

Water Pollution Control Act, Revised") issued by the Department of the Interior, states:

"Prior to establishing, amending, or repealing standards of water quality the Board shall, after due notice, conduct public hearings thereon. Notice of public hearing shall specify the waters for which standards are sought to be adopted, amended or repealed and the time, date and place of such hearing."

Thus, any attempt to adopt a revised standard on the State level without a full public hearing would result in standards which are invalid under the "Model Act" and would be unenforceable in any State having a similar statutory requirement.

In addition, section 10(c)(1) of the Federal Act requires the States to hold public hearings prior to adoption of water quality criteria. It is logical that section 10(c)(1) also be read to require public hearings prior to the revision of existing water quality standards. Such was the intent of the Senate Committee:

"Accordingly, the bill provides authority for the Secretary to establish standards of water quality to be applicable to interstate waters or portions thereof. The standards are to be formulated in accordance with accepted administrative procedures calling for notice and public hearing and consultation with affected Federal, State, interstate and local interests and are to be such as to protect public health or welfare and to enhance the quality and value of interstate waters. Standards would also be subject to revision either by the Secretary on his own or when petitioned to do so by the Governor of any affected State. The same procedure for hearing and consultation will be followed in revisions as when standards were being formulated." S. Rep. No. 10, 89th Cong., 1st Sess. 9 (1965).

In any event, sections 10(c)(2) and (4) establish detailed requirements for the revision of existing standards. Section 10(c)(2) states that when the Secretary desires to revise an existing standard, he must call a conference in the same manner as that required for the original adoption of Federal standards. Furthermore, the Secretary must comply with the full Hearing Board procedures of section 10(c)(4) before any revised standard can be adopted over State opposition.

Thus, when the Secretary requests that a State adopt any provision that is not included within its water quality standards as previously approved, such as a non-degradation standard, the procedural requirements of section 10(c) must be observed, as well as those existing under appropriate State law. Any revised standards imposed without regard to these procedural requirements would be invalid and unenforceable.

VI. ADMINISTRATIVE REVIEW OF THE SECRETARY'S REGULATIONS

When a State either refuses to adopt the minimum water quality standards deemed essential by the Secretary or refuses to revise existing standards to meet new minimum levels imposed by the Secretary, the administrative review process of sections 10(c)(2) and (4) becomes applicable, and affected States have a right to a hearing before a Hearing Board, as set forth in section II of this Memorandum. The legislative history of the 1965 Act makes it clear that the scope of the Board's inquiry in reviewing a proposed standard will be broad. As the Senate Committee notes in its Report (*see* S. Rep. No. 10, 89th Cong., 1st Sess. 10 (1965)):

"The authority given the Secretary is not arbitrary. He is constrained from arbitrary action by the public hearing and consultation requirements of the standards section and by the knowledge that, if he promulgates standards, compliance with such standard must ultimately meet the test of 'practicability' in the courts, as provided in section 5(d) of the bill, should violation of such standards trigger an enforcement action. It is clear, also, that the enforcement conference and the *hearing board must*, in the light of the authority given the court, *consider the 'practicability' of compliance with the standards.*" (Emphasis supplied.)

The Hearing Board review process was further commented on by Congressman Blatnik, the House sponsor of the Water quality legislation:

"This Hearing Board . . . can then do either one of two things: Approve the standards and recommend approval at the same time to the Secretary, whereupon he may promulgate them and enforce them. Or the board may modify the