As to the suggested federal guideline that states require secondary or its equivalent treatment across the board within the next five years, this is clearly an effluent standard.

Under most state statutes, the quality of an effluent must be tailored so that upon mixing with the waters of the receiving stream, the desired standard of quality is achieved. Effluent standards must, therefore, be designed to result in that desired quality in the receiving waters. As stated by Burton J. Gindler, B.S.L., LL.B., in Volume 3 of *Waters and Water Rights*, 1967:

"There may be a tendency to establish effluent standards which provide a margin of safety. The effluent standards may often not be based on the fair assimilative capacity of the receiving waters; they may require a greater expense for waste treatment than is actually necessary."

Under what legal theory could a state administrator tell a municipality or industry that they must construct and install secondary or its equivalent treatment when they can clearly demonstrate that they are able to meet the pertinent water quality standards by using a lesser degree of treatment? Any state which adopts this requirement is probably buying itself a lot of litigation in which it cannot prevail. Consequently, across-the-board uniform effluent requirements, such as secondary treatment or its equivalent, is beyond the power of the Secretary to require and beyond the legal capacity of most states to require or enforce. Certainly the Secretary couldn't enforce it and knowing this he wants the states to do it for him, or at least attempt to do so.

With respect to sub-topic (2), it is axiomatic that the delegation of certain powers and discretion by a state agency to a federal agency is legally and constitutionally prohibted unless it is specifically authorized to do so by state legislation and even in some instances such legislative authority is highly questionable.

In regard to the question of the need for additional state hearings, if a state should attempt to adopt the Secretary's suggestion, it is clear, in most states at least, that such a hearing would be required. This is true for the reason that the impact of such an amendment is so broad as to affect the entire scope of standards theretofore adopted and thus constitutes a substantial deviation therefrom.

The whole purpose of a public hearing is to advise all segments of the public as to what it is the administrative agency proposes to do and give them an opportunity to offer suggestions, criticisms and alternatives. It also allows them to go on record as objecting to a certain regulation to protect themselves for the record should they later determine to have it tested judicially. To attempt to promulgate such a rule without a hearing would by-pass and ignore all of these well established legal concepts.

It is suggested that the state attorneys general should take a more active part in water pollution control activities and keep in constant touch with their water pollution control agencies and particularly request that such agencies invite them to any conferences or consultations with representatives of the Department of the Interior. This is not to imply that such federal representatives bear watching but rather that some state administrators out of a lack of understanding of legal restrictions may in good faith agree to do certain things beyond their authority.

Considering the recent activities of the federal government in this matter, it would appear that the Department of the Interior is attempting by indirection to do what the Congress has precluded them from doing directly; that is, to formulate broad and nationally uniform water quality standards and to inject themselves directly into state water pollution control administration. In seeking these goals, the federal representatives have attempted to pit one state against another and to play upon the fears of the states that federal grants will be withheld unless the states comply with their wishes.

This unhealthy climate results in a serious detriment to a state's economic development in that a water user who wishes to locate in a particular state cannot project his operating costs accurately until he knows what level of treatment will be required of him. If he relies on existing state standards, he may find to his horror that a later federally adopted rule might require him to substantially add to his treatment facility at a cost far beyond that which he could have constructed such a facility originally. Such a situation is unfair to water users and to the states.

All state regulatory bodies should take a long hard look at these federal proposals and seek the advice of their legal counsel. If it is determined that their adoption is legally unsound, then they should so advise the Secretary of the Interior and stand their ground.