

Secretary of Interior for approval. If states do not comply with this requirement, or the state plan, in the opinion of the Secretary, is defective, or if after a continuing evaluation the Secretary determines a state is not complying with the approved state plan, the Secretary may initiate federal regulations for surface mining and surface mining reclamation in that state.

The rationale for this approach is stated in Section 3(d) of the proposed bill, which reads: "because of the diversity of terrain, climate, biological, chemical, and other physical conditions in mining areas, the establishment of a nationwide basis of uniform regulations for surface mining operations and for the reclamation of surface mined areas is not feasible." The rationale is sound, reasonable and logical. It backs up an approach that should be supported by those who believe that states must play an active role if our Federal form of Government and its checks and balances are to be preserved.

In fact, the National Chamber did support just such an approach in 1965 when Congress enacted the Water Quality Act. It was the same formula, the same expressed intent of Congress and almost the same language.

Unfortunately, the Secretary of Interior is not administering the Water Quality Act with the same understanding that is so clearly spelled out in the Act. Uniform federal standards are being demanded before state standards are approved—one state is being played against the other. Confusion reigns. It is now ten months after all the states have submitted their plans for implementing state water quality standards—not one state has had its plan approved 100 percent. All approvals are "conditional." Conditional upon acceptance by the states of certain language that will provide "equal"—uniform—standards for the state plans.

Based upon the experiences the states are now having with the Department of Interior in submitting plans for the Secretary's approval, it is apparent that more restrictive guidelines must be included in any legislation if the intent of Congress is to be properly reflected in the administration of such legislation. For your information and the record, attached is a letter of opinion from the Washington, D.C. law firm of Covington & Burling which clearly states that, in their opinion, the Secretary of Interior is acting beyond the scope of his authority in considering for approval state plans submitted to him under the provisions of the Water Quality Act of 1965.

For these reasons the National Chamber opposes S. 3132 and urges the Senate Interior and Insular Affairs Committee to reject the bill.

Sincerely,

JAMES G. WATT,
Secretary, Natural Resources Committee.

WASHINGTON, D.C., April 4, 1968.

Mr. JAMES G. WATT,
Secretary, Natural Resources Committee, Chamber of Commerce of the United States of America, Washington, D.C.

DEAR MR. WATT: You have requested our opinion whether the Secretary of Interior is authorized to determine that State water quality standards are not consistent with the Federal Water Pollution Control Act on the ground that they fail to include (1) an effluent standard relating to the quality of matter permitted to be discharged into interstate waters, or (2) a uniform standard of "nondegradation" as published by the Secretary.

In our view the answer to both parts of this question is No. The Secretary has no authority under the Federal Water Pollution Control Act, as amended by the Water Quality Act of 1965, to insist that a State include in its water quality standards applicable to interstate waters either an effluent standard—such as an absolute requirement of secondary treatment or its equivalent—or a requirement that waters whose existing quality is better than the established standards will be maintained at their existing high quality.

The express policy of Congress in enacting and amending the Federal Water Pollution Control Act was "to recognize, preserve, and protect the primary responsibilities and rights of the States in preventing and controlling water pollution," and under the Act it is the initial right and responsibility of each State to adopt, after public hearings, water quality standards applicable to interstate waters within or on its borders. If the Secretary of the Interior determines that a State has adopted water quality criteria and an enforcement plan that are consistent with the Act, such State criteria and plan thereafter become the water quality standards applicable to the interstate waters within the State.