

If the Secretary were to disapprove a State's water quality standards for their failure to include either an effluent standard or a nondegradation requirement, and then to promulgate standards applicable to the interstate waters of that State which included these requirements, the State would be entitled to a public hearing before an independent Hearing Board. In our view the Hearing Board would be obliged, as a matter of law, to recommend the elimination of these requirements from the standards promulgated by the Secretary, and the Secretary would be obliged to promulgate revised standards of water quality in accordance with the Hearing Board's recommendation.

This letter sets forth in summary form the basis for these conclusions, which are further elaborated with citation to the legislative history and other relevant authorities, in the accompanying memorandum.

WATER QUALITY STANDARDS MUST RELATE TO THE QUALITY OF THE RECEIVING STREAM

Both the language and the legislative history of the 1965 amendments to the Act make it clear that Congress intended that water quality standards prescribe the quality of the waters into which effluent is discharged, rather than the quality of the effluent itself, and that such standards must relate to the use and value of the receiving body of water.

Section 10(c)(1) provides for the adoption of "water quality criteria applicable to interstate waters or portions thereof within such state"—clearly a reference to the quality of the receiving waters. Water quality standards must meet the requirements of section 10(c)(3), which provides that in establishing such standards States, the Secretary, and Hearing Boards must take into consideration the use and value of interstate waters for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial and other legitimate uses. This emphasis on the use and value of the receiving waters is fundamental to Congress's insistence upon local standards that relate directly to the quality of these waters.

The sole means for Federal enforcement of water quality standards is set forth in section 10(c)(5), which provides that the "discharge of matter into such interstate waters or portions thereof, *which reduces the quality of such waters* below the water quality standards established under this subsection . . . is subject to abatement. . . ." (Emphasis added.) No violation occurs until it can be shown that the quality of the stream has been reduced below the level prescribed in the standard for that stream.

The fact that the Water Quality Act requires that water quality standards apply to the stream rather than to the effluent is the result of the deliberate decision by Congress to reject the approach taken in the initial Administration proposal, which would have authorized both stream standards and controls reading directly on the effluent. On the basis of testimony at the first hearings on the bill, the Senate Committee removed the provision for effluent standards, and it never reappeared through enactment.

Thus, both the statutory language reading explicitly in terms of stream standards, and the Congressional refusal to provide for effluent controls, make it clear that the Secretary of the Interior has no authority to insist on the inclusion of an effluent criteria in State water quality standards as a necessary condition for their approval under the Act. More particularly, the insistence by the Secretary that States include within their water quality criteria a uniform requirement of secondary treatment or its equivalent, without regard to whether such treatment is necessary to achieve compliance with the applicable stream standards, is beyond the Secretary's statutory authority.

In many instances municipalities and companies may have to install secondary treatment or its equivalent if they are to prevent the discharge of matter which reduces the quality of interstate streams below the applicable water quality standards. Failure to install secondary treatment in those instances would result in a violation of both Federal and State law.

But an across-the-board requirement of secondary treatment or its equivalent without regard to the water quality standards applicable to the interstate waters in question is contrary to the Congressional intent and the statutory language. If, after the adoption of water quality standards based on particular uses and values of an interstate stream, a municipality or a company finds that it need not install secondary treatment in order to prevent the discharge of matter that would reduce the quality of the stream below such standards, then there is no basis for requiring such treatment or for taking Federal enforcement action for failure to install it.