June 22, 1978

TO: CWC Executive Committee, Officers, Rules Committee, Selected Water Leaders

FROM: Fred Caruso

SUBJECT: Recently Adopted Water Quality Standards for Colorado

This is an alert!!!

The Colorado Water Quality Control Commission recently adopted a new set of Water Quality Standards for Colorado, which contains strict guidelines for some 65 substances determined to be pollutants.

These standards will go into effect by July 20, UNLESS they are challenged by appeal by August 10. (August 10 is 60 days after publication of those standards in the Colorado Register.)

This letter is to call your attention to what I believe to be a major flaw in the standards as published...a flaw which seems to have occurred somewhere between the understanding reached by those working with the Commission and the actual publication of the document. I urge you to contact your lawyer to see if this may in fact be the case.

Here is what has happened:

The proponents of excessive, restrictive, and even undetectable standards made a "major concession" to the proponents of reasonable regulation by agreeing to making the numeric standards first proposed into "criteria." The criteria would be used as a guideline and imposed as a standard only if there should be determined to be a water quality problem.

Although the difference between the terms, "standard" and "criteria," may seem small, it is not so! Within the context of the state water quality program, the differences are gigantic and should be measured in terms of millions and millions of dollars, hundreds of state employees, and endless red tape faced by all water users from all sectors.

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"Standards" are a legal definition of pollution. They do not necessarily address a problem (i.e., fish kills, algae growth, etc.). They simply define by law a water quality situation which must be met regardless of consequences or nonconsequences. Standards, in effect, become the problem which must be met.

Teams of pollution control officers could cover the state, testing the waters at tremendous taxpayer expense, demanding compliance with "numbers" at uncountable costs, when, in fact, the problem of "damage" may exist in only a few areas.

"Criteria," on the other hand, amounts to the same thing, but ONLY as it addresses a problem. Pollution-related "problems" are handled on a priority basis, in a cost-effective manner. There is no need to remove a constituent from the water if it is doing no harm.

Members of the Water Quality Control Commission are aware that something is not quite right and have placed the matter of "Standards vs. Criteria" on the agenda for their meeting on July 5th. After examining the published standards, you should inform the Commission of your appraisal.

Here are a few quotes from the "Water Quality Standards for Colorado" which lead me to believe there is not one bit of difference between "criteria" and "standards" as far as the Commission is concerned:

Page 6, Section 3.1.6, item (2)(a): "Both criteria and standards will apply to most streams. The numbers in the tables in Part II of these regulations are criteria which will apply unless standards are established..."

If the criteria applies in the absence of standards, then the criteria are in fact the standards. Will the criteria be enforced as standards, even in the absence of a problem?

Page 7, Section 3.1.6, item (2)(e): "The Division (of Water Quality) will apply the criteria in the tables unless sufficient evidence is before it showing that a different number would be appropriate to protect the use classification."

Page 8, Section 3.1.6, item (3)(f): "Numerical limits in the tables that are not selected as standards shall serve as quality criteria, guiding the Division in the writing of NPDES permits.

Page 25, Part II, Section 3.1.14, Item 1, paragraph 2: "...In the absence of a standard, the Division will apply the corresponding criterion value..."

Other statements in the document raise questions too, but I will not go any further.

Please re-examine the standards as issued with an effective date of July 20. If you find the results to be different than you expected, let the Commission know before or at its July 5th meeting. I will be happy to pass your comments on for you. And don't forget, the deadline for appeal is August 10.

                                                           Fred Caviness