MEMORANDUM

TO: Ival V. Goslin, Executive Director
FROM: Paul L. Billhymer, General Counsel

Senator Muskie, upon introducing S. 2987, included in the Congressional Record, Vol. 112, February 28, 1966, pp. 4058-4061, a section-by-section analysis of the bill which is incorporated into this memorandum.

"TITLE I"

"Section 101"

"This section provides a short title; namely the 'Clean Rivers Restoration Act of 1966'."

"Section 102"

"This section contains congressional findings: First, that the Nation's natural waters have become dumping grounds for industrial and domestic wastes and the sewage of our communities; second, that the people of the United States are concerned about the potentially harmful effects of these waters on our health, and about the quality of these waters for our resource needs; third, that there is an immediate need to control and eliminate water pollution through the construction of coordinated treatment works and sewer facilities if they are to be restored to adequate standards of quality; fourth, that the present Federal pollution..."
control grant programs concentrate on providing assistance on a municipality-by-municipality basis; and fifth, that these programs need to be supplemented by a wider based program; namely one aimed at restoring the quality of an entire river basin or basins.

"Congress then declares that the purpose of the Clean Rivers Restoration Act of 1966 is to initiate and carry out in selected river basins of the Nation a program that supplements other water pollution control programs, that provides for maximum cooperation on the part of national, State, interstate, and local governmental units, and that will be directed at reclaiming and restoring the quality of the Nation's rivers, lakes, streams, estuaries, bays, and coastal waters.

"Section 103

"Subsection (a) authorizes the Secretary of the Interior to designate or establish a planning agency on his own initiative for a river basin or basins or portions thereof to be selected by him for the purpose of this act. He may also designate or establish such an agency if the Governors of one or more States located within a selected river basin request him to do so. If a River Basin Commission is established by the President under the Water Resources Planning Act (79 Stat. 244), it is expected that, in most cases, the planning agency for river basin planning under this act will be that River Basin Commission.

"The Secretary, in his discretion, could, however, designate some other organization to plan, if that organization adequately represents the various national, State, interstate, and local interests in the selected river basin or basins, and if that organization is capable from a practical and technical standpoint of preparing a plan that will adequately and effectively carry out the purpose of this act.

"Subsection (b) directs the Secretary to select for planning purposes only river basins where all the Governors of the States wherein the basin or basins are located agree in advance of planning to seek such legislation as may be necessary to carry out a plan and, in particular, to carry out subsections 104 (e) (1), (2), and (3) of this act.

"Section 104

"Once designated, subsection (a) directs the planning agency to develop a comprehensive pollution control and abatement plan for the selected river basin or basins. The plan must be consistent with or part of a comprehensive river basin and related land resources plan being prepared or in existence for the selected river basin or basins or portions thereof.
"The plan must include a provision for water quality standards applicable to the entire basin which are consistent with the criteria set forth in section 10 (c) (3) of the Federal Water Pollution Control Act, as amended, for such standards. Thus, the standards must, among other things, be designed to protect the public health, enhance water quality, and take into consideration the use and value of water for, such things as, public water supply, fish and wildlife, agriculture, and industrial uses. The plan must provide for the use of adequate enforcement measures to maintain these standards. It must provide that the local or interstate bodies within areas designated geographically by the plan shall organize, plan, construct, operate, and maintain treatment works and water and sewer facilities, or share the cost thereof with other public or private agencies, so as to provide the most effective and economic means of developing for the entire basin or for areas within such basin systems for the collection, storage, treatment, purification, and distribution of water and wastes. The plan must also provide for a permanent body with effective jurisdiction coextensive with the area covered by the plan. This body will have among its responsibilities water and related land resources regulation and enforcement authority and authority to coordinate the implementation of, and to review and update, the plan.

"In addition, the plan will provide that the local or interstate bodies constructing and operating treatment works and water and sewer facilities must obtain the necessary and adequate authority, if they lack it, (1) to take actions necessary to carry out the purpose of this act, (2) to raise capital through the sale of revenue or other bonds or through other authorized methods, including the guarantee of bonds, (3) to levy water and sewer and sewage collection and treatment, and disposal charges which will cover the costs of these services, including capital costs, and (4) to use an effective metering system which will have the threefold purpose of conserving water, preventing or minimizing wastes, and serve as a basis for establishing water and sewer and waste treatment charges. These bodies will then have the capability of adopting sound financial programs designed to maintain water quality in the basin in accordance with the plan and to assure the future expansion and replacement of the works and facilities constructed under the plan without further Federal assistance.

"The plan will also include such other provisions as the planning agency believes may be necessary to carry out the purposes of this act.

"Subsection (b) directs the planning agency, in preparing a plan for the basin, to consider the possibility of effluent charges on public and private entities discharging wastes into the waters of the basin or basins covered by the plan."
"Section 105

"When the planning agency completes the plan, this section directs that agency to transmit the proposed plan to the heads of the Federal and interstate agencies represented on the planning agency and to the Governor of each State represented on the planning agency. If the plan affects an international boundary water or river crossing such boundary over which an international commission has jurisdiction, then the planning agency will transmit it to the U.S. section of the commission for review. Each agency, etc., will have 90 days to review the plan and submit views and recommendations thereon. The planning agency may then consider these and make appropriate changes or modifications and then submit the plan to the Secretary of the Interior.

"In some instances where the planning agency has completed a meaningful part of the plan, it may be desirable and appropriate to submit such portion for review. In such instances, it may be desirable to proceed with the development of needed treatment works and water and sewer facilities based on this interim plan to prevent a potential pollution problem in a basin or to prevent a worsening of existing pollution in a basin or basins. This section permits such measures.

"Section 106

"Subsection (a) provides for the transmittal by the Secretary of the Interior of the completed plan or interim plan to the Secretary of Health, Education, and Welfare and to the Secretary of Housing and Urban Development and to the Water Resources Council.

"Subsection (b) directs the Secretary of Health, Education, and Welfare to review the plan to determine its effectiveness in guarding and improving human health.

"Subsection (c) directs the Secretary of Housing and Urban Development to review the plan to determine its effect on the comprehensively planned development of the metropolitan area or areas included in the proposed plan or interim plan. A metropolitan area is usually a standard metropolitan statistical area designated by the Bureau of the Budget and adjusted to include only urbanized and urbanizing areas.

"Subsection (d) directs the Water Resources Council to consider whether the plan is consistent with or part of a comprehensive river basin water and related land resources plan for the basin which is being prepared or is in existence. The Council is particularly concerned with the relationship of the plan to the conservation of water in the basin and to the optimum development and use of the water and related land resources therein.
"Subsection (e) directs the Secretaries of Health, Education, and Welfare and Housing and Urban Development and the Council to notify the Secretary of the Interior of the results of their review.

"Subsection (f) directs the Secretary of the Interior to review the proposed plan or interim plan to determine that it substantially complies with section 104 of the act. If it does, he shall approve it. If it does not, he will return it with his comments.

"Section 107

"When a completed plan is approved subsection (a) authorizes the Secretary of the Interior to accept applications from local or interstate bodies located within a river basin or basins or portions thereof covered by the plan and to make grants to them to assist in the financing of the development costs of various treatment works necessary to carry out the plan. The Secretary can also accept applications and make grants based on an interim plan or reports, if he finds that the interim comprehensive pollution control and abatement plan is substantially completed and if the applications are consistent with such a plan. The grants are subject to a number of limitations.

"First, the maximum amount of a grant shall be 30 percent of the estimated development costs of the treatment works. This limitation will not, however, apply to grants made for Appalachia and for economic development areas under the appropriate laws. Similarly, this limitation will not apply in the case of supplemental grants made under the proposed Housing and Urban Development Act of 1966 now pending in Congress.

"Second, an application for a grant cannot be approved until the Secretary determines that the treatment works (A) substantially conform with the approved plan or interim plan, (B) are consistent with and carry out the purpose of this act, (C) will be properly and efficiently operated and maintained, (D) are designed to meet foreseeable growth needs of the area, and (E) when located wholly or in part in urbanized areas meet the same conditions with respect to planning and programming that are prescribed by the Secretary of Housing and Urban Development with respect to water and sewer projects under title VII of the Housing and Urban Development Act of 1965.

"Third, grants under this act cannot be used to assist local or interstate bodies in financing the construction costs of particular waste treatment works within a river basin or basins or portions thereof covered by the completed or interim plan which are actually receiving a Federal grant under the appropriate provisions of such laws as the Federal Water
Pollution Control Act, as amended, the Appalachian Regional Development Act of 1965, the Housing and Urban Development Act of 1965, and the Public Works and Economic Development Act of 1965. This limitation, however, would not prevent the use of the supplemental grant authority in title I of the proposed Housing and Urban Development Act of 1966.

"Fourth, water quality standards must be approved by the Secretary and in effect for the area covered by the completed or interim plan.

"Fifth, the applicant must adopt prior to receiving a grant a financial program in accordance with the plan.

"Subsection (b) contains standard labor provisions.

"Section 108

"This section provides that once a plan or a portion thereof is approved grants under any other provision of law for treatment works in a river basin or basins or portions thereof covered by such plan cannot be approved unless such works and facilities conform to that plan. If they so conform, the Secretary can, in making grants under section 8 (b) of the Federal Water Pollution Control Act, as amended, waive the dollar limitations in that section for projects in the river basin or basins or parts thereof covered by such plan, as well as under this act.

"Section 109

"This section authorizes the Secretary to use, to the extent necessary, the authorities contained in section 5 (a) (1), (2), (3), and (5) of the Federal Water Pollution Control Act, as amended, in carrying out the provisions of this act. They relate to such activities as research, studies and the hiring of consultants.

"Section 110

"This section authorizes the Secretary of the Interior to pay all or part of the expenses of the planning agencies designated by the Secretary under this act to prepare a comprehensive pollution control and abatement plan.

"Section 111

"Subsection (a) requires grant recipients to keep records.
"Subsection (b) requires the grant recipient to permit examination
of pertinent books, etc., to determine that the funds granted are used
as required by the act.

"Section 112

"This section authorizes an appropriation of $50 million for fiscal
year 1967 to carry out the provisions of this act. It also authorizes
additional appropriations for succeeding fiscal years. Funds appropriated
are available until expended.

"Section 113

"This section defines various terms used in the act.

"Section 114

"This section specifically provides that this act will not affect the
jurisdiction of any interstate compact or international body.

"TITLE II

"Section 201

"Subsection (a) provides that it is the purpose of this title to encour­
age the several States to control pollution on a statewide basis, as well
as on a city-by-city basis or a river basin basis. It is also the purpose
of the title to encourage the States to establish for all of the waters in the
State effective water quality standards.

"Section 8 of the Federal Water Pollution Control Act, as amended,
now authorizes grants for waste treatment works to prevent the discharge of
untreated or inadequately treated sewage or other waste into any waters of
the Nation. The maximum grant can be 30 percent of the estimated reason­
able cost of the project or $1.2 million, whichever is smaller. When the
project serves several communities the dollar maximum is $4.8 million.

"No grant can now be made under section 9 of that act for any
project in any State for more than $250,000 until a grant has been made
for each project which requires a grant of less than $250,000 in that State.

"Subsection (a) of this section of title II of the bill authorizes the
Secretary to make up to 30 percent grants without regard to the above dollar
limitations and the limitation mentioned above regarding projects exceed­
ing $250,000 in a State, if four conditions precedent are met.
These conditions are: First, the applicant State agency, municipality, or intermunicipal or interstate agency must adopt a financial program that will, as determined by the Secretary of the Interior, adequately assure the maintenance of water quality within the metropolitan area within which the applicant is located; second, such applicant must have adequate capability of adopting a sound financial program, including authority to levy water and sewer and sewage treatment charges, to use a metering system, and to raise capital by use of revenue bonds or other methods to assure the future expansion and replacement of such works without subsequent Federal assistance; third, the State must adopt adequate, as determined by the Secretary, statewide water quality standards, consistent with the criteria established in section 10 (c) (3) of the Federal Water Pollution Control Act, as amended; and fourth, the State must also match with its own funds the applicant's Federal grant made under this section. The Secretary cannot, however, waive these limitations if a comprehensive pollution control and abatement plan or interim plan for a river basin within the State has been approved or is in preparation pursuant to the Clean Rivers Restoration Act of 1966, unless the particular project substantially conforms to such plan.

"Section 202"

"This section authorizes the use of all funds appropriated to the Secretary under section 8 (d) of the Federal Water Pollution Control Act, as amended, and allocated to the States pursuant to section 8 (c) for the purpose of this title.

"Section 203"

"This section repeals the last sentence of section 8 (b) of the Federal Water Pollution Control Act, as amended. That sentence now waives the dollar limitation mentioned above if a State matches the grants made under section 8 (b) of that act from any appropriations exceeding $100 million made pursuant to section 8 (d) of that act and allocated to the States in the ratio that the population of each State bears to the population of all the States. Thus, the present act authorizes up to $50 million for a State matching pollution control program. This title will enable the Secretary to use more than $50 million of the total authorized appropriation of $150 million for fiscal years 1966 and 1967 for the program authorized by this title, if the conditions are met.

"TITLE III"

"Section 301"

"This section provides a short title.
"Section 302

"This section provides that it is the purpose of this title to aid and expedite the present Federal, State, and local efforts toward controlling and preventing pollution by providing additional funds to aid the States in formulating, implementing, and enforcing water quality standards, by increasing the Federal Government's pollution control research efforts, and by strengthening the Secretary's present enforcement authority.

"Section 303

"This section amends section 7 of the Federal Water Pollution Control Act, as amended.

"Subsection (a) extends the authority in section 7 (a) of that act for appropriations to aid the States in establishing and maintaining adequate control measures to prevent and control water pollution to the fiscal year ending June 30, 1972. This authority will now expire on June 30, 1968.

"Subsection (b) adds a new subsection to section 7 which authorizes an annual appropriation of $5 million for fiscal year 1967 and for 5 subsequent fiscal years to be used by the Secretary, in his discretion, to assist the State and interstate agencies in formulating, implementing, and enforcing water quality standards pursuant to section 10 (c) of the Federal Water Pollution Control Act, as amended. This amendment will double the present Federal support under the act for State and interstate control agencies.

"Section 304

"This section amends section 10 (c) of the Federal Water Pollution Control Act, as amended. The amendment expands the provisions of that section which relates to the establishment of water quality standards to include navigable as well as interstate waters. This change makes subsection (c) consistent with the other provisions of section 10 of the act which now apply to both navigable and interstate waters.

"Section 305

"Subsection (a) amends section 10 (d) (1) of the Federal Water Pollution Control Act, as amended. That section now directs the Secretary to call a conference (1) when requested by the Governor of a State, or (2) when requested by a State water pollution control agency, or (3) when requested, with the concurrence of the Governor and of the State water pollution control agency, by the governing body of any municipality, or (4) on his own motion if the pollution is affecting persons outside the State where the discharge occurs.
"This subsection of the bill amends section 10 (d)(1) principally by authorizing the Secretary to call a conference on his own initiative, based on studies conducted pursuant to the Federal Water Pollution Control Act, as amended, if any pollution referred to in section 10 (a) of the Federal Water Pollution Control Act, as amended, is, in his judgment, occurring. Thus, the Secretary can act to abate the pollution even if it only affects persons within a single State. He would only act in either case, however, if the pollution was occurring in such quantity to warrant such Federal action.

"Subsection (b) amends section 10 (d) of the Federal Water Pollution Control Act, as amended, principally by adding a new provision which is similar to the provision now contained in section 105 (c) (1) of the Clean Air Act, as amended.

"This provision directs the Secretary to call a conference if he believes that any pollution referred to in section 10 (a) of the Federal Water Pollution Control Act, as amended, which endangers the health or welfare of persons situated in foreign countries, such as Canada and Mexico, is occurring, and if the Secretary of State requests him to call a conference, and if he believes that the pollution is occurring in sufficient quantity to warrant his taking such action. The Secretary will, through the Secretary of State, invite the affected country to participate in the conference.

"Section 306

"This section amends the second sentence in section 10 (e) which now directs the Secretary to delay at least 6 months from the date he recommends remedial action to the State water pollution control agency, after a conference, before he calls a public hearing. This section of the bill eliminates the 6-month waiting period and allows the Secretary to determine what is a reasonable waiting period in each case.

"Section 307

"This section amends section 10 (f) of the Federal Water Pollution Control Act, as amended, which now requires the Secretary to wait at least 6 months after sending the hearing board's findings and recommendations to the persons causing or contributing to the pollution and to the State water pollution control agency, before he acts to abate the pollution. This section of the bill eliminates this "built-in" delay and leaves it up to the Secretary depending on the circumstances, to fix a reasonable time for such person or agency to act.
"Section 308

"This section amends section 10 (g) of the Federal Water Pollution Control Act, as amended, which now authorizes the Secretary to request the Attorney General to initiate a suit to abate pollution, which endangers the health or welfare of persons only in the State in which the discharge originates and only if the Governor consents in writing. This section of the bill authorizes such a suit without the Governor's consent, if action is not taken within the time given the violator to abate the pollution.

"Section 309

"This section amends section 10 (h) of the Federal Water Pollution Control Act, as amended. Section 10 (h) now permits a court in which an action to abate pollution is brought to rehear all of the evidence produced before the hearing board and to receive additional evidence and to make new findings de novo. This procedure is time consuming, a burden on the courts, and unnecessary. The hearing board convened by the Secretary is composed of persons who are expert and impartial. The courts do not have the same expertise nor the time to develop it adequately. The board must now hear and consider all relevant evidence to make the necessary findings. The court should not review this evidence de novo and then make either the same or wholly new findings.

"This section of the bill requires the court to receive in evidence a transcript of the board's proceedings and a copy of their findings and recommendations. The court is then bound by the board's findings if supported by substantial evidence considered on the record as a whole. The court may only receive new evidence discovered after the board's hearing and before the filing of the suit.

"The substantial evidence test is now used in the judicial review of most administrative hearings. It should apply in these cases also.

"Section 310

"This section adds two new subsections to section 10 of the act.

"The first is subsection (k) which enables the Secretary to request the Attorney General to go into court immediately and on his own initiative whenever he believes that actual or threatened pollution deriving from an identifiable source presents an imminent danger to the public health or welfare, or to the Nation's natural resources, or to areas of significant scenic or recreational value, and that there is no other effective means of protection available. This subsection authorizes this action without first exhausting the time-consuming administrative procedures required by the act.
"Some types of pollution can present danger to the health or welfare of the public or to our Nation's natural resources, such as fish and wildlife, and scenic beauty. For example, chemical plants have in the past dumped deadly poisons, such as potassium cyanide into navigable waters. Also, various petroleum products can be a danger to our wildlife populations. When these and other dangerous wastes pollute these waters or threaten to do so, the Secretary needs an adequate tool to cope with this potential disaster. This amendment provides such a tool, but at the same time insures that he cannot exercise this authority lightly in order to avoid the scheme of regulation and procedure expressed in the act.

"The second is subsection (1) which provides that findings and recommendations of a hearing board convened under section 10 of the Federal Water Pollution Control Act, as amended, and court decrees rendered pursuant to this section can be used in private suits to establish prima facie the fact of pollution and the fact that a particular party has caused or contributed to the cause of it.

"To establish the fact of pollution in navigable or interstate waters and resultant damage can be very difficult and costly. It usually requires expert witnesses. The hearing board and the court have all obtained this evidence on an impartial basis.

"There is precedent for this authority. Plaintiffs in private treble damage actions under antitrust laws are permitted to introduce such findings in Government cases. The plaintiff must still prove that he himself has been damaged by the defendant.

"Section 311

"This section of the bill amends subsection (d) of section 5 of the Federal Water Pollution Control Act, as amended, by deleting paragraph (2) which now limits the amount of funds for research to $5 million annually. This change will permit the Secretary to conduct research at the dollar level recommended by the President in his message, "Preservation of Our Natural Heritage."

"Section 312

"This section redesignates six sections of the Federal Water Pollution Control Act, as amended.

"Section 313

"This section adds three new sections to the Federal Water Pollution Control Act, as amended.
"The first new section is section 11.

"Subsection (a) of that section authorizes the Secretary to issue subpoenas compelling attendance of witnesses and the production of various records determined by the Secretary to be relevant at any proceeding held pursuant to the Federal Water Pollution Control Act, as amended. The subpoenas must be served by authorized persons or service must be proved by affidavits of the serving official. Service must be at least 5 days in advance of the date of attendance and must be in the judicial district where the person lives or where such person is doing business.

"Subsection (b) authorizes the Secretary to invoke the court's aid when a person fails to respond to a subpoena. Willful failure or refusal to attend and testify, etc., subjects the person to a criminal penalty.

"The second new section is section 12.

"Subsection (a) of that section authorizes the Secretary, in order that he may abate the pollution of interstate or navigable waters which endangers the health or welfare of any person, to enter and inspect public and private facilities from which any discharge of matter emanates causing or contributing to the pollution, directly or indirectly, of such waters or their tributaries.

"Subsection (b) provides a penalty for refusing to permit an inspection.

"Subsection (c) defines the term 'matter.'

"The third new section is section 13.

"This section directs the Secretary to require by regulation that public or private facilities discharging matter into interstate or navigable waters must register such discharges with the Secretary, including the point, amount and nature of the discharge. Changes in the nature, quantity or location of the discharged matter must also be reported, as well as such other information as the Secretary may require to carry out adequately the purpose of the Federal Water Pollution Control Act, as amended.

"Subsection (b) requires that fees be established by regulation which, in the aggregate will pay for the costs of handling the notices required by this new section.

"Subsection (c) provides for a civil penalty of $200 a day for failure to file the notices required by this new section. The penalty begins after the expiration of 30 days after the Secretary notifies the person of
his failure to file. The penalty is recoverable in a civil suit, but may be remitted or mitigated by the Secretary, if based on the circumstances of each case, he believes that such action is warranted and in furtherance of the purpose of the act.

"Subsection (d) defines the term 'matter.' "

"TITLE IV

"Section 401

"This section amends title 28 of the United States Code by adding a new section 1362. This new section gives to the district courts of the United States original jurisdiction in private actions brought to enjoin pollution of interstate or navigable waters. Such persons are now permitted to bring actions to enjoin nuisances which adversely affect the use and enjoyment of their property. In the normal case, absent diversity of citizenship, such persons must sue in State courts. Even when diversity exists, the amount in controversy must be more than $10,000. Nuisance resulting from the pollution of interstate or navigable waters should be subject to injunctive relief in Federal courts without regard to the issue of diversity or the amount in controversy. This new section will further the objective of this legislation which is to abate pollution for the benefit of all.

"Section 402

"This section amends section 13 of the Refuse Act by requiring a determination by the Secretary of the Interior that the depositing of refuse matter into navigable waters is consistent with the purposes of the Federal Water Pollution Control Act, as amended. The Corps of Engineers must still determine if the refuse will be harmful to anchorage and navigation.

"Section 403

"This section amends the Oil Pollution Act. This section transfers the authority to administer the Oil Pollution Act, 1924, to the Secretary of the Interior from the Secretary of the Army."
COMMENTS ON H.R. 13104 - S. 2987

Comments will not be made on each section. Only those sections which seem to call for special consideration will be covered. There will be no analysis of the changes in the "grant" provisions of the law as such changes generally increase the "grants."

These bills really seek to accomplish three things, namely:

(a) provide ways and means for the reconstituting of a river system which has been degraded because of pollution; (b) involve States more closely in pollution control within the State itself; and (c) amend the present Pollution Control law so as to strengthen the enforcement procedure under such law.

The method chosen for the restoration of a river basin system is unique and should be carefully considered.

There is one feature of Title I, "Clean Rivers Restoration Act of 1966," which should have special consideration. The rehabilitation plan must provide for a permanent organization with authority coextensive with the area over the regulation of water and related land resources. This organization also is to coordinate the activities and carry out the plan and keep it up to date. (See Section 102 (c) and Section 104 (a)(4)). The bill does not indicate the source of "appropriate water and related land resources regulations" unless the reconditioning plan itself is to provide for such. The bill does not provide for any further authority in this organization to act, such as make rules and regulations, yet it is...
to have enforcement authority. It likewise appears that the plan will have to furnish the authority for creating the staff and its method of financing.

It appears that there is to be created a regional interstate organization which will have some far-reaching authority which can, so far as a particular river basin area is concerned, conflict and override State jurisdiction. Note the States making up the river basin will not have anything to do with creating such agency—not even with approving the plan. The States are authorized only to comment on the plan. The States will be represented on the planning agency which formulates the plan, it is true. Once the plan is put in operation, its operation, so far as the area agency is concerned, seems to be independent of State control.

The fact that "water and related land resources regulation" is subject to the jurisdiction of the area agency can have far-reaching consequences with respect to water resources administration of the States which are in the basin. Although the subject of this Title is the restoration of polluted river systems and/or basins, it is rather obvious that pollution control has reached the stage where all water users are under scrutiny as to their pollution potential. It would appear that under this Title, future State water administration may be subjected, in any river basin having restoration plan, to the scrutiny and control of this interstate agency. The sources of authority for this organization will be that which is granted by the Title I and thus it will be Federal.
Also, it is to be noted that this organization is to have responsibility for appropriate "water and related land resources regulation and enforcement authority." Just what is intended is not clearly spelled out. It does appear that since the purpose of this Title is to clean up the particular river system, some real authority must be granted as to the control of water uses and development. Perhaps the extent of what would be the type of control can only await the full development of the river basin plan.

The place which is to be developed is required to be of such comprehensive nature that it includes the necessary water quality standards, together with enforcement authority. Local agencies are integrated into the plan so that their systems of water use and treatment facilities will carry out the purposes of the Title, namely: restore the system involved. States are required to aid in the plan by at least seeking authority for the local agencies to insure some measure of financial operating room for such local agencies. There is an attempt to bring about some State responsibility for pollution control.

It seems obvious that this proposed legislation is attempting to make States a real working partner in pollution control. States are now going to be forced to meaningfully consider how river basins of which they may be a part can be cleaned up.

Title II seeks to involve the State government in the Pollution Control program within the State itself. This is to be done by making
the liberalized grants from Federal Government contingent upon a more active State participation. The State can secure these benefits by adopting approved State water quality standards and providing State funds to match Federal grants which are available for control works. These proposals are a result of some long-standing feelings that the States have not realistically approached the pollution problem. Local agencies have not been able to secure needed aid from State Governments, and, as a result, turned to the Federal Government for aid and support in this field. This situation has resulted in strained Federal-State relations. The proposed legislation is an attempt to ameliorate this situation.

Title III contains the 1966 amendments to the Federal Water Pollution Control Act as it has been amended. The purpose of this Title is two-fold, namely: (a) States are to be provided financial assistance in the development, carrying out, and enforcement of water quality standards; and (b) the Secretary is provided with enforcement measures similar to other control programs dealing with the Nation's health and welfare. No comment is really needed on the grant program other than it is doubled in this area over what is now existing. The amendments made to the enforcement authority, Section 10 of the Federal Water Pollution Control Act, as amended, are rather far-reaching and should be carefully considered.

Water-quality standards are to apply to navigable as well as inter-state water under the proposed amendment. This makes the water-quality standard provision consistent with the other parts of the enforcement section of the law.
The Secretary is authorized by this proposed legislation to call
a conference with respect to pollution on interstate or navigable streams
without regard to its interstate consequences. The Secretary under the
proposed law will have authority to use the conference technique on
intrastate pollution of waters covered by the Act. This authority should
allow the Secretary to act in a pollution situation which is serious and
locally dangerous but not yet ripened into interstate consequences. In
other words it allows for more prompt action in local pollution situations.
This authority could also benefit State governors in that it could eliminate
political pressure in local pollution situations. This is indeed a broad
departure from the present law. Under present law the Secretary's ability
to act when the pollution affects only persons within the State of origin of
the pollution is limited to situations where the State Governor requests
aid.

In addition the Secretary is authorized to use the conference
technique if he finds that pollution originating in the United States causes
injury to persons living in a foreign country. So far as the Colorado River
is concerned, this new authority could have far-reaching consequences
in view of recent experiences with the Lower Colorado River salinity
problems with Mexico.

The present law allows two six-month waiting periods, namely:
one six-month period after the conference acts and before there is a call
for public hearings, Section 10 (e), and a second six-month period follow­
ing the hearing board's recommendations, Section 10 (f). Both of these
periods have been eliminated in the proposed legislation, and each of
the periods are to be set by the Secretary. These provisions will allow
for more flexibility in the law. It would appear that the circumstances
of the particular problem should control the allowable time for voluntary
corrective action rather than an arbitrary fixed delay. Certainly the
appeal rights of concerned parties will protect their interests.

Under the present law, Section 10 (g), the Secretary can only
request, in intrastate cases, that the Attorney General act where proper
abatement action is not taken if consent is obtained from the Governor
of the State involved. The proposed legislation eliminates the Governor's
consent. This proposal would appear to be a cross purpose with the
spirit of the other parts of this legislation in that it eliminates the need
for cooperation of the State as a partner in the pollution control problems.
In fact, the whole of Title III has the appearance of increasing the Federal
authority to deal with enforcement of pollution abatement while cutting
down State participation in this field. It may well be that increased
authority is needed where the problems are interstate in nature, yet, where
the pollution is intrastate, it would appear that the Federal authority should
remain as an aid to State action, i.e., available, but not paramount. See
the above discussion of the Secretary's conference authority in intrastate
pollution situations. The authority of the Secretary to request the Attorney
General to act without the Governor's consent is actually supplementary to
the Secretary's powers in intrastate matters. There will always be a need
to carefully consider the balancing of Federal authority and State responsibility in the field of pollution. The harshness of the law can always be ameliorated in its administration. The history of pollution control has been that Federal administration has been careful in its exercise of Federal authority. State administration can eliminate the need of Federal intervention in intrastate pollution problems.

Section 10 (h) now allows a trial de novo in the Federal Court in an appeal from the findings and conclusions of the hearing board. The proposed amendment would change this to bring the procedure in line with other administrative hearings. The court would have to accept the findings and conclusions of the hearing board if supported by substantial evidence. The Court could consider any new evidence which has developed subsequent to the hearing board's action. This change makes sense. There seems to be no reason why a Court should rehear the evidence presented to the hearing board. If administrative action is undesirable, this step should be removed rather than have a system of "de novo" retrial. Surely in view of crowded court dockets there is no reason why steps should not be taken to cut the time delay in the final determination of a question which has such vital connection with the public welfare.

There is a proposal in these bills to add two new subsections to Section 10 of the Federal Water Pollution Control Act, as amended. The added subsections would--
(a) allow the Secretary on his own initiative to request the Attorney General to seek court action to abate actual or threatened pollution without exhausting administrative procedures;

(b) allow the hearing board's findings and conclusions and any court decrees pursuant to Section 10 to be used to establish a prima facie case of pollution by private parties in damage action against the party causing the same or contributing to the same.

At first glance these two new sections may seem somewhat drastic. There have been instances of pollution resulting by oil releases, chemical releases, etc., which have caused great damage. It does appear that some immediate means should be available to combat such occurrences. There are sufficient safeguards because the Secretary is required to establish the identifiable source of pollution and that it "presents an imminent danger to the health or welfare of persons, or to natural resources or to areas of significant scenic or recreation value." It also appears he would have to offer some proof as to the reasonableness of his belief that there is no other effective way to secure the necessary protection. Courts are not likely to lightly grant drastic relief.

The second provision of allowing the use of findings of the hearing board or the court's decree as evidence in a private suit presents a somewhat different question. It would appear that, so far as the hearing board's findings are concerned, the defendant in the private suit might not have too much of a reason to complain. Administrative hearings are most liberal as to rules of evidence, and such defendant would have had full opportunity to develop his side of the question. As to the court decree, he should
not be heard to complain for the reason that he at least got a second chance
to test the substantiality of the evidence against his position. There is
also the problem of the private party proving the pollution by the defendant.

It is not only difficult, but it is costly. The plaintiff will still have the
problem of proving his injury and its connection to the defendant's pollution
action. There is here an issue of the philosophy of tort laws. What aid
will be granted to an injured Plaintiff in establishing his case in matters
of pollution? It seems likely that actually the real purpose of this section
will be that of providing an incentive to prevent pollution, rather than be
involved in private litigation for damage resulting from one's activity
which may cause harmful pollution. Thus an evidentiary rule may really
become a tool for pollution prevention.

Three new sections are proposed to be added to the Federal Water
Pollution Control Law. These three are as follows:

(a) The Secretary is given power to subpoena witnesses and
records for any proceedings under the Control Act. Courts are authorized to enforce this power.

(b) The Secretary is authorized to inspect private and public
discharge facilities in order that he may abate pollution. Discharge "matter" is very broadly defined as "municipal, industrial, agricultural, or commercial wastes, including, but not limited to, raw or inadequately treated sewage, and the return of withdrawn or diverted water and heat or radioactive matter." A penalty is provided for refusing to permit the inspection.

(c) The Secretary, by regulation, can require a permit for
public and private facilities discharging "matter" into interstate or navigable streams. Changes of discharge must be reported and a fee can be charged for the
Registration. Failure to register is subject to a penalty. "Matter" is defined as above set forth.

As for the power of subpoena, it seems that this authority is logically needed in order to carry out an effective program of pollution control. There is always a possibility of abuse of this power in that it could be used for a "fishing expedition." Courts have found ways to prevent this in the past, and it is likely that safeguards will be developed. It does seem that it might be advisable to provide safeguards for the protection of trade processes and like information, the disclosure of which might prove injurious to the party by its publication.

Plant inspection and registration seem to be complementary authority. With respect to the inspection, the Secretary must have as the purpose for the inspection the abatement of pollution covered by Section 10 of the Control Act. He is further required to give written notice of the inspection. This authority of inspection is indeed a very powerful weapon, and perhaps careful consideration should be given with respect to safeguards to be afforded the inspected party. It might be beneficial to require a report setting forth the findings concerning the inspection so that the party inspected would be aware of what findings and conclusions resulted. Means of limiting the use of the results of such inspection might be considered. A means of testing the reasonableness of the inspection could be provided.

Ways and means should be provided to insure the reasonableness of the inspection and to further insure that there is an "inspection" rather than a "hunt" without destroying the benefits to be derived for this procedure.
With respect to the registration of discharges, there seems to be some safeguards for the reason that such can be accomplished only by regulations. Such can be tested for reasonableness.

Title IV is in the nature of a house-keeping action. It tidies up some of the loose ends and seems to be needed. One section allows the Federal District Courts jurisdiction in suits to enjoin pollution of interstate and navigable streams without regard to the amount in controversy or the residence, situs, or citizenship of the parties. The danger here is a flood of private suits in an already crowded court docket. The other two sections of Title IV really require no comment and are covered as to content in the section analysis above set forth.