THE 1972 FEDERAL WATER POLLUTION CONTROL ACT'S AREA-WIDE PLANNING PROVISION:

HAS EXECUTIVE IMPLEMENTATION MET CONGRESSIONAL INTENT?

by

Dennis F. Stark

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THE 1972 FEDERAL WATER POLLUTION CONTROL ACT'S AREAWIDE PLANNING PROVISION: HAS EXECUTIVE IMPLEMENTATION MET CONGRESSIONAL INTENT?

Miscellaneous Report

By

Dennis F. Stark

Department of Political Science
Colorado State University

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This report was prepared as a Masters thesis under the direction of Professor Henry P. Caulfield, Jr.

ENVIRONMENTAL RESOURCES CENTER
Colorado State University
Fort Collins, Colorado

Norman A. Evans, Director

PREFACE

Has Executive implementation met Congressional intent with regard to the 1972 Federal Water Pollution Control Act's areawide planning provision?

This paper, in making a comparison of the Congressional intent behind Section 208 of the Federal Water Pollution Control Act Amendments of 1972 and the manner in which it has been implemented by the administering agencies, endeavors to answer this question.

A great deal has been written concerning the areawide planning mandated by Section 208 since passage of the 1972 Amendments, yet very little has been written on this specific topic. My research therefore has been based to a great extent on primary sources: Congressional hearings, Federal, state, and local administrative regulations and guidelines, reports prepared for the Environmental Protection Agency and the National Commission on Water Quality, and others.

However, many references that would be germane to this topic (minutes of executive sessions, private conversations) are not available as part of the public record. I have therefore attempted to affirm the veracity of my analysis by personally interviewing officials involved in both the promulgation and implementation of Section 208. These have included: John Eastman, staff member of the United States Senate subcommittee on Environmental Pollution of the Senate Public Works Committee; Terrence Anderson, Environmental Protection Agency Section 208 Administrator for Region VIII; Gary Broetzman, State of Colorado Section 208 Coordinator; Kenneth Webb, State of Colorado

Water Quality Control Division; Charles Foster, Colorado Department of Local Affairs; F. A. Eidsness, Jr., and Terrence Trembly, Larimer-Weld Section 208 Planning Agency; and Thomas Pitts of Toups Corporation, a consultant to both state and local water pollution control planning agencies. These gentlemen provided invaluable insight and assistance by commenting on my preliminary work and through the provision of background information. However, I, of course, accept full responsibility for any errors in this paper.

The general framework of analysis used in this paper is based on Charles O. Jones', AN INTRODUCTION TO THE STUDY OF PUBLIC POLICY. Jones presents a five-step process for policy analysis: 1) problem identification; 2) formulation of a course of action to solve the problem; 3) legitimation of that course of action by its passage into law; 4) application of the new course of action; 5) an evaluation of that course of action, possibly identifying needed changes in existing policy. This paper begins on this last step and follows the policy process through the application of a new course of action in water pollution control.

It should be noted that Section 208 planning is a continuing process, and as such, any assessment must of necessity be tentative and subject to future reevaluation.

Finally, I would like to thank Professor Henry P. Caulfield, Jr. whose interest coexisted with, and fueled, my interest in this subject area.

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INTRODUCTION

During the late 1960's and early 1970's, the environmental movement had reached its apex, and pressure was mounted on Congress to draft legislation that would clean up America's waters. The 1965 Water Quality Act, and other existing pollution laws, vested primary pollution control responsibility with the states.[1] These laws were denounced from many quarters for their seeming inability to deal effectively with water pollution.[2] By virtually all accounts, the Nation's waters were becoming more polluted annually, not only in outright tonnage, but to an even greater extent in lethality and danger to aquatic species and man. Environmental groups, key legislators, and Environmental Protection Agency officials had concluded that previous control efforts were inadequate and, as such, vastly stronger measures were necessary.

Congress felt it could create programs which would clean up the nation's waters in a decade.[3] This necessitated greatly increased expenditures of funds and strong federal legislation. Congress believed it had the support of the public in passing tough legislation. In an election year, it became a case of he who proposed the most far reaching legislation wore the "whitest hat." As Representative Robert Roe stated:

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[1]Water Quality Act of 1965, Pub. L. No. 89-234, 79 Stat. 903.

[2]Two of many such works are: William D. Hurly, Environmental Legislation, (Springfield, Illinois: Charles C. Thomas, 1971), and David Zwick and Marcy Benstock, Water Wasteland, (New York: Bantam Books, 1971).

[3]Harvey Lieber, Federalism and Clean Waters, (Lexington, Massachusetts: Lexington Books, 1975), p. 15.

> "We, as members of Congress, are here representing the people because they put us here to represent them...it is not our money but theirs. If it is true that in this vital need of the people, that they are willing to utilize their tax money to clean up a problem, for God's sake why not let them, and us, do something that they want to do. They want a little better place to live and a little better quality of life. That is what it is all about."[4]

Untold hours of staff work, committee hearings and meetings, and over five months' effort to hammer out the differences between the House and Senate bills in conference committee,[5] culminated in the Federal Water Pollution Control Act Amendments of 1972.[6] These Amendments (hereafter refered to as the Act) provided for the most complex piece of environmental legislation in U.S. history. "In my thirteen years in the Senate," Senator Edmund Muskie stated, "no bill has consumed so much time, demanded so much attention to detail, and required such arduous efforts to reach final agreement as did this act."[7]

The Act signaled not only a radical change in pollution control philosophy, but a level of spending was authorized that would eventually make the sewage treatment grant program the world's largest

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[4]Frederich Rasmussen, Wisconsin Law Review, Vol. 3, (St. Paul, Minnesota: West Publishing Co., 1973), p. 903.

[5]The Senate Subcommittee on Air and Water Pollution of the Senate Public Works Committee held 33 days of public hearings, heard testimony from 170 witnesses, and received 470 additional written statements which culminated in more than 6,400 pages of testimony. The Senators, themselves held 45 executive sessions to consider amendments. The House Public Works Committee held 38 days of hearings, heard 294 witnesses, and received 135 additional statements.

[6]Federal Water Pollution Control Act Amendments of 1972, Pub. L. No. 92-500, 33 USCS 1251 et seq. [hereafter cited as FWPCA].

[7]Lieber, Clean Waters, p. 7.

discretionary public works program. Profound changes in the institutional structure for dealing with water pollution were also mandated.

In this paper I will examine the intent of Congress, with special interest in the Section 208 areawide planning provision, to determine how effectively that intent has been carried out by the agencies charged with implementing the Act. As David J. Vogler states in The Politics of Congress, "the real impact of some policies is determined not by how the legislation is worded when it emerges from Congress, but rather how those who implement the policy interpret the legislation."[8] It is my contention that the Environmental Protection Agency, which had primary responsibility for interpreting and implementing the Act, did so, initially, in such a manner that in regard to planning, their policy directives ran contrary to clearly stated Congressional intent.

To provide insight into this seemingly reclacitrant behavior by the EPA, an encapsulated history of prior water pollution control efforts is presented in Section I. The goals and objectives of the Act, and some of its major provisions are included in Section II. Section III reviews the formulation/legitimation process of the Act in both houses of Congress, and delineates Congressional intent with respect to the various planning provisions in the Act. Section IV postulates why the EPA disregarded Congressional intent and delayed implementation of areawide planning, and Section V explains the factors that led the EPA to fully implement areawide planning. The current planning process is then examined in Section VI to assess the degree to which present regulations reflect Congressional intent. In Section VII an assessment is made of

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[8] Ibid., p. 93.

the land use planning requirements called for in the areawide planning provision. A summary and conslusions are set forth in Section VIII.

SECTION I Brief History of Federal Water Pollution Control Legislation

Water pollution in the U.S. until 1948 was considered a local problem. Pollution control, however, was a state responsibility. The center of concern for these state agencies was usually safe drinking water. When pollution control measures were necessitated to protect public health or safety, the affected locality was charged with the actual control, or clean up, responsibility.

After the close of World War II, the magnitude of pollution, caused by a growing population and industry, had reached such proportions that it had become evident that pollution from one locality affected the quality of the water at other localities. Similarily, the pollution from upstream states affected their neighboring downstream states. As a result, the first national water pollution control legislation was passed in 1948.[9]

From 1948 until passage of the 1972 Amendments, the states were charged with the responsibility of leading the national effort to prevent, control, and abate water pollution. The Federal role had been confined to technical and financial aid, with limited enforcement powers to support state pollution control efforts.

The 1948 Act authorized low-interest loans for the construction of municipal treatment plants. In addition, provisions were included providing technical assistance and research aid to the states.

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[9]Water Pollution Control Act, 1948, Pub. L. No. 80-845.

The 1956 Water Pollution Control Act established the pattern of an expanding federal role.[10] It authorized program grants for state planning, and sewage treatment construction funds for relatively small municipalities. A cumbersome and ineffective enforcement procedure was established to deal with pollution in interstate waters.[11]

The 1965 Water Quality Act amended the Federal Water Pollution Control Act.[12] The Federal role in pollution control was enhanced significantly, as the states were directed to develop and submit, for Federal approval, water quality standards for all interstate waters and their tributaries by 1967.

The focus of concern regarding water pollution also changed in the 1965 Act. Until 1965 water pollution had been considered mainly a potential health hazard. Consequently, water pollution control had been a function of the Public Health Service.[13] By 1965 this view had changed and pollution was considered to be a factor that diminished the usefulness of a valuable natural resource; the Nation's waters. Consequently, the Federal Water Pollution Control Administration was created by the 1965 Act.[14] This body by-passed public health officials and reported directly to the Secretary of Health, Education, and Welfare. In February of 1966 its responsibilities were transferred to the Department

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[10]Water Pollution Control Act Amendments of 1956, Pub. L. No. 84-660, 70 Stat. 498.

[11]Robert Zener, "The Federal Law of Water Pollution Control," Federal Environmental Law, (Environmental Law Institute, 1974), p. 715.

[12]The Water Quality Act of 1965, Pub. L. No. 89-234, 79 Stat. 903.

[13]Lieber, Clean Waters, p. 12.

[14]Ibid.

of the Interior, where it was more closely allied with natural resource concerns.[15] In 1970, water pollution control responsibilities were transferred to the new Environmental Protection Agency.[16]

Funding levels were increased under the 1965 Act, and amendments in 1966 further expanded the municipal sewage treatment construction grant program to 3.4 billion dollars over five years, and increased the potential federal matching share from 30 to 55%.[17] In 1970 more amendments were added which dealt with the control of oil pollution caused by certain sea going vessels and shore facilities, and the control of discharges of sewage from sea going vessels.[18]

A regulatory procedure, based on the development of the water quality standards mandated by the 1965 Act, served as the basis for pollution control efforts until 1972. River segments and lakes that were interstate in character were classified according to: 1) the use to be made of a particular segment of the river, or lake; (e.g., swimming, drinking water supply, industrial or agricultural use). And, 2) the desired characteristics of the ambient water, regarding the amount of allowable pollutants for a specified use; (e.g., no more than one coliform bacteria per 100 milliliters for public drinking water supply). A detailed implementation plan was then negotiated between the state water pollution control agency and industrial and municipal

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[15] Ibid., p. 13.

[16] Reorganization Plan No. 3, Environmental Protection Agency. 5 U.S.C. App., 84 Stat. 2086. (1970).

[17] Clean Water Restoration Act of 1966, Pub. L. No. 89-753, 70 Stat. 498(c)(1).

[18] Water Quality Improvement Act of 1970, Pub. L. No. 91-224, 84 Stat. 108.

dischargers for the construction of waste treatment facilities or other measures to meet the water quality standards.[19] This implementation plan, and the level of pollution control established by water quality standards, was subject to approval by the Federal Water Pollution Control Administration.[20] If the state submitted no standards, or the standards submitted were not approved, an elaborate procedure was established to resolve the dispute. A public conference would be held, followed by promulgation of federal regulations setting forth the standards for the state involved, with a right of appeal by the states to an administrative hearing board.[21]

It was exceedingly difficult to control pollution by this method. Little was known empirically about the capacity of oceans, lakes, and rivers to assimilate waste, how the pollutants acted in combination, or what the cumulative affect would be downstream. This confounded the task of trying to determine what amounts each individual discharger would be allowed to discharge. The lack of empiricism in setting these criteria made it virtually impossible to bring an enforcement action against those who exceeded their established limits. It was difficult to prove in a court of law that the limit had been established correctly, or that the pollutant in question was actually discharged by the suspected violator.

John R. Quarles, Deputy Administrator of EPA, commented that the Water Quality Standards were "all too often prepared in haste and

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[19] Zener, Federal Law of Water Pollution Control, p. 715.

[20] Ibid.

[21] Ibid.

approved in ignorance."[22] He also noted,

> "even if the requirements [were] clear, it was anyone's guess as to when or how they might be enforced against similar plants elsewhere in that, or other states. No sanctions were imposed for default, except for the possibility of adverse publicity. Every day of delay saved the polluter money."[23]

The question of a state's willingness to actively pursue the establishment of tough water quality standards and then enforce implementation plans was raised frequently.[24] It was simply not advantageous for a state to do so. Industry would locate in those states that had the least restrictive standards; thus, strict standards would put a state at a distinct disadvantage in attracting, and maintaining a growing business-industrial sector.

Congressman Charles Vanink (D-Ohio) charged also that:

> "due to the pressures of powerful economic interests, the states often do not establish meaningful quality levels... For example, most Lake Erie harbors were zones for "industrial water supply, aquatic life B." Such a classification is a hoax; 'aquatic life B' cannot support any form of aquatic life--unless you consider sludge worms 'aquatic life.'"[25]

The siting of new pollutant sources on high quality waters presented a similar problem. Secretary of the Interior, Stewart Udall, announced in a 1968 press release, that all waters would have to be maintained at their existing level, even if that level was higher than applicable water quality standards required. An exception could be made if economic or social development pressure was sufficient to

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[22]Lieber, Clean Waters, p. 22.

[23]Ibid.

[24]David Zwick and Marcy Benstock, Water Wasteland, Chapter 11.

[25]Lieber, Clean Waters, p. 22.

justify such an exception. This determination would be made by the Governors of each state, but subject to approval by the Department of the Interior.[26] Governors Love and Hathaway, of Colorado and Wyoming, respectively, felt this policy was unfair to the states, and not supported by law.[27] They believed the Department of the Interior could effectively forestall economic growth in those states with substantial amounts of high quality waters. The states, they felt, should retain the sole authority to determine the extent of development they would allow in their states, as long as existing water quality standards were not breached.

Senator Muskie was adamant that the federal position obtain. He was concerned that new development, if not strictly controlled and limited in its pollutant discharge, would result in the degradation of the nations remaining clean waters, and would further reduce overall water quality.[28]

The Governors' position eventually prevailed, and the power to determine what development was justifiable, and consequently, how much degradation would be allowed was left to the states. This "defeat" quite probably was influential in Senator Muskie's decision to reject the water quality standards approach as a means to effect the enhancement of water quality.

The philosophical position in regard to pollution control efforts prior to 1972 was man-centered, seeking to adjust pollution control

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[26]Zener, Federal Law of Water Pollution Control, pp. 717-718.

[27]Interview with Henry P. Caulfield Jr., Colorado State University, Fort Collins, Colorado, 4 August 1977.

[28]Ibid.

levels only to the point necessary to maintain suitable water quality for particular human uses. Regulatory measures were based on dubious assumptions about the origin, nature, and fate of pollutants, and about the assimilative capacity of water bodies.[29]

The apparent failure of the water quality standards system elicited a new perception of water pollution control needs by Congress; hence, a redefinition of basic pollution control philosophy was necessary. The redefinition effected the formulation of a new scheme for pollution control. The major provisions, goals, and philosophy of this scheme, legitimized by the 1972 Amendments, is the subject of the following section.

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[29]Walter E. Westman, "Problems in Implementing U.S. Water Quality Goals," American Scientist, (March-April, 1977), p. 197.

SECTION II

Goals and Provisions of the 1972 Federal Water Pollution Control Act Amendments

The objective of the Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.[30] The stated policy of the Act is that, systematically, through a complicated, interrelated series of actions, and by certain key dates, the tolerance of water pollution shall end. As a national goal, an interim level of water quality is called for which provides for the protection and propagation of fish, shellfish, and wildlife, and provides for recreation in and on the water by July 1, 1983.[31] The ultimate goal of the Act is the elimination of the discharge of pollutants into navigable waters by 1985.[32]

The greatest change in philosophy embodied in the 1972 Amendments concerns the rejection of major reliance on water quality standards, and a switch to a system of effluent limitations. Assimilation of waste was no longer considered a permissible use of the Nation's waters. As Senator John Sherman Cooper explained in Senate debate on S.2770, "the beginning point is not the degree of pollution considered tolerable, but

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[30] FWPCA, 33 USCS 1251(a).

[31] FWPCA, 33 USCS 1251(a)(2).

[32] "Navigable Waters" is defined by the Act as: "The term Navigable Waters means the waters of the United States, including the territorial seas."

the elimination of polluting discharges to the extent that available technology allows."[33]

The effluent limitation system on which this philosophy relies, regulates the maximum amounts of pollutants that a facility may discharge, irrespective of the type of water into which the effluent will be discharged, or the intended use of that water. These limits are usually calculated by time period (e.g., 1/100 lb. per day), or maximum permissible concentrations (e.g., no more than .01 parts per million), or an amount per unit of production (e.g., 5 lbs. of suspended solids per ton).

The 1972 Act dictates that the EPA establish uniform effluent limitations on an industry-wide basis, so that all similar processes, regardless of their location, must meet the same standards.[34] Standardized effluent limitations are also required for publicly owned treatment plants. These standards are to be met in a two-step process.

By July 1, 1977, industry standards will require the best practicable control technology currently available."[35] Publicly owned treatment plants are required to have "secondary treatment."[36] By 1983, a second level requiring the "best available technology economically achievable"[37] for industry, and "best practicable waste treatment

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[33]U.S. Congress, Senate, A Legislative History of the Water Pollution Control Act Amendments of 1972, Committee Print, 93rd Cong., 1st Sess., (GPO, 1973), p. 1304.

[34]FWPCA, 33 USCS 1314(b)(1)(A).

[35]FWPCA, 33 USCS 1311(b)(1)(A).

[36]FWPCA, 33 USCS 1311(b)(1)(B).

[37]FWPCA, 33 USCS 1311(b)(2)(A).

technology over the life of the works"[38] for publicly owned treatment plants is to be met.

The final bill approved by the Senate, S.2770, in the form of proposed amendments to the Water Quality Act, relied solely on effluent limitations to define permissible levels of discharge. These levels would be stated in a permit to discharge, and permits would be mandatory for all point source dischargers.[39] The final house bill, H.R. 11896, however, provided for the continuation of the old water quality standard system in conjunction with the effluent limitation system.[40] The House version was incorporated in the final bill worked out in conference committee. Therefore, both systems are included in the Act.

Under these provisions of the Act, uses are determined by the states for intrastate waters, as well as interstate waters, in much the same manner as in the 1965 Act. The criteria which underscore a particular use are now to be directed toward the goal of achieving "fishable, swimmable" water by 1983. Any water quality standard, to be enforced, has to be translated into an effluent limitation for each particular discharger. Whichever standard imposes the stricter limitation, controls, and will be included as part of the discharger's permit. Thus, while water quality standards are continued, they only become a controlling factor when effluent limitations would not in themselves be sufficiently stringent to provide a quality of water commensurate with

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[38] FWPCA, 33 USCS 1311(b)(2)(B).

[39] S.2770, 92nd Cong., 1st Sess., 301(a), (1971).

[40] H.R. 11896, 92nd Cong., 2nd Sess., 303(1)(a), (1972).

an intended use.[41] Section 303(e) of the Act contains provisions for planning that allows the states to establish water quality standards.

The purpose of the planning requirements is to ensure that the goals of the act are met. Central to this effort is the implementation of the key action segments of the Act, namely the National Pollution Discharge Elimination System (NPDES) and sewage treatment construction funding. Section 402, the NPDES system, calls for the issuance of permits to all polluters who discharge into navigable waters from a point source.[42] The term point source is defined by the act as "any discernable, confined, discrete, conveyance," including pipes, ditches, channels, tunnels and similar structures. Permits issued under this program require that authorized discharges meet specified levels of wastewater control, which EPA has developed for major categories of industries, as well as municipal dischargers. The permit, as mentioned earlier, may call for additional restrictions when deemed necessary to achieve ambient water quality standards in effect at the point of discharge.

Section 201, establishing the construction grants program, was conceived as a means to provide direct financial assistance to local governments. Matching grant awards, based on a biannual survey of

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[41]Senate Bill 2770 and the Act both provide in Section 302(a) that where the application of effluent limitations would interfere with the attainment or maintenance of water quality sufficient to assure protection of public water supplies, agricultural and industrial uses, fish and wildlife, and recreational uses, more stringent effluent limitations could be applied. The provision, however, provides no mechanism to update the criteria for these various uses. The provisions in Section 303 to update water quality standards may often result in the revised water quality standards requiring more restrictive limitations than the standardized effluent limitations of Section 301.

[42]FWPCA, 33 USCS 1342(a)(1).

needs, are provided at the 75% level for planning, designing, and construction of waste treatment facilities.

Section 106 calls for the state to submit an annual report on the condition of the water within the state, and a description of the state's program for the prevention, reduction, and elimination of pollution.

Section 303(e) requires each state to maintain a continuing planning process which will identify water quality problems on a basinwide basis. A management plan designed to alleviate water quality problems and preserve water quality, is called for, including the establishment of: a) effluent limitations and compliance schedules for point source discharges to achieve the goals of the act; b) classification of stream segments for total maximum daily load requirements; c) inventories and priority ranking of the needs for the construction of new waste treatment facilities; d) control over the disposition of residual waste from treatment plants; and e) procedures for revision of ambient water quality standards. The section, therefore, is principally concerned with analyzing the quality of the state's water and establishing the criteria on which to base the requirements for NPDES permits.

Section 208, on the other hand, is designed to encourage and facilitate the development and implementation of areawide waste treatment management plans. Generally, the plans produced under Section 208 are intended to anticipate municipal and industrial waste treatment needs, establish priorities for construction of new waste treatment facilities, regulate the modification, construction, and siting of new waste treatment facilities, and establish procedures to control non-point sources of pollution. Some examples of non-point sources are: feedlots,

mining, construction, forestry, and stormwater runoff in cities. Section 208 is the only part of the Act that addresses these types of pollution problems.

At a minimum, Section 208 plans must contain:

a) Identification of treatment works necessary to meet anticipated municipal and industrial waste treatment needs of the designated Section 208 area over a 20-year period; this must include any land acquisition requirements and a system for financing construction of new facilities;

b) The establishment of construction priorities and time schedules for completion of construction of treatment facilities;

c) Assurances that waste treatment management is on an areawide basis and provides treatment or control of all pollution sources;

d) Identification of a waste treatment management agency;

e) Identification of the financial, and institutional arrangements necessary to carry out the plan. In this respect, all local governments involved in an areawide effort must sign an intergovernmental memorandum of agreement which guarantees they will implement the final work plan agreed upon. (This is the first time such a stipulation has been included in Federal planning provisions, and adds significantly to the prospect of plan implementation);

f) A process to identify land use controls for various non-point sources of pollution; and,

g) A process to protect against contamination of surface and groundwater from on-land disposal of wastes.

There is a considerable degree of overlap in the planning requirements of Section 303(e) and Section 208. Section 303(e) calls for

planning at the state level, using basically the same methodology the states had been accustomed to, as a means to assess point source problems. On the other hand, Section 208 dictated that much of this same planning be carried out by local agencies and that non-point source problems be assessed also.

The following passages from the House and Senate reports on consideration of the Conference Committee report illustrate that both legislative bodies clearly placed primary emphasis on Section 208. Referring to Section 208, the Senate document states;

> "The degree to which the Administrator takes immediate action to implement this section will be convincing evidence of the commitment of the EPA to early and effective implementation of the water quality management policies established by this legislation."[43]

> "If a state has limited resources and Federal program funding is inadequate, the primary state effort should be devoted to the effective implementation of the new program, and to the extent not inconsistent, existing water quality implementation plans should be used rather than assigning needed personnel to the added functions required under Section 303."[44]

The House document, in reference to Section 208, starts by saying,

> "this section of the bill places emphasis on what the committee considers the most important aspect of a water pollution control strategy. The plans developed are to be utilized by the EPA and the states in managing their water pollution control programs. If these plans are not utilized effectively we will continue in our fragmented approach."[45]

The utility of Section 303 was explained in these terms: "to the extent the state may wish to continue an examination of water quality in order to determine if more restrictive effluent limits may be

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[43] U.S. Congress, Senate, Legislative History, p. 169.

[44] Ibid., p. 171.

[45] Ibid.

required, this section may be useful."[46] The Senate document concludes that the Senate had,

> "accepted a House of Representatives amendment which extends and expands the Water Quality Standards procedure initiated in the Water Quality Act of 1965. In agreeing to continue a Water Quality Standards program, we do not intend to duplicate or delay the new regulatory provisions of the legislation. The Administrator should assign secondary priority to this provision to the extent limited manpower and funding may require..."[47]

As a further show of commitment to planning under Section 208, Congress specifically authorized 300 million dollars to fund Section 208 for FY's 1973-1975.[48] In contrast, no funds were authorized for Section 303, except those funds included in the general grant authorization in support of the Act.[49]

The process by which the goals and provisions, outlined in this section of the paper, came to be included in the Act is the subject of the following section.[50]

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[46]U.S. Congress, House, Federal Water Pollution Control Act Amendments of 1972, Report of the House Committee on Public Works with Supplemental Views, 92nd Cong., 2nd Sess., 1971, p. 95.

[47]U.S. Congress, Senate, Legislative History, p. 171.

[48]FWPCA, 33 USCS 1288(f)(3).

[49]FWPCA, 33 USCS 1313.

[50]Another planning provision, Section 209, called for the preparation of Level B plans under the 1965 Water Resources Planning Act. Level B plans are prepared for river basins and identify each water resource project and each water quality program that should be authorized and implemented to obtain the water quantity/quality objectives established for the river basin. U.S. Congress, Legislative History, p. 784. I have not included Section 209 in this paper, even though it was intended to interface with Section 208 planning, because its use has, to date, been limited and ineffectual in conjunction with 208 planning. See, Level B Planning and Water Quality, U.S. Environmental Protection Agency, (GPO, 1976).

SECTION III Formulation/Legitimation, Presidential Veto, and Final Enactment

Congress, having evaluated the administrative application, and effectiveness, of federal water pollution control legislation, perceived the need for change. In 1970 the Senate Subcommittee on Air and Water Pollution considered 18 proposed amendments. Part of these deliberations were held during "Earth Week" in April 1970. This may appear as nothing more than an historical coincidence, however, it was anything but a coincidence. The environment, ecology, and pollution were very important public issues at the time the amendments to the Water Pollution Control Act were being formulated. The environment then, as a pressing public issue, readily garnered the attention of both legislative and administration officials.

Competition between the Republican Administration and the Democratic Congress to put forward the most far reaching pollution control proposals was an important factor in the development of the Act. The potential political mileage to be gained from being the "leader" in the pollution control field was especially great in a pre-election year. The President often claimed Congress had failed to enact many of his environmental proposals, while Democrats asserted that the President was soft on the environment.[51]

A related consideration was the fact that Senator Muskie was the leading Democratic presidential candidate prior to the spring of 1972. As the chairman of the Senate Subcommittee on Air and Water Pollution,

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[51] Lieber, Clean Waters, p. 17.

he had established a formidable reputation as a proponent and author of environmental legislation. Both President Nixon and Senator Muskie hoped to improve their environmental image by securing the maximum political advantage from the pending legislation.

The Administration's efforts were to a large extent characterized by reaction rather than initiation.[52] Although the Administration did offer amendments in both 1970 and 1971, these proposals were not uniformly supported by officials of the executive branch, and found little partisan support.[53]

The Administration Proposals, S.1012 through S.1015, called for continued state supremacy and the existing water quality standards approach, higher and more uniform standards for intrastate and interstate waters, and two billion dollars each year in FY 1972-1974 for construction grants. The proposals were intended to provide an expansion or strengthening of the existing legislation. Congress was skeptical of the state water pollution control agencies' capabilities, and the overall ability of the water quality standards approach to enhance the state of the nation's waters. Thus, while the Administration's proposals were included in the Senate hearings, they were not considered as an adequate position from which to initiate a change in water pollution control.

The original Senate Public Works Committee proposal, S.523, was similarly inadequate. It too, was for the most part, an expansion of the existing Act. Grant levels would be increased to 2.5 billion each year in 1972-1976, and the enforcement procedure was streamlined. The greatest difference involved the requirement of effluent limitations to

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[52] Ibid., p. 50.

[53] Ibid., p. 41 and p. 50.

facilitate the enforcement of water quality standards. These proposals and a number of less comprehensive proposed amendments were the basis of the Senate Hearings.

In all, 15 proposals were under consideration during the Senate Hearings.[54] Due to the wide range of proposals, the witnesses' statements tended to be quite general, rather than a specific point-by-point analytical review of each proposal. The testimony received covered a wide range of viewpoints and led the subcommittee to redefine its previous conception of pollution control needs, and consequently, to reformulate a new approach based on this changed perception.

In order to understand the metamorphis of the familiar and relatively mild approach of S.523 to that of the innovative approach of S.2770, the dynamics of the Senate Air and Water Pollution Subcommittee need be explained.[55] Historically, the Senate Committee had taken the lead during the 1960's in initiating environmental legislation. Besides pioneering new approaches, Senator Muskie, its Chairman, had mastered the legislative strategy of getting strong and controversial legislation enacted, such as the 1970 Clean Air Act. The subcommittee members had acquired considerable expertise in handling air pollution, solid waste disposal, and water pollution. Because of their familiarity with the magnitude of environmental pollution they had developed an environmentalist perspective. This, coupled with the close relationships formed between Senator Muskie and the ranking Republican minority members, put the committee on a bipartisan basis. The subcommittee

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[54]U.S. Congress, Senate, Legislative History, p. 1524.

[55]The portion of this paper concerning the dynamics of the Senate Subcommittee on Air and Water Pollution is based on Chapter 3 of Federalism and Clean Waters. See note 3.

staff also exhibited a strong environmental concern and worked on a bipartisan basis.

They took a somewhat jaundiced view toward industry and the states, and were skeptical of many of their claims. While the motives of industry and the states were suspect, the cause promoted by the environmentalists was straight forward: clean water. Therefore, environmentalists found the subcommittee cooperative, and receptive to their ideas.

Contrastingly, the Administration had difficulty in presenting a unified approach, and attempts to influence the committee's deliberations were ineffectual. EPA officials who handled negotiations with the committee for the Administration were sympathetic with the rigorous environmental approach of the Senate draftsmen, often contrary to the Administration's official position.[56] Further, the White House did not consider the Committees Republican Counsel, Thomas Jorling, as an ally and were rarely in contact with him,[57] other members of the committee, or the staff;[58] thus, Administration input was not well coordinated. As a White House spokesman, Richard Fairbanks, stated: "We were always one draft behind."[59]

Given the existing electoral situation at the time S.2770 was being formulated, it is likely that the subcommittee felt the President would have to sign any bill they formulated, and were not particularly concerned with the Administration's views.[60]

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[56]Lieber, Clean Waters, p. 50.

[57]Ibid., p. 41.

[58]Ibid.

[59]Ibid., p. 50.

[60]Ibid., p. 84.

The coalesense of these factors lead to the emergence of a bill that was heavily environmentalist in orientation; calling for industry to meet exacting standards, perhaps at great expense, denigrated the state role in water pollution abatement, and included a greatly expanded construction grant program; all of which was against the Administration's desires.

The subcommittee proposal was sent to the full Senate Public Works Committee in August 1971. After a few minor revisions by the Committee, it was passed by the full Senate November 2, 1971, by a vote of 86-0.

Senator Cooper of the Air and Water Pollution Subcommittee described the bill as follows during Senate debate:

> "The plan of action provided by the bill includes these elements: First, a national system of permits for all point sources of discharge, which can be largely delegated to the states as they develop approved programs; Second, regional planning for waste disposal, encouraging also, regional waste treatment management--which will require, in most cases, local zoning and land use controls; Third, a large program of federal assistance for the construction of municipal waste treatment facilities; Fourth, specific regulations for the limitation of effluents, to be applied as a condition of the permits; and Fifth, a major research and development, and information effort."[61]

The second of these elements, regional planning and management, was included in Section 208.

None of the bills or proposed amendments considered during the Senate Hearings contained provisions similar to Section 208. Therefore, this section was formulated in its entirety by the Air and Water Pollution Subcommittee in closed executive session. Mr. John Eastman, of the subcommittee staff has indicated that Senator Muskie was primarily responsible for Section 208, with his principal intent being

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[61]U.S. Congress, Senate, Legislative History, p. 1305.

the strengthening of planning capacity at the intrastate regional level.[62]

Senator Muskie had been an enthusiastic supporter of the 1968 Inter-governmental Cooperation Act. Section 401(a) of that Act requires the establishment of "rules and regulations governing the formation, evaluation, and review of Federal programs and projects having a significant impact on area and community development." In response, the Office of Management and Budget published Circular A-95. Part I of Circular A-95 encourages,

> "the establishment of a network of state, regional, and metropolitan planning and development clearing houses which will aid in the coordination of Federal or Federally assisted projects and programs with state, regional, and local planning for orderly growth and development."[63]

By the time Section 208 was being deliberated, 380 areawide clearing houses covering 1680 counties containing approximately 85% of the countries' population, had been established. The planning capacity of these agencies had been expanded greatly by direct grants for planning assistance under the Housing and Urban Development's "701 program." The EPA had attempted to make use of the planning capacity of these areawide agencies by publishing, "Guidelines--Water Quality Management Planning," (January, 1971).[64] The guidelines called for virtually the same

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[62]Interview with John Eastman, Senate Subcommittee on Air and Water Pollution Staff, June 13, 1977.

[63]Environmental Protection Agency, Institutional Arrangements for Water Quality Management Planning, (GPO, 1971), p. 27.

[64]Environmental Protection Agency, Guidelines--Water Quality Management Planning, (GPO, 1971).

planning requirements as Section 208. These guidelines were in turn taken directly from HUD's Comprehensive Planning Assistance Handbook.[65]

Two possible reasons why this approach was favored by the Senate Subcommittee are: its feeling that the states had not done an adequate job of planning, and that the localities were incapable of coordinating their efforts. Both made the areawide approach attractive. In addition, Senator Muskie has stated that his intention was that Section 208 would avoid some of the limitations of areawide planning under the Clean Air Act. These areawide plans were prepared by state agencies, and he felt the resultant plans were too far removed from the "grassroots" for the public to accept, or support, them.[66]

Thus, pragmatic reasons were also responsible for changing the focus of planning from the state to areawide agencies. Therefore, it appears that for philosophical and pragmatic reasons, the 1971 EPA Guidelines, calling for regional/metropolitan planning served well as a model for the planning requirements of Section 208.

Section 208, in the final Senate Bill required that the entire geographic area of a state be subject to areawide planning. The Governor would designate local elected officials, and other appropriate individuals, to develop a management plan on an areawide basis. If the Governor failed to designate an area, local officials could assume that responsibility. The state planning role would be confined to coordinating the plans developed by these agencies. Each agency would receive

[65] Ibid., pp. 16-17.

[66] Michael Jungman, "Areawide Planning Under the Federal Water Pollution Control Act Amendments of 1972: Intergovernmental and Land Use Implications," Texas Law Review, December 1976, (Austin, Texas: Texas Law Review Publications, 1976), p. 1064.

a direct Federal grant covering 100% of planning costs for the first two years, which would further ensure their autonomy. The funds for these grants were to be provided to the EPA as a fixed percentage of construction grant funds. Section 208 plans were to be completed within two years after designation. The Army Corps of Engineers was authorized to provide technical assistance to the state or areawide agencies. Funds for such assistance would be subtracted from state program or areawide planning grants. The Corps of Engineers was also authorized to acquire lands through their condemnation power for any needed treatment works. (See Appendix A for complete text.)

The House of Representatives' Public Works Committee held three sets of hearings on proposed amendments to the Water Pollution Control Act. Beginning in May, 1971, 12 days of oversight hearings spanning a six-week period were held. A second set of hearings were held to consider over 200 separately introduced bills. The Committee then began formulating its own bill, in which the format, numbering system, and content of Senate 2770 served as the framework for analysis and discussion.

During this period of formulation, most interest groups, except the environmentalists, were successful in dealing with the committee members and staff. The members were receptive to their views, and considered many of their proposals. Consequently, the bill, as it emerged from the House, provided the states and industry with more flexibility and emphasized that the fight for clean water should be considered in the context of the nation's economic, social welfare, and intergovernmental political structure.[67] The House bill, H.R. 11896, co-sponsored

[67]Lieber, Clean Waters, p. 77.

by all 37 Public Works Committee members, was in essence the Senate bill, with the additions and alterations the Committee felt were necessary.[68] Four days of hearings were then held on H.R. 11896.

The hearings were considered necessary because several provisions of the bill were new and far reaching, and the Committee decided that in fairness to the public, all interested parties should have an opportunity to express their views.[69] The public record is not clear, however, it appears that no amendments to the bill were made as a result of these final hearings. The bill was sent to the House, and after three days of debate by the full House, the bill was passed with 380 yeas, 14 nays, and 37 not voting.[70]

The difference in the Senate and House bills regarding Section 208 were minor. (See Appendix B.) The Senate bill required that plans be completed within two years, the House required only that they be initiated within two years. The House bill provided an authorization of 50 million dollars to the Corps of Engineers for planning assistance, rather than the Senate's open-ended account based on services rendered. The House bill contained no provision, similar to that of the Senate, which authorized the Corps to acquire land through its condemnation power for sewage treatment sites. Funding for planning was provided as contract authority with limits of 100 million dollars in 1973 and 150 million in 1974 and 1975.

In retrospect, the most significant difference between the Senate and House versions, concerns the geographical area for which Section 208

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[68] U.S. Congress, House, Report with Supplemental Views, p. 69.

[69] Ibid.

[70] U.S. Congress, Senate, Legislative History, p. 749.

planning would be required. Whereas the Senate bill dictated that all areas of a state would be included, the House bill stipulated Section 208 planning only for designated areas with substantial pollution problems.

In addition, the House added Section 303 which continued water quality standards, and established a continuing planning process under state auspices. While it has not been explicitly stated, it appears Section 303's planning provisions may have been included to follow the traditional model of most Federal resource programs. That is, Federal to state to local, with emphasis on the state level, as opposed to the Federal-local-state relationship envisioned by Section 208.

The two provisions effecting the extent of planning, and which level of government should do it, would serve as a source of confusion during the early stages of implementating the Act, even though the spatial question of where Section 208 planning would be required seemed to be settled by the Conference Committee.

Section 208 as it emerged from the Conference Committee was substantively the Senate version, however, a number of House amendments were incorporated, and compromises made. A continuing areawide planning process would have to be operative within one year of designation, and completed within two years of that date. Contract authorization was included in the amount of 50 million dollars for FY 1973, 100 million for FY 1974, and 150 million for FY 1975. The Corps of Engineers were authorized up to 50 million dollars per year for their planning assistance, but they were not granted authority for condemnation of land for treatment sites. In addition, the Senate Report on the Conference Proceedings states, "The conferees have agreed to require state-wide planning, either

through a regional process in a designated area, or by the state for areas outside the designated areas."[71] Comparable statements were made in House and Conference Committee report.[72] The bill that emerged from the Conference Committee was passed with near unanimity by both houses, and forwarded to President Nixon.[73]

In an election eve assertion of independence, the Senate rejected an Administration proposal to set a debt ceiling for FY 1973. President Nixon had lost in his attempt to halt what he felt to be inflationary Congressional spending. Therefore, shortly after the budget ceiling vote, White House Advisor John Ehrlichman, who had been watching from the gallery, issued a retaliatory message to the Senate; due to the unreasonable funding levels mandated by the Act, the President had vetoed the Water Pollution Control Act Amendments.[74] The President's veto was easily overridden, and the Amendments became law.[75]

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[71] Ibid., p. 169.

[72] Ibid. House consideration of the Report of the Conference Committee; "The conference report requires that the State shall act as a planning agency for all portions of that State which are not designated as special areas with a designated agency for planning," p. 161. The Joint Explanatory Statement of the Committee of Conference declared: "A State is required to act as a planning agency for all portions of the State which are not specifically designated..."

[73] Ibid. The House vote was 366-11-53, pp. 278-279. The Senate vote was 74-0-26, pp. 222-223.

[74] "Even though denied by the Administration, the veto was in effect a retaliatory measure, or at least a reaction to the vote on [the debt ceiling bill]. If the President could not obtain authority to limit expenditures of the Federal government, he was not about to sign a bill that would cost more than 24 billion, and over which he would have less than 100% control." Clean Waters, p. 82. President Nixon in his veto message cites budget considerations as the sole criteria for his action. He stated, "any spending bill this year which would lead to higher prices and higher taxes defies signature by this President. I have nailed my colors to the mast" Legislative History, p. 138.

[75] The vote to override the Presidential veto in the Senate was 52-12-36, and 247-23-160 in the House. Legislative History, pp. 135-136 and pp. 112-113.

The passage of the Act formally legitimized Congresses' new scheme for water pollution control. It then became the task of the EPA to implement this scheme. The following two sections of this paper reflect on possible reasons why, and how, the EPA chose to implement the Act by their own plan, rather than that of Congress.

SECTION IV Why EPA Ignored Congressional Intent

The passage of the Act created a host of new responsibilities and functions for the EPA. Many provisions in the Act called for the EPA to create guidelines, standards, regulations, etc., where none had existed before. One such aspect was the planning provisions of Section 208.

However, as noted previously, Congressional sentiment clearly indicated that Section 208 planning would require immediate and full implementation. Considering that the Senate and House had both passed bills by overwhelming majorities, containing provisions for areawide planning, more than seven months prior to final enactment, it would seem that the EPA should have been prepared to implement planning of an areawide nature soon after passage of the Act.

It would appear incredulous that the EPA chose to assign Section 208 the lowest priority, and implemented the Act through the provisions of Section 303.[76] The first EPA water strategy paper labeled Section 208 plans a "longterm" objective of "delayed priority" that would focus on the 1983 goals. In addition, the scope of Section 208 plans was described as being "limited to a number of metropolitan areas with critical water quality problems after 1975."[77] Accordingly, the EPA requested only 13 of the 150 million dollars authorized for FY 1973 and FY 1974, and 100 of the 150 million dollars authorized for Section 208

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[76] Lieber, Clean Waters. From the Environmental Protection Agency's first Water Quality Strategy Paper, p. 122.

[77] Ibid.

planning in FY 1975.[78] There are a number of possible considerations that appear to have led EPA officials to this course of action.

William Ruchelshaus, the Administrator of the EPA, strongly backed passage of the Act, but opposed Section 208.[79] In testimony given at House Hearings December 13, 1971, he declared:

> "Although we fully endorse the concept of regional waste treatment planning, we do not favor the provisions of Section 208 for several reasons. Basin-wide, regional and metropolitan planning are already required pursuant to regulations governing waste treatment facilities construction grants. Moreover, new special purpose authorities should not be created without regard to other planning underway or without regard to important functions of other levels of government. Furthermore, we strongly oppose 100% federal funding of these planning costs. If federal financial assistance for such activities is to be provided, substantial state and local matching is essential. We are also opposed to the provision of Section 208(H) which, evidentally would sanction a direct role for the U.S. Army Corps of Engineers in the planning and operation of regional waste treatment management. Such provision would tend to divide federal authority and activities regarding environmental protection, which were consolidated under EPA's leadership. The Corps should provide assistance to EPA and to local and state agencies under EPA criteria only upon request. We do not believe a separate authority for the Corps for this purpose is appropriate."[80]

In addition, there are a number of pragmatic considerations that must have influenced the EPA decision to put Section 208 on the backburner.

Congress, as stated earlier, believed that clean water could be achieved in a decade, thus, the EPA had to administer the Act in the most expeditious manner that would achieve this goal. The Council on Environmental Quality's 4th Annual Report states, "the essence of EPA

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[78] Ibid., p. 103.

[79] U.S. Congress, House, Report with Supplemental Views, p. 154.

[80] Ibid.

strategy is to focus on problems whose solutions will produce the biggest payoff in water quality, and for which implementation is feasible now."[81]

This pursuit of the expeditious, led the EPA to question the immediate usefulness of Section 208. An EPA sponsored study on regional governments concluded that there were no regional governmental structures in existence in the U.S. that could assume all the responsibilities of Section 208 without modifications.[82] Also, little was known about the extent of water pollution from non-point sources, how to empirically test non-point source effects on water quality, and even less concerning what type of "best management practices" would be necessary to curb non-point source pollution.

The control of non-point sources was one of the principal differences between Section 208 and Section 303(e) planning; without adequate means to deal effectively with these non-point sources in the near-term, the immediate utility of Section 208 planning was diminished. These factors, perhaps, prompted the Director of Water Resource planning to state in April 1973 that the EPA was, "looking seriously at the ability of any 208 agency to carry out the intent of the law."[83] Furthermore, he stated, "the basic plan made under the provisions of Section 303 is the best basis for a state strategy."[84]

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[81]Lieber, Clean Waters, p. 176.

[82]Environmental Protection Agency, Regional Governmental Arrangements in Metropolitan Areas, by C. J. Hein, Joyce M. Keys, G. M. Robbins, (GOP, 1974), p. 46.

[83]California Water Pollution Control Federation Bulletin, Vol. 9, No. 4, April 1973, p. 23.

[84]Ibid.

Given the administrative and political complexity of Section 208, and the lack of precedent for this novel intergovernmental approach, it is logical that the EPA should have sought an easier, more familiar approach. As 208 agencies were not yet in existence, there was no organized constituency to pressure the EPA to provide Section 208 funding. On the other hand, many states were agitating for a greater role in planning.

The feeling of numerous state officials could be summed up by a statement of the Water Pollution Control Federation,

> "the federal governments dependency on the states and the essentiality of state cooperation remains salient and requisite to any prevailing federal program. It is not realistic or responsible for the Congress or their enforcement agency to in effect, give up on the states, regardless of their defects which exist, and proceed as if it were unimportant or unessential to the national program whether or not the states are a willing partner in the program."[85]

Many states, typically suspicious of regional units, were afraid that new areawide waste treatment management agencies would bypass them.[86] The New England Interstate Water Pollution Control Commission testified that, "208 agencies could conceivably nullify all state water pollution control abatement programs."[87]

At the 45th annual meeting of the Water Pollution Control Federation, one week before passage of the Act, EPA officials were made aware of state hostility to Section 208. William Dendy, the Executive

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[85] Water Pollution Control Federation Journal, Vol. 45, No. 1, January 1973, p. 3.

[86] Lieber, Clean Waters, p. 106.

[87] U.S. Congress, House, Water Pollution Control Legislation, 1971, Hearings before the House Committee on Public Works, 92nd Cong., 1st Sess., 1971, p. 598.

Director of the California State Water Resources Board, stated, "they [the Board members] were not interested in seeing a proliferation of Section 208 agencies," and that "they would not seem necessary."[88] A representative from Texas stated that "Federal authority was not needed for planning provided in Section 208, which in any case it [Texas] believes would not work."[89] The National Governor's Conference urged that Section 208 be integrated with all the other planning provisions to give Governors more responsibility and more closely relate planning to state agency functions.[90]

How much pressure the EPA felt from these state protestations is uncertain, but the EPA had to be aware that state cooperation was essential to implementation. It was, if nothing else, logistically simpler to fall back on the states as the focus of planning. At the state level a bureaucracy was already in place with whom the EPA was familiar and had established lines of communication. Personnel at the state level were familiar with the planning procedures of Section 303, and those mandated by Section 208 were untried.

The flexibly worded Section 303 thus gave the EPA the opportunity to integrate the Act's planning and management provisions through its normal political channels, without the delays, complexities, risks, and costs of working with new and untried 208 agencies. Congress facilitated the EPA in their switch from Section 208 to Section 303 as the basic planning requirement by placing the key planning provisions in various

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[88] California Water Pollution Control Federation Bulletin, April 1973, p. 26.

[89] Ibid., p. 16.

[90] U.S. Congress, House, 1971 Hearings, p. 423.

sections of the Act rather than under a single planning title. By not including a detailed explanation of the relationship between the planning requirements, Congress left room for varied interpretation of those provisions.

This enabled Director Ruchelshaus to state, a week before passage of the Act,

> "the thrust of the management concept is for the state and federal governments to establish priority basins and to set forth targets and milestones for ending pollution in these basins. These plans will integrate all the pieces from state and federal programs and insure that they are achieved in a timely fashion."[91]

In an "executive communication" from Ruchelshaus to the OMB urging enactment of the Act, he expressed these sentiments;

> "the bill continues the existing program and is faithful to the intent of the Administration's proposals. The bill is not perfect. We can mutually disagree on some of its priorities and requirements. But I think we can mold it into a 'good bill.' I believe it important that we do so."[92]

He added:

> "there are numerous conditions, limitations and requirements, that provide a broad range of control to delay or even block spending. Through these administrative mechanisms the phasing of commitments, and funding outlays, could be regulated through rigorous application of stringent requirements."[93]

Two prospects seem to emanate from this attempt by the EPA Director to forestall a Presidential veto. To "continue the existing program, and be faithful to the intent of the Administration's proposals," would require first: a continuation of water quality standards,

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[91] Water Pollution Control Federation Journal, January 1973, p. 1.

[92] U.S. Congress, Senate, Legislative History, p. 157.

[93] Ibid.

and state controlled basin planning, and; second a spending level substantially lower than that proposed by Congress.

As Section V illustrates, the President and OMB did provide fewer funds for planning than authorized, and would exert pressure to lower even further the federal cost of pollution control planning. The regulations governing the designation of 208 areas, and grant regulations for Section 208, were sufficiently restrictive to raise the possibility that the less comprehensive Section 303(e) planning was prefered by EPA/OMB officials because it would be less costly to carry out than Section 208 planning.

The analysis to this point has been speculative; the EPA, however, provided an official explanation of its rationale in implementing Section 208 during House Hearings held in 1975.[94]

In explanation, the EPA testified in 1975 that the, "Implementation of Section 208 presented significant timing difficulties. For EPA there was development of regulations and guidance for a planning program that was entirely different from any previously administered by the agency. For local planning agencies, this new thrust in planning called for establishing a new planning process, staffing up the agencies, as well as development of the plan. All of these activities require time in order to be brought together in a cohesive effort. Statutorily, 208 plans could not have been completed before mid-summer 1975. Given this situation and the very limited resources we could devote to the 208 program, the plans had little hope of impacting the first round of permits

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[94]U.S. Congress, House, Hearings to Amend the Federal Water Pollution Control Act; Hearings before a Subcommittee of the House Committee on Public Works and Transportation, 94th Cong., 1st Sess., 1975, p. 251.

or the major portion of initial construction grants. EPA chose to place agency emphasis on these programs and employ 208 planning to impact the 1977-79 round of permits and construction grants. We wholeheartedly support the area planning approach for local, state, and federal efforts at pollution abatement. EPA's timing for implementation of Section 208 was based on recognition of the strengths of the program, and the constraints within which it had to be operated to produce results."[95]

This official explanation is superficial and misleading. Timing difficulty is cited as the major factor in their decision to delay utilization of Section 208. However, the EPA deadline for submission of 303(e) plans was July 1, 1975, just one month less than the statutory deadline for 208 plans.[96] Further, at a March, 1973, Water Pollution Control Federation Workshop, a number of states indicated that they did not believe they could meet this deadline.[97] It is doubtful that undermanned and underfunded state planning agencies could have completed the required water quality analyses for all the waters of the state, more rapidly than fully funded areawide agencies. The EPA's second contention, that they lacked the resources to implement Section 208, has merit. The EPA budget was not increased in a manner commensurate with their increased responsibilities. Just the same, Congress had clearly indicated that if manpower or resources were lacking, Section 303 should be waylaid rather than Section 208. The reason for the EPA's decision more likely lies in the factors posited earlier.

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[95] Ibid.

[96] Lieber, Clean Waters, p. 105.

[97] Ibid., p. 103.

Section 208 offered the possibility of a role for the Corps of Engineers in pollution control planning, and the EPA was rightfully concerned with this, as a possible usurption of their powers in the environmental protection field.

With a fiscally conservative, highly budget conscious, Chief Executive and OMB, 100% grants for anything were anathma.

The EPA didn't know what kind of local political squabbles it might become embroiled in when trying to establish and work with 208 agencies. Additionally, the EPA had little faith in the ability of any regional organization to carry out the mandates of Section 208.

When Director Ruchelshaus commented that new special purpose authorities should not be created without regard to planning underway, or without regard to important functions of other levels of government, he was obviously refering to the local, and more importantly to the State role in planning. State cooperation was vital to pollution control efforts. The states, while silent, for the most part, on the role of Section 208 throughout the hearing process, were quite vociferous about the denigration of their overall role in water pollution control and the federal assumption of those powers. As pointed out earlier, when state water pollution control officials finally realized the ramifications of Section 208, they opposed its utilization. By resorting to the use of 303(e) planning, the states in effect were given back a measure of control and authority.

The coalesence of these factors dovetailed with Director Ruchelshaus' stated preference for a water quality standards approach, and the familiar basin planning methodology of the states which supported that approach.

This would seem to be a more realistic explanation of why the EPA chose to implement the Act through the provisions of Section 303(e).

The following section explores how they provided for planning during initial implementation of the Act.

SECTION V Implementation by EPA Directive Rather than Congressional Dictate

The EPA so completely reversed Congressional intent that in early 1973, the Counsel to the Senate Air and Water Pollution Subcommittee declared:

> "as it stands the Amendments may as well not have been enacted. It appears that for the first time, EPA is now implementing the 1965 Act as it was intended in 1965, not the effluent control program under the 1972 Amendments."[98]

The EPA's first Water Quality Strategy paper perhaps sparked this criticism. The strategy paper listed four objectives, in the order to be obtained: 1) Establishing or revising water quality standards; 2) Preparation of Section 303(e) basin plans; 3) Establishing Section 201 municipal sewage treatment facilities planning; and 4) Section 208 planning.[99]

These objectives were to be accomplished through a two-phase strategy. Phase I emphasizing the institution of existing, proven controls, with Phase II directed toward the more difficult and persistent problems.[100] Phase I would complete basin planning so that effluent limits could be set for point source dischargers to meet existing water

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[98] Ibid., p. 274.

[99] The term basin planning, as used in this paper, refers to state planning efforts for intrastate basins and should not be confused with Level B basin planning under the 1965 Water Resources Planning Act. See note 50.

[100] U.S. Congress, House, Federal Water Pollution Control Act Amendments of 1972, Interim Staff Report of the Subcommittee on Investigations and Review, of the House Committee on Public Works and Transportation, 94th Cong., 1st Sess., 1975, p. 197.

quality standards. At the same time the Section 201 program would provide funds for the construction of sewage treatment facilities as rapidly as possible. During Phase II, more stringent Water Quality standards would be established, which would necessitate more restrictive effluent limitations to meet the 1983 goal of the Act. Non-point sources would also be addressed during this period to help achieve the 1983 goal of "fishable," "swimmable" water.[101] In keeping with this philosophy, the EPA's second Water Quality Strategy Paper maintained essentially the same priorities, with Section 208 last.[102]

It is no wonder then, that the first regulations governing the designation of 208 agencies were nine months late in issuance,[103] and relieved the states from performing many Section 208 functions, including: an analysis of treatment needs over the next 20-year period, establishing a regulatory program and regulatory agencies, identifying procedures to control non-point sources, and the requirement to establish a plan that would consider the economic, social, and environmental impacts of controlling point and non-point sources.[104] The states were also permitted to substitute Section 303(e) for Section 208 planning in

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[101] Environmental Protection Agency, Guidelines for State and Areawide Water Quality Management Program Development, (GPO, 1976), p. 1-2.

[102] Lieber, Clean Waters, from the Environmental Protection Agency's second Water Quality Strategy Paper, p. 271.

[103] 40 CFR 126 (1973).

[104] 40 CFR 126(2)(d) (1973).

non-designated areas,[105] and were subsequently denied funds to accomplish Section 208 planning.[106]

Thus, for all intents and purposes, the EPA Water Quality Strategy Papers, rather than the Act in its entirety, became the key decision making documents. By stressing Section 303(e) basin planning and relegating Section 208 planning to areas where water quality problems were of such severity that they could not be solved through the application of statutory base level effluent limitations, the EPA mislead the states on the role of Section 208.[107]

The states, as noted earlier, were uncomfortable with the idea of regional planning through regional agencies and following the EPA's lead, stressed the importance of basin planning by state level personnel. They were inclined to want to extend basin plans to sufficient detail to allow for facilities planning, in which case, there would be no need for locally-controlled areawide planning.[108]

This position was exemplified by representatives of state organizations during the 1974 House Hearings on implementation of the Act.[109]

[105]40 CFR 126.2(a) (1973).

[106]Each program grant to a state provided funds for planning. Technically, these funds could be used for Section 208 planning. However, Section 303(e) plans were required, whereas the EPA presented Section 208 planning as optional. Therefore, these scarce federal dollars were used for the mandatory and less expensive 303(e) planning in most cases.

[107]39 FR 93 (Introduction) (1974).

[108]National Commission on Water Quality, The Water Pollution Control Act of 1972, Institutional Assessment; Planning, by Harold F. Wise Consultants, (National Technical Information Service, Report No. NCWQ/75-10), p. 8.

[109]U.S. Congress, House, Implementation of the Federal Water Pollution Control Act, Hearings before a Subcommittee of the House Committee on Public Works, 93rd Cong., 1st Sess., 1974, p. 126.

The comments of the states who gave testimony regarding 208 planning indicated that the plans should be done by the state water pollution control agency, coordinated through that agency, or abolished.[110]

State Pollution Control officials were hard pressed at this time to meet all the new demands of the Act, and the new EPA regulations. With the level of Federal funding for the state programs well below the authorized levels, the states could not staff their agencies sufficiently to do the extensive planning called for in Section 208.[111] In 1974, the EPA requested only 50 million of an authorized 75 million dollars for state program grants, and with three quarters of the fiscal year completed, only 4.3 million dollars had actually been paid out to the states.[112]

This problem would have become still more serious had an OMB directive obtained. The directive stated: "Federal grants to state and local pollution control agencies are to be phased out starting in FY 1976. Your agency is expected to announce this decision not later than June 30, 1974."[113] The directive, had it been followed, would have

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[110] Ibid. The Association of States and Interstate Water Pollution Control Administrators testified that to assure compatibility with the state agencies programs and objectives, such [208] planning should be coordinated through that agency and the states should have the option of doing all 208 planning, p. 404. Dr. Walter Lyons, of the Pennsylvania Board of Water Quality Management reiterated the same, p. 131. A delegation of New England states originally requested the same, however, they submitted a request to change their testimony as follows, "Section 208 has not been implemented. Since EPA has forced utilization of Section 201 and Section 303(e) to accomplish required planning, Section 208 should be repealed. Any belated effort to implement Section 208 will result in duplication, confusion, and additional delays in pollution abatement," p. 127.

[111] U.S. Congress, House, Interim Staff Report, p. 2.

[112] U.S. Congress, House, Implementation Hearings, p. 128.

[113] U.S. Congress, House, Hearings on Implementation, p. 718.

severely diminished state level planning efforts; it may have proved fatal to any future attempts to broaden the use of 208 planning.

In 1974, 30 states had not designated any 208 areas, as a consequence, 95% of the Nation's waters were not subject to 208 planning.[114] Considering this lack of utilization of 208 planning when full funding was available, it is reasonable to assume that even fewer designations would have occurred at a reduced level of funding.

The EPA, however, was preparing to develop Phase II mechanisms for dealing with less easily controlled forms of pollution in FY's 1975 and 1976, as indicated in the EPA's FY 1976 Water Quality Strategy paper. It states:

> "As the abatement of point sources is achieved, the scope and nature of non-point pollution will become increasingly obvious. During Phase II, non-point source control will become a major program emphasis. Preparation for this will occur in Phase I during FY 75-76. States and areawide agencies are expected to develop non-point source control strategies in 1976-77."[115]

This policy was given credence by the EPA's first National Water Quality inventory which found:

> "significant improvements have been made in terms of organic waste loads, coliform bacteria, and other pollutants most readily controlled by point sources. However, measured levels of nutrients, trace metals, and other pollutants associated with land runoff had increased."[116]

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[114]Michael B. Phillips, "Developments in Water Quality and Land Use Planning: Problems in the Application of the Federal Water Pollution Control Act Amendments of 1972," Urban Law Annual, 1975, p. 85.

[115]Environmental Protection Agency, Water Quality Strategy Paper, 1975, (GPO, 1975), p. 21.

[116]Council on Environmental Quality, Sixth Annual Report, (GPO, 1975), p. 362.

Additionally, the National Commission on Water Quality studies on the relationship of point sources versus non-point sources as a cause of pollution tend to bear this out. One such study of the Delaware River Estuary found that 40-80% of the biological oxygen demand, and similar amounts of chemical oxygen demand, were attributable to pollutants generated by sources other than treatment plants. It was also found that more toxic materials entered the waters from urban runoff than from industrial sources.[117] They concluded, therefore,

> "that the regulation of point source discharges alone would not improve water quality sufficiently to meet the water quality goals of the Act. Consequently, moving from the 1977 to 1983 effluent standards [might] not noticeably improve water quality because of the small amount of pollution removed from regulated point sources compared with pollution loading from natural sources, unregulated agricultural activities, urban stormwater runoff and other non-point sources."[118]

The necessity of quantifying, and developing management strategies for the abatement of non-point source pollution was apparent. Although the EPA was publicly on record stating their appreciation for, and intention to utilize, Section 208 areawide planning, they had shown little actual commitment to its full utilization.

In response to exortations by Senator Muskie to fully employ 208 planning, EPA Director Train replied in November 1974, "We do not expect or require that such planning be carried out in areas lacking

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[117] Westman, Problems in Implementing U.S. Water Quality Goals, p. 198.

[118] Council on Environmental Quality, Seventh Annual Report, (GPO, 1976), p. 24.

substantial water quality problems, either existing, or discernable in the near term future."[119]

The EPA, may have chosen to address non-point source pollution through their previously stated requirement to expand 303(e) planning during Phase II, to include a non-point source assessment, rather than instituting 208 planning. The question is mute, however, because the EPA was forced by court decision to promulgate regulations that would require full implementation of Section 208.

In October of 1974, the Natural Resource Defense Council (NRDC) filed a suit against Director Train for failure to implement Section 208. The resolution of this suit caused the EPA to comply with the statutory dictate of the Act regarding Section 208. The NRDC sought the implementation of 208 planning in non-designated areas, and full funding for the states to accomplish this planning. The position taken in the NRDC suit was upheld in July, 1975.[120]

The court directed the EPA to take prompt action on Section 208. The judge found that:

> "the Act incorporated various programs involving somewhat different planning approaches and it did not fully explain the precise manner in which they

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[119] Water Pollution Control Federation Journal, Vol. 48, No. 8, August 1975, p. 2016. July 11, 1974 Muskie wrote to EPA Administrator Train, "S.208 should not be confined to urban and industrial areas ... all areas of every state must come within 208 regions and should have been established." Train replied Nov. 1, 1974; "We do not expect or require that such planning be carried out in areas lacking substantial water quality problems, either existing, or discernible in the near term future." On Dec. 12, of that year, Muskie again wrote to Train, calling for regulations to implement all 208 requirements in all non-designated areas and revision of existing regulations to require long range planning.

[120] U.S. District Court for District of Columbia, NRDC vs. Train, 396 F Supp. 1386 (1975).

> should be reconciled. But it is clear that the Congress did not see these programs as being mutually exclusive nor inherently in conflict. Instead, the assumption was that these activities, working together, would result in a comprehensive solution to the problem of controlling pollution and assuring water quality nationwide.... This is not partial guidance of the states, it is an impermissable mis-construction of the Act which must be cured swiftly so that the states can understand and fulfill their total planning responsibilities."[121]

Accordingly, Section 208 planning was prescribed for all non-designated areas prior to November 1, 1976. The EPA was also directed to provide full funding for this planning. In response to this court order, the EPA brought forth new regulations that would meet the court mandate.[122]

While the EPA had tentatively scheduled the implementation of Section 208; their previously circumscribed utilization of Section 208, state resistence, and OMB's proposed cut in planning funds, may have led the EPA to limit its scope and application. Congressional pressure to implement 208 planning, with the exception of Senator Muskie, was inconsequential. The decision in the NRDC suit was clearly the determinate factor leading to full implementation of Section 208. The following section looks at how the EPA complied with the court's order.

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[121] National Commission on Water Quality, Institutional Assessment, p. 6.

[122] "these regulations are issued in response to an Order of the District Court for the District of Columbia..." Federal Register Vol. 40, No. 230, November 28, 1975, p. 55322.

SECTION VI State Water Quality Management Plans Fulfill Congressional Intent as a Result of Court Order

The regulations promulgated by the EPA in response to the NRDC decision, 40 CFR 130 and 131, provided for a consolidation of the requirements of Section 208 for areawide agencies, and Section 303(e) and Section 208 for state planning agencies.[123] This consolidation established a single statewide planning process, the state water quality management plan (state WQM plan), that fulfills all applicable requirements for water quality planning and implementation under the Act.[124] The regulations do not revoke the provisions of Section 303(e) regarding the state continuing planning process, but rather, add the Section 208 requirements in addition to the Section 303(e) requirements. These regulations require that the states assume responsibility for the preparation of water quality management plans for the entire state--directly in non-designated areas, and indirectly in designated areas through coordination with areawide agencies.

The state WQM plan will provide a basis for implementation of applicable point, and non-point, source controls for the entire geographic area of each state. In addition, the plan will provide the strategic guidance for preparing the annual state program plan required by Section 106 of the Act.[125] The state WQM plan therefore seeks to ensure effective coordination of all planning efforts.

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[123] 40 CFR 130.1(b).

[124] 40 CFR 130 (Introduction).

[125] 40 CFR 130.1(c).

The state WQM plan must, at a minimum, contain: water quality assessments, including non-point source assessment, stream segment classification, inventories and projections of discharges for a 20-year period, revision of water quality standards, total daily maximum loads, and waste load allocations.[126] This first set of requirements pertains to water quality analysis. A second set of requirements confronts implementation and planning responsibilities. These include: a water quality implementation plan, municipal and industrial treatment works program, an urban stormwater runoff management program, residual waste management plan, target abatement dates, a regulatory program, and designation of management agencies and institutional arrangements to supervise and finance plan implementation.[127] The first set of elements provides technical direction for the state WQM plan in the form of water quality goals and evaluation of permissible levels of pollutant loading in receiving waters, while the second set of elements involves a determination of particular abatement measures, regulatory controls, and financial management arrangements to meet the water quality goals.[128]

As the two elements are logically interrelated the state may allow designated areawide planning agencies to carry out the latter elements and provide much of the analysis needed by the states to finalize the first set of elements.[129] The exact division of labor must be included

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[126]Environmental Protection Agency, Guidelines for State and Areawide, p. 2-14 and 2-15.

[127]Ibid.

[128]Ibid., p. 2-15.

[129]40 CFR 130.10(c) and 40 CFR 130.14(a).

in a state/EPA agreement required by the state continuing planning process.[130]

All states previously had an EPA approved continuing planning process. The new regulations, however, necessitated revisions to reflect the expanded planning requirements, and additional responsibilities, for either the states or designated agencies.

The regulations allow the states to undertake less extensive planning in non-designated areas if the state certifies that no water quality problems exist, or are expected to occur in an area over the next 20 years.[131] The level of detail required, and the timing of the development of these plans for non-designated areas are also included in the state/EPA agreement.

While a state agency is charged with the duty of planning for the non-designated areas, local governments do have an influential role in the planning process for these areas.[132] The regulations require the establishment of a policy advisory committee for non-designated areas. Representatives from local governments must constitute a majority of the membership.[133] The committee will advise the state agency charged with the responsibility for planning in non-designated areas on broad policy matters including fiscal, economic, and social impacts. The state may

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[130] 40 CFR 130.11(a).

[131] Environmental Protection Agency, Guidelines for State and Areawide, p. 3-3.

[132] 40 CFR 130.16(c).

[133] Ibid.

also delegate certain planning functions directly to local governmental units.[134]

The regulations also provide for increased state control over the designated area planning process. Designated agencies in existence prior to July 1, 1975, continue to use prior guidelines, and established work plans.[135] However, state review and comment is now required on any substantive changes in the work plan, interim progress reports, and pre-adoption review plans, to minimize any conflicts that may arise when the designated area agencies submit their final management plans.[136] A description of the state's management program to oversee the planning process in designated areas, including the monitoring of progress and the timely accomplishment of key milestones specified in the 208 agencies work plan, must be included in a state's WQM plan.[137] Some of these requirements are not new, but have taken on a greater significance.

Where a designated areawide planning agency fails to achieve the requirements of Section 208, the state planning agency is now responsible for assuring that such requirements are fulfilled.[138] The regional EPA Administrator may elect not to approve grants for any municipal sewage treatment works where a plan is incomplete or disapproved.[139]

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[134] 40 CFR 130.14(a).

[135] Environmental Protection Agency, Guidelines for State and Areawide, p. 1-1.

[136] 40 CFR 35.232.

[137] 40 CFR 130.10(b)(8).

[138] 40 CFR 130.31(c).

[139] 40 CFR 130.33(a).

The regional administrator, in addition, may withhold up to 10 percent of a grant award for noncompliance with a program objective.[140] Presumably, this could be applied to state grants under 40 CFR 130.12(b), which requires the states to assure that each element of the state WQM plan is achieved.

These regulations, promulgated by the EPA in response to the NRDC suit, have brought the Federal, state, and local/regional participants in the Section 208 planning process substantially in line with Congressional intent. All areas of each state are now subject to Section 208 planning. Section 208 planning is finally the seminal effort from which the controlling state WQM plan emenates, providing coordination for the action invoking elements in the Act. Nonetheless, making provision either statutorily, or administratively, will not assure that those requirements will be completed.

The Regional EPA administrator has the ultimate responsibility to review state WQM plans, and designated area plans, and require whatever changes may be necessary to ensure adequate completion of all the requirements of Section 208.

The Federal role in 208 planning has been to assure that solutions are developed, rather than attempting to use Federal authority to dictate specific solutions. The regulations provide the flexibility to allow and, indeed, encourage state and local governments to work out the institutional, financial, planning, and management arrangements most appropriate to meet existing and projected water quality management needs for any given area.

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[140] 40 CFR 35.218.6.

Due to the late start in Section 208 planning, the first agencies to receive grants are just now commencing the final plan approval process. Accordingly, the degree to which these plans will comply with the Congressionally mandated requirements of Section 208 is impossible to assess at this point in time.

One area which has been dealt with sparingly throughout this paper concerns a Congressional intent that was not fully expounded upon by Congress prior to, at the time of passage, or since; land use planning. The area of land use planning is, however, the area in which Section 208 plans and state WQM plans now hold the most potential for deviation from Congressional intent.

SECTION VII Did Congress Pass a Land Use Act When It Included Section 208?

Throughout the legislative history of the Act; House and Senate hearings and committee reports, conference committee reports, supplementary statements to accompany bills, and Administrative comments or correspondence, the words "land use" are used only twice. The Senate supplementary statements to accompany S.2770 contain the following passage:

> The principal cause of inefficiency and poor performance in the management of waste in metropolitan regions is the incoherent and uncoordinated planning and management that prevails. Adjacent communities and industries are under no mandate to coordinate land use or water quality planning activities... Such diffuse and divergent programs not only intensify pollution problems but they prevent the use of economies of scale, efficiencies of treatment methods, and most importantly, coherent, integrated and comprehensive land use management.[141]

This passage does not call for comprehensive land use management, it merely declares that such planning is impeded by uncoordinated metropolitan planning and management.

Senator Cooper, during Senate debate on S.2770, makes the only additional comment on land use planning when he stated that regional planning for waste disposal would require, in most cases, local zoning and land use controls.[142]

This lack of comment on an issue as controversial as land use planning is surprising, especially in light of the fact that for agriculture,

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[141] U.S. Congress, Senate, Legislative History, p. 161.

[142] Ibid., p. 1305.

silviculture, construction, and mine-related sources of non-point pollution, land use requirements were mentioned as a possible method of control in both the Senate and House bills.[143]

John Eastman of the Senate Air and Water Pollution Subcommittee has explained that at the time the bills were being considered, land use controls had a favorable image. They were seen as a logical outgrowth of the environmental/ecological movement which sought to relate man's activities to the land, air, and water as a wholistic, comprehensive system.[144] The Senate subcommittee discussed frankly and openly the land use provisions of Section 208 and fully intended that land use controls not only would serve to help curb non-point source pollution, but would also aid in point source control. The latter is demonstrated in provision (2)(c)(ii) of Section 208 which establishes a program to "regulate the location, modification, and construction of any facilities within such [208] area which may result in any discharge in such area."

The exact intent of Congress by including the regulation of the location of any discharging facilities is obscured by the lack of legislative history. Apparently the intent of this section was not fully understood by some Congressman at the time of passage of the Act. Senator Mathis, of Maryland, asked during Senate debate if a discharge permit would be sufficient to regulate the location and construction of discharging facilities.[145] Evidently he interpreted this passage to

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[143]See Appendices A and B.

[144]Interview with John Eastman, Senate Subcommittee on Air and Water Pollution staff, 13 June 1977.

[145]U.S. Congress, Senate, Legislative History, p. 1390.

mean the construction and location of the facilities that would convey the actual discharge from existing industries and treatment plants. Senator Muskie replied that, "Section 208 anticipates controls over the location of facilities to comply with an overall plan for protection of the Nation's waters--208 is prevention, not control oriented.[146] This exchange provides the only further illucidation on this subject. It is apparent that Senator Muskie was referring to the location of new dischargers.[147]

Whatever the Congressional intent, the EPA has published regulations that go well beyond the statutory provisions of the Act. However, recognizing the hostility that has developed since passage of the Act towards land use planning, the EPA has injected a degree of flexibility regarding the manner in which the regulations may be fulfilled.

The director of the Water Resource division of EPA has stated;

> "while 208 is not a land use program, it does have definite relationships to land use. Water quality is affected, often significantly, by land use decisions. As a result, land use issues can be expected to receive attention in the plan. Section 208 will undoubtedly provide impetus to existing public and private efforts to ensure that actions reflect long-term public needs and desires. However, there are many public goals that enter into decisions on resource usage, and water quality should be only one of these goals... Section 208 provides a comprehensive means for relating water quality impacts to decisions made about the nature of urban and rural development."[148]

However, he adds, "with the limited time and resources available, it is important that each agency focus on those elements for which it

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[146] Ibid., pp. 1390-1391.

[147] Jungman, Areawide Planning, p. 1056.

[148] Mark Pisano, "208: A Process for Water Quality Management," Environmental Comment, January 1976.

can realistically obtain implementation in the near term."[149] This theme of plan implementability is contained throughout Section 208 regulations and guidelines, stressing also the need for compatability with existing planning efforts to achieve implementation.[150]

The planning procedure enumerated by EPA for relating water quality to land use development provides for ample growth by allowing the construction of treatment facilities with excess capacity.[151] However, the management plan must contain provisions that will prevent the lowering of existing water quality. This planning is conducted in a progressional fashion including the following steps:

1. Inventory of existing municipal, industrial, and non-point sources of pollution, and amounts contributed by each;

2. Categorization of existing land use in such a way as to be able to assign pollutant loadings for each category;

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[149] Ibid.

[150] The first work plan handbook for areawide planning, May 1974, stated: "The aim of the planning process is to formulate an areawide waste treatment plan that can be implemented," p. 1. Draft guidelines in February 1975 added, "primary reliance will be placed on utilizing existing land use plans and controls," p. 4-2. It states further, "This guideline sets forth the following criteria for evaluating adequacy of the management provisions of a 208 plan: Implementation feasibility and reliability, and public acceptance," p. 1-4. The November 1976 Guidelines for State and Areawide Water Quality Management Program Development follows this pattern with respect to land use planning considerations. It states, "Since land use controls and practices are used to achieve a variety of objectives, the following factors should be considered when conducting the analysis: A. Implementation capability. Careful consideration should be given to the feasibility of land use controls and their relationship to existing and proposed institutional and financial arrangements. B. Consistency with other programs. To the extent practical, the land use controls should be consistent with other programs, policies, and plans, such as those related to transportation, water supply, capital improvements, and air quality. C. Public acceptance. Since controls that are unacceptable to the public are unlikely to be implemented, it is essential that serious consideration be given to the public's viewpoint," p. 6-5.

[151] 40 CFR 131.11(b)(3).

3. Demographic and economic projections in five-year increments covering the next 20 years. Particular emphasis is placed on assessing the effects of local growth policies, the state WQM plan, plans for maintenance of air quality, transportation plans, water supply availability, and state and local public investment plans on historic growth trends;

4. Projection of land use patterns. Using the land use categories developed, and the projected demographic and economic projections, future land use changes are projected;

5. Waste load projections. Waste load projections are made for the projected land use categories, and projected municipal and industrial discharges; and,

6. Estimate of maximum allowable waste load. No water segment may be lowered in quality. Therefore, the allotments made must be consistent with achievement of existing water quality standards, or more stringent standards, if they are required to meet the 1983 goal of fishable, swimmable water.

Based on these projections, land use controls may have to be imposed to prevent the overloading of some water segments. When the imposition of land use controls are required, the regulatory plan must state what controls will be applied, and the agency (in most cases a general purpose government) who will impose that control.[152]

Land use controls, or growth restrictions, may still be avoided even if projected water loads exceed existing or projected water quality

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[152]Environmental Protection Agency, Guidelines for State and Areawide, p. 3-63.

standards.[153] The guidelines for State and areawide water quality management suggest six methods: 1) Designing wasteload allocations to accommodate new sources via reduction in current source loadings; 2) Restricting any new discharge of pollutants from new and existing sources; 3) Restricting any increase in pollutants currently discharged from existing sources; 4) Adoption of a no mixing zone policy, thus requiring safe concentrations in discharges; 5) Requiring land disposal for new sources; and, 6) Requiring new non-point source activities to demonstrate no permanent or continual adverse impact on water quality.[154] The EPA has therefore allowed for a multiplicity of means to relate the changing character of an area to water quality concerns.

Will these regulations meet the Congressional intent behind the statutory dictate to "regulate the location" of any facilities? Senator Muskie's previously quoted statement is the only yardstick provided; "Section 208 anticipates controls over the location of facilities to comply with an overall plan for protection of the Nation's Waters." By this standard, even though state and areawide agencies have ample opportunity to circumvent the application of land use controls, they must present a feasible, workable, alternative that will accomplish the same end, protection of the Nation's waters. Where circumstances dictate, existing or newly created legislative authorities may be called upon to assume the status of management agencies under Section 208 to impose land use controls. Congressional intent appears to be satisfied.

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[153] Ibid.

[154] Ibid., p. 5-15.

SECTION VIII Summary and Conclusions

Summary

The environmental movement of the late 1960's and early 1970's propelled air and water pollution into the forefront of public concern. The Nixon Administration and the U.S. Congress both realized the need for swift, far-reaching legislation. Bills were proposed by the Administration and Congress. Subsequent hearings revealed a need for an entirely new approach to water pollution control.

One of the most apparent changes included in the resultant legislation involved the level of government responsible for water pollution planning. The focus of planning efforts would be intrastate regional planning rather than the traditional state level planning.

The EPA, however, chose to ignore Congressional intent, and continued water quality planning through the traditional state agencies. A number of reasons influenced this decision. The principal concern seems to have been the allocation of scarce manpower and resources to accomplish the myriad new demands, directives, and deadlines contained in the Act. Those actions which would produce the greatest reduction in pollution in the least amount of time were given priority. On this account, the EPA ranked comprehensive areawide planning as its lowest priority, in direct contravention of Congressional intent. Overlaid on, and interwoven in, the EPA's decision were a number of additional factors.

The states opposed the denigration of their planning powers, and the creation of regional planning agencies. The cooperation of the

states was essential to the effective and timely implementation of the Act. The EPA had well established relations with state planning agencies, and were familiar with the state planning process. Whereas regional agencies would have to be created, and a type of planning was contemplated, for which there existed no precedent. Furthermore, comprehensive planning would be more expensive, and the 100% planning grants authorized for the regional agencies were perhaps an easy target for White House and OMB budget cutters. In addition, the Director of the EPA, William Ruchelshaus, preferred the water quality standards approach, and the state planning provision would provide the requisite information for that system more rapidly.

Congress throughout oversight, budget, and amendment hearings held subsequent to passage of the Act, concerned itself with the faltering construction grant program, to the virtual exclusion of planning considerations. Senator Muskie, however, pressed for immediate and full utilization of Section 208. Late in 1974 the Natural Resources Defense Council joined in this effort by filing suit against the new EPA Administrator, Russel Train, for failure to comply with the mandate of the Act regarding Section 208.

The court ruled in favor of the NRDC and required the EPA to promulgate regulations that would provide for Section 208 planning for the entire geographic area of each state, and provide the states with funding to do this planning. The regulations and guidelines published by the EPA to comply with the court's decision, belatedly, brought the national planning effort substantially into line with the original Congressional intent.

Finally, the intent of the land use considerations contained in Section 208 was addressed. The paucity of comment on potential land use considerations prior to passage of the Act makes that judgment somewhat tenuous. It appears that Congress intended land uses, and their affects on water quality, be taken into account in the planning process, and adequate controls instituted to ensure achievement of the goals of the Act. Compliance with this Congressional intent rests upon the eventual determinations made by the regional EPA Administrators of the "adequacy of control" contained in completed areawide plans.

Conclusion

This paper has shown the Congress responding to a public concern for a cleaner environment by passing legislation designed to address water pollution. The approach contained in this legislation incorporated provisions that were radical departures from past practices. To help alleviate any possible confusion in the mind of the public and the agencies involved in implementation of the Act, Congress provided full documentation of their deliberations, including an uncustomary legislative history.

The manner in which the EPA implemented Section 208 of the Act was based, however, on executive level policy statements which were not supported by either the legislative intent nor the statutory language of the Act.

Several factors were involved in this breach: 1. The proclivity of the Nixon administration to disregard Congressional intent, especially in budgetary matters; 2. Resistance to the legislated course of action by state and federal water pollution control bureaucracies, and

the politically appointed top officials of the EPA; 3. Congressional failure to adequately oversee the implementation of the Act, and; 4. An initial lack of general public or special interest pressure to adhere to the legislated course of action. The first two factors coalesed to provide the impetus, and sanction, for the EPA's actions. The Nixon administration provided an environment in which opposition to legislative action was commonplace. Surely Director Ruchelshaus had Presidential support in his actions or the divergence from Congressional intent could not have occurred. Nonetheless, personal convictions, even of the highest executive branch officials, and no matter how well supported by affected bureaucracies, is not a legitimate substitute for legislative dictate.

Congress had it within its power to rectify the EPA's course of action through oversight hearings, budget hearings, and direct exortation. In a general sense, Congress was pre-occupied with other issues; the Vietnam war, and a perceived loss of power vis-a-vis the executive branch, among others. More specifically, those Congressmen who served on committees dealing with water pollution had directed their attention to the Presidential impoundment of sewage treatment plant construction funds, and the resultant slow down in construction efforts. This Congressional failure to insure that implementation was based on the law and legislative history, rather than expediency or personal executive branch predisposition, meant the only avenue of possible redress was the court system.

The court's decision in NRDC vs. Train found that what was considered administrative discretion by the executive branch was more

correctly viewed as an impermissible misconstruction of the intent behind Section 208.

Perhaps, then, the most salient point exposed in this paper is that executive policy must follow logically from enabling legislation. In this particular case a number of extraordinary factors coalesed to permit an exception to this precept of American government, which was finally rectified through the court system.

BIBLIOGRAPHY

Banks, Harvey O. Relationship of Level B Planning and Water Quality Management Planning: Environmental Protection Agency, (GPO, November 1976).

California Water Pollution Control Federation. California Water Pollution Control Federation Bulletin, Vol. 9, No. 4, 1973.

Caulfield, Henry P. Jr. Colorado State University, Fort Collins, Colorado, Interview, August 4, 1977.

Colorado Department of Health, and the Office of the Governor of Colorado. Colorado State Continuing Planning Process for Water Quality Management, (Colorado Department of Health, May 1976).

Council on Environmental Quality. Sixth Annual Report, (GPO, 1975).

_____. Seventh Annual Report, 1976.

Davey, William B. Conservation Districts and 208 Water Quality Management: National Association of Conservation Districts and Environmental Protection Agency, (GPO, June 1977).

Dolgin, Erica L. and Guilbert, Thomas G. (ed.). Federal Environmental Law, (St. Paul, Minnesota: West Publishing Co., 1974).

Eastman, John. Senate Subcommittee on Air and Water Pollution, Interview, June 13, 1977.

Environmental Law Institute. Environmental Law Reporter, (Washington, D.C., 1974).

_____. 1975.

_____. 1976.

Environmental Protection Agency. Institutional Arrangements for Water Quality Management, (GPO, September 1971).

_____. Draft Guidelines for Areawide Waste Treatment Management, (GPO, May 1974).

_____. Review of the Municipal Waste Water Treatment Works Program, (GPO, November 1974).

_____. State Continuing Planning Process, Water Quality Management Basin Plan, (GPO, January 1975).

_____. Water Quality Strategy Paper, (GPO, August 1975).

_____. Management Agencies Handbook for Section 208 Areawide Waste Treatment, (GPO, September 1975).

_____. Financial Arrangements for Water Quality Management Planning, (GPO, October 1976).

_____. Guidelines for State and Areawide Water Quality Program Development, (GPO, November 1976).

_____. 208 Bulletin, (GPO, January 1977).

_____. Summary of Draft Environmental Impact Statement--Water Quality Management Plan--El Paso and Teller Counties, (Region VII Office, March 1977).

_____. 208 Areawide Water Quality Management Planning: Nine Case Studies, (GPO, April 1977).

Fallows, James M. Water Lords, (New York, New York: Grossman Press, 1971).

Frankel, Michael L. Work Plan Handbook for Section 208 Areawide Waste Treatment Management Planning: Environmental Protection Agency, (GPO, February 1975).

Goldfarb, William. Litigation and Legislation, Water Resources Bulletin, Vol. 12, August 1976.

Hein, C. J., Keys, Joyce M., Robbins, G. M. Regional Governmental Arrangements in Metropolitan Areas: Nine Case Studies: Environmental Protection Agency, (GPO, January 1974).

Hurly, William D. Environmental Legislation, (Springfield, Illinois: Charles C. Thomas, 1971).

Indiana University School of Public and Environmental Affairs. Problems and Approaches to Areawide Water Quality Management: Environmental Protection Agency, (GPO, October 1973).

Ipsen, Henry W., White, Michael D. "Land Use Law Developments," Colorado Land Use and Zoning Newsletter, 12 January 1976.

Jones, Charles O. An Introduction to the Study of Public Policy, (Belmont, California: Dunberry Press, 1970).

Jungman, Michael. "Areawide Planning Under the Federal Water Pollution Control Act Amendments of 1972: Intergovernmental and Land Use Implications," Texas Law Review, Vol. 47, June 1976, pp. 1047-1081.

Lieber, Harvey. Federalism and Clean Waters, (Lexington, Massachusetts: Lexington Books, 1975).

Miami Valley Regional Planning Commission. Federal Programs Impacting Regional Water Quality Management: Environmental Protection Agency, (GPO, January 1976).

National Water Commission. Water Policies for the Future, Final Report to the President and Congress of the U.S., (GPO, 1973).

Oregon Research Institute. The Water Pollution Control Act of 1972: Attitudes of Participants, Institutional Assessment: National Commission on Water Quality, (NTIS: PB-247 392, 1975).

Phillips, Michael B. "Developments in Water Quality and Land Use Planning: Problems in the Application of the Federal Water Pollution Control Act Amendments of 1972," Urban Law Annual, 1975, pp. 43-144.

Piasano, Mark. "208: A Process for Water Quality Management," Environmental Comment, January 1976, pp. 1-14.

Ragan, James Associates. The Water Pollution Control Act of 1972: Public Participation, Institutional Assessment: National Commission on Water Quality, (NTIS: PB-245 410, 1975).

Rasmussen, Frederich. "The Federal Water Pollution Control Act Amendments of 1972," Wisconsin Law Review, Vol. 3, 1973, pp. 893-908.

Sherrod, W. Floyd (ed.). Environment Law Review, (Albany, New York: Sage Hill Publishers, Inc., 1970).

_____. 1971.

_____. 1975.

U.S. Congress. Senate. Federal Water Pollution Control Act Amendments of 1971. Hearing before a Subcommittee of the Senate Committee on Public Works. 92nd Cong., 1st Sess., 1971.

U.S. Congress. Senate. Federal Water Pollution Control Act Amendments of 1971. Report with supplemental views to accompany S.2770 by the Senate Committee on Public Works. 92nd Cong., 1st Sess., 1971.

U.S. Congress. House. Federal Water Pollution Control Act Amendments of 1972. Report of the House Committee on Public Works with supplemental views on H.R. 11896. 92nd Cong., 2nd Sess., 1972.

U.S. Congress. Senate. Federal Water Pollution Control Act Amendments of 1972. Conference Report from Committee of Conference to accompany S.2770. 92nd Cong., 2nd Sess., 1972.

U.S. Congress. Senate. Legislative History of the Water Pollution Control Act Amendments of 1972. Committee print of the Senate Committee on Public Works. 93rd Cong., 1st Sess., 1973.

U.S. Congress. House. Laws of the U.S. Relating to Water Pollution Control and Environmental Quality. Compiled by the House Committee on Public Works. 93rd Cong., 1st Sess., 1973.

U.S. Congress. Senate. Environmental Protection Agency Budget Request. Hearings before a Subcommittee of the Committee on Public Works. 93rd Cong., 2nd Sess., 1974.

U.S. Congress. House. Implementation of the Federal Water Pollution Control Act. Hearings before a Subcommittee of the Committee on Public Works. 93rd Cong., 2nd Sess., 1974.

U.S. Congress. House. Interim Staff Report on Implementation of the Federal Water Pollution Control Act of 1972. For a House Subcommittee of the Public Works and Transportation Committee. 94th Cong., 1st Sess., 1975.

U.S. Congress. Senate. Budget Review Hearings, Senate Committee on Public Works. 94th Cong., 1st Sess., 1975.

U.S. Congress. House. To Amend the Federal Water Pollution Control Act. Hearings before a Subcommittee of the Committee on Public Works and Transportation. 94th Cong., 1st Sess., 1975.

U.S. Congress. Senate. Budget Review. Hearings before the Senate Committee on Public Works. 94th Cong., 1st Sess., 1975.

U.S. Congress. Senate. Status of the Programs and Policies of the Environmental Protection Agency. Hearings before a Subcommittee of the Committee on Public Works. 95th Cong., 1st Sess., 1977.

U.S. Department of Interior. Water Quality Standards: Better Water for America. (GPO, March 1969).

Water Pollution Control Federation. Water Pollution Control Federation Journal, Vol. 45, No. 1, January 1973.

_____. Vol. 46, No. 5, May 1974.

_____. Vol. 47, No. 1, January 1975.

_____. Vol. 47, No. 2, February 1975.

Westman, Walter E. "Problems in Implementing U.S. Water Quality Goals," American Scientist, March-April 1977.

White, Gilbert F. Strategies of American Water Management, (Ann Arbor, Michigan: University of Michigan Press, 1969).

Wise, Harold F. and Associates. Water Pollution Control Act of 1972, Institutional Assessment, Planning: National Commission on Water Quality, (NTIS: PB-244 804, 1974).

Zener, Robert. "Federal Law of Water Pollution Control," Federal Environmental Law, (St. Paul, Minnesota: West Publishing Company, 1974).

Zwick, David and Benstock, Marcy. Water Wasteland, (New York, New York: Bantam Books, 1971).

APPENDIX A

Public Law 92-500
92nd Congress, S. 2770
October 18, 1972

AN ACT To amend the Federal Water Pollution Control Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Water Pollution Control Act Amendments of 1972".

SEC. 2. The Federal Water Pollution Control Act is amended to read as follows:

"(C) directly or by contract, to design and construct new works, and to operate and maintain new and existing works as required by any plan developed pursuant to subsection (b) of this section;

"(D) to accept and utilize grants, or other funds from any source, for waste treatment management purposes;

"(E) to raise revenues, including the assessment of waste treatment charges;

"(F) to incur short- and long-term indebtedness;

"(G) to assure in implementation of an areawide waste treatment management plan that each participating community pays its proportionate share of treatment costs;

"(H) to refuse to receive any wastes from any municipality or subdivision thereof, which does not comply with any provisions of an approved plan under this section applicable to such area; and

"(I) to accept for treatment industrial wastes.

"(d) After a waste treatment management agency having the authority required by subsection (c) has been designated under such subsection for an area and a plan for such area has been approved under subsection (b) of this section, the Administrator shall not make any grant for construction of a publicly owned treatment works under section 201(g)(1) within such area except to such designated agency and for works in conformity with such plan.

"(e) No permit under section 402 of this Act shall be issued for any point source which is in conflict with a plan approved pursuant to subsection (b) of this section.

"(f)(1) The Administrator shall make grants to any agency designated under subsection (a) of this section for payment of the reasonable costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

"(2) The amount granted to any agency under paragraph (1) of this subsection shall be 100 per centum of the costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section for each of the fiscal years ending on June 30, 1973, June 30, 1974, and June 30, 1975, and shall not exceed 75 per centum of such costs in each succeeding fiscal year.

"(3) Each applicant for a grant under this subsection shall submit to the Administrator for his approval each proposal for which a grant is applied for under this subsection. The Administrator shall act upon such proposal as soon as practicable after it has been submitted, and his approval of that proposal shall be deemed a contractual obligation of the United States for the payment of its contribution to such proposal. There is authorized to be appropriated to carry out this subsection not to exceed $50,000,000 for the fiscal year ending June 30, 1973, not to exceed $100,000,000 for the fiscal year ending June 30, 1974, and not to exceed $150,000,000 for the fiscal year ending June 30, 1975.

"(g) The Administrator is authorized, upon request of the Governor or the designated planning agency, and without reimbursement, to consult with, and provide technical assistance to, any agency designated under subsection (a) of this section in the development of areawide waste treatment management plans under subsection (b) of this section.

"(h)(1) The Secretary of the Army, acting through the Chief of Engineers, in cooperation with the Administrator is authorized and directed, upon request of the Governor or the designated planning organization, to consult with, and provide technical assistance to, any agency designed under subsection (a) of this section, in developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

"(2) There is authorized to be appropriated to the Secretary of the Army, to carry out this subsection, not to exceed $50,000,000 per fiscal year for the fiscal years ending June 30, 1973, and June 30, 1974.

"BASIN PLANNING

"SEC. 209. (a) The President, acting through the Water Resources Council, shall, as soon as practicable, prepare a Level B plan under the Water Resources Planning Act for all basins in the United States. All such plans shall be completed not later than January 1, 1980, except that priority in the preparation of such plans shall be given to those basins and portions thereof which are within those areas designated under paragraphs (2), (3), and (4) of subsection (a) of section 208 of this Act.

"(b) The President, acting through the Water Resources Council, shall report annually to Congress on progress being made in carrying out this section. The first such report shall be submitted not later than January 31, 1973.

"(c) There is authorized to be appropriated to carry out this section not to exceed $200,000,000.

"ANNUAL SURVEY

"SEC. 210. The Administrator shall annually make a survey to determine the efficiency of the operation and maintenance of treatment works constructed with grants made under this Act, as compared to the efficiency planned at the time the grant was made. The results of such annual survey shall be included in the report required under section 516(a) of this Act.

ess shall be certified by the Governor and submitted to the Administrator not later than two years after the planning process is in operation.

"(2) Any plan prepared under such process shall include, but not be limited to—

"(A) the identification of treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of the area over a twenty-year period, annually updated (including an analysis of alternative waste treatment systems), including any requirements for the acquisition of land for treatment purposes; the necessary waste water collection and urban storm water runoff systems; and a program to provide the necessary financial arrangements for the development of such treatment works;

"(B) the establishment of construction priorities for such treatment works and time schedules for the initiation and completion of all treatment works;

"(C) the establishment of a regulator program to—

"(i) implement the waste treatment management requirements of section 201(c),

"(ii) regulate the location, modification, and construction of any facilities within such area which may result in any discharge in such area, and

"(iii) assure that any industrial or commercial wastes discharged into any treatment works in such area meet applicable pretreatment requirements;

"(D) the identification of those agencies necessary to construct, operate, and maintain all facilities required by the plan and otherwise to carry out the plan;

"(E) the identification of the measures necessary to carry out the plan (including financing), the period of time necessary to carry out the plan, the costs of carrying out the plan within such time, and the economic, social, and environmental impact of carrying out the plan within such time;

"(F) a process to (i) identify, if appropriate, agriculturally and silviculturally related nonpoint sources of pollution, including runoff from manure disposal areas, and from land used for livestock and crop production, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

"(G) a process to (i) identify, if appropriate, mine-related sources of pollution including new, current, and abandoned surface and underground mine runoff, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

"(H) a process to (i) identify construction activity related sources of pollution, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

"(I) a process to (i) identify, if appropriate, salt water intrusion into rivers, lakes, and estuaries resulting from reduction of fresh water flow from any cause, including irrigation, obstruction, ground water extraction, and diversion, and (ii) set forth procedures and methods to control such intrusion to the extent feasible where such procedures and methods are otherwise a part of the waste treatment management plan;

"(J) a process to control the disposition of all residual waste generated in such area which could affect water quality; and

"(K) a process to control the disposal of pollutants on land or in subsurface excavations within such area to protect ground and surface water quality.

"(3) Areawide waste treatment management plans shall be certified annually by the Governor or his designee (or Governors or their designees, where more than one State is involved) as being consistent with applicable basin plans and such areawide waste treatment management plans shall be submitted to the Administrator for his approval.

"(4) Whenever the Governor of any State determines (and notifies the Administrator) that consistency with a statewide regulatory program under section 303 so requires, the requirements of clauses (F) through (K) of paragraph (2) of this subsection shall be developed and submitted by the Governor to the Administrator for application to all regions within such State.

"(c)(1) The Governor of each State, in consultation with the planning agency designated under subsection (a) of this section, at the time a plan is submitted to the Administrator, shall designate one or more waste treatment management agencies (which may be an existing or newly created local, regional, or State agency or political subdivision) for each area designated under subsection (a) of this section and submit such designations to the Administrator.

"(2) The Administrator shall accept any such designation, unless, within 120 days of such designation, he finds that the designated management agency (or agencies) does not have adequate authority—

"(A) to carryout appropriate portions of an areawide waste treatment management plan developed under section (b) of this section;

"(B) to manage effectively waste treatment works and related facilities serving such area in conformance with any plan required by subsection (b) of this section;

"AREAWIDE WASTE TREATMENT MANAGEMENT

"SEC. 208. (a) For the purpose of encouraging and facilitating the development and implementation of areawide waste treatment management plans—

"(1) The Administrator, within ninety days after the date of enactment of this Act and after consultation with appropriate Federal, State, and local authorities, shall be regulation publish guidelines for the identification of those areas which, as a result of urban-industrial concentrations or other factors, have substantial water quality control problems.

"(2) The Governor of each State, within sixty days after publication of the guidelines issued pursuant to paragraph (1) of this subsection, shall identify each area within the State which, as a result of urban-industrial concentrations or other factors, has substantial water quality control problems. Not later than one hundred and twenty days following such identification and after consultation wtih appropriate elected and other officials of local governments having jurisdiction in such areas, the Governor shall designate (A) the boundaries of each such area, and (B) a single representative organization, including elected officials from local governments or their designees, capable of developing effective areawide waste treatment management plans for such area The Governor may in the same manner at any later time identify any additional area (or modify an existing area) for which he determines areawide waste treatment management to be appropriate, designate the boundaries of such area, and designate an organization capable of developing effective areawide waste treatment management plans for such area.

"(3) With respect to any area which, pursuant to the guidelines published under paragraph (1) of this subsection, is located in two or more States, the Governors of the respective States shall consult and cooperate in carrying out the provisions of paragraph (2), with a view toward designating the boundaries of the interstate area having common water quality control problems and for which areawide waste treatment management plans would be most effective, and toward designating, within one hundred and eighty days after publication of guidelines issued pursuant to paragraph (1) of this subsection, of a single representative organization capable of developing effective areawide waste treatment management plans for such area.

"(4) If a Governor does not act, either by designating or determining not to make a designation under paragraph (2) of this subsection, within the time required by such paragraph, or if, in the case of an interstate area, the Governors of the States involved do not designate a planning organization within the time required by paragraph (3) of this subsection, the chief elected officials of local governments within an area may by agreement designate (A) the boundaries for such an area, and (B) a single representative organization including elected officials for such local governments, or their designees, capable of developing an areawide waste treatment management plan for such area.

"(5) Existing regional agencies may be designated under paragraphs (2), (3), or (4) of this subsection.

"(6) The State shall act as a planning agency for all portions of such State which are not designated under paragraphs (2), (3), or (4) of this subsection.

"(7) Designations under this subsection shall be subject to the approval of the Administrator.

"(b) (1) Not later than one year after the date of designation of any organization under subsection (a) of this section such organization shall have in operation a continuing areawide waste treatment management planning process consistent with section 201 of this Act. Plans prepared in accordance with this process shall contain alternatives for waste treatment management, and be applicable to all wastes generated within the area involved. The initial plan prepared in accordance with such proc-

Union Calendar No. 458

92D CONGRESS
2D SESSION

H. R. 11896

[Report No. 92-911]

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 1971

Mr. BLATNIK (for himself, Mr. JONES of Alabama, Mr. KLUCZYNSKI, Mr. WRIGHT, Mr. GRAY, Mr. CLARK, Mr. EDMONDSON, Mr. JOHNSON of California, Mr. DORN, Mr. HENDERSON, Mr. ROBERTS, Mr. KEE, Mr. HOWARD, Mr. ANDERSON of California, Mr. CAFFERY, Mr. ROE, Mr. COLLINS of Illinois, Mr. RONCALIO, Mr. BEGICH, Mr. MCCORMACK, Mr. RANGEL, Mr. JAMES V. STANTON, Mrs. ABZUG, Mr. HARSHA, and Mr. GROVER) introduced the following bill; which was referred to the Committee on Public Works

MARCH 11, 1972

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Federal Water Pollution Control Act.

* * * * * * *

"SEC. 208. (a) For the purpose of encouraging and facilitating the development and implementation of areawide waste treatment management plans—

"(1) The Administrator, within ninety days after the date of enactment of this Act and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which, as a result of urban-industrial concentrations or other factors, have substantial water quality control problems.

"(2) The Governor of each State, within sixty days after publication of the guidelines issued pursuant to paragraph (1) of this subsection, shall identify each area within the State which, as a result of urban-industrial concentrations or other factors, has substantial water quality control problems. Not later than one hundred and twenty days following such identification and after appropriate consultation with the officials of all local governments having jurisdiction in such areas, the Governor shall designate (A) the boundaries of each such area, and (B) a single representative organization capable of developing effective areawide waste treatment management plans for such area. The Governor may in the same manner at any later time identify any additional area (or modify an existing area) for which he determines areawide waste treatment management to be appropriate, designate the boundaries of such area, and designate an organization capable of developing effective areawide waste treatment management plans for such area.

"(3) With respect to any area which, pursuant to the guidelines published under paragraph (1) of this

subsection, is located in two or more States, the Governors of the respective States shall consult and cooperate in carrying out the provisions of paragraph (2), with a view toward designating the boundaries of the interstate area having common water quality control problems and for which areawide waste treatment management plans would be most effective, and toward designating, within one hundred and eighty days after publication of guidelines issued pursuant to paragraph (1) of this subsection, of a single representative organization capable of developing effective areawide waste treatment management plans for such area.

"(4) Existing regional agencies may be designated under paragraphs (2) and (3) of this subsection.

"(5) Designations under this subsection shall be subject to the approval of the Administrator.

"(b)(1) No later than two years after the date of designation of any organization under subsection (a) of this section such organization shall have in operation a continuing areawide waste treatment management planning process consistent with section 201 of this Act. Plans prepared in accordance with this process shall contain alternatives for waste treatment management, and be applicable to all wastes generated within the area involved.

"(2) Any plan prepared under such process shall include, but not be limited to—

"(A) the identification of treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of the area over a twenty-year period, annually updated (including an analysis of alternative waste treatment systems), including any requirements for the acquisition of land for treatment purposes; the necessary waste water collection and urban storm water runoff systems; and a program to provide the necessary financial arrangements for the development of such treatment works;

"(B) the establishment of construction priorities for such treatment works and time schedules for the initiation and completion of all treatment works;

"(C) the establishment of a regulatory program to—

"(i) implement the waste treatment management requirements of section 201(c),

"(ii) regulate the location, modification, and construction of any facilities within such area which may result in any discharge in such area, and,

"(iii) assure that any industrial or commercial wastes discharged into any treatment works in

such area meet applicable pretreatment requirements;

"(D) the identification of those agencies necessary to construct, operate, and maintain all facilities required by the plan and otherwise to carry out the plan;

"(E) the identification of the measures necessary to carry out the plan (including financing), the period of time necessary to carry out the plan, the costs of carrying out the plan within such time, and the economic, social, and environmental impact of carrying out the plan within such time;

"(F) a process to (i) identify, if appropriate, agriculturally related nonpoint sources of pollution, including runoff from manure disposal areas, and from land used for livestock and crop production, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

"(G) a process to (i) identify, if appropriate, mine-related sources of pollution including new, current, and abandoned surface and underground mine runoff, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

"(H) a process to (i) identify construction activity related sources of pollution, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources; and

"(I) a process to (i) identify, if appropriate, salt water intrusion into rivers, lakes, and estuaries resulting from reduction of fresh water flow from any cause, including irrigation, obstruction, ground water extraction, and diversion, and (ii) set forth pocedures and methods to control such intrusion to the extent feasible where such procedures and methods are otherwise a part of the waste treatment management plan.

"(3) Areawide waste treatment management plans shall be certified annually by the Governor or his designee (or Governors or their designees, where more than one State is involved) as being consistent with applicable basin plans and such areawide waste treatment management plans shall be submitted to the Administrator for his approval.

"(c)(1) The Governor of each State, in consultation with the planning agency designated under subsection (a) of this section, at the time a plan is submitted to the Administrator, may designate one or more waste treatment management agencies for each area designated under subsection (a) of this section and submit a list of such designations to the Administrator.

"(2) The Administrator shall approve any such designation, within ninety days of designation, only if he finds that

the designated management agency (or agencies) is authorized—

"(A) to carry out appropriate portions of an areawide waste treatment management plan developed under subsection (b) of this section;

"(B) to manage effectively waste treatment works and related facilities serving such area in conformance with any plan required by subsection (b) of this section;

"(C) directly or by contract, to design and construct new works, and to operate and maintain new and existing works as required by any plan developed pursuant to subsection (b) of this section;

"(D) to accept and utilize grants, or other funds from any source, for waste treatment management purposes;

"(E) to raise revenues, including the assessment of waste treatment charges;

"(F) to incur short- and long-term indebtedness;

"(G) to assure in implementation of an areawide waste treatment management plan that each participating community pays its proportitonate share of treatment costs;

"(H) to refuse to receive any wastes from any municipality or subdivision thereof, which does not comply with any provisions of an approved plan under this section applicable to such area; and

"(I) to accept for treatment industrial wastes.

"(d) After a waste treatment management agency has been designated under this subsection for an area and a plan for such area has been approved under subsection (b) of this section, the Administrator shall not make any grant for construction of a publicly owned treatment works under section 201(d)(1) within such area except to such designated agency and for works in conformity with such plan.

"(e) No permit under section 402 of this Act shall be issued for any point source which is in conflict with a plan approved pursuant to subsection (b) of this section.

"(f)(1) The Administrator shall make grants to any agency designated under subsection (a) of this section for payment of the reasonable costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

"(2) The amount granted to any agency under paragraph (1) of this subsection shall be 100 per centum of the costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section for each of the fiscal years ending on June 30, 1973, June 30, 1974, and June 30, 1975, and

shall not exceed 75 per centum of such costs in each succeeding fiscal year.

"(3) There is authorized to be appropriated to the Administrator to carry out this subsection not to exceed $100,000,000 for the fiscal year ending June 30, 1973, and not to exceed $150,000,000 for the fiscal year ending June 30, 1974.

"(g) The Administrator is authorized, upon request of the Governor or the designated planning agency, and without reimbursement, to consult with, and provide technical assistance to, any agency designated under subsection (a) of this section in the development of areawide waste treatment management plans under subsection (b) of this section.

"(h)(1) The Secretary of the Army, acting through the Chief of Engineers, in cooperation with the Administrator is authorized and directed, upon request of the Governor or the designated planning organization, to consult with, and provide technical assistance to, any agency designated under subsection (a) of this section in developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

"(2) There is authorized to be appropriated to the Secretary of the Army, to carry out this subsection, not to exceed $50,000,000 per fiscal year for the fiscal years ending June 30, 1973, and June 30, 1974.

APPENDIX C **Calendar No. 411**

92D CONGRESS
1ST SESSION

S. 2770

[Report No. 92–414]

IN THE SENATE OF THE UNITED STATES

OCTOBER 28, 1971

Mr. MUSKIE (for himself, Mr. RANDOLPH, Mr. BAKER, Mr. BAYH, Mr. BENTSEN, Mr. BOGGS, Mr. BUCKLEY, Mr. COOPER, Mr. DOLE, Mr. EAGLETON, Mr. JORDAN of North Carolina, Mr. MONTOYA, Mr. STAFFORD, Mr. TUNNEY, and Mr. WEICKER) introduced the following bill; which was read twice and referred to the Committee on Public Works

OCTOBER 28, 1971

Reported by Mr. RANDOLPH, without amendment

A BILL

To amend the Federal Water Pollution Control Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Water Pollution Control Act Amendments of 1971".

SEC. 2. The Federal Water Pollution Control Act is amended to read as follows:

"WASTE TREATMENT MANAGEMENT

"SEC. 209. For the purpose of encouraging and facilitating the development and implementation of areawide waste treatment management plans—

"(a) (1) The Administrator, within ninety days after the date of enactment of this Act and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which, as a result of urban-industrial concentrations or other factors, have substantial water quality control problems.

"(2) The Governor of each State, within sixty days after publication of the guidelines issued pursuant to paragraph (1) of this subsection, shall identify each area within the State which, as a result of urban-industrial concentrations or other factors, has substantial water quality control problems. Not later than one hundred twenty days following such identification and after appropriate consultation with the chief elected officials of local governments having jurisdiction in such areas, the Governor shall designate (A) the boundaries of each such area, and (B) an organization composed of elected officials from the general purpose local governments in such area and other appropriate individuals capable of developing an areawide waste treatment management plan for such area. The Governor may in the same manner at any later time identify any additional area (or modify an existing area) for which he determines areawide waste treatment management to be appropriate, designate the boundaries of such area, and designate an organization capable of developing an areawide waste treatment management plan for such area.

"(3) With respect to any area which, pursuant to the guidelines published under paragraph (1) of this subsection, is located in two or more States, the Governors of the respective States shall consult and cooperate in carrying out the provisions of paragraph (2), with a view toward designating the boundaries of the interstate area having common water quality control problems and for which an areawide waste treatment management plan would be most effective,

and toward the designation, within one hundred and eighty days after publication of guidelines issued pursuant to paragraph (1) of this subsection, of a single representative organization capable of developing an effective waste treatment management plan for such area.

"(4) If a Governor does not act within the time required by paragraph (2) of this subsection, or if, in the case of an interstate area, the Governors of the States involved do not designate a planning organization within the time required by paragraph (3) of this subsection, the chief elected officials of local governments within such area may by agreement designate (A) the boundaries for such an area, and (B) an organization composed of elected officials from the general purpose local governments in such area and other appropriate individuals capable of developing an area-wide waste treatment management plan for such area.

"(5) Existing regional planning agencies may be designated under paragraphs (2), (3), and (4) of this subsection.

"(6) The Governor shall designate a planning agency for all areas of a State which are not designated under paragraphs (2), (3), or (4) of this subsection.

"(7) Designations under this subsection shall be subject to the approval of the Administrator.

"(b) (1) No later than two years after designation of any organization or agency under subsection (a) of this section, each such organization or agency shall develop a waste treatment management plan consistent with section 201 of this Act, containing alternatives for waste treatment management, and applicable to all wastes generated within the area involved: *Provided*, That the Administrator may extend this requirement by six months for any plan which he determines is under development and will provide for an effective waste-water management program.

"(2) Any such plan shall provide for—

"(A) the establishment of construction priorities for such treatment works and time schedules for the initiation and completion of all treatment works;

"(B) the identification of treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of the area over a twenty-year period (including an analysis of alternative waste treatment systems), including any requirements for the acquisition of land for treatment purposes; the necessary waste water collection and urban storm water runoff systems; and a program to provide the necessary financial arrangements for the development of such treatment works;

"(C) the establishment (to the extent practicable

within the time required under this section, or, as soon thereafter as possible) of a regulatory program—

"(i) to implement the waste treatment management requirements of subsections (c) and (d) of section 201 of this Act;

"(ii) to regulate the location, modification, and construction of any facilities within such area which may result in any discharge or runoff of pollutants in such area;

"(iii) to assure that any industrial or commercial wastes discharged into any treatment works in such area meet applicable pretreatment requirements;

"(Iv) to control the disposition of all residual waste generated in such area which could affect water quality; and

"(v) to control the disposal of pollutants on land or in subsurface excavations within such area to protect ground and surface water quality;

"(D) the necessary institutional framework including identification of waste treatment management agencies available for designation under subsection (c) of this section required to implement the plan;

"(E) the identification of the measures necessary to achieve the objective of this title, the period of time necessary to implement those measures, the cost of achieving such objective within such time, and the social and economic impact of achieving such objective within such time;

"(F) a process to (i) identify, if appropriate, agriculturally related nonpoint sources of pollution including runoff from fields used for manure disposal and the production of crops and from forest lands; and (ii) set forth procedures, processes, and methods (including land use requirements) to control such sources to the extent feasible;

"(G) a process to (i) identify, if appropriate, mine-related sources of pollution including runoff from new, current, and abandoned surface and underground mines; and (ii) set forth procedures, processes, and methods (including land use requirements) to control such sources to the extent feasible;

"(H) a process to (i) identify construction related sources of water pollution; and (ii) set forth procedures, processes, and methods (including land use requirements) to control such sources to the extent feasible; and

"(I) procedures to control salt water intrusion into rivers, lakes, and estuaries resulting from reduction of fresh water flow from any cause, including irrigation,

obstruction, ground water extraction, and diversion, to protect water quality.

"(3) (A) Waste treatment management plans shall be certified by the Governor or his designee (or Governors or their designees, where more than one State is involved) and submitted to the Administrator for his approval within the time specified in subsection (b) of this section.

"(B) The Administrator shall approve any revision of a plan, or portion thereof, under this section if he determines that such revision meets the requirements of the section and has been adopted by the State after reasonable notice and public hearings.

"(4) Whenever the Governor of any State determines (and notifies the Administrator) that consistency with a State-wide regulatory program so requires, the requirements of clauses (F) through (I) of subsection (b) (2) of this section shall be developed and submitted by the Governor for application to all regions within such State. Funds for such purpose shall be provided under section 106 of this Act.

"(c) (1) The Governor of each State, in consultation with the planning agency designated under subsection (a) of this section, at the time a plan is submitted to the Administrator, shall designate one or more waste treatment management agencies for each area designated under subsection (a) of this section and submit a list of such designations to the Administrator.

"(2) The Administrator shall approve any such designation, within ninety days of designation, only if he finds that the designated management agency (or agencies) is authorized—

"(A) to carry out appropriate portions of the areawide waste treatment management plan developed under subsection (b) of this section;

"(B) to manage effectively waste treatment works and related facilities serving such area in conformance with any plan required by subsection (b) of this section;

"(C) directly or by contract, to design and construct new works, and to operate and maintain new and existing works as required by any plan developed pursuant to subsection (b) of this section;

"(D) to accept and utilize grants, or other funds from any source, for waste treatment management purposes;

"(E) to raise revenues, including the assessment of waste treatment charges;

"(F) to incur short- and long-term indebtedness;

"(G) to assure in implementation of its waste treatment management plan that each participating community pays its proportionate share of treatment costs;

"(H) to refuse to receive any wastes from any municipality or subdivision thereof, which does not comply with any provisions of an approved plan under this section applicable to such area; and

"(I) to accept for treatment, any industrial wastes which conform to effluent standards and pretreatment standards under section 307 of this Act, or other requirements necessary for water quality management, including requirements to monitor and report on the volume, character, and rate of flow of such industrial wastes.

"(3) The Administrator shall approve any revision of any designated area, at any time, in the same manner as required for the initial designation.

"(d) After July 1, 1974, (or such later date as authorized pursuant to subsection (b) (1) of this section) the Administrator shall not make any grant other than to the designated management agency or agencies, or their delegates for the construction of treatment works in any area for which a designation has been approved under this section. After such date, the Administrator shall not make any grant unless such works to be assisted are in conformance with a plan approved pursuant to subsection (b) of this section.

"(e) After July 1, 1974 (or such later date as authorized pursuant to subsection (b) (1) of this section), no permit under section 402 of this Act shall be issued to any point source which is in conflict with a plan approved pursuant to subsection (b) of this section.

"(f) (1) The Administrator shall provide financial assistance to any agency designated under subsection (a) of this section in the development of waste treatment management plans under subsection (b) of this section.

"(2) The Administrator is authorized, upon request of the Governor or the designated planning agency, to consult with, and provide technical assistance to, any agency designated under subsection (a) of this section in the development of waste treatment management plans under subsection (b) of this section.

"(3) The amount granted to any agency shall be 100 per centum of the costs of developing a waste treatment management plan under subsection (b) of this section for each of the first two fiscal years, and shall not exceed 75 per centum of such costs in any succeeding fiscal year.

"(g) (1) The Secretary of the Army acting through the Chief of Engineers, in cooperation with the Administrator and in accordance with policy guidelines developed by the Administrator within ninety days after the date of enactment of this Act, is authorized, upon request of the Governor or the designated planning agency, to consult with, and provide

technical assistance to, any agency designated under subsection (a) of this section in the development of waste treatment management plans under subsection (b) of this section.

"(2) There is authorized to be appropriated to the Secretary of the Army such sums as may be necessary to carry out this subsection.

"(h) (1) In any case in which the Secretary of the Army (hereafter in this subsection called Secretary), is requested by a Governor of any State to acquire lands or interests in lands required by such State for any treatment works approved under section 203 of this Act for sites therefor, the Secretary is authorized, in the name of the United States and prior to the approval of title by the Attorney General, to acquire, enter upon, and take possession of such lands or interests in lands by purchase, donation, condemnation, of otherwise in accordance with the laws of the United States (including the Act of February 26, 1931; 46 Stat. 1421), if—

"(A) the Secretary has determined that either the State or appropriate planning agency is unable to acquire such lands or interests in lands with sufficient promptness; and

"(B) the Governor has agreed with the Secretary to pay, at such time as may be specified by the Secretary, an amount equal to the non-Federal costs incurred by the Secretary in acquiring such lands or interests in lands.

"(2) The authority granted by this section shall also apply to lands and interests in lands received as grants of land from the United States and owned or held by railroads or other corporations.

"(3) The costs incurred by the Secretary in acquiring any such lands or interests in lands may include the cost of examination and abstract of title, certificate of title, advertising, and any fees incidental to such acquisition. All costs incurred by the Secretary in connection with the acquisition of any such lands or interests in lands shall be paid from the funds for construction of treatment works allocated to the State upon the request of which such lands or interests in lands are acquired, and any sums paid to the Secretary by such State as its share of the costs of acquisition of such lands or interests in lands shall be deposited in the Treasury to the credit of the appropriation for treatment works and shall be credited to the amount allocated to such State as its allocation of funds for construction of treatment works or shall be deducted from other moneys due the State for reimbursement from funds authorized to be appropriated under section 206 of this Act.

"(4) The Secretary is further authorized and directed by proper deed, executed in the name of the United States,

to convey any such lands or interests in lands acquired in any State under the provisions of this section, to the State or appropriate planning agency upon such terms and conditions as to such lands or interests in lands as may be agreed upon by the Secretary and the State or appropriate planning agency to which the conveyance is to be made.

"(i) (1) Whenever lands or interests in lands owned by the United States are required, the Administrator may make such arrangements with the agency having jurisdiction over such lands as may be necessary to give the State or appropriate planning agency constructing the projects on such lands title to such lands in accordance with paragraph (4) of subsection (h) of this section and adequate rights-of-way and access thereto from adjoining lands and any such agency is directed to cooperate with the Administrator in this connection.

"(2) (A) If the Administrator determines that any part of the lands or interests in lands owned by the United States is reasonably necessary for treatment works under this Act, the Administrator shall file with the head of the agency supervising the administration of such lands or interests in lands a map showing the portion of such lands or interest in lands, which it is desired to appropriate.

"(B) If within a period of four months after such filing, the head of such agency shall not have certified to the Administrator that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purposes for which such land has been reserved, or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such land may be appropriated and transferred to the State, or its nominee, for such purposes and subject to the conditions so specified.

"(C) If at any time the need for any such lands for such purposes shall no longer exist, notice of the fact shall be given by the State to the Administrator and such lands shall immediately revert to the control of the head of the agency from which they had been appropriated.

"(j) The provisions of subsections (h) and (i) of this section shall apply only to projects constructed under the provisions of title II of this Act.

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