Amendments to the Clean Water Act—Environment—(H.R. 8) Water Quality Renewal Act of 1985; (S.1128) Clean Water Act Amendments of 1985

In 1972 Congress overrode a Presidential veto and passed the Federal Water Pollution Act Amendments of 1972, also known as the Clean Water Act.[1] The purpose of this Act was simply, "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."[2] Since its passage there has, in fact, been substantial improvement in the overall quality of this country's waters. However, the progress that has been made in cleaning the nation's lakes, rivers and streams may not continue, unless Congress can agree to rewrite the financing provisions of the Clean Water Act, most of which expired in 1982. While both the House of Representatives and the Senate have recently passed bills which will extend the Act, as of this date, there has been no attempt by either House to arrive at a compromise. Meanwhile, the Clean Water Act is still awaiting reauthorization.

The House passed its package of amendments, entitled the "Water Quality Renewal Act of 1985," (H.R. 8), on July 23, 1985. The bill, introduced by James J. Howard (D-N.J.), passed by an overwhelming vote. The House bill authorizes $21 billion of grants and loans for the wastewater treatment construction program over a nine-year period, clearly opposing the Administration's $6 billion proposal, which provides for a phaseout of the program within the next four years.

The House package includes a number of revisions to the Clean Water Act, which substantially alter its present character. For the purposes of this summary, however, only a few of the major provisions will be discussed. One of the initial provisions of H.R. 8 establishes a procedure by which the Environmental Protection Agency (EPA) can set more stringent technology requirements than the existing "best available technology" (BAT) standard for "toxic hot spots." The new provision provides that in situations where BAT has been implemented, but water quality still fails to meet standards because toxics are being discharged,

---

[1] 33 U.S.C. § 1251-1376 (1982).

[2] *Id.* at § 125(a) (1982).

the EPA can impose stricter technology requirements. This provision further requires that EPA and the states provide a list of such waters within one year, and within another year provide an "individual control strategy" which will reduce the discharge of toxics.

The House amendments also include a new requirement for the control of nonpoint sources of pollution, *e.g.* pollution from agricultural and urban runoff. This provision mandates that states submit a report to the EPA which both identifies nonpoint sources of pollution and details a program that the state plans to adopt to control such pollution. States will have nine months to submit their plans and the EPA must thereafter approve or disapprove each state's plan. The bill authorizes $150 million for this program each fiscal year from 1986 to 1990, with the Federal share not to exceed fifty percent per year.

One of the more controversial provisions of H.R. 8 deals with the issuance of National Pollution Discharge Elimination System (NPDES) Permits. Each permit limits the amount of pollution allowed to be discharged by the permit holder during the term of the permit. The amended provision extends the current five-year term to ten years for certain non-toxic discharges, provided that the discharged pollutants are either "not detectable in the effluent to which the permit will apply," or "such pollutants are present in such effluent only in trace amounts. . . ." Five-year permits however will continue to be issued to those facilities discharging toxic pollutants.

The permit provision of H.R. 8 also includes an "anti-backsliding" section in order to prevent the relaxation of water quality standards as they currently apply to permit holders. The provision specifically requires that when a permit is renewed or revised, it cannot "contain a less stringent effluent limitation" than that originally imposed on the permit holder. However, as passed by the House, the anti-backsliding section contains a "sunset" provision, which provides that the backsliding prohibition will automatically terminate after two years and six months from the date of enactment.

An additional section of H.R. 8 which has generated some controversy is that which allows companies to receive variances from pollution control requirements. The issuance of such a variance is dependent upon whether a company can establish that it

is subject to "fundamentally different factors" than those factors that the EPA considered in establishing the original requirements.

Overall, the House bill provides something for both industry and environmentalists. For industry, the House version contains some relaxations of current provisions of the Clean Water Act, such as extensions of deadlines for pollution control requirements and waivers from these requirements in certain circumstances. Environmental groups, on the other hand, can point to the backsliding prohibition of the House bill, although they would still like to see the "sunset" provision deleted.

The Senate counterpart to H.R. 8, entitled "Clean Water Act Amendments of 1985," (S. 1128), was passed on June 13, 1985 and authorized $18 billion over a nine-year period, as opposed to the $21 billion provided for by the House version. Despite this initial difference between the two bills, they are quite similar. Both bills extend the deadline by which industries must comply with the BAT standard for toxic pollutants and the "best conventional technology" standard for conventional pollutants, although the House version allows the industries six months more than the Senate's three-year extension. Also, in regard to BAT, the two bills establish a procedure for the EPA to set more stringent requirements where toxics are still being discharged into the waters, despite compliance with the BAT requirement. The Senate version, however, allows the industries more time to comply with any new standards.

Among the differences between H.R. 8 and S.1128 is the provision concerning industrial variances from pollution control requirements. This is one provision of the Senate version that environmental groups tend to favor over the House version's similar provision, primarily because the Senate language imposes more restrictions on the power of the EPA to issue waivers to those industries claiming that they fall under the "fundamentally different factors" exception.

Both the Senate and House measures establish a program to control nonpoint source pollution. The Senate proposal provides that each state submit a management program to the EPA within eighteen months. The difference between these two provisions lies in the amount of funds and the manner in which the funds for the program are authorized. One of the more distinct

funding provisions of S.1128 is that it reserves for each state one percent of the state's share of the construction grants for nonpoint pollution control.

While the Senate and the House bill each have an anti-backsliding provision, the controversial "sunset" section is missing from S.1128. Moreover, the Senate bill does not include the numerous exceptions to the backsliding prohibition that the House bill has listed.

Despite any differences between the House and Senate packages of amendments to the Clean Water Act, there does not appear to be any major conflict between the two bills which cannot be reconciled. Furthermore, it is clear that the reauthorization of this Act is essential in order for the nation to continue on its course toward improvement in the quality the country's waters.

Lisa M. Agresti