

[facimile - retyped and certified correct November 2, 2000]

OCT 25 1972

Chief, Planning and Standards Branch

National Stream Use Policy

Acting Director, Water Planning Division

The proposed new Guidelines for Developing or Revising Water Quality Standards under the 1972 Amendments require all streams to be classified for recreational uses and for the preservation and propagation of desirable species of aquatic biota. Exceptions are made for specific water quality criteria to be lower than our recommended levels because of natural conditions or because the application of best practicable or available technology and appropriate effluent limits fails to achieve the desired water quality.

RATIONALE

Section 303 of the 1972 Amendments provides EPA with an opportunity to review existing inter and intrastate standards to determine whether such standards are ". . .inconsistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972." Section 10(c)(3) of the previous Act states that "Standards of quality established pursuant to this subsection shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this Act. In establishing such standards the Secretary, the Hearing Board, or the appropriate State authority shall take into consideration there (sic)use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses. In establishing such standards the Secretary, the Hearing Board, or the appropriate State authority shall take into consideration their use and value for navigation."

On February 8, 1972, the Assistant Administrator for Air and Water Programs issued a memorandum on "Water Quality Standards- National Policy" which stated that "It is EPA policy to require all interstate waters to be protected for recreational uses and for desirable species of aquatic biota." The Administrator agreed with this statement, in writing, albeit informally. (See Tab A). The rationale is that only these uses with their associated water quality criteria adequately protect public health and welfare and enhance water quality. Such classifications do not preclude their use for other purposes.

Senate Report #10 on the Federal Water Pollution Control Act Amendments of 1965, 89th Congress, 1st Session contained several applicable statements:

" . . . There ought to be a constant effort to improve the quality of the water supply, it being recognized that the improvement of the quality of water makes it available for more uses."

"The Committee must reemphasize its intent that water quality standards are not designed to "lock in" present uses of water or to exclude uses, not now possible."

"The Committee intends that water quality standards should be applied on the basis of water quality requirements of present and future uses . . . after due consideration of all factors and variables involved."

CONGRESSIONAL TESTIMONY

The reports on the 1972 Amendments by the House, Senate, or the Conferees do not expound upon stream use designations. The Senate Public Works Committee in its deliberations, repeatedly asked EPA questions concerning the application of primary and secondary contact recreational uses. Our replies are attached (Tab B). We also provided testimony to both the House and Senate that standards needed to be upgraded, including stream use classifications. Considering the tone of the question, our responses, and the stated goal of the 1972 Amendments, it appears to us that Congress wants the high stream use goals reflected by our policy statement. Since Congress uses the same terms to describe the requirements for an acceptable standard in both old and new legislation, we believe that the wording " . . . applicable requirements of this Act as in effect immediately prior . . ." should not be construed as prohibiting stream reclassification upgradings in the initial 90-day review period.

CONSISTENCY WITH 1972 AMENDMENTS

Section 303(c)(2) of the 1972 Amendments contains language close to that of 10(c)(3) on the purposes of water quality standards. Also, section 302(a) uses the phrase ". . . shall assure the protection of public water supplies, agricultural and industrial uses, and the protection and propagation of balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water. . ." However, Section 101(c) of the 1972 Amendments states that "it is the national goal that wherever attainable, an interim goal of water quality provides for the protection and propagation of

fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983." Our stream use policy is consistent with this objective. Exceptions for specific water quality criteria shall be processed through the Section 302 mechanism where costs and benefits are compared.

CONCLUSION

That the stream use policy stated in the new Guidelines is a valid policy statement because: (1) it is consistent with previous EPA policy interpreting the Federal Water Pollution Control Act, as amended, (2) it is consistent with the intent of the 1972 Amendments, (3) it best fulfills the objective of protecting the public health and welfare and enhancing the quality of water, and (4) the required stream uses do not prohibit waters to be used for any other purposes.

CONCURRENCE

Mr. Zener

Concur T Date Oct. 25,

1972

Nonconcur _____ Date _____

Signed Joseph Krivak

TAB A

2 - 8 - 72

MEMORANUDM

TO: All Regional Administrators

FROM: Assistant Administrator for Air & Water Programs /s/

SUBJECT: Water Quality Standards--National Policy

Basic authority for approving or disapproving water quality standards is contained in EPA Order 1150.11. This order and recent EPA instructions clearly assign this authority to the regional administrators; preclearance from Washington is not required. The instructions further require the regional administrator to follow policy guidelines issued by headquarters.

It is EPA policy to require all interstate waters to be protected for recreational uses and for desirable species of aquatic biota. Minimum recommended water quality criteria to protect these uses are contained in the National Technical Advisory Committee's Report to the Secretary of the Interior on Water Quality Criteria, April 1, 1968. Further guidelines will be issued by headquarters from time to time.

Any exceptions to NTAC recommendations or other headquarters' guidelines must be cleared through Washington, as they represent a deviation from national policy. Headquarters assistance in the standards negotiation and review process is, of course, available at any time.

cc:
Mr. Baukol
DILunquist: vor 1/20/72

FEB 5, 1975

MEMORANDUM

TO: Robert V. Zener
General Counsel

FROM: Ray McDevitt
Water Quality Division

SUBJECT: Associated Industries of Alabama, Inc. et al
v Train, et al (N. Dist. Alabama, No. 75 M 0092 M)

On January 24, 1975, Associated Industries of Alabama and five other corporations, including Republic Steel, filed suit against the Agency in the Federal District Court for the Northern District of Alabama. The complaint challenges the Agency's actions in disapproving Alabama water quality standards in January 1973 and again in May 1974 and in thereafter itself promulgating standards for Alabama waters.¹

The suit is significant since it is the first to challenge the Agency's insistence on a "fish and wildlife protection" under classification in the initial round of standards review under section 303(a) and (b). The promulgation of the standards is attacked on numerous grounds ranging from technical and scientific deficiencies in the documents on which the action was allegedly based to constitutional claims founded on due process and equal protection. The most important issue, however, for the Agency's water quality standard program is a question of statutory construction: the extent of the Agency's power under section 303(a) and (b) to upgrade use classifications to fish and wildlife and secondary contact recreation.

AGWD:RMcDevitt :mmc:2/5/75:X50760

Ray McDevitt

cc: James Agee
Richard Pisano

1. The standards were proposed on July 17, 1974 (39 FR 26168) and promulgated on November 26, 1974 (39 FR 41254)

CONCURRENCES							
SYMBOL	WQSB						
SURNAME	Kramer						
DATE	8/16/00						