

REAUTHORIZATION OF THE CLEAN WATER ACT

Peter E. Black

Professor of Water and Related Land Resources
SUNY College of Environmental Science and Forestry
Vice-Chair, UCOWR Policy, Legislation and Administration Committee

Preface

It is my pleasure on behalf of, and with the guidance and inspiration of the PLA Committee of UCOWR, to have been able to solicit, review, and to herewith pass along the articles in this issue of *Update*. The overall purpose is to provide a background of information and views that will provoke discussion and exchange of ideas among all those interested in and responsible for decisions concerning our nation's waters. Now is the time for serious attention to this important portion of our environmental protection laws.

Historical Perspective

... It wasn't called the "Clean Water Act" until it was amended in 1977 in legislation referred to in the Moon-mission jargon of the day as "The Mid-course Corrections". The 1977 amendments were the result of recommendations to the Congress by the National Study Commission set up in Section 315 of the 1972 Water Pollution Control Amendments (33 USC 466). The National Study Commission was also known as the "Water Quality Commission" or the "Rockefeller Commission" because Vice President Nelson Rockefeller was elected its Chair. The task of the Commission was to review and make recommendations concerning progress toward the 1983 goal of control over discharge of pollutants from publicly-owned treatment works.

... It doesn't really need reauthorization because everyone is committed to the philosophy that underlies the act. Well, almost everyone. True,

as Counsel to the House Subcommittee on Water Resources Errol L. Tyler points out in our lead article, it doesn't need reauthorization since the programs the Clean Water Act (CWA) launched are accepted, funded, and likely to be the continued recipients of appropriations even in the absence of directed legislation. But, just the number of issues raised in Tyler's article is overwhelming; the complexity of each and the uniqueness of the environmental settings where each must be resolved considerably exacerbate the confusion and difficulty of the reauthorization arena.

The Articles That Follow

What is likely to be in the new act? The many issues are presented by Errol L. Tyler with analysis of the past and future of those important topics. Functional, regional, topical, and environmental dimensions are discussed in detail.

How did we get those programs? Look over the presentations by UCOWR's "own" David Allee and Leonard Dworsky; involved in the early stages of the 1972 legislation, they offer sage perspectives on the long-term, pressing problems of water pollution control.

How well has the law performed so far? Consider the observations of Robert Adler, Senior Attorney for the Natural Resources Defense Council, leader of the 125 organizations making up the National Clear Water Network; "the goals have not been met". And see the views of James Tripp, Counsel for the Environmental Defense Fund, the major organization that did not join that coalition;

he focuses on wetlands, a critical concern of millions of Americans, the focus of a major ongoing battle over proposed revisions of the fundamental classification regulations, and a hot political issue in the current Presidential campaign.

How are state and local programs likely to be impacted by the reauthorization? Read what Michael Phillips of the Minnesota Division of Forestry has to say: he has been active in that and other states' activities in implementation of the nonpoint source pollution control programs.

Do we really want those programs? Enjoy the independent, innovative, and well-articulated ideas of Senior EDF Economist, Zach Willey.

This Author's Opinion

Perhaps the time has indeed come to begin to look at alternative approaches to water pollution control from both point and nonpoint sources. "Zero discharge" is an unrealistic goal simply because it is unattainable. We will always have wastes, and must put them someplace; they or their by-products will almost invariably end up in the water. And once the deadline is passed without compliance, what then? Better to have zero discharge as an undated, target toward which to strive within acceptable constraints imposed by economics and risk levels.

Subsidy and regulation have ruled the nation's basic approach to point source water pollution control ever since the first water quality control legislation in 1948 (62 Stat 1155), to which all subsequent acts are amendments. Even the 1899 Rivers and Harbors Act (30 Stat 1152), aka "The Refuse Act", that was intended to control obstructions to navigation, has been used for water quality control and, indeed, its provisions are currently entombed in Section 404 of the CWA.

Nonpoint source control involves the application of Best Management Practices (BMPs) and is properly considered as a process whereby appropriate consideration is given to each unique

situation, the potential solutions, and the context of the pollution problem. But how will implementation and compliance be attained?

Solutions to these complex pollution problems involve a wide variety of organizations and individuals with diverse interests, and diverse environmental and economic goals and circumstances. Above all, the public is mandated to participate. Without deliberate, thoughtful public input, any pollution control program, especially those that involve nonpoint pollution abatement, cannot be successfully implemented.

Conclusion

Read on ...