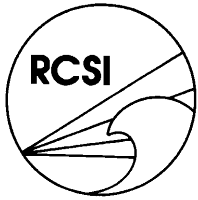

Rochester Committee
for Scientific Information
Rochester, NY

RCSI Bulletin 138

The Federal Water Pollution Control Act of 1972

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October 1972

THE ROCHESTER COMMITTEE FOR SCIENTIFIC INFORMATION
P. O. Box 5236, River Campus Station
Rochester, New York 14627

Bulletin #138
Legislation, Water Pollution October 1972

The Federal Water Pollution Control Act of 1972 *

Summary

The Federal Water Pollution Control Act of 1972 has just come out of conference and was passed by the House and Senate on October 4. This Act and the preceeding Senate and House versions are analyzed in this bulletin.

Two particularly strong points of the conference bill are:

1) If fully funded, the Act provides that 75% of the total cost of municipal sewage treatment construction will come from federal funds.

2) Nationwide standards and firm deadlines are established for abatement of industrial pollution and 800 million dollars are allocated for assistance to industries in meeting their cleanup goals.

Several weak points of the Bill are:

1) Loopholes are left whereby an industry may receive exceptional treatment on the basis of hardship.

2) In the mechanism established for a state to assume responsibility for its waters, the EPA is stripped of most of its right to exert control of individual polluters.

3) The Act forbids public interest suits against municipal or industrial discharges and greatly restricts actions which citizens' groups can take for pollution abatement.

Discussion of the Act

The Congress of the United States has been deliberating for some months on a Federal Water Pollution Control Act for 1972. A Senate version written by the Public Works Committee was ready in November, 1971 and was quickly passed by the entire Senate. The House of Representatives Public Works Committee put out its version in March, 1972. The two versions differed and some of the differences were of major concern to environmentalists. R.C.S.I. studied the two bills and sent its conclusions to Monroe County Congressmen before the bill came up for vote in the House. The letter is enclosed in the Appendix.

* This bulletin summarizes the conclusions of an R.C.S.I. Task Force on the Federal Water Pollution Control Act. The members were Drs. George Berg and Olga Berg, Graham Cox, and Drs. Herman Forest and Kenneth Harbison.

In May after the House passed its version of the bill, the Act went to a joint House-Senate conference and came out on September 14. The version of the Act that came out of conference was passed by both Houses on October 4.

This bulletin will compare the House version, the Senate version, the joint version and R.C.S.I. recommendations. R.C.S.I. made no comment on those points which seemed obvious - such as that we favored the larger authorization of money.

1) Monies authorized for expenditure over a 3 year period

Senate	20 billion dollars total, 14 billion for construction of sewage treatment plants
House	24.6 billion dollars total, 18 billion for construction of sewage treatment plants
Conference	24.6 billion dollars, 18 billion for construction of sewage treatment plants

Some of the money not used for construction of new sewage treatment plants will be used to reimburse the States for their past expenses under Pure Waters programs.

There was also disagreement on how the money should be partitioned among the States.

Senate	by population
House	by need of the applicant
Conference	by need of the applicant

The two bills differed only slightly on the percentage of the total construction expenses that the Federal Government should pay.

	Minimum Federal share	Maximum Federal share
Senate	60%	70%
House	60%	75%
Conference	-	75%

The House and the Senate agreed that the Federal Government would pay 60% of the construction costs of a municipal sewage treatment plant, no matter what the State did. Then, the Senate bill offered to pay 10% more if the State chipped in 10%. The House was even more generous, saying that the Federal Government would add an additional 15% if the State would also pay 15%. The compromise version is the most generous of all. It authorizes the Federal Government to pay 75% of construction costs for municipal sewage treatment plants. The remaining 25% is to be divided between state and municipality as they decide.

Mr. Diamond, commissioner of the NYS Dept. of Environmental Conservation, spoke in Rochester on September 30. He said that if the Environmental Bond Act on the November ballot passes, and if the Federal Act is fully funded, New York State will probably pay 15% of the construction costs for municipal sewage treatment plants. Thus, up to 90% of our sewage treatment plant construction costs would be paid by higher governments, and that is a great deal. If the Bond Act does not pass, Monroe County may have to raise the entire 25%.

The authorized Federal expenditure of 24.6 billion dollars is not large compared to the need, since our country has been falling behind its pollution control needs for over fifty years. We are beginning to pay for half a century of neglect. To get an estimate of what the total national need will be, compare the country as a whole with Monroe County. Our County, starting with a sewage treatment system already superior

to what is found in many other parts of the country, will have to spend over $500 per head for capital construction to insure pure waters in our area. Using $500 per head as an estimate, the cost of cleanup for 200,000,000 Americans can be estimated in excess of $100,000,000,000 in the long run. 24 billion dollars authorized for 3 years for pollution control can be compared to 74 billion dollars authorized by the Senate for one year's defense expenditures.

2) Deadlines for cleanup

There were four major points of difference between the two bills under this heading.

(a) Whether cleaning our waters should be a national policy or a national goal. A policy is pursued much more vigorously than a goal.

(b) Whether it is reasonable to require an end to all discharges that pollute navigable waters. This has been called the "zero discharge" clause although it only calls for zero pollution. A discharge is polluted when it contains levels of a substance (or heat) in excess of standards set by the Environmental Protection Agency (EPA).

(c) What the deadlines should be. There are three stages of cleanup in the Act for which differing deadlines are set:

(1) Best practicable technology - as close to clean as each industry can afford.
(2) Best available technology - as close to clean as can be achieved with existing equipment, or practices presently available.
(3) Zero pollution - no discharges exceeding permitted levels.

(d) Whether the Nation's commitment to clean water should be delayed pending study. The House bill called for a delay of two years while awaiting the results of a cost/benefit study by the National Academy of Sciences. The results of the study would go to Congress, which would then vote again on accepting or rejecting the key goals and standards of the Act.

	National policy or national goal	Deadline for best practicable technology	Deadline for best available technology	Deadline for "zero pollution"
Senate	Policy	1976	1981 firm	1985 firm
House	Goal	1976	1981 contingent*	1985 contingent*
Conference	Goal	1977	1983 firm	1985 firm

* contingent on the National Academy of Science study and congressional revote.

R.C.S.I. thinks that the deteriorating state of our waters is sufficiently documented. We recognize the high cost of cleanup, that is why we favor the full Federal funding of this Act. Since need is great and prices are escalating we do not favor a two year delay and we explained this in the letter to our Congressmen.

Most members of the House including both Congressman Horton and Congressman Conable voted in favor of the National Academy study and the two year delay. The study and the delay were both removed in the Conference and firm deadlines for cleanup were reestablished. As a compromise, various studies of economic impact were added to the Act (to be done by a commission appointed by the President and Congress) and deadlines were moved up as shown above.

3) Federal versus State enforcement

Powers of enforcement of the law are, of course, the key to its success, and the two bills differed sharply in the degree of Federal power of enforcement. Both agreed that the Federal Government should determine guidelines for water cleanliness, and issue discharge permits to individual industries as they meet the requirement. Both agreed that the States should develop their own programs for water management, and that as each State develops a program as strict or stricter than that of the EPA it may take over management of its own waters.

Major disagreement came in deciding when the Federal Government may interfere after a State is in charge of its own program. The Senate decreed that the EPA may revoke any individual permit at any time if the industry is not living up to its obligations. The House decreed that the EPA may revoke the right of a State to manage its own waters, but may not revoke an individual permit, unless a downstream State complains that it is being polluted by a single offender in an adjoining upstream State.

In conference the committee decided that:

(a) Standards for permits shall be developed on an industry wide basis: that is, an industry, such as a textile mill, will have to meet the same standard no matter where in the country it builds, and every other textile mill will have to meet that same standard. This provision is extremely important both to industry and to responsible cities such as Rochester. Industry lobbied very strongly against it. Industry argued that if a stream has only one plant built on it, that plant could pour three times as much pollutant into the water as if the stream had 3 plants built on it, and the water would be equally clean. However, once it was decided that standards are going to apply to industries rather than bodies of water, the clause requiring all manufacturers of a product to meet the same regulations prevents a "good" industry from being undercut by a less scrupulous one. Similarly a conscientious city that wants clean water will not lose its industry to one where standards are more lax. This is a very welcome stipulation for Monroe County.

(b) After a State has been given control over the management of its own water, the Federal Government may not veto the permit of an individual industry that is polluting, with two exceptions:

1) When the permit given by the State to that industry did not meet the requirements of the law.

2) When the Governor of a downstream State demonstrates that the water in his State is being polluted by the effluent from an industry in an adjoining upstream State.

	Interim permit program	EPA may revoke individual permit in the interim program	EPA guide-lines	State that meets guide-lines operates program	EPA may revoke State permit	EPA may revoke individual permit
Senate	no	no	yes	yes	yes	yes
House	yes	no	yes	yes	yes	no
Conference	yes	yes	yes	yes	yes	no*

* unless the Governor of a downstream state demonstrates that his waters are being polluted by the discharge from an industry in an upstream state or the state permit requirements for that industry can be shown to be below standard.

Thus, the final authority for enforcing the law is the privilege of the State. If the States want clean water they will find adequate authority in the Federal Water Pollution Control Act, which includes a stiff fine - namely $25,000 for the first

offense and $50,000 for the second violation, with up to two years imprisonment for those who do not comply. If a State does not want to clean up there are two loopholes in the law. Such a State could issue permits that meet the requirements of the EPA and then not enforce the one given to a favored industry. If the State shelters a polluter this way the EPA cannot intervene because it does not have the right to close down or fine an industry if its permit meets the requirements of the Federal law. Secondly, the law applies only to navigable waterways, so small streams such as West Creek are exempt. R.C.S.I. pointed this out in its letter to the Congressmen.

4) Citizen suits

During the past 10 years, a body of new environmental law has been developed and tested in courts. The plaintiffs in several key suits were civic organizations defending the citizens' right to a clean environment, instead of suing for damages. Such lawsuits are called citizen suits, to show that the case for the public is not brought to court by a public official. Citizen suits against polluters are allowed by the Senate bill. They are forbidden by the House bill, unless the plaintiff can show that he was personally affected by the pollution. To "gain standing" to sue a polluter of a lake, for example, you would have to live where this lake's water is used, and show that the pollution caused you some damage.

R.C.S.I., in its letter to Congressmen, asked that public interest suits be allowed. The conference decided that public interest suits would not be allowed.*

	Public interest suits by citizens against polluters
Senate	allowed
House	not allowed
Conference	not allowed

5) Disposal of dredgings

The Senate Bill applied the same rules of cleanliness to the disposal of dredgings as it did to any wastes brought into a lake from outside. This would mean no dredgings could be dumped into Lake Ontario. The House bill allows dredgings to be put back in another part of the lake provided that they are not contaminated. The conference adopted the position of the House. The Army Corps of Engineers, which does most of the dredging, is made responsible for keeping polluted materials out of the lake. The standards for pollution are to be set by the EPA. The Corps has classified Rochester Harbor as polluted and requested that our community provide a disposal area where it will allow the Corps to dispose of dredgings. The County Environmental Management Council now has 2 sites under consideration and has asked the Corps for environmental impact statements on the effect that the dredgings will have on those sites. R.C.S.I. sees no reason for a blanket ban on returning uncontaminated dredgings to the lake. We think it important that the environmental impact be studied separately for each disposal site.

	Uncontaminated dredgings may be returned to the lake	Contaminated dredgings may be returned to the lake
Senate	no	no
House	yes	no
Conference	yes	no

* Citizens' organizations, such as the Environmental Defense Fund, are now preparing to plead environmental cases in court by intervening on behalf of local citizens.

6) Thermal pollution

The Senate had no special comment to make about hot water released by power plants - it was presumably to be treated as any other pollutant, and best practicable technology would have to be used to control its release by 1976. The House exempted some thermal discharges from the 1976 deadline. In conference, it was decided that thermal discharges are subject to the 1976 deadline unless the owner of the plant that is discharging the hot water can demonstrate that the discharge is in accordance with water quality standards and that shellfish, fish and wildlife will be protected.

R.C.S.I. believes that the damage done by hot water is more directly related to the size of the body of water into which it is released and the way in which it is released, than it is to some fixed standard for the temperature of the effluent. The decision of the conference is reasonable.

7) What will happen to the Act

The Conference Bill was passed by the House of Representatives and the Senate on October 4. It will now be submitted to the President for signature before the close of the legislative session.

There is some question as to whether the President will veto the Act. In the past, he has vetoed some legislation that appropriated more money than he requested. The expenses authorized in the Federal Water Pollution Control Act of 1972 are four times more than the amount requested by the President for controlling water pollution for the next few years. R.C.S.I. is sending out this bulletin so that members may take what action they consider appropriate either to help the final enactment of the Bill, or to support the President's policy of curtailing expenses by the Federal Government.

References

(1) S. 2770. An Act to amend the Federal Water Pollution Control Act

(2) H.R. 11896. A Bill to Amend the Federal Water Pollution Control Act

(3) House-Senate Conference Agrees on Water Pollution Control Bill
Summary of the conference version of the Bill from the House of Representatives Committee on Public Works

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To: Congressman F. Horton
Congressman B. Conable
The Capitol

March 27, 1972

We submit the following working paper (excerpted from the R.C.S.I. Bulletin No. 138) for your use in the deliberations on the Federal Water Pollution Act.

On behalf of the Rochester Committee for Scientific Information we studied HR 11 896 (Union Calendar 458, pp. 198-414) and found it a forthright and enforceable conservation measure, except for Section 315 (National Academies Study) which is inconsistent with the Act. We suggest that the House strike this entire section, which only questions the goals and erases the deadlines of the Act. The delays in enforcement of national standards due to Section 315 would be most damaging to New York State, while the scientific advice which is the excuse for this Section is amply provided in a more appropriate way in Sections 503 and 515.

The goals, deadlines and enforcement procedures of the Act, as spelled out in Sections 101, 310, 309, and 402j (in the Senate bill this is 402k), should be guarded on the floor against similar attempts to weaken or nullify them by amendment.

The Act is weakened by the way it restricts the concerns of citizens and of the Federal Government with pollution of water. Section 505g eliminates citizens' suits in the public interest, although they are a key to public participation in law enforcement. The entire Act uses the term "navigable waters" as a device for establishing Federal control over point sources of pollution. Existing practices would be better served by affirming the Administrator's powers of enforcement against pollution of all "public waters", both intra- and interstate.

The Act is needlessly confusing in providing for registration of industrial and municipal effluents under diverse headings, such as Sections 210, 308, 401(a), 402(d), and 402(k). For purposes of administration and public information all these ought to be collected into a single provision for a central Federal registry of effluents into the environment.

Subcommittee on the Water Pollution Act,

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