

Navigating the Clean Water Act

Congressional gambits have driven and stalled Clean Water Act legislation.

By Mark Dayao

ALTHOUGH CONGRESS HAS failed to renew the Clean Water Act this past September 30th, the Act has made significant progress down legislative waters. The Federal Water Pollution Control Act (later called the Clean Water Act) has been one of the most important environmental legislative vessels for the past twenty years. The act has increased regulation of water pollution and has increased public awareness of potential and actual threats to the country's most essential resource. From its origins in 1972 to its recent 1994 session, the course of the Clean Water Act has been both a smooth and bumpy ride.

The need to federally regulate the nation's waters was first satisfied by the 1972 Federal Water Pollution Act (PL. 92-500) to halt the discharge of raw industrial sewage into the nation's streams and lakes (Congressional Quarterly 242). The goal of Congress was to achieve zero-discharge and to abandon the misconceived notion that water pollution was a necessary evil of modern life (Congressional Record 37735-37737). Congress cited pre-1972 water pollution laws as an inadequate means of legitimate regulation. A plethora of scientific uncertainties, administrative burdens, and delays provided no immediate solutions. In October of 1972, Congress commissioned the Environmental Protection Agency (EPA) as the "skipper" of the Act; its mission was to steer the act along national "effluent standards." These standards outlined the maximum lawful discharge of specific pollutants under a two-phase program: the first phase requires point sources to achieve that level of effluent reduction identified as "best practicable control technology;" the second phase requires phase application of "best available control technology" (Mann 28).

The EPA was given full authority to

determine what "best practicable control technology" and what "best available demonstrated technology" is. In addition, the EPA was not required to use a balancing test weighing economic interests.

The FWPCA was actually an amendment to water pollution act legislation of the fifties and sixties. The 1972 amendment was critical in setting out specific

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environmental regulatory measures. Before 1972, water pollution was remedied by impotent measures such as futile authorization of the Public Health Service to do "research" and make weak, unenforceable threats if "certain" standards were not met. Pre-1972 standards were often ambiguous at best and were easily circumvented by industries and state jurisdictions. After years of insubstantial mandates, Congress had to get its feet wet.

The raft of environmental regulation was launched in 1972 exclusively by the legislative branch. No aid was offered by the executive wing, as President Nixon clearly demonstrated his slant towards the private sector, business, and relative reduction of government spending, as he vetoed the FWPCA Bill (Yeager 12). Preventing the executive veto from capsizing legislation, Congress later overrode Nixon by a 299 to 35 margin. FWPCA became law on October 18, 1972. The law gave Congress the tools it needed to fight the currents of private industries. The powerful focus of the new law now forced companies to pay, at least in part, for the use of the water resources

they had traditionally considered free goods in the process of production (Zener 364-380).

The main force of the law rested in section 311 of the CWA, where it mandated a federal fund that would finance the clean-up of pollutants in the nation's waterways and determine who would be assessed for costs. However, section 311 could not overpower criticism that it only covered spills in surface waters and not ground waters, in addition it failed to clearly specify liability damages from spills. The Superfund Act of 1980 added greater strength to the CWA by creating a clean-up fund financed by excise taxes on crude oil, imported petroleum products, and industrial chemicals. Civil liabilities were also included in a separate fund financed by an excise tax on hazardous waste. Furthermore, the "steering" parameters of the EPA were also widened by the Superfund Act. Not only could the EPA define the nature of "toxic pollutants," but it could also gauge financial responsibility of substances labeled "hazardous" (Brown 9).

ERA OF INCREASED ENFORCEMENT

The 1987 CWA amendments (also known as the Water Quality Act of 1987) increased buoyancy and strength of environmental regulation. An integral component of the amendments was the expansion of federal, criminal, civil, and administrative enforcement authority. The EPA could use the enforcement arm of the federal government to sweep away less significant violators (Brown 95). Effluent limitations and permit conditions set by the EPA that were violated were subject to misdemeanor and felony charges depending if the violation was negligent, intentional, or a second offense (Brown 98). Non-point source pollution management, sewage sludge, and storm water discharge became elements of the act. The question of funding new regulation was answered by one key amendment: the state revolving loan program. States were given federal funds on a quarterly basis provided that they met the requirement of matching 20% of received funds (Congressional Quarterly 472). The area of funding has been the most vulnerable for capsizing the CWA in the late eighties and early nineties. The New Federalism of Ronald Reagan and George Bush blocked widespread enforcement of the Act by creating the Presidential Task Force on Regulatory Relief. The Task Force limit-

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ed regulation and created loopholes for private industries to avert federal standards.

THE CLEAN WATER ACT TODAY

Funding concerns created a tempest for 1994 legislation. Debate churned in February over how funds would actually be distributed and what projects could be built with appropriated funds. Party lines were drawn on whether or not new provisions would actually make it cheaper and easier for states to improve the nation's waterways in House and Senate subcommittees. By a 14-3 margin, the Senate Environmental and Public Works Committee approved a bill that would provide, over four years, funds to each state according to water quality needs and population size (Congressional Quarterly 242). Arguments by Senator Graham (D-FL) suggested the need to re-evaluate the outdated population and assessment needs for each state. Senator Chafee (R-RI) opposed initial provisions to increase funds by \$500 million each year Congress reduces the deficit (Congressional Quarterly 730). Senator Baucus (D-MT) proposed that a balancing test be included weighing both costs and health risks of water supplies. Refuting Baucus' view, Senator Mineta (D-CA), chairman of the Senate Public Works Committee, saw it as "dilute" funding since it mixes money for improving drinking water (Safe Drinking Water Act of 1974, a separate law) with improving clean water (Congressional Quarterly 730).

The source of the legislative agitation is the law itself, and one can see how the language of the original law has led to the current situation. First, under the 1972 mandate, federal grants were distributed to states and local jurisdictions that only covered a fraction of the sewage treatment costs. Secondly, the 1987 reauthorization of the act eliminated the federal grant program and instead created the state revolving loan fund. The 1987 reauthorization allowed states to provide low-interest loans to local communities needing sewage plant repair or needing one built. This pool of funds provided by the federal government was established to keep a constant cash flow for current and potential projects. The Senate Environment and Public Works Committee's 4-10 rejection of Senator Graham's February amendment to generate a new state revolving fund formula indicated bipartisan dis-

taste for the pool of funds formula. The formula was murky at best because communities of a particular waste have their sewage treatment needs satisfied without taking into account which states actually need substantial sewage treatment plant repair and construction. The formula was outdated (from 1976) and needed revision. The Senate committee approved a 14-3 bi-partisan compromise bill by Chafee and Baucus (S 1114) which uses 1992 EPA data of cities. The data provides the most current survey of cities in dire need of new sewage plants and expands the types of water projects sought by highly populated cities (Congressional Quarterly 472).

House Public Works and Transportation Chairman Norman Mineta suggested an alternative to the Baucus and Chafee bill with his May proposal (HR 3948). Mineta's bill confronts agricultural runoff as a pollutant to watersheds and keeps wetlands at their current levels, meaning no future net water losses. The House bill also employs the state revolving loan fund by funding \$3 billion for fiscal 1995, in addition to annual \$500 million increases. Mineta's bill was endorsed in a May meeting of the Water Resources and Environmental Protection Subcommittee meeting by Carol M. Browner, an administrator of the Environmental Protection Agency. (Congressional Quarterly 1386).

RECENT LEGISLATIVE BLOCKAGE

Senate and House sponsored bills have created opposing currents stalling the Act from making further progress. Pro-environmental and pro-economic forces have managed to cook up another lame-duck session for water protection laws. As the Clean Water Act renewal is now destined for the 104th Congress, the Safe Drinking Water Act renewal (PL 99-339) also remains caught in the congressional whirlpool. On October 6, the Senate rejected a House proposal (HR 3392) relaxing drinking water standards for public water systems supplying low populated areas. Likewise, the Senate bill (S 2019) was caught in a provisional "backwash" where Senators Glenn (D-OH), Dole (D-KS), and Johnston (D-CA) each adamantly added unrelated features to the bill. These provisions were:

- 1) elevate EPA to Cabinet status (Glenn)
- 2) provide private property rights (Dole)
- 3) create risk assessment measures (Johnston)

This tripartite configuration impeded

1994 Safe Drinking Water Act legislation just as the partisan forces idled the Clean Water Act.(CQ 2869).

Failure of Congress to renew the Act this past September, signals that legislators are still unclear about settling their differences. Until legislators can agree on drawing a fine line between reaching economic and environmental goals, the Clean Water Act and other water regulation will remain trapped upstream. •

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