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Briefing on Water Pollution Control Program
for the UTILITIES DIVISION, ASSOCIATION OF GENERAL
CONTRACTORS, October 25, 1976

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WATER POLLUTION CONTROL PROGRAM

~~Speech to~~
Utilities Division
Association of General Contractors

Thank you. It is a pleasure for me to be a part of the Division Meeting of the Associate Members of the General Contractors of America. And it is a special privilege to be here at ~~the~~ ^{meeting} ~~the gathering~~ of the Utilities ~~Divisi~~ ~~Dis~~ Division. I appreciate the ~~esp~~ opportunity to be here and engage in discussion with you.

The major question I was asked to mull over before coming to ~~this~~ ^{the} meeting this morning was: WHAT IS THE PROBABLE FUTURE COURSE OF THE FEDERAL WATER ~~POO~~ POLLUTION CONTROL PROGRAM, NOW BEING IMPLEMENTED ~~UB~~ UNDER ~~P~~ P.L. 92-500?

sincerely

Let me first say that I hope that any legislation which the Congress ~~comes up with~~ ^{drafts bills proposes} to amend the Federal Water Pollution Control Act will be adopted ~~a~~ only after an orderly ~~process~~ ~~of~~ ~~hearings~~ legislative process. I want to be certain that all those interested in the water programs ~~can~~ can and will be ~~heard~~ heard on the ~~is~~ issues. The opportunity for input must be available to any ~~interest~~ ~~interested~~ interested person or group when any legislation is written, but especially when measures as far-reaching as ~~the~~ ^{our} national water pollution control strategy ~~is concerned~~ are concerned. ~~We~~ ~~are~~ We -- legislators and private citizens alike -- must be ~~be~~ involved and knowledgeable ~~on~~ on the ~~crucial~~ crucial subjects ~~as possible~~, if the "future course" of the water ~~program~~ program or any large, complex ~~program~~ program is to be an ordered, forward-moving, positive approach

to the problems which are facing this country.

Now, I must admit that I think I have a bit more faith in the states' ability to deal efficiently and effectively with many of the problems than some of my colleagues in the states' abilities to deal efficiently and effectively with many of the problems which are of national concern today: Land Use, air and water pollution. Land use policy, and air and water pollution are some good examples. It may be that we need some national standards developed for the control of certain pollutants, but much of the procedural work, and administrative burden flexibility as well as burden, involvement should rest with the states. In my work with the Clean Air Act Amendments of 1976, I worked to see that the states would have much of a great deal of the voice in the operation of permitting of stationary sources, the defining, on a case-by-case basis, of what will be Best Available Control Technology, and, just generally, the methods, rationale and methods which would be put to use in attaining and maintaining the national standards.

I can say candidly that I simply do not know as much about the Federal Water Pollution Control Act as I have come to know about the Clean Air Act. The Senate Public Works Committee worked with on the Clean Air Act Amendments for approximately two years had been working on the Clean Air Act Amendments before I went to Washington, and

the Subcommittee on ~~Environment~~ Environmental Pollution and the full Committee worked on that ~~is~~ legislation the entire 94th Congress. *I can say, though, that in developing water pollution control programs shall seek to give the states a greater voice in the*
 The intent of the Public Works Committee with regard to the Federal Water Pollution Control Act was to wait until the early part of ~~1977~~ 1977 to review the comprehensive Report of the National Commission on Water Quality and reevaluate, in ~~great~~ ~~depth~~ depth, the progress of the Water Act ~~thus far~~ ^{in an} attempt to conceive ~~the~~ "future course" ^{that} about-which-i-have-been-asked in which you and so many others are interested.

The House of Representatives, as you know, ^{was} ~~was~~ able to draft a comprehensive piece of ~~the~~ legislation dealing with ~~the~~ water pollution control. The main reason for this is that two different committees in the House have jurisdiction over water and air pollution ^{policy} ~~control~~. In the Senate, the ~~the~~ Public Works Committee has jurisdiction over both. In ~~fact~~ fact, the Subcommittee on Environmental Pollution has ^{primary} responsibility for ~~both~~ ^{them} ~~and~~ ~~and~~ ~~and~~ ~~and~~ ~~and~~ a ~~large~~ ~~thoughtful~~ ~~treat~~ wide-ranging and thoughtful treatment of both these ~~are~~ crucial ~~is~~ areas ~~was~~ ~~simple~~ by the Committee was simply impossible.

Instead, ~~the~~ the Public Works Committee attempted to deal with those issues within the Water Pollution Control Act which ~~had~~ ~~to~~ ~~be~~ ~~dealt~~ ~~with~~ seemingly had to be dealt with in the

implementing them - just as I did with the Clean Air Act

94th Congress and leave the rest until we had ample time to ~~scrutinize~~ scrutinize the options and hear from the local levels.

Of course, the greatest controversy stemming from the Water Pollution Control Act in the last Congress was that of Section 404 of the Act: the question of the implementation by the Corps of Engineers of the permit program for ~~is~~ disposal of dredge spoil and fill material. The controversy reached its peak in the final days of mark-up in the House Committee on H.R. 9560 when the Breaux amendment ^{greatly} ~~drastically~~ limiting the ~~is~~ definition of navigable waters for the purposes of Section 404 was adopted. The controversy continued on the floor of the House where a Wright substitute to the Breaux amendment was adopted by ~~more than~~ a more than 2-1 vote.

So, the ~~Senate~~ ^{House} ~~new~~ Committee knew that it had to devote ~~time~~ ^{time} and its energy to the Section 404 ~~question~~ ^{question} ~~this~~ issues. * In addition, the allotment formula for ~~each~~ construction grant monies had to be worked out. The use of various formulas can create significant ~~is~~ differences in effects upon State construction grant programs as well as implementation of the program at the Federal level. Several alternatives for allotment have been ^{proposed} ~~suggested~~. A ~~formula~~ ^{formula} ~~is~~ formula based on both needs and population has been suggested by the E.P.A. This method uses the State-submitted needs estimates and balances those ~~estimates~~ with a population ~~is~~ factor. A variation of this approach was used by the House in their ~~Amend~~ Amendments. The House had

~~to~~ utilized ~~1990~~-population-data specified the use of 1990 population data with their formula rather than 1975 figures. The ~~Committee~~ Public Works Committee decided to ~~to~~ accept the ~~House~~ ~~House~~ House formula, with 1975 population ~~figures~~, for one year. It was ~~the~~ ^{the} intent of ~~the~~ ~~Senate~~ ~~Committee~~ committee to come back to the formula issues and decide on a long-~~range~~ range approach when more time could be devoted to the many potential ~~o~~ alternatives.

Another of the ~~our~~ ~~most~~ items which the Senate had to address in the ~~last~~ ~~as~~ last ~~e~~ Congress ~~q~~ was that of ^{so-called} "Municipal Extension". Approximately 50% of the nation's municipalities will not be able to ~~to~~ comply with the requirements of secondary treatment, ^{of them} (or whatever level ~~of~~ ~~they~~ might be required ^{to} meet applicable water quality standards) by the deadlines established in the Act. The ~~the~~ House-passed bill ~~author~~ authorized the Administrator to ~~provide~~ ~~to~~ provide extensions of the deadline for the municipalities for achieving the requirements for secondary treatment. ~~to~~ Extensions up to ~~to~~ ~~the~~ July 1, 1982 for conventional treatment technology, ^{or} ~~if~~ if innovative technology is to be utilized, up to July 1, 1983 would be authorized. In addition, the House ~~pro~~ provisions would ~~also~~ have ~~also~~ allowed the Administrator of E.P.A. to give ~~relief~~ relief to industrial sources which discharge or plan to discharge into municipal ~~systems~~ systems which receive extensions. The Senate's approach was again based on ~~the~~ the desire to come back to the legislation next year for a concentrated look at all the issues. The Committee ~~devised~~ proposed that

the ~~Admins~~ Administrator be authorized to grant ~~case-by-case~~ case-by-case extensions to municipalities based upon the lack of availability of Federal financing assistance. ~~would-maintain-program~~ ~~credibi~~ The reasoning for the amendment was to maintain the program credibility ~~w~~ while not ~~interfering~~ interfering with the overall program review ~~next~~ in 1977.

generally
So, there were ~~base~~ three substantive provisions, plus the ~~bas~~ basic authorizations, which the Public Works Committee felt required legislative attention during the last Congress: ~~Allotment-of-Cong-Construction-Grant-Funds~~, Section 404 and the Corps of ~~E~~ Engineers' permitting authority, ~~Allotment~~ Allotment of Construction Grant Funds, and Municipal Extensions. I generally supported the majority of the Committee and the staff recommendations except ~~for-the-Section-404~~ on the Section 404 issue, and I shall come back to that in a ~~moment~~ moment.

But, as you all know, nothing happened to the Federal Water Pollution Control Act in the ~~last~~ 94th ~~Congress~~ Congress. The Senate passed the Public ~~Works~~ Works Committee's amendments and in the last few days of the Congress the House and ~~Senate~~ Senate went to conference on ~~their~~ their respective bills. At the same time, the House and Senate were holding conferences on the Clean Air Act Amendments of 1976, and ~~as~~ ^{As} the ~~Public~~ Public Works Committee on the Senate side has responsibility for this legislation also, many of the same senators were involved in both conferences. It was ~~hectic~~ ~~hectic~~ hectic to say the least.

The Clean Air Amendments finally made it out of conference but were filibustered to death on the floor of the Senate. The Water Pollution Control Act Amendments never got out of the conference.

Now, then, the two houses of Congress will have to go back to work on the Water Act in the next session. ~~Some of the complexion of the House and Senate committees will be determined by the outcome of the elections in November, and your guess is certainly as good as mine as to how much difference that will make in the fall when the committees meet to draw up legislation.~~

You have asked me what the probable future course of the Water programs will be. At this point in my work with ~~the~~ the Federal Water Pollution Control Act, I ~~simply~~ ^{simply} cannot ~~cannot~~ ~~tell~~ you. ~~I cannot tell you what approach will be taken in~~ I shall ~~attempt~~ attempt, though, to give you some idea of what issues will be in the forefront as the Senate begins an in-depth look at the Act and the formulation of a water pollution control policy for the future.

There are two issues which will be of great concern to many people as the discussions of the Water Act continue to develop. One of which I have already mentioned is that of the Section 404 permit processes for dredged and fill materials. The other was treated by the House of Representatives in their legislation and is now being referred to as ~~state certification~~ "State Certification."

Section 16 of the House bill (H.R. 9560 as substituted in S. 2710) deals with "dredge and fill permits". It ~~involves~~ involves the Corps of Engineers' role under section ~~4-4=~~ 404 of P.L. 92-500. The ~~house~~ House an amendment² creates ~~an entirely~~ new definition of ~~the~~ navigable waters to govern the scope of the Corps' regulation of the discharge of dredge or fill material. This new definition would ~~significantly~~ restrict the waters into which the discharge of dredge or fill pollutants would be regulated. The so-called Wright Amendment, concerning ~~this~~ these dredge and fill permits, was introduced by Senator ~~Bens~~ ~~Bens~~ ~~Bens~~ Bentsen when the ^{Senate} Public Works Committee considered the Section 404 issues. I supported Senator Bentsen, thinking that the House approach would significantly reduce the "red tape" and undue delay ^{with} which many people have ~~ad~~ ~~and~~ had to contend ~~with~~ during the Corps' implementing of Section 404. The Wright/Bentsen approach was defeated and a proposal by Senators Baker and Randolph was adopted by the Committee. ~~and~~ The Senate also accepted the Baker/Randolph approach, but by a very narrow margin. The ~~B~~ Baker/Randolph Amendment ~~reduced-juris-~~ ~~diction-of-the-Corps-of-Engineers-for-permits-for-disposal~~ ~~of-dredge-or-fill-material-to-the-traditionally-navigable-waters-~~ did not change the definition of ~~N~~ navigable waters and did not define "e wetlands". ~~as=the~~ The jurisdiction of the Corps of ~~En-~~ Engineers was ~~reduced=to=~~ for ~~perm~~ permits ~~for~~ for disposal of dredge or fill material was reduced to the traditionally navigable waters; that is, the corps' ~~per~~ present ~~juris~~ jurisdiction under Section 10 of ~~the~~ the Rivers and Harbors Act of 1899

~~the~~ and the ~~p~~ Phase I waters under current Corps regulations. Permits for other point source discharges of dredge or fill material into any other waters would be obtained from ~~the~~ the Environmental Protection Agency under ^{the} present ~~s~~ W Section 402. ~~Ne~~

~~No-change-~~

The discharge of ~~the~~ fill in connection with ~~see~~ ~~see~~ ~~see~~ certain activities would be exempt from any permit requirement under section ~~e~~ 402 or 404. Normal farming, forestry, ~~a~~ and ~~ranching-practices-~~ ~~ranching~~ ranching practices, for example, as well as placement of fill in connection with all ~~the~~ a farm or stock ponds or irrigation ditches, mining, sediment control impoundments, and all farm or logging roads would be exempted from the permit requirement.

The Administrator, ~~the~~ the Corps, and ~~State~~ States with approved programs would be authorized to issue general permits for large classes of minor activities.

This is ^{contains} not the entire Baker/Randolph proposal, but it gives you some ~~of~~ idea of the thinking of the Committee. The problem became: "How do you exempt those activities which simply do not need to go through the ^{permitting} ~~processes~~ of ~~permitting~~ and protect the valuable waters ^{and wetlands} at the same time?"

As I have indicated, I supported the Wright approach, hoping that ~~the states would show their good judgement~~ cutting down on the excessive red tape in these permitting procedures ^{aid} ⁱⁿ would ~~induce~~ the states ~~to show~~ ~~ek~~ ~~emp~~ ~~er~~ ~~er~~ ~~emp~~ ~~er~~ ~~er~~ ~~er~~ better ^{means} ~~their good judgement in the protection of the wetlands~~ the water ^{entire} ~~pollution~~ control programs and at the same time induce them

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to employ their own good judgement in protecting the ~~valuable~~
~~invaluable~~ invaluable wetlands of this nation. Of course, both
the Wright ~~Amend~~ Amendment and the Baker/Randolph positions
will be discussed in greater depth as the Congress renews its
commitment to ~~drafting~~ writing comprehensive amendments
to the Federal Water Pollution Control Act -- hopefully
in 1977. I think that we will see some compromise between
the House ~~and~~ and Senate positions. The two houses differ
in philosophy on the Section 404 issues, and it is this difference
which must be addressed. The House, with the Wright amendment,
suggests that certain waters of the United States should
be ~~restricted~~ ~~the Senate or~~ exempted. The Senate, though,
^{maintains} ~~says~~ that certain ~~activities~~ activities should be exempt, not
bodies of water. I think it is ~~given~~ ~~that~~ accepted that
~~many-normal-activities-should-be-the-farmers-and-others-who-~~
~~indulge-in-normal~~ there should be exemptions made so that
the time-consuming process of obtaining a permit not be
forced on those who ~~do-not-need-to-be-aper-permitted~~ ~~gh~~
~~to-through-the-a-tedious~~ will not be significantly contributing
to the pollution problems in our nation's waters. Given the
~~and analysis~~ analyses of ~~the~~ those on the ~~local~~ local levels
of government and those in ~~and~~ many of the industries affected
by P.L. 92-500, I believe that the Congress can come up with
some workable solutions to the Section 404 issues.

The other single issue which I believe will ~~see~~ consume much
of the ~~Senate's~~ ^{of the Congress} time in the next session is that

of "State Certification"

The idea of turning some of the management of the construction grant program over to the states has been under consideration for several years. It was proposed in EPA hearings held ~~then~~ throughout the country in 1975, in House hearings in the spring of 1974, and in the recommendations of the Water Quality Commission.

The House's bill ~~prevede~~ provided for a process by which a state could be certified by the Administrator of the EPA for the management of the construction grant ~~per~~ program and provides that up to 2% of a state's construction grant allocation be ~~a~~ utilized for the management of the program.

This ~~prevsie~~ ~~r~~ provision had broad support among the states and responds to the allegation that the program ~~has~~ has too much redtape. ~~It does not provide specific guidance to the Administrator in deciding whether or not the state has the capability and willingness to administer the program for the Federal government.~~ According to a ~~s~~ Senate Public Works Staff Memorandum, though, "...It does ~~ne~~ not provide specific guidance to the Administrator in deciding whether or not the state has the capability and ~~willingness~~ willingness to administer the program for the Federal government." I think it may well be true that some sort of procedure ^{needs to} be adopted to make that

kind of ~~judgement~~ judgement. ^{On the whole, though, I am confident} that most states would welcome the opportunity to ^{administer} ~~administrate~~ their own grant programs. ^{I would think} ~~The~~ states should have ~~see see~~ demonstrated a willingness to manage those parts of the program

which are currently eligible for state management *before being given further management duties. (see insert bracketed sentence.)*

~~I am given to understand that best practicable e tech
nology for communities has not been adequately defined.
The systems of proportionate user charges mandated by the congress
have been ignored~~

Duplication of effort at ~~the~~ the State and Federal level is a major problem but it is ~~e~~ not the only ^{problem} with the construction grant program. ~~The~~ ^{the} complaint most often heard about the program, in the political ~~area~~ arena, is that there are too many regulations and too much ~~paperwork~~ red tape. I tend to agree with these allegations, but there may well be a paradox here: tremendous amounts of paperwork -- a lack of substantive control or direction in the program -- and general non-compliance with specific statutory requirements. At the same time this potential for abuse in the 75% grant program demands ~~regulation~~ regulations and control, which results in paperwork.

I am given to understand that best practicable technology for communities has ~~not~~ ^{not} been adequately defined. The systems of proportionate user charges mandated by the Congress have been ignored by the ~~Agency~~ Agency because they anticipate legislative changes permitting ad valorem taxes. In fact, the ~~House~~ House ~~Water~~ Water Amendments permitted the use of ad valorem taxes as a method of collecting the costs of operating and maintaining municipal waste treatment works. In other words, present law is sometimes

~~overlooked or unenforced because the EPA is waiting for the Congress to act on the many interrelated portions of~~

~~the P.L. 92-500.~~ "State Certification" can be a very ~~good~~ effective tool, but the states will have to ~~affirm their~~ desire to manage their program.

Well, I have taken too much time already, and the "future course" of the Federal Water Pollution Control Act has hardly been enumerated for you.

to manage their program

But let me just list some other aspects of the Act in general which will most probably be discussed as the House and Senate attempt to amend P.L. 92-500 in the next ~~session~~ Congress.

User charges, as I briefly mentioned, will certainly be one of the points considered. Sewage collection systems grants and, of course, construction grants will be a part of any bill which is adopted. Within these general grant areas, the priorities of categories will be given some attention, and possibly guidelines I would think it possible that hope that the state would have the largest voice in those kinds of decisions. The House bill gave the states sole decision-making power in this area.

There will be attention given to toxic and pretreatment standards and the time limits which the state has to meet "toxic effluent standards".

pertaining to

In addition, provisions for judicial review and the possible establishment of an emergency contingency fund for

during assistance ~~for~~ emergencies which involve ~~endangerment~~ endangerment of the public health will ~~also~~ be discussed in any future consideration of the Water programs.

There is no way to cover the many aspects of the Federal Water Pollution ~~S~~ Act in a day or a week, ~~much~~ much less in ~~15-20~~ ~~15~~ ~~15~~ fifteen or twenty ~~minutes~~ minutes. I do hope, however, that this rough outline gives you some idea of the kinds of issues that are being generated in this area of national policy.

I shall restate what I said at the beginning of this discussion. Only through a give-and-take kind of communication between local government, industry, environmental lobbies and ~~the~~ the Congress are we going to be ~~able~~ able to ~~give~~ ~~a~~ leave a firm, well-developed water pollution control policy to
 balance between
 our children. ~~a~~ ~~A~~ ~~balance~~ ~~of~~ of priorities ~~and~~ ~~and~~ and time tables ~~must~~ must be struck if we are to ~~form~~ formulate a pollution control strategy which is ~~both~~ both effective ~~and~~ ~~for~~ ~~for~~
 ~~for~~ in its pursuit of the goal of protecting the public ~~health~~ health and welfare and, at the same time, a strategy which will enable this country to remain a strong advocate of individual rights and free ~~enter~~ enterprize.