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Second Sino-American Conference on Environmental Law
RECONSIDERING WATER QUALITY PROTECTION IN THE UNITED STATES

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- I. There is little evidence of real improvement in water quality in the United States in the past ten to fifteen years.
 - A. Measurements show improvements in some parameters (e.g. fecal streptococcus bacteria), but a worsening in others (e.g. salinity).
 - B. There is virtually no information concerning toxic pollutants.

- II. This lack of apparent progress exists despite the existence of federal water quality regulations since 1965.
 - A. The Water Quality Act of 1965 required states to establish water quality standards for all interstate waters. The states were to include a plan of attainment in these standards.
 - B. The absence of any effective implementation and enforcement under this law led to the enactment of major amendments in 1972.
 - C. The approach established then is still largely intact today. This approach emphasizes the control of discharges of pollutants from point sources such as pipes. Discharges are controlled by technology-based standards established for categories of point sources

(e.g. by type of industry and type of process). Major grants were awarded to encourage construction of municipal wastewater treatment facilities. More than 60,000 permits have been issued regulating discharges of pollutants from point sources.

III. Existing regulation considers water quality only indirectly.

- A. The states are still required to establish water quality standards for all streams. These standards include designating the uses of the water and then establishing criteria to protect and maintain those uses.
- B. However, in most cases, the effluent limitations placed on point sources are based only on what is technologically achievable -- not on the quality of water to be maintained.

IV. Existing regulation does not address water quality degradation from sources other than point sources.

- A. Pollution from diffuse, nonpoint sources is not regulated under the Clean Water Act.
- B. Amendments enacted in 1987 require states to prepare an assessment of the water quality problems from nonpoint sources and to develop a program to address those sources of pollution. The general approach being taken is to establish "best management practices" (BMPs) for the various activities that cause or contribute to nonpoint

source pollution. At present, these BMPs are voluntary.

C. More than half of all water pollution in the U.S. comes from these nonpoint sources.

D. Moreover, water quality impairment resulting from water use -- especially the contaminant-concentrating effects of depletion -- is not considered at all in the federal law.

V. Attention needs to return to the maintenance and improvement of water quality instead of the regulation of water pollution.

A. The policy objective is to protect and improve water quality so that desired uses may be made of the water resources available.

B. All sources of water quality impairment, whether or not the result of pollution and whether point or nonpoint, should be addressed.

C. Water quality necessary to allow existing uses should be maintained. Higher water quality in special areas such as national parks should be protected.

D. Special attention should be focused on those (limited) areas where water quality standards are not being met. The responsibility for achieving improvements needed to attain acceptable quality should be allocated according to the cost-effectiveness of the results expected to be obtained.

E. Effective programs for groundwater quality protection need to be developed and existing programs need to be better coordinated. Emphasis must be on prevention of contamination of groundwater resources.