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NEPA: Birth and Infancy

Responding to a nationwide concern for improved environmental management, President Nixon, by executive order, established the Environmental Quality Council and the Citizens' Advisory Committee on Environmental Quality in May of 1969 to advise him with respect to environmental quality matters.¹ By this order, the President set off a chain of executive orders, legislation, and flurries of implementing memoranda and guidelines with the ultimate goal of harnessing the unwieldy environmental problem. Congress responded to executive impetus and in January 1970, passed the National Environmental Policy Act of 1969² which declared a national policy on the environment and established a Council on Environmental Quality.

In action leading to passage of the Act, Congress considered the effect it would have on existing administrative procedures of the various governmental agencies involved. This comment will summarize the actions of the executive and legislative branches leading to passage of the Act, review the actions of the Council on Environmental Quality during the first months of its existence, and discuss the effect of the Act on the administrative actions of governmental agencies.

Since the mid-1960's the executive branch and Congress have been aware of a growing public concern for improved environmental management. President Johnson relied on the Councils on Recreation and Natural Beauty and the corresponding Citizens' Advisory Committees for advice on environmental matters.³ Upon taking office in 1969, President Nixon identified environmental management as one of the nation's major problems and assigned his staff the task of determining appropriate action.⁴ These staff studies led to establishment of a cabinet-level Environmental Quality Council and Citizens' Advisory Committee on Environmental Quality.⁵

1. Exec. Order No. 11,472, 3 C.F.R. 122 (Comp. 1969), 16 U.S.C. § 17k (Supp. V, 1970).

2. 42 U.S.C. §§ 4331-47 (Supp. V, 1970).

3. See Exec. Order No. 11,402, 33 Fed. Reg. 5253 (1968); Exec. Order No. 11,359A, 3 C.F.R. 295 (Comp. 1967); Exec. Order No. 11,278, 3 C.F.R. 107 (Comp. 1966). These groups were strictly advisory in nature.

4. See Statement of Dr. Lee A. DuBridge, *Hearing on H.R. 11952 Before a Subcomm. of the House Comm. on Government Operations*, 91st Cong., 1st Sess. 14 (1969) [hereinafter cited as DuBridge Statement]. Dr. DuBridge is the former Director of the Office of Science and Technology.

5. *Id.* at 15. The President considered the recommendation of the Advisory

The Quality Council was to advise the President on agency matters affecting the environment,⁶ and the Citizens Advisory Committee was to provide a source of information and advice from the non-governmental community as well as providing liaison with the many non-governmental organizations that have an interest in the environment.⁷ The President also expanded the staff of the Office of Science and Technology to include experts who would be immediately available to the Council and to him for environmental advice.⁸

This was the genesis of policies and programs to improve environmental quality by encouraging the agencies to more actively pursue environmental objectives already assigned to them by existing law, and by making use of existing facilities in the Office of Science and Technology.⁹

National Environmental Policy Act of 1969

The President's executive order had not caught Congress by surprise. Committees in both Houses of Congress had been hard at work to arrive at a statement of national environmental policy and to develop a national council on the environment to implement it.¹⁰ The idea was not new. As early as June 1967, a task force report to the Secretary of Health, Education and Welfare entitled "A Strategy for a Livable Environment," recommended the concept of an independent advisory council to counsel the President on environmental matters. This task force was created at a time when public concern was beginning to focus on the serious deterioration of the environment caused by the industrial and economic boom since World

Council on Executive Organization which had been set up to consider federal organization as a whole. It recommended a policy of flexibility in creating new management level organizations.

6. Exec. Order No. 11,472, 3 C.F.R. 122 (Comp. 1969), 16 U.S.C. § 17k (Supp. V, 1970). The President presides over meetings of the Council. Members of the Council include: the Vice President, the Secretaries of Agriculture, Commerce, Health, Education and Welfare, Housing and Urban Development, Interior and Transportation. The Chairman of the Council of Economic Advisors, the Executive Secretary of the Council for Urban Affairs, and the Director of the Bureau of the Budget may participate in the deliberations of the Council as observers. The Science Advisor to the President serves as Executive Secretary of the Council and assists the President in directing the affairs of the Council.

7. This committee consists of a chairman, currently Mr. Laurence Rockefeller, and fourteen other members appointed by the President. See DuBridge Statement at 16.

8. In his statement, Dr. DuBridge pointed out the advantages in using the Office of Science and Technology as the source of support for the Council. He pointed out "[a]ny necessary extension of my office to handle this work can be done within the existing structure without the necessity for new legislation." *Id.* at 17.

9. The Order did not give the Council any new operating functions but specifically left such functions with the agencies authorized by law to carry them out.

10. In the House of Representatives, the Committee on Merchant Marine and Fisheries had been studying the problem; in the Senate, the Committee on Interior and Insular Affairs was at work on the same questions.

War II. The groundswell of environmental concern led to many bills which were introduced in the 90th Congress. Despite much committee debate none of these received action. Early in 1969, Senator Henry M. Jackson, Chairman of the Senate Committee on Interior and Insular Affairs, and Congressman John D. Dingell, Chairman of the House Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries, introduced similar bills on environmental policy.¹¹ Ultimately a version was agreed upon and enacted¹² as the National Environmental Policy Act of 1969.¹³ Through this Act, Congress made the following statement of national environmental policy:

[I]t is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.¹⁴

In order to accomplish this policy, Congress ordered all federal agencies to use all practical means to improve and coordinate plans, functions, programs, and resources so that the nation may

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations; (2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings; (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences; (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice; (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.¹⁵

The design of Congress was not to create new policies, regulations, and pub-

11. H.R. 6750, 90th Cong., 1st Sess. (1969); S. 1075, 90th Cong., 1st Sess. (1969).

12. On July 10, 1969 the Senate considered and passed S. 1075, reported by Senator Jackson. On September 23, 1969, the Senate bill was considered and passed the House, amended, in lieu of H.R. 12549. When, on October 8, 1969, the Senate disagreed to the House amendments, the bill was sent to conference. The conference report was approved by the Senate on December 20, 1969, and the House concurred two days later. H.R. REP. NO. 765, 91st Cong., 1st Sess. (1969).

13. 42 U.S.C. §§ 4331-47 (Supp. V, 1970).

14. *Id.* § 4331(a). This statement was adopted from Senator Jackson's bill, S.1075, *supra* note 11. See DuBridgde Statement at 24-25.

15. 42 U.S.C. § 4331 (Supp. V, 1970).

lic laws to carry out the intent of the Act, but rather to have existing laws interpreted and administered in accordance with the policy of the Act. In order to accomplish this, the Act requires that all agencies review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies which prohibit full compliance with the purpose of the Act, and propose to the President measures necessary to bring their authority or policies into line with the purposes of the Act.¹⁶

Exempt from this provision of the Act are the regulatory activities of federal environmental protection agencies, such as the Federal Water Quality Administration of the Department of the Interior and the National Air Pollution Control Administration of the Department of Health, Education and Welfare. Since these agencies already monitor areas of the environment specifically assigned them, the preparation of an environmental statement reviewing their authority and policies was not required.¹⁷

Council on Environmental Quality

To assist the President in compiling the information provided by the various agencies, the Act created a Council on Environmental Quality in the Executive Office of the President.¹⁸ Not to be confused with the cabinet-level council set up by executive order,¹⁹ the Act provides an independent council composed of three presidentially appointed members—persons trained and experienced in environmental fields who would analyze and interpret environmental trends for the purpose of advising the President and monitoring the actions of federal agencies in implementing the Act. Another function of the Council is to assist the President in formulating and submitting an annual environmental quality report to Congress as required by the Act.²⁰

16. *Id.* § 4332.

17. President Nixon has proposed the creation of an Environmental Protection Agency which would combine the Federal Water Quality Administration, the National Air Pollution Administration, the pesticides research and standard-setting program of the Food and Drug Administration, the pesticides registration authority from the Department of Agriculture, and other lesser departments found in various government agencies. See, H.R. Doc. No. 366, 91st Cong., 2d Sess. (1970). See also Water Quality Improvement Act of 1970, Pub. L. No. 91-224, 84 Stat. 91.

18. 42 U.S.C. § 4342 (Supp. V, 1970).

19. *Supra* note 1. Due to the creation of an independent Council by the Act, President Nixon renamed his Council of Cabinet Members the Cabinet Committee on the Environment. Exec. Order No. 11,514, 35 Fed. Reg. 4247 (1970).

20. The annual report must contain as a minimum: (1) the status and condition of the major environmental classes of the nation (*i.e.*, the air, the aquatic, etc.); (2) current and foreseeable trends in the quality, management, and utilization of such environments and the effect of these trends on the requirements of the nation; (3) the adequacy of natural resources in the light of expected population pressures; (4) a re-

The Environmental Policy Act contains none of the provisions transferring functions of government agencies to the Council found in earlier bills submitted to Congress.²¹ These bills had called for an actual transfer of the executive branch functions of evaluating effects upon the environment to the Council. Rather than actually transfer the functions, the Act created the Council to monitor, coordinate, and make recommendations on the exercise of existing agency authority. However, the earlier bills served a purpose for the Council because they identified many troublesome areas which the Council would have to deal with in accomplishing the aims of the Act.²² The Act went even further. It required all agencies of the federal government to review their own statutory authority to bring their policies into conformity with the purposes and procedures set forth in the Act with the ultimate purpose of enabling the Council to recommend action to the President on behalf of the agencies to step-up or revise their authority, if necessary.²³

In order to implement the Act, the Council began monitoring procedures to assure that all agencies of the federal government were taking environmental considerations into account in their actions.²⁴ Under Section 102(2) (C) of the Act all agencies, to the fullest extent possible, are required to include a statement on the environmental impacts of any proposed agency action and to include any environmentally acceptable alternatives.²⁵ Shortly after

view of the programs and activities of governmental bodies and their effects on the environment; and (5) a recommended program for correcting the deficiencies of existing programs and recommendations for legislation to meet this end. 42 U.S.C. § 4341 (Supp. V, 1970).

21. *See, e.g.*, H.R. 11,952, 91st Cong., 1st Sess. (1969).

22. *Id.* A forerunner of the House version of the bill finally enacted, was concise in spelling out the various agencies whose implementing acts had an effect on environmental management. It listed the activities of the following agencies as relevant to the Act: The Departments of Interior, Defense, Transportation, Housing and Urban Development, the Federal Power Commission, the Air Quality Advisory Board of the Department of Health, Education and Welfare and the Environmental Science Services Administration.

23. 42 U.S.C. § 4333 (Supp. V, 1970).

24. In a memo dated March 10, 1970, Chairman Train requested each agency to designate a representative to discuss with the Council's staff the application of Section 4332 to his agency and to outline to the Council his agency's plans for complying with the Act. Memorandum to Agency Heads from Russell E. Train, Chairman of Council on Environmental Quality, Mar. 10, 1970.

25. In an executive order entitled Protection and Enhancement of Environmental Quality, the President directed all agencies to proceed in accordance with Section 102 and directed the Council to issue guidelines on Section 102(2)(C) procedure as soon as possible. Exec. Order No. 11,514, 35 Fed. Reg. 4247 (1970). Section 102(2)(C) provides in part that all federal agencies shall

include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should

the monitoring began, the Council submitted a draft set of guidelines as required by Section 102 to the heads of all executive departments and agencies and invited comment.²⁶

The guidelines were designed to provide the federal departments, agencies, and establishments with the tools to develop a detailed statement on proposals for federal actions which would significantly affect the quality of the environment.²⁷ They called for each agency to establish no later than June 1, 1970, its own procedures for: (1) identifying those agency actions requiring environmental statements, (2) obtaining information required in their preparation, (3) designating the officials who are to be responsible for the statements, and (4) consulting with and taking account of the comments of other appropriate federal, state, and local agencies.²⁸ The guidelines were careful to point out that each agency should consult with other appropriate agencies in the development of procedural guidelines so as to achieve consistency wherever similar activities are involved. The Council stood ready to provide advice and further guidance to agencies in the preparation of their procedures. Emphasis was placed on coordination and efficient use of existing "mechanisms" in proposing federal actions to deal with environmental matters.²⁹ The Council outlined criteria to be employed by agencies in deciding whether a proposed action calls for the type of detailed statement required under Section 102,³⁰ and suggested that each

the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

42 U.S.C. § 4332(2)(C) (Supp. V, 1970).

26. Memorandum to Heads of Executive Departments and Establishments from Russell E. Train, Chairman of Council on Environmental Quality, March 20, 1970.

27. *Id.* at 1.

28. *Id.* at 1-2.

29. *Id.* On July 22, 1970, Secretary of the Interior Hickel requested the Justice Department to investigate a number of corporations who had allegedly polluted a number of rivers and lakes by dumping mercury waste. By making use of an 1899 statute, the coordination between Justice and Interior efficiently used an "existing mechanism." See note 40 and accompanying text, *infra*.

30. Memorandum, *supra* note 26 at 4-5. "Actions" include all activities directly undertaken or supported in whole or in part by any federal agency. These include but are not limited to recommendations leading to legislation and appropriations, grants, subsidies, and policies and procedures. The statutory clause "major Federal action significantly affecting" the quality of the human environment, is to be construed broadly. The Council places great significance on those actions, however local in impact, that may significantly affect the environment. Agencies should look to Section 4331(b) of the Act for an indication of the sweeping range of the environmental considerations when determining significant direct and indirect effects on the quality of the human environment.

agency's environmental statement include, as a minimum, the following: (1) the environmental impact of any proposed action; (2) any adverse environmental effect which will result if the proposal is implemented due to lack of an alternative or due to necessity; (3) alternatives to the proposed action, aimed specifically at "doing the job" while avoiding some or all of the adverse environmental effects; (4) an assessment of the proposed action from the perspective that each generation is trustee of the environment for succeeding generations, and hence should not consider only the local short-term use of the environment; and (5) the outside limit or extent to which the proposed action permanently decays or destroys any part of the environment.³¹

Following the dictates of Section 102 (2) (C), the Council called for federal agencies to consult with and obtain the comments of any federal agency which has "jurisdiction by law or special expertise with respect to any environmental impact involved."³² Further, to insure deference to state and local agencies, the Council authorized the publication of a summary notice in the *Federal Register* specifying that comments of the relevant state and local agencies on proposed actions be submitted within 90 days of publication of the notice.³³

The Council emphasized that it is up to the agencies to identify at what stage of a series of actions the environmental statement procedures will be applied. Emphasis is to be placed on both the development of new programs and the review of proposed projects currently underway. However, a recent case in Pennsylvania points out that applying the Act to projects currently underway will not always be practical. In *Pennsylvania Environmental Council, Inc. v. Bartlett*,³⁴ the Pennsylvania Council tried to prevent the granting of federal funds for a state road construction project that antedated and did not comply with the Act, and which belatedly proposed an alternative plan. The court held that the Act was not to be given retroactive application:

31. *Id.* at 5-6.

32. *Id.* at 7. Section 102 is intended to serve all agencies, including those which lack other legislative authority in the area of the environment, as a tool for each to make an analysis of the impact on the environment of proposed legislation or other major action. Included are the functions of independent agencies, such as the licensing and regulating of interstate trucking by the Interstate Commerce Commission, as well as other on-going activities. If existing law applicable to the agency's operations expressly prohibits or makes compliance with the Section impossible, the agency involved must advise the Council of the existence of such conflicting law as early as possible but in no event later than September 1, 1970. See Exec. Order No. 11,514, 35 Fed. Reg. 4247 (1970).

33. See note 39, *infra*.

34. Civil No. 70-123 (M.D. Pa. Apr. 30, 1970), 38 U.S.L.W. 2609.

Since the contract here in question was awarded and finalized prior to the Act's passage, no violation of the Act occurred on the part of the Secretary of Transportation A requirement that the Secretary must make independent and affirmative evaluations of all phases of the multitude of state secondary highway projects relative to their impact on the environment not only would place a staggering burden on the Secretary, but also would cause him to duplicate state investigations and determinations.³⁵

The court found many impracticalities in the Council's suggestions. First, a project may have progressed too far for a worthwhile consideration of the environmental effect, or even if an effect on the environment is noted, the stage of development of the project may preclude any remedy. The court also pointed out the necessity for cooperation between local, state, and federal agencies.³⁶ Where secondary roads are concerned, it is not likely that the Department of Transportation has the resources to survey the potential effect on the environment, so local officials will have to make this consideration and include it in the request for federal funds. This would appear to be exactly what Congress had in mind in calling for "the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practical means and measures . . . to create and maintain conditions under which man and nature can exist in productive harmony"³⁷

In the interest of keeping the public informed of proposed agency actions, and in accordance with the Freedom of Information Act,³⁸ the Council has placed responsibility on the agencies for making material comments and policy statements available to the public.³⁹ As the agency statements

35. *Id.* at 2610.

36. *Id.*

37. 42 U.S.C. § 4331 (Supp. V, 1970).

38. 5 U.S.C. § 552 (Supp. V, 1970).

39. In the requirement for notice, the Act stayed well within the Administrative Procedure Act which requires the agencies to make public all proposed rule-making. 5 U.S.C. § 553 (Supp. V, 1970). Section 102(2)(C) of the National Environmental Policy Act states in part:

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the *public* as provided by Section 552 of Title 5, and shall accompany the proposal through the existing agency review processes.

42 U.S.C. § 4332(2)(C) (Supp. V, 1970) (emphasis added).

To implement this the Council authorized the publication of a summary notice in the *Federal Register* requesting comments of state and local agencies on a proposed action within 90 days of publication of the notice. These steps follow closely the require-

emerge, this aspect becomes particularly important in determining what, if any, remedy exists for individuals affected by an agency's misuse of the environment or the misuse of the environment by an individual or corporation licensed or regulated by the agency. An example of how this type of publicity alerts the public was recently seen when the Interior Department requested the Justice Department to take action against thirteen large companies who allegedly had polluted lakes and rivers with mercury.⁴⁰ A number of private civil suits for damages have sprung up throughout the country as the result of the government's action.⁴¹ That the courts are recognizing the potential of the Act to aid injured parties is evident from a recent case involving the Trans-Alaska Pipeline System's proposed 800 mile pipeline and 390 mile haul road rights-of-way.⁴² When the Secretary of the Interior failed to submit a detailed statement to the Council showing the environmental impact of the proposed pipeline and haul road, the Secretary was enjoined from issuing a permit for the haul road across public lands until final determination of a conservation society's suit. The court found that the applications for the pipeline right-of-way requested an area of land in excess of the width permissible under Section 28 of the Mineral Leasing Act of 1920⁴³ and if the permit was issued for this amount of land, without an opportunity for interested third parties to challenge the legality of the permit, the requirements of the Act would not be fully complied with.⁴⁴ The court ordered that the Secretary and his agents be preliminarily enjoined, until the final determination of plaintiffs' application for a permanent injunction, from issuing a permit for construction of any section or component of the Trans-Alaska Pipeline System unless plaintiffs be given 14 days notice prior to the planned issuance and an opportunity to challenge any proposed issuance.⁴⁵

It would seem from the language of the Act and the court's interpretation

ment of the Administrative Procedure Act, to wit:

General notice of proposed rule making shall be published in the Federal Register, unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include (1) a statement of the time, place and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule . . .

5 U.S.C. § 553(b) (Supp. V, 1970).

40. New York Times, July 22, 1970 at 1, col. 6. See note 29, *supra*.

41. At the time of writing over \$50 million in claims had been sought in northern Alabama suits as the result of the dumpings of the Diamond Shamrock Company into a tributary lake of the Tennessee River.

42. Wilderness Soc'y v. Hickel, Civil No. 928-70 (D.D.C., Apr. 23, 1970).

43. 30 U.S.C. § 185 (1964).

44. Wilderness Soc'y v. Hickel, Civil No. 928-70 (D.D.C., Apr. 23, 1970).

45. *Id.*

of it that following a consideration of the environmental effect of an action, an agency must then make its proposed action as public as possible so that any potentially aggrieved individual will have notice of it. Section 553 (b) of the Administrative Procedure Act⁴⁶ outlines the steps the agency must take after giving the public notice of a proposed action. That section calls for

[A]n opportunity [for interested persons] to participate in the rule-making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose.⁴⁷

The National Environmental Policy Act contains no specific provision calling for an agency hearing. However, Section 102 (B) of the Act states that federal agencies shall "identify and develop methods and procedures, in consultation with the Council on Environmental Quality . . . which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations . . ." ⁴⁸

Following a period of review of the draft guidelines by the various agencies and the receipt of comments by these agencies, the Council published a set of Interim Guidelines for Statements on Major Federal Actions Affecting the Environment.⁴⁹ The Interim Guidelines memorandum was circulated for the assistance and guidance of agencies in preparation of their procedures to implement Section 102 of the Act and followed closely the format of the draft guidelines issued on March 20.⁵⁰ In his memorandum accompanying

46. 5 U.S.C. § 553(c) (Supp. V, 1970).

47. *Id.*

48. 42 U.S.C. § 4344 (Supp. V, 1970). U.S. District Court Judge John J. Sirica called on this provision, recently, in enjoining further construction of the Three Sisters Bridge in Washington, D.C. In holding that the environmental impact and other related issues of the bridge had not been adequately considered, Judge Sirica ruled that the failure to hold a public hearing on the design of the bridge, under a policy procedure established by the Transportation Department's Bureau of Public Roads in January 1969, was a major administrative lapse which must be corrected before construction could resume. By his ruling Judge Sirica points up the Act's requirement that existing administrative procedures and statutory obligations of Federal agencies must be considered and fulfilled. *D.C. Fed'n of Civic Ass'ns v. Volpe*, Civil No. 2821-69 (D.D.C., Aug. 3, 1970).

49. Memorandum, Interim Guidelines for Statements on Major Federal Actions Affecting the Environment, to Heads of Executive Departments and Establishments from Russell E. Train, Chairman of Council on Environmental Quality, dated Apr. 30, 1970.

50. *Id.* The Interim Guidelines again called for each agency to establish no later than June 1, 1970, its own formal procedures for (1) "identifying those agency actions requiring environmental statements, (2) obtaining information required in their preparation, (3) designating the officials who are to be responsible for the statements, (4) consulting with and taking account of the comments of appropriate Federal, State

the guidelines, Chairman Train was careful to express the concern of the Council that, "in many cases there appears to have been failure to comply with the Section 102 (2) (C) environmental statement requirement."⁵¹ The underlying tone of his memorandum indicated that many agencies of the government looked on the Act, and particularly the requirements of Section 102 (2) (C), as just requiring more "paper work formalities."⁵² The response of the agencies has ranged from the completely negative—the agency evidently seeing no necessity for consideration of environmental policies—to positive reactions on the part of a few agencies. As an example of an affirmative reaction, the Federal Power Commission, citing provisions of the Act, recently issued new regulations establishing guidelines to be followed by natural gas pipeline companies in the planning, locating, clearing, and maintenance of rights-of-ways and construction of land facilities.⁵³ In accordance with provisions of Section 102 of the Act, the Federal Power Commission advised the Council of the issuance of the order. Designed to maintain the aesthetic beauty of the countryside, the guidelines called for "the construction and maintenance of interstate pipeline facilities . . . in a manner which will minimize adverse effects on these [aesthetic] values."⁵⁴

Summary of the First Six Months

In the first few months of its existence, the Council has taken steps to bring an awareness of environmental responsibility to all government agencies, eliminate duplication of environmental responsibility between two or more agencies, and establish guidelines for the future on which the executive branch, governmental agencies, and the public in general will be able to depend for the protection of the environment.

Through its guidelines for statements on actions affecting the environment, the Council has provided the agencies with direction to insure that every governmental action is evaluated in terms of its effect on the environment. Concurrently, it has set up the structure by which input should come from the agencies so that the Council will have the information available to advise the President and other agencies on the environment.

and local agencies and (5) meeting the requirements of Section 2(b) of Executive Order 11,514 for providing timely public information on Federal plans and programs with environmental impact." Reiterated was the fact that Section 102(2)(C) of the Act, by including "to the fullest extent possible," made clear that each agency of the Government shall comply with the requirement unless prohibited by existing law applicable to the agency's functions.

51. *Id.*

52. *Id.* at item 3.

53. 35 Fed. Reg. 11387 (1970).

54. *Id.*

President Nixon's recent action in sending to Congress a plan to create a new Environmental Protection Agency is a direct result of the type of information and recommendation the Council can give.⁵⁵ In his message to Congress accompanying the proposal, the President called for a rational and systematic organization of presently scattered environment-related activities. Implying that confusion and argument existed among federal agencies, the President said, "Our national government today is not structured to make a coordinated attack on the pollutants which debase the air we breathe, the water we drink, and the land that grows our food."⁵⁶ The impact of the proposed Environmental Protection Agency is not to destroy but to reinforce the mission of the Council. The Council will retain its broad advisory and policy missions in the environmental field, while the Environmental Protection Agency will set standards in the field and enforce them.

For all its fanfare, in the first few months of its existence the Council has gotten off to a slow start in carrying out the dictates of the Act. The Act and the Council have served more to get government agencies thinking philosophically about the environment than as a catalyst to spur positive action. The somewhat unique characteristic of the Act—that it cuts across the entire government spectrum—helps explain its slow acceptance in many of its quarters.

However, much more can be expected of the Act and the Council as the agencies begin to feel public pressure to respond to the needs of the environment, and hence turn to the provisions of the Act and to the advice of the Council. As courts begin to entertain environmental questions and tie the Act in with the procedural and statutory obligations of federal agencies, questions on administration of the Act will be offered and answered. There have been a few isolated examples of agency action in this direction in the past few months and it would appear that as the agencies coordinate the provisions of the Act, the advice of the Council, provisions of the Administrative Procedure Act, and provisions of their own implementing legislation, the environmental protection field will come alive with productive action.

James H. Clingham

55. See note 17, *supra*.

56. H.R. Doc. No. 366, 91st Cong., 2d Sess. (1970).

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When this symposium was initially planned, Helen Leavitt's Superhighway-Superhoax was one of the very few recent book-length treatments of the highway's impact on American life today. Mrs. Leavitt's view of highway development since 1956 is one of a "conspiracy to pave America over." In his review of the book, Mr. Robson adopts a more temperate view, with an attempt to place in perspective the past and future of the interstate highway system and the prospects for more balance in the forms of urban transportation.