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The Supreme Court as Guardian of the Environment: The *Metropolitan Edison* Decision in Perspective

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I. INTRODUCTION

The National Environmental Policy Act (NEPA)[1] was enacted as a means of protecting the environment from degradation caused by technological advances.[2] Since the enactment of NEPA, the Supreme Court has clearly established the role of the judiciary in environmental litigation in the context of NEPA and otherwise.[3] The function of the courts, as delineated by the Supreme Court, is to determine whether a federal agency has considered the environmental consequences of its actions.[4] In carrying out this duty, the courts have been specifically instructed to avoid substantive review of the conclusions reached by the agency regarding the environmental effects of its actions.[5] Instead of ultimately deciding

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1. National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4367 (1976 & Supp. V 1981).

2. Senator Jackson, in introducing the original bill, stated that "[we] are . . . only reacting to crisis situations in the environmental field. What we should be doing is setting up institutions and procedures designed to anticipate environmental problems before they reach the crisis stage." *Hearing on S. 1075, S. 237, and S. 1752 Before the Senate Comm. on Interior and Insular Affairs*, 91st Cong., 1st Sess. 27 (1969). *See* Comment, *NEPA, The Supreme Court and the Future of Environmental Litigation*, 10 SW. U. L. REV. 403 (1978).

3. *See, e.g.*, Strycker's Bay Neighborhood Council v. Karlen, 444 U.S. 223 (1980) (NEPA requirements are satisfied whenever an agency has followed the appropriate procedures for considering the environmental consequences of its actions); Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519 (1978) (NEPA's mandate to the agencies is essentially procedural, and courts are not to set aside administrative decisions simply because the court is unhappy with the result reached); Kleppe v. Sierra Club, 427 U.S. 390 (1976) (in the absence of a proposal for regional coal development, there is no NEPA mandate for a regional environmental impact analysis); Aberdeen and Rockfish Railroad v. SCRAP (II), 422 U.S. 289 (1975) (Interstate Commerce Commission is not required to consider environmental issues until it makes a recommendation or report on a proposal for federal action). *See also* 10 ENVTL. L. 643 (1980) and 10 SW. U. L. REV. 403 (1978) for a detailed analysis of this trend.

4. *See, e.g.*, Strycker's Bay Neighborhood Council v. Karlen, 444 U.S. 223, 228 (1980), in which the Court stated: "[O]nce an agency has made a decision subject to NEPA's procedural requirements, the only role for a court is to insure that the agency has considered the environmental consequences." *See also* 10 ENVTL. L. 643, 654 (1980).

5. *See, e.g.*, Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 558 (1978) which states that the decisions reached by an administrative agency should be set aside "only for substantial procedural or substantive reasons as mandated by the statute, not simply because the court is unhappy with the result reached." *See infra* notes 57-61 and accompanying text. *See also* 10 ENVTL. L. 643 (1980).

whether an agency made a sound decision from an environmental perspective, the courts are limited to reviewing whether the agency has followed the procedural requirements in reaching its final decision regardless of the merits of that decision.[6]

Recently, in *Metropolitan Edison Co. v. People Against Nuclear Energy*,[7] the Supreme Court reinforced its position that substantive policy decisions regarding environmental protection should not be made in the courts, by refusing to judicially broaden the scope of NEPA to require consideration of psychological health impacts in the process of environmental review. The purpose of this comment is to examine the treatment given to environmental protection by the Supreme Court in *Metropolitan Edison* and place it in perspective with the approach taken by the Court on previous occasions.

II. The National Environment Policy Act

NEPA was enacted in response to widespread public concern that man's activities were causing irreversible environmental degradation.[8] Because of this concern, NEPA was enacted as a declaration of a national environmental policy with provisions providing for the implementation of that policy.[9]

Initially, the Act defines as national policy the creation of "conditions under which man and nature can exist in productive harmony."[10] The Act places responsibility on the federal government

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6. *See, e.g.*, Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 558 (1978), in which the Court states that NEPA's mandate "is to insure a fully informed and well-considered decision, not necessarily a decision the judges . . . would have reached had they been members of the decisionmaking unit of the agency." *See also* 10 Envtl. L. 643 (1980).

7. Metropolitan Edison Co. v. People Against Nuclear Energy, 103 S. Ct. 1556 (1983).

8. In declaring the national environmental policy, the Act specifically recognizes "the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances. . . ." National Environmental Policy Act of 1969, 42 U.S.C. § 4331(a) (1976).

9. Senate Comm. on Interior and Insular Affairs, National Environmental Policy Act of 1969, S. Rep. No. 296, 91st Cong., 1st Sess. 8, 9, 10, 14 (1969). For a more detailed discussion of the NEPA legislation, *see* Comment, *supra* note 2.

10. National Environmental Policy Act of 1969, 42 U.S.C. § 4331(1) (1976) provides:

> The Congress recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of

to carry out this policy,[11] and also recognizes that each person should enjoy a healthful environment and have a corollary responsibility to contribute to the preservation of the environment.[12]

The remainder of the Act is devoted to implementation of the Act in a manner which incorporates consideration of environmental factors into the activities of an agency.[13] Essentially, the primary method of placing environmental considerations into the decision-making process of federal agencies is the preparation of an Environmental Impact Statement (EIS).[14] An EIS is intended to

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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.

Id.

11. 42 U.S.C. § 4331(b) (1976) provides:

In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end 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.

Id.

12. 42 U.S.C. § 4331(c) (1976) provides: "The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment." *Id.*

13. 42 U.S.C. § 4332(2) (1976) requires that federal agencies:

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

Id.

14. 42 U.S.C. § 4332(2)(c) (1976) requires that federal agencies:

include in every recommendation or report or proposals for legislation and other

insure that the policies and goals defined in NEPA are infused into the activities of the federal government.[15]

This important piece of legislation has been the subject of voluminous case law attempting to sort out the procedural and substantive aspects of NEPA.[16] In the past, the Supreme Court has taken the position that the judiciary's role in environmental litigation is limited to the procedural aspects of agency behavior under NEPA.[17] This approach set the stage for the Court's most recent decision in *Metropolitan Edison.*

III. *Metropolitan Edison Company v. People Against Nuclear Energy*

In *Metropolitan Edison,* Justice Rehnquist, writing for the Court, held that NEPA does not require the consideration of psychological health impacts resulting from the fear of an accident at a nuclear generating facility.[18] *Metropolitan Edison* arose as a result of an accident at the Three Mile Island nuclear power plant[19] on March 28, 1978, which damaged the second nuclear reactor unit (TMI-2), causing widespread anxiety and the evacuation of many area residents.[20] At the time of the accident, Three Mile Island

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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 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.

Id.

15. 40 C.F.R. 1502.1 (1982). Additionally, an EIS functions as a device by which more informed decisions can be made: "[An EIS] shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." *Id.*

16. *See* Yarrington, *Judicial Review of Substantive Agency Decisions: A Second Generation of Cases Under the National Environmental Policy Act,* 19 S.D.L. REV. 279 (1974).

17. *See supra* note 3. *See infra* notes 57-61 and accompanying text.

18. 103 S. Ct. at 1561-62. The decision was unanimous. A concurring opinion was filed by Justice Brennan. *Id.* at 1564 (Brennan, J., concurring).

19. Three Mile Island (TMI) is a two reactor nuclear power plant near Middletown, Pennsylvania. TMI is owned by Metropolitan Edison Co., Jersey Central Power and Light Co., and Pennsylvania Electric Co., subsidiaries of General Public Utilities Corp. Brief for Appellant at i, Metropolitan Edison Co. v. People Against Nuclear Energy, 103 S. Ct. 1556 (1983).

20. 103 S. Ct. at 1558.

Unit 1 (TMI-1) had been taken out of operation for refueling.[21] The Nuclear Regulatory Commission (NRC) ordered that TMI-1 remain out of operation until the NRC determined that TMI-1 could be operated safely.[22] Subsequent to the accident the NRC held extensive hearings pertaining to the reactivation of TMI-1, but refused to consider the potential psychological harm to neighboring residents and economic and social deterioration in surrounding communities that might result from the renewed operation of the undamaged TMI-1, limiting its inquiry to issues directly related to radiation exposure.[23]

People Against Nuclear Energy (PANE),[24] objected to the failure of the NRC to consider the impact of psychological stress and community well-being, and sought judicial review of the NRC's decision.[25] In response to PANE's petition, the Court of Appeals for the District of Columbia held that NEPA required the NRC to address the potential psychological health effects associated with stress resulting from the renewed operation of TMI-1.[26] The court of appeals determined that medically recognized psychological stress impacts were encompassed within the NEPA mandate for the protection of public "health."[27] Metropolitan Edison Co. ap-

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21. *Id.*

22. *Id.*

23. *Id.*

24. PANE is an association of neighbors of TMI opposed to further operation of the TMI facility. *Id.*

25. *Id.* The order and notice of hearing published by the NRC on August 9, 1979 stated: "While real and substantial concern attaches to issues such as psychological distress and others arising from the continuing impact of aspects of the Three Mile Island accident unrelated directly to exposure to radiation . . . the Commission has not determined whether such issues can be legally relevant to this proceeding." 10 NRC 148 (1979). Parties wishing to raise such issues were invited to submit briefs for consideration by the NRC Atomic Safety and Licensing Board. *Id.*

By vote of the NRC Commissioners, the NRC hearing regarding the restart of TMI was conducted without consideration of psychological distress and community deterioration issues. Also, the NRC staff excluded these issues from its environmental impact appraisal, which recommended that no environmental impact statement be prepared in connection with the proposed reactivation. People Against Nuclear Energy v. United States Regulatory Comm'n, 678 F.2d 222, 225 (D.C. Cir. 1982), *rev'd*, 103 S. Ct. 1556 (1983).

26. 678 F.2d at 225-26 (D.C. Cir. 1982). *See also* 103 S. Ct. at 1559.

27. 678 F.2d at 227-28. The court relied on the language of NEPA which requires that each agency utilize a "systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts." 42 U.S.C. § 4332(2)(A) (1982). Additionally, the court cited Chelsea Neighborhood Ass'ns v. United States Postal Serv., 516 F.2d 378 (2d Cir. 1975), which considered the applicability of NEPA to considerations of emotional and physical isolation stemming from occupancy of a high-rise apartment building. The court stated that a NEPA-mandated environmental impact analysis "must consider these human factors." *Id.* at 388.

pealed,[28] and the Supreme Court reversed.[29]

The Supreme Court reached its decision in *Metropolitan Edison* by formulating a standard for determining which impacts are cognizable "environmental effects" under NEPA based upon the Court's interpretation of the purpose of the NEPA legislation.[30] The Court first examined the basic mandate contained in section 102 of NEPA which requires that an agency evaluate the environmental impacts and the unavoidable adverse environmental effects of any proposal significantly affecting the quality of the human environment.[31] The Court rejected an overbroad definition of "adverse environmental effects" and determined that the NEPA mandate is limited to adverse effects on only the physical environment,[32] rather than allowing NEPA to extend to assessment of every conceivable impact or effect of a proposed action, no matter how remote that impact may be.[33] The broad language contained in NEPA regarding the health and welfare of man, according to the Court, is a statement of the goals of NEPA to be achieved through the protection of the physical environment and is not a statement of the scope of the environmental assessment required by NEPA.[34]

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28. Certiorari was granted at 103 S. Ct. 292 (1982).

29. 103 S. Ct. 1556, 1558 (1983).

30. *See generally* 103 S. Ct. at 1560-62. *See infra* notes 35-36 and accompanying text.

31. 103 S. Ct. at 1560. National Environmental Policy Act of 1969 § 102(c), 42 U.S.C. § 4332(c) (1976), directs all federal agencies to:

> 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 —
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> (i) the environmental impact of the proposed action, (and)
>
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented. . . .

Id.

32. 103 S. Ct. at 1560. In support of this interpretation the Court refers to the Conference Report of two principal sponsors of NEPA which indicates that NEPA addresses "damage to the air, land, and water which support life on earth" and that NEPA will "preserve and enhance our air, aquatic, and terrestrial environments. . . ." *Id. See* 115 CONG. REC. 40,416 (1969) and 115 CONG. REC. 40,924 (1969).

33. 103 S. Ct. at 1560.

34. *Id.* As an example, the Court referred to National Environmental Policy Act of 1969, § 2, 42 U.S.C. § 4321 (1976) which provides:

> The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

Id. Other sections contain similarly broad language. The National Environmental Policy Act

Based upon this interpretation, that NEPA is limited to protection of the physical environment, the Court then formulated a standard for determining which environmental effects fall within the scope of NEPA. The standard set forth by the Court requires that the terms "environmental effect" and "environmental impact" encompass only those effects having a reasonably close causal relationship to the physical environment.[35] As a result, if a harm is too remote from the physical environment, it is not to be assessed as an environmental impact under NEPA.[36]

As an example of the application of this standard, the Court presented a hypothetical situation in which the Department of Health and Human Services created very stringent requirements for hospitals receiving federal funds.[37] As a result of this action, many hospitals might be forced to close down, causing a shortage of health care facilities resulting in health damage to ill people unable to receive treatment.[38] The Court indicated that NEPA would not require an environmental impact analysis evaluating the health damage because the health damage would not be proximately related to a change in the physical environment.[39]

The Court applied the "proximate cause" standard in a similar fashion to the situation presented in *Metropolitan Edison.* The Court first identified the causal chain between the effect complained of[40] and the resultant change in the physical environment.[41]

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of 1969 § 101(c), 42 U.S.C. § 4331(c) (1976) provides that "each person should enjoy a healthful environment." The National Environmental Policy Act of 1969 § 101(b), 42 U.S.C. § 4331(b) states that "it is the continuing responsibility of the Federal Government to . . . (2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings." *Id.*

35. 103 S. Ct. at 1561. The Court analogized this standard to the tort doctrine of proximate cause. *Id. See* W. PROSSER, LAW OF TORTS ch. 7 (4th ed. 1971).

36. 103 S. Ct. at 1560-61. "[C]ourts must look to the underlying policies or legislative intent in order to draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not." *Id.* at 1561 n.7. *See also* United States v. Dow, 357 U.S. 17, 25 (1958), in which the Court stated: "we cannot attribute to Congress the intention to . . . open the door to such obvious incongruities and undesirable possibilities."

37. 103 S. Ct. at 1561.

38. *Id.*

39. *Id.*

40. The effect at issue is the renewed operation of the undamaged nuclear reactor. 103 S. Ct. at 1561.

41. The physical effect complained of is the psychological health damage stemming from the fear of a nuclear accident. Brief for Respondent at 23, Metropolitan Edison Co. v. People Against Nuclear Energy, 103 S. Ct. 1556 (1983). *See* 103 S. Ct. at 1561.

The chain constructed by the Court was as follows: reactivation of the nuclear generator will create a risk of nuclear accident which will be perceived by PANE's members which will cause psychological health damage.[42] The elements of risk of an accident and the perception of that risk are middle links in the causal chain identified by the Court.[43] The presence of those middle links made the harm too remote from the environment to require a NEPA evaluation of psychological health damage caused by renewed operation of TMI-1.[44] Therefore, the Court found that contentions of psychological health damage caused by risk of an accident are not within the contemplation of NEPA.[45]

After formulating the standard by which the scope of NEPA is limited, the Court discussed the purpose of NEPA in its role as part of the general scheme of governmental regulation. The Court advanced as the central purpose of NEPA the balancing of the value of technological advances against the resulting alterations of the physical environment. The Court stated that in order for this mission to remain manageable, NEPA must be interpreted to exclude consideration of these broader policy issues.[46] The Court directed that agency resources be devoted to the consideration of protection of the physical environment as it relates to the assigned function of that agency and not to the consideration of the broader policy questions regarding whether the achievements brought forth through a given technological advance are worth the perceived risks.[47] The result in this particular case was that the general debate concerning the desirability of nuclear power generation is not to be held in the context of environmental assessment under NEPA.[48] Consequently, the Court excluded NEPA as a means for

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42. 103 S. Ct. at 1561-62. The Court noted PANE's contention that psychological health damage will flow directly from the risk of an accident, but asserted that risk itself cannot be a physical effect because "risk is, by definition, unrealized in the physical world." *Id.* at 1562.

43. *Id.* "In a causal chain from renewed operation of TMI-1 to psychological health damage, the element of risk and its perception by PANE's members are necessary middle links." *Id.*

44. *Id.* "We believe that the element of risk lengthens the causal chain beyond the reach of NEPA." *Id.*

45. *Id.* at 1561.

46. *Id.* at 1562. "Time and resources are simply too limited for us to believe that Congress intended to extend NEPA as far as the Court of Appeals has taken it." *Id.*

47. *Id.* "If contentions of psychological health damage caused by risk were cognizable under NEPA, agencies would, at the very least, be obliged to expend considerable resources developing psychiatric expertise that is not otherwise relevant to their congressionally assigned functions." *Id.*

48. *Id.* The Court noted that PANE's original contention in this case seemed to ad-

voicing general policy objections to a federal action and left these broad policy questions to the political process.[49]

IV. *Metropolitan Edison* AND THE SUPREME COURT PERSPECTIVE ON ENVIRONMENTAL PROTECTION

The exclusion from NEPA consideration of harms too remote from the physical environment as provided by the Supreme Court in *Metropolitan Edison* is entirely consistent with the Court's previous approach, found in *Vermont Yankee Nuclear Power Corp. v. Natural Resource Defense Council, Inc.*[50] The *Vermont Yankee* controversy concerned the court's role in reviewing an agency's internal decision-making process. The dispute centered around the sufficiency of the administrative procedures promulgated by the Atomic Energy Commission to be followed in connection with the preparation of NEPA mandated environmental impact statements for the licensing of a nuclear generating facility.[51] The Supreme Court, in an opinion by Justice Rehnquist, held that the lower court overstepped its bounds in dictating the procedure to be followed by an agency in conducting substantive review of the environmental consequences of its actions.[52] This decision cautioned the courts against interference with an agency's substantive decision-making process by imposing judicially created procedural requirements upon the agencies.[53] The general theme of the decision was judicial restraint.[54] Although the decision in *Vermont Yankee* is more concerned with interference by the courts in procedural matters of federal agencies,[55] there is a tangential relationship to

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dress the broader question of the desirability of continued nuclear power generation at the TMI facility as much as it addressed the risk of an accident. *Id.* at 1563 n.12. For example, PANE contended that "operation of [TMI-1] would be a constant reminder of the terror which [local residents] felt during the accident, and of the possibility that it will happen again. The distress caused by this ever present spectre of disaster makes it impossible . . . to operate TMI-1 without endangering the public health and safety." 103 S. Ct. at 1562 n.2, quoting Brief for Respondent, Metropolitan Edison Co. v. People Against Nuclear Energy, 103 S. Ct. 1556 (1983).

49. 103 S. Ct. at 1563. "Neither the language nor the history of NEPA suggest that it was intended to give citizens a general opportunity to air their policy objections to proposed federal actions." *Id.*

50. 435 U.S. 519 (1978).

51. *Id.* at 525.

52. *Id.* at 555.

53. *Id.* at 541-42.

54. *Id.* at 557-58. *See* Breyer, *Vermont Yankee and the Courts' Role in the Nuclear Energy Controversy*, 91 HARV. L. REV. 1833 (1978).

55. *Id.* at 524. *See* Wright v. Califano, 587 F.2d 345, 352 (7th Cir. 1978). *See also* 9 ENVTL. L. 653, 660-61.

Metropolitan Edison in that *Vermont Yankee* is indicative of the mood of the Court with respect to the judicial role in environmental protection.[56]

In this regard, *Vermont Yankee* can be considered the leading case limiting the role of the judiciary in environmental regulation.[57] The opinion of the Court in *Vermont Yankee* specifically indicated that courts are to play a limited role in the review process established by Congress in its choice to develop nuclear energy.[58] The Court stated that the judiciary is not to substitute its own judgment for that of an agency in the area of the environmental consequences of agency actions, and cannot interject itself into discretionary areas as to the choosing of the course of action to be taken.[59] The *Vermont Yankee* Court concluded that administrative decisions should not be set aside simply because the court is unhappy with the result reached,[60] and that fundamental policy questions appropriately resolved by the legislature are not subject to reexamination in the courts under the guise of judicial review of agency action.[61]

The *Metropolitan Edison* decision was simply the next step in a natural evolution of the previous cases concerning environmental

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56. *See* 10 ENVTL. REV. 643 (1980), identifying and charting the trend of the Supreme Court toward minimizing the substantive influence of NEPA in federal agency decision-making. *See supra* note 3.

The most recent Supreme Court decision in the area prior to *Metropolitan Edison* was Strycker's Bay Neighborhood Council v. Karlen, 444 U.S. 223 (1980). The controversy in *Strycker's Bay* centered around a decision by the Secretary of Housing and Urban Development (HUD) to redesignate a proposed housing site for a greater number of low income units. The Court, in a per curiam opinion, held that since HUD had prepared an EIS considering the environmental consequences of the proposed action as required by NEPA, it had fulfilled its duties under NEPA. The Court reiterated the position taken in *Vermont Yankee* that NEPA, while establishing "significant substantive goals for the Nation," imposes upon agencies duties that are "essentially procedural." 444 U.S. at 227 (quoting 435 U.S. at 558). This decision has been interpreted as reducing NEPA to a procedural obstacle in the path of agency action. *See* 10 ENVTL. L. at 654. *See also* Gray, *NEPA: Waiting for the Other Shoe to Drop*, 55 CHI.-KENT L. REV. 361 (1979); Comment, *supra* note 2.

57. *See supra* note 56.

58. 435 U.S. at 555. This position was taken from dicta in Kleppe v. Sierra Club, 427 U.S. 390 (1976). "Neither the statute nor its legislative history contemplates that a court should substitute its judgment for that of the agency as to the environmental consequences of its actions. The only role for a court is to insure that the agency has taken a 'hard look' at environmental consequences." 427 U.S. at 410 n.21. The question in *Kleppe* was whether NEPA required the Department of the Interior to prepare an EIS for a coal mining project. The Court held that no EIS was required in the absence of a proposal. *Id. See* 10 ENVTL. L. 643, 645 (1980).

59. 435 U.S. at 555. *See supra* note 58.

60. 435 U.S. at 558.

61. *Id.*

protection.[62] The *Metropolitan Edison* Court used the policy decisions enunciated in *Vermont Yankee* to formulate a working standard for identifying "environmental effects" within the contemplation of NEPA. The standard requiring a reasonably close causal relationship between a change in the physical environment and the effect at issue[63] results in a limitation of NEPA to assessment only of effects on the physical environment.[64] By limiting NEPA's focus in this manner, the Court has determined that NEPA cannot be used as a means of resolving policy disagreements under the guise of assessment of risks associated with technological advances.[65] Consequently, fears or disagreements concerning a project which may lead to psychological stress are not to be assessed under NEPA but remain a subject for the political forum.[66] In closing the door of NEPA as a means of deciding general policy questions, the Court was furthering its *Vermont Yankee* declaration that fundamental policy questions are appropriately resolved in Congress and that Congress has made a choice in favor of nuclear energy, with the courts playing a limited role in the review process.[67] Through the *Metropolitan Edison* decision, the Court has reinforced its approach as originally presented in *Vermont Yankee* that if the decision to develop nuclear energy should be proven wrong, it is Congress, not the judiciary, which must eventually make that decision.[68]

V. Conclusion

Although the treatment given to environmental litigation by the Supreme Court is often criticized as hostile to substantive environ-

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62. *See supra* notes 3 and 56.

63. 103 S. Ct. at 1561. *See supra* notes 35-39 and accompanying text.

64. 103 S. Ct. at 1560. *See supra* note 40-45 and accompanying text.

65. 103 S. Ct. at 1562. *See supra* notes 46-49 and accompanying text.

66. 103 S. Ct. at 1563. *See supra* note 49 and accompanying text.

67. 435 U.S. at 558. *See* Breyer, *supra* note 54, at 1845.

68. 435 U.S. at 558. Justice Rehnquist, speaking for the Court in *Vermont Yankee*, specifically stated that:

> Nuclear energy may some day be a cheap, safe source of power or it may not. But Congress has made a choice to at least try nuclear energy, establishing a reasonable review process in which courts are to play only a limited role. The fundamental policy questions appropriately resolved in Congress and in the state legislatures are *not* subject to reexamination in the federal courts under the guise of judicial review of agency action. Time may prove wrong the decision to develop nuclear energy, but it is Congress or the States within their appropriate agencies which must eventually make that judgment. In the meantime courts should perform their appointed function.

Id. at 557-58 (emphasis in original).

mental protection,[69] the *Metropolitan Edison* decision greatly strengthens the substantive impact of NEPA. The *Metropolitan Edison* decision accomplishes this by clearly defining NEPA's objective as the protection of the health and welfare of man through the protection of the physical environment.[70] By limiting NEPA's scope to the protection of the physical environment rather than including within its realm the broad policy issues behind the environmental impact,[71] the Court has limited NEPA to that which it was intended to protect. Consequently, federal agencies conducting environmental assessments must focus on this narrow issue and are not required to expend their limited resources of time, money and expertise on consideration of the broad policy issues behind the activity in question.[72]

The *Metropolitan Edison* decision imposes a standard which limits NEPA consideration to those effects having a reasonably close relationship to the physical environment. By protecting the physical environment, NEPA's objective of the protection of human health and welfare can be achieved. The *Vermont Yankee* declaration that fundamental policy decisions must be made in the political forum is also furthered by the elimination of NEPA as a means of analyzing the underlying policies leading to activities having an effect on the physical environment. The final result is that by leaving policy questions to the political process, NEPA's resources can be channelled to the protection of the physical environment. In this manner, the limitations imposed by the Supreme Court will promote the best interests of environmental protection.

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69. *See* Gray, *supra* note 56, at 367; *see also* 10 ENVTL. L. 643, 654 (1980).
70. *See supra* note 32-34 and accompanying text.
71. *See supra* notes 64-66 and accompanying text.
72. *See supra* notes 46-49 and accompanying text.