

**The National Environmental Policy Act, Cases & Materials.** NEIL ORLOFF & GEORGE BROOKS. The Bureau of National Affairs, Washington, D.C., 1980. Pp. v, 515.

A book written specifically about the National Environmental Policy Act (NEPA)<sup>1</sup> to be used as a law school text is a valuable addition to the literature of the field. A book about NEPA which is also of value to practicing lawyers is certainly a welcome surprise. That is what I find this book to be. After a decade of development in the area of environmental law, usable material is now appearing which focuses more in depth on particular aspects of the field rather than on the entire field. The authors have successfully tailored the textual material to serve both law students and practicing lawyers, which is a difficult feat in a field of law so broad and fragmented as is the law of the environment. The book is primarily a text to be used in law school. However, because it contains a balanced approach and much well selected case law and explanatory notes, the general practitioner will find the book a rich reference source.

NEPA is a watershed in American legal development. Never was this metaphor so aptly applied because the enactment of NEPA in 1970 marked the point at which the United States recognized the finiteness of its natural resources and its obligation to preserve them for the future. NEPA emerged from a milieu of awakened awareness of the natural environment. The years of the sixties produced a group of pollution control acts in various disparate areas such as air, water and toxic additives. Enacted in 1970, NEPA was the central unifying statute which drew together the programmatic acts into an integrated protection scheme and forced the federal government to carry out the enunciated policy of protecting the natural environment.

In the introduction the authors state that

NEPA is the most versatile and well known of the major environmental statutes passed by Congress in the 1970's. . . . NEPA is also the most fully developed of the major modern environmental statutes. It has been in operation for the longest period of time; and there are probably more judicial decisions construing NEPA than have been rendered for all the other major environmental statutes combined. Thus, the study of NEPA provides a broad introduction to the field of environmental law.<sup>2</sup>

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<sup>1</sup> 42 U.S.C. §§ 4321 to 4347 (1976).

<sup>2</sup> N. ORLOFF & G. BROOKS, *THE NATIONAL ENVIRONMENTAL POLICY ACT, CASES & MATERIALS* (1980).

NEPA has three significant parts. The first is a statement of a national policy for protection of the natural environment.<sup>3</sup> The second contains action-forcing language which speaks to federal administrative agencies and directs them to prepare an environmental impact statement for every "major project significantly affecting the human environment."<sup>4</sup> The third concerns the Council on Environmental Quality.<sup>5</sup> Created by NEPA, the council consists of three members nominated and confirmed by the Senate and is organizationally comparable to such agencies as the Council of Economic Advisors or the Office of Management and Budget. The council's "clout arises in large measure from its proximity to, and, inferentially, its perceived ability to influence, the President."<sup>6</sup>

NEPA is a young and pervasive statute. There is a dearth of literature attempting to define its parameters or analyze its depth for law students and practicing lawyers. To the best of my knowledge, no other book has been written for law students which focuses entirely on the Act. The authors believe that the field of environmental law is simply too large and fragmented to sample all of its parts in one semester.<sup>7</sup> Accordingly, the book is not exhaustive. But the skill and economy the authors have used in choosing the material makes it a well balanced presentation of a subject almost hopelessly diversified and, because of its youth, constantly changing.

At the schools where the book has been used—George Washington University Law School, Arizona State Law School and Cornell University Law School—it was used for the first half of a three credit course. The format is first, introductory text material; second, a hypothetical problem; and, third, several cases covering the area with detailed notes and questions. This allows the law professor and students a broad array of approaches to a particular problem and provides practicing lawyers with a taste of NEPA's diversity and complexity.

In the opening pages, NEPA is set out in its entirety and serves as a basic tool at a crucial beginning point. A particularly interesting review of the Act's legislative history is also included at this early stage. Reference to the unusual beginnings of the Act and its progress through Congress include the fact that it was in large part drafted by Dr. Lynton K. Caldwell, professor of government at In-

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<sup>3</sup> *Id.* at 17.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 19, 40.

<sup>6</sup> *Id.* at 40.

<sup>7</sup> *Id.* at 19, 40.

diana University. Another interesting comment is that of Theodore Lowi, another professor of government, who declares that, ". . .there is no law to be found anywhere in the act."<sup>8</sup> The text describes in detail the Council on Environmental Quality (CEQ) and the Environmental Protection Agency (EPA) as they have grown to be in the past decade and their roles in the development of NEPA.

Chapter 4, 5, and 6 have to do with the when, who, and what of an Environmental Impact Statement. Chapter 7 reviews attempts which have been made under NEPA to challenge substantive decisions of the federal agencies covered by NEPA. Judicial review of agency decisions has been broadened considerably in environment cases, and these cases now constitute a significant portion of the field of administrative law. Cases concerning NEPA have provoked much controversy in the areas of availability and scope of judicial review. Some of these cases are included and discussed.

Chapter 8 deals with the very complex problem of coordinating the requirements of NEPA with a federal agency's other mandates. Chapter 9 is an evaluation of NEPA in operation, based on a case study of Savannah, Georgia and its pollution problems centering around American Cyanamid's Ocean Dumping Proposal. "A Final Note" summarizes NEPA's implementation by the Congress, the Courts, the Executive Branch, and the public. "A Final Word" sets out two purposes which the authors sought to accomplish. First, they have "assembled materials that are relevant to understanding NEPA either because they are important in the historical development of the statute or because they are representative of some aspect of its interpretation or implementation."<sup>9</sup> Second, they have "tried to furnish a perspective on the Act, largely through repeated reference to the process of NEPA's emergence and growth and to the entities and influences bearing on that process."<sup>10</sup>

The authors have accomplished these purposes and have produced a book of value to law students, law teachers, and lawyers who want to understand better the National Environmental Policy Act.

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 429.

<sup>10</sup> *Id.*

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