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A National Policy for the Environment – NEPA and Its Aftermath

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clusion, however, is that the federal government will make and enforce those laws only upon our demand.

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A NATIONAL POLICY FOR THE ENVIRONMENT—NEPA AND ITS AFTERMATH. By Richard A. Liroff. Bloomington: Indiana University Press, 1976. Pp. 273. $10.00.

When Congress passed the National Environmental Policy Act (NEPA), it declared a national policy for the environment and delegated the implementation of that policy to federal agencies. *A National Policy for the Environment* traces the development of NEPA from its passage in 1969 to approximately 1973, analyzes the reasons for its broad scope, and describes the struggle it engendered between environmentalists and federal agency administrators, with the courts often acting as referees. Richard Liroff, a Project Associate for the Environmental Law Institute, concludes that Congress failed to anticipate the full implications of NEPA's broad policy statement, and that the agencies' attempts to implement that policy, whether willing or reluctant, produced a variety of unforeseen results.

To explain the reasons for such a broadly worded statute, the author traces NEPA's legislative history in conference and on the floor of Congress. By the late 1960's, public concern for the environment was evident, and Congress was prepared to respond with increased federal environmental protection. There was, however, hesitation and disagreement over the proper means. Certain legislators were reluctant to enact a law which would alter the effectivenss of existing programs. Senators Jackson and Muskie, the main proponents of NEPA, agreed on the need for a national environmental protection policy but disagreed over the manner in which the policy should be implemented. Mr. Liroff suggests that while most members of Congress realized the importance of an environmental protection statute, a specific and detailed law would never have pleased all the interest groups; thus, compromise spawned NEPA's broad, "almost constitutional" nature.

The ease with which NEPA made its way through the Senate and the House underscores the inability of Congress to foresee the stat-

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ute's long-term implications. The controversial § 102 of Title I, the provision which requires federal agencies to prepare environmental impact statements for any project having a significant effect on the environment, was in Senator Jackson's original proposal and never met any serious opposition. In *A National Policy for the Environment,* the author details the machinations of NEPA's promoters when Representative Wayne Aspinall objected to the potentially compromising effects of § 102. The changes made in the language of the statute in response to these objections did nothing to limit its effectiveness. In fact, the new language—"to the fullest extent possible"—may have expanded the statute's sweep, for it allowed the interpretation that an agency must comply with the § 102 requirements unless its authorization specifically excluded such compliance.

Mr. Liroff uses Title II of NEPA to demonstrate how a broad general statute can undermine the effectiveness of any policy coordination. Title II established the Council on Environmental Quality (CEQ) which operates within the executive branch as an overseer of agency compliance with NEPA. Because its enabling provisions were vague, the CEQ developed role-conflict problems. The function of an overseer is to protect the interests of, and to identify any problems for, the person or group it represents. NEPA, unfortunately, did not clarify whose interests the CEQ was to represent. The CEQ chose to function primarily as a presidential advisor on environmental matters, rather than as a source of public information on the environmental impact of government projects. This role did not develop satisfactorily because for the first few years the CEQ had only limited access to the President. Conflicts also developed with economists who had different interests to protect and who, because of the steadily worsening economic situation in the early 1970's, generally prevailed in the struggle for influence with the executive branch.

As overseer, no matter whom it represents, the CEQ has been the target of criticism. Initially, it issued guidelines for agency compliance and memos reviewing pertinent court decisions. Although not statutorily mandated to do so, the CEQ also developed a review procedure for examining impact statements to determine whether the guidelines had been met. The author faults this review procedure both for its informal attitude towards agency compliance and for its policy of refraining from public criticism of agency nonfeasance.

Since environmental protection was to be accomplished by the sum of federal agency responses to a statutory statement of policy, Mr. Liroff examines the decision-making process of a federal agency to determine if and how that process has been affected by NEPA. Liroff found that the primary shift in agency focus was in response to what he terms NEPA's demand that "parochial, incremental decision-making schemas"[1] be replaced by broad environmental goals. Because the methods to reach these goals were never specified, agency response was varied. The author cites the Army Corps of Engineers, an agency traditionally conceived of as oblivious to the environmental consequences of its projects, as a model of compliance. Although compliance in this instance may have been partly in response to the many suits brought against Corps projects by environmentalists, the result, nevertheless, was compliance with NEPA.

Unfortunately, most agencies have not been as willing to change. Under § 103 of Title I, agencies are required to review their policies and statutory mandates to determine whether environmental considerations have been overlooked. According to Mr. Liroff, very few agencies have done so. Moreover, many agencies have responded poorly to the requirement of filing impact statements. Some agencies have reacted by filing too many impact statements for the purposes of clogging the review process or of protecting themselves in the event of a lawsuit. Other agencies, such as the Bureau of Reclamation, have been indifferent to either the quality or accuracy of their statements. Surprisingly, Mr. Liroff concludes that agencies which were involved in environmental matters prior to NEPA's enactment have demonstrated the slowest and most incomplete compliance. He suggests that these agencies may consider themselves so in tune with NEPA policy that they feel little need to fulfill procedural requirements.

A National Policy for the Environment also traces the more litigious aspects of NEPA's adoption. When agencies did not fulfill the mandate prescribed by NEPA, environmentalists enlisted the aid of the federal courts. Initially, this alliance was very successful. In 1971 and 1972, the federal courts, and particularly the District Court for the District of Columbia, enjoined many projects pending a full examination of the environmental impacts. Analysis of these cases

[1] R. LIROFF, A NATIONAL POLICY FOR THE ENVIRONMENT—NEPA AND ITS AFTERMATH 81 (1976).

demonstrates how the courts, rather than the CEQ, functioned as overseers of the agencies. The courts determined which actions by federal agencies required impact statements and what these statements should contain. Once the agencies adjusted their procedures to reflect the early court decisions, the question became not whether to comply but how effective was the compliance. As the CEQ became less insular and the agencies more responsive, the courts became more restrained in their criticism of agency inaction.

Mr. Liroff's study is an authoritative analysis of the first years of NEPA's existence, and his thesis that Congress enacted a statute which was well timed but impossible to implement uniformly is certainly supportable from the evidence. If the work has any fault, it is that the time frame of the study seems unclear. Mr. Liroff has confined himself to the four years following NEPA's enactment. Although this is a valuable study of a period of complicated policy and goal reassessment, the book's time span should be made clear at the outset. For instance, after a lengthy discussion of fee-shifting in the Alaska Pipeline case,[2] there is only the briefest mention of the Supreme Court reversal on this point.[3] Despite this criticism, *A National Policy for the Environment* should prove a worthwhile book for those interested in the development of environmental protection in this country.

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[2] Wilderness Society v. Morton, 495 F.2d 1026 (D.C. Cir. 1974).

[3] Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240 (1975). For a detailed discussion of fee-shifting and the *Alyeska* decision, see Comment, *Defrosting the Alyeska Chill: The Future of Attorneys' Fees Awards in Environmental Litigation*, 5 ENV. AFF. 297 (1976).

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