

## NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

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If we can send men to the moon, we can clean our rivers and lakes, and if we can transmit television pictures from another planet, we can monitor and improve the quality of the air our children breathe and the open spaces they play in.

The needs and the aspirations of future generations make it our duty to build a sound and operable foundation of national objectives for the management of our resources for our children and their children. The future of succeeding generations in this country is in our hands. It will be shaped by the choices we make. We will not, and they cannot escape the consequences of our choices.<sup>1</sup>

This statement was made by Senator Jackson in support of the passage of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969<sup>2</sup> which was signed by the President on January 1, 1970.<sup>3</sup> Senator Jackson, the sponsor of the bill in the Senate, described the Act as "the most important and far-reaching environmental and conservation measure ever enacted by the Congress."<sup>4</sup>

The most important effect of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 is that it provides "all agencies and all Federal officials with a legislative mandate and a responsibility to consider the consequences of their actions on the environment."<sup>5</sup> Other provisions of less long range importance are the requirements that the President transmit an annual Environmental Quality Report to Congress,<sup>6</sup> and the establishment of a Council on Environmental Quality within the Executive Office of the President to advise the

- 1 115 Cong Rec S 17452 (daily ed. Dec. 20, 1969).
- 2 42 USC § 4321 *et seq.* (Supp. 1970).
- 3 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Jan. 5, 1970,  
at 11.
- 4 115 Cong Rec S 17451 (daily ed. Dec. 20, 1969).
- 5 S REP No. 296, 91st Cong., 1st Sess. 14 (1969).
- 6 42 USC § 4341 (Supp. 1970).

President on environmental questions.<sup>7</sup> The purposes of the Act are stated to be:

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.<sup>8</sup>

Congress enacted this Act because of a belief that the policies and programs of the federal government, traditionally designed "to enhance the production of goods and to increase the gross national product,"<sup>9</sup> were not designed to avoid environmental degradation and decay.<sup>10</sup>

The NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 is a synthesis by a conference committee,<sup>11</sup> of bills introduced in the Senate by Senator Jackson,<sup>12</sup> and in the House by Congressman Dingell.<sup>13</sup> Hearings on S. 1075 and two similar bills introduced by Senators Nelson,<sup>14</sup> and McGovern,<sup>15</sup> were held before the Committee on Interior and Insular Affairs on April 16, 1969.<sup>16</sup>

S. 1075, after substantial amendment by the committee, was reported to the Senate, where the bill, as amended by the committee, was adopted on July 10, 1969.<sup>17</sup>

The Subcommittee on Fisheries and Wildlife Conservation of the House Committee on Merchant Marine and Fisheries held hear-

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<sup>7</sup> 42 USC §§ 4332-4346 (Supp. 1970).

<sup>8</sup> 42 USC § 4321 (Supp. 1970).

<sup>9</sup> S REP No. 296, 91st Cong., 1st Sess. 5 (1969).

<sup>10</sup> *Id.* at 4-5.

<sup>11</sup> CON REP No. 765, 91st Cong., 1st Sess. (1969).

<sup>12</sup> S 1075, 91st Cong., 1st Sess. (1969).

<sup>13</sup> H R 6750, 91st Cong., 1st Sess. (1969).

<sup>14</sup> S 1752, 91st Cong., 1st Sess. (1969).

<sup>15</sup> S 237, 91st Cong., 1st Sess. (1969).

<sup>16</sup> S REP 296, 91st Cong., 1st Sess. 10-11 (1969).

<sup>17</sup> 115 Cong Rec S 7819 (daily ed. July 10, 1969).

ings on H.R. 6750 and similar bills introduced subsequently.<sup>18</sup> At the conclusion of these hearings, the subcommittee unanimously reported a new bill<sup>19</sup> to the full committee.<sup>20</sup>

The new bill, which was in essence H.R.6750, with amendments, was introduced into the House of Representatives by Congressman Dingell and coauthored by other members of the subcommittee. After extensive debate, the House of Representatives passed the bill, with amendments, on September 23, 1969.<sup>21</sup> The House on the same day voted to amend S. 1075 by striking out all after the enacting clause and inserting in lieu thereof the provisions of H.R. 12549 as passed.<sup>22</sup> The House requested a conference with the Senate, insisting on its amendments. The Senate, after insistence by Senator Jackson that the Senate disagree to the amendments of the House of Representatives to S. 1075,<sup>23</sup> did disagree to the amendment by the House of S. 1075, and agreed to the request of the House for a conference. The compromise bill agreed to by the conference committee<sup>24</sup> was accepted by the Senate on December 20, 1969,<sup>25</sup> and by the House on December 23, 1969.<sup>26</sup> Sections 2, 101, 102, 103, 104, and 105,<sup>27</sup> are based on S. 1075 as passed, there being no similar provisions in H.R. 12549, as passed.<sup>28</sup> The remaining sections of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 are based primarily on H.R. 12549 as passed.<sup>29</sup> Section 101 of the Act recognizes the substantial effects of man's activities on "the interrelations of all components of the natural environment \*\*\* and \*\*\* the critical importance of restoring and maintaining en-

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<sup>18</sup> These hearings were held on May 7 and 26 and on June 13, 20, 23, 26, and 27, 1969. H R REP No. 378, 91st Cong., 1st Sess. 2 (1969).

<sup>19</sup> H R 12549, 91st Cong., 1st Sess. (1969).

<sup>20</sup> H R REP No. 378, 91st Cong., 1st Sess. 2 (1969).

<sup>21</sup> 115 Cong Rec H 8266-H 8285 (daily ed. Sept. 23, 1969).

<sup>22</sup> *Id.* at H 8286.

<sup>23</sup> 115 Cong Rec S 12124-S 12145 (daily ed. Oct. 8, 1969).

<sup>24</sup> CON REP No. 765, 91st Cong., 1st Sess. (1969).

<sup>25</sup> 115 Cong Rec S 17462 (daily ed. Dec. 20, 1969).

<sup>26</sup> 115 Cong Rec H 13096 (daily ed. Dec. 23, 1969).

<sup>27</sup> 42 USC §§ 4321, 4331-4335 (Supp.1970).

<sup>28</sup> CON REP No. 765, 91st Cong., 1st Sess. 7-10 (1969).

<sup>29</sup> *Id.*, at 11-12.

vironmental quality to the overall welfare and development \*\*\*<sup>30</sup>  
To this end, the national policy of the federal government under the Act is, in cooperation with state and local governments and 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.<sup>31</sup>

Section 101 of the Act is a Congressional declaration of a national environmental policy. This national policy is predicated upon legislative recognition of the dependence of man on his natural environment for material goods and cultural enrichment. This national policy reflects "the increasing pressures exerted upon the environment as a result of population growth, urbanization, industrial expansion, resource exploitation, and technological development."<sup>32</sup>

In furtherance of this national environmental policy established by section 101(a) of the Act, Congress declared that

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;

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<sup>30</sup> 42 USC § 4331 (Supp. 1970).

<sup>31</sup> 42 USC § 4331(a) (Supp 1970).

<sup>32</sup> S REP No. 296, 91st Cong., 1st Sess. 17 (1969).

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.<sup>33</sup>

Section 101(b)(1) is a recognition of the responsibility of each generation to enhance and maintain to the greatest extent possible the quality of the environment for the benefit of future generations. Congress has made it the duty of the federal government under section 101(b)(2), through its planning and programs, to strive to protect the quality of the environment and to plan, design, and construct projects in order to protect and enhance every American's habitat. "Each individual should be assured of safe, healthful and productive surroundings in which to live and work and should be afforded the maximum possible opportunity to derive physical, esthetic, and cultural satisfaction from his environs."<sup>34</sup>

Because this nation's natural resources must support larger populations in the future, the federal government must use these resources in the widest and most efficient manner. "In seeking intensified beneficial utilization of the earth's resources, the Federal Government must take care to avoid degradation and misuse of resources, risk to man's continued health and safety, and other undesirable and unintended consequences."<sup>35</sup> Though federal programs previously enacted are designed to preserve important aspects of our national heritage, "many are single-purpose in nature and most are viewed as being within the province of a particular agency of Government."<sup>36</sup> Section 101(b)(3) was regarded by the Senate Committee on Interior and Insular Affairs as making "clear that all agencies, in all of their activities, are to carry out their programs with a full appreciation of the importance of maintaining important aspects of our national heritage."<sup>37</sup>

The Senate Interior and Insular Affairs Committee regarded the maintenance of a natural environment providing "the widest

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<sup>33</sup> 42 USC § 4331(b) (Supp 1970).

<sup>34</sup> S REP NO. 296, 91st Cong., 1st Sess. 13 (1969).

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

possible opportunities for diversity of experience and choice in cultural pursuits, in recreational endeavors, in esthetics and in living styles" as "an important aspect of national environmental policy."<sup>38</sup> Section 101(b)(5) is a recognition by Congress that uncontrolled magnitude and distribution of population underlies many of this nation's environmental and resource problems.

To insure that high standards of living are made available to all citizens and that Americans obtain esthetic enjoyment from a quality environment, the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 intends that "the Federal Government must strive to maintain magnitude and distribution of population which will not exceed the environment's capability to provide such benefits."<sup>39</sup> By section 101(b)(5) Congress has thus implied that the rights of underprivileged American citizens to a high standard of living should not be sacrificed as a result of the national environmental policy to protect the environment. The intent of Congress under section 101(b)(6) is that the efforts of the federal government to protect and improve renewable resources such as air and water be continued and intensified. Through technology, and, if necessary, federal regulation the recycling or depletable resources such as fiber, chemicals, and metallic minerals must be made more effective.<sup>40</sup>

Congress has also recognized, under section 101(c), 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."<sup>41</sup> The Senate version of the Act originally provided: "The Congress recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment."<sup>42</sup> The conference committee changed the language of section 101(c) to its present form.

The managers of the bill in the House of Representatives stated that the language of the Senate bill was changed "because of doubt on the part of the House conferees with respect to the legal scope

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<sup>38</sup> *Ibid.*

<sup>39</sup> *Id.* at 19.

<sup>40</sup> *Ibid.*

<sup>41</sup> 42 USC § 4331(c) (Supp 1970).

<sup>42</sup> S 1075, 91st Cong. 1st Sess. (1969), as amended; see S REP No. 296, 91st Cong., 1st Sess. 18 (1969).

of the original Senate provision."<sup>43</sup> The House conferees might well have thought that the original wording of the Senate provision might result in the issuance of injunctions against actions of the federal government that in any manner violated a citizen's "inalienable right to a healthful environment\*\*\*." In addition, the language of the original Senate provision might have been regarded as establishing a cause of action on behalf of every citizen against both governmental and private action that infringed his inalienable right to a healthful environment.<sup>44</sup> The change in wording by the conference committee was probably made, therefore, so that section 101 (c), *in itself*, would not create a cause of action by which any citizen could restrain actions of the federal government that in any way adversely affected his natural surroundings.

The most important provision of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, and the provision most debated by the members of Congress, is section 102(1), which provides that "to the fullest extent possible: (1) the policies, regulations and public laws of the United States shall be interpreted and administered in accordance with the policies" of the Act. The meaning of this section is dependent on the meanings given to sections 102(2), 103, 104, and 105.<sup>45</sup> Section 102 provides, in pertinent part, that all federal agencies shall, to the fullest extent possible:

(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 decision making 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 title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations;

(C) 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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<sup>43</sup> CON REP NO. 765, 91st Cong., 1st Sess. 8 (1969).

<sup>44</sup> Compare S 3575, 91st Cong 1st Sess (1969), discussed by its sponsor, Senator McGovern, at 116 Cong Rec S 3323-S 3325 (daily ed. March 10, 1970).

<sup>45</sup> 42 USC §§ 4332(2), 4333, 4334, 4335 (Supp 1970).

- (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.

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, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(E) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(F) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(G) initiate and utilize ecological information in the planning and development of resource-oriented projects.<sup>46</sup>

Section 102 also provides that all federal agencies assist the Council on Environmental Quality.<sup>47</sup>

The NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 should strengthen the rights of the public to access to records and informa-

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<sup>46</sup> 42 USC § 4332 (Supp 1970).

<sup>47</sup> 42 USC § 4332(2) (H) (Supp 1970).

tion of federal agencies under the FREEDOM OF INFORMATION ACT.<sup>48</sup> Senator Jackson, the author and sponsor of S. 1075, stated that section 102(C) of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 made the statements required with recommendations of proposals for major federal action that significantly affect the environment, available to the public under the provisions of the FREEDOM OF INFORMATION ACT.<sup>49</sup> In addition, Congress has required all federal agencies to the fullest extent possible, to "make available to States, counties, municipalities, institutions and individuals, advice and information useful in restoring, maintaining and enhancing the quality of the environment\*\*\*."<sup>50</sup>

These provisions, which should not be given a narrow construction<sup>51</sup> would enable individuals and private citizens, under the FREEDOM OF INFORMATION ACT, to have access to records of federal agencies that are relevant to the protection of the environment, in addition to the statements required to be filed by section 102(C). Senator Jackson indicated that section 102(F) required the federal agencies to give such advice and information "on environmental management as is available from their expertise and studies \*\*\*."<sup>52</sup>

The regulations of the Food and Drug Administration,<sup>53</sup> of the Department of Agriculture,<sup>54</sup> of the Atomic Energy Commission,<sup>55</sup> and the Department of Interior,<sup>56</sup> with respect to the availability of information, should now place a presumption as to the right of the public to have access to information with respect to the quality of the environment.

Under the INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT,<sup>57</sup> insecticides and pesticides are required to be registered with the

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<sup>48</sup> 5 USC § 552 (1967). See, note, 80 HARV. L. REV. 909 (1967).

<sup>49</sup> 115 Cong Rec S 17455 (daily ed. Dec. 20, 1969).

<sup>50</sup> 42 USCA § 4332(f) (Supp 1970).

<sup>51</sup> CON REP No. 765, 91st Cong., 1st Sess. 9-10 (1969).

<sup>52</sup> 115 Cong Rec S 17455 (daily ed. Dec. 20, 1969).

<sup>53</sup> 21 C.F.R. §§ Part 4 (1970).

<sup>54</sup> 7 C.F.R. §§ 1.1-1.6 (1970).

<sup>55</sup> 10 C.F.R. § 2.790, Parts 9, 10, 25, 95 (1970).

<sup>56</sup> 43 C.F.R. Part 2 (1970).

<sup>57</sup> 7 USC §§ 135-135k (1964).

Food and Drug Administration.<sup>58</sup> In addition to requiring the F.D.A. to consider the effects on environmental quality of registration of a pesticide, the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 should be construed, in conjunction with the FREEDOM OF INFORMATION ACT, as giving individual citizens the right to have access to pesticide registration forms. Since the manufacturing processes and formulae of DDT was the property of the federal government until given to industry in World War II, the trade secret exception<sup>59</sup> to the FREEDOM OF INFORMATION ACT should not restrict access to the registration forms. In any case, the presumption should be in favor of access to registration forms of all pesticides. The information contained in the original registration forms for some types of pesticides, it is believed, will indicate that certain pesticides, including DDT, are no longer entitled to registration, and thus to distribution, under the policies and goals of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969. Consequently, public access to pesticide registration information would force the F.D.A. to consider whether the registration of pesticides such as DDT should be suspended and would enable members of the public to challenge the failure of the F.D.A. to suspend the registration of certain pesticides as contrary to the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.

Members of the public might also seek access to information relevant to the leasing of lands on the Outer Continental Shelf for off-shore oil drilling,<sup>60</sup> and to the leasing of lands under the mineral land and mining laws<sup>61</sup> from the Department of Interior. Individual citizens may wish to obtain information with respect to the radiation hazards of the detonation of nuclear devices by the Atomic Energy Commission and with respect to the hazards of thermal pollution and radiation from nuclear power reactors licensed by the Atomic Energy Commission.<sup>62</sup> The NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 in conjunction with the FREEDOM OF INFORMATION ACT, should be presumed to give members of the

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<sup>58</sup> 7 USC § 135b (1964). It is unlawful to ship in interstate commerce any pesticide that has not been registered under 7 USC § 135b; 7 USC § 135 (a)(1)(1964).

<sup>59</sup> 5 USC § 552(b)(4)(1967).

<sup>60</sup> 43 USC 1331 *et seq* (1964); *see* 30 C.F.R. Part 250 (1970).

<sup>61</sup> Title 30, USCA (1942).

<sup>62</sup> 42 USC § 2011 *et seq* (1970).

public this right, unless the information sought is clearly exempted from disclosure.<sup>63</sup> Section 103 requires all federal agencies to determine whether their present statutory authority, administrative regulations, and their policies and procedures prohibit full compliance with the purposes and provisions of the NATIONAL ENVIRONMENTAL POLICY ACT. If a federal agency finds that there are such deficiencies or inconsistencies, it is to propose to the President measures that are necessary to bring their authority and policies into conformity with the Act.<sup>64</sup> These proposals are to be made by July 1, 1971.<sup>65</sup>

The specific statutory duties of a federal agency to comply with environmental quality criteria and standards, to coordinate or consult with other agencies of state or federal government, or to act or refrain from acting upon the recommendation or approval of other federal and state agencies, are not affected "in any way" by sections 102 and 103 of the Act.<sup>66</sup> Finally, section 105 provides that the policies and goals of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 "are supplementary to those set forth in existing authorizations of federal agencies."<sup>67</sup> The effect of sections 102, 103, 104 and 105 is to require all federal agencies and officials to consider environmental values in reaching decisions or in planning agency action, unless to do so would clearly conflict with their existing statutory authority and duties.

The Senate Committee on Interior and Insular Affairs indicated that section 102 directs all federal agencies to follow the procedures and operating principles set forth in the section in carrying out their program activities.<sup>68</sup> The committee also indicated that section 101 would change the construction of authorizing legislation of some federal agencies prohibiting consideration of important environmental values.<sup>69</sup> The Act is to provide such agencies with a

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<sup>63</sup> 5 USC § 552(b) (1967).

<sup>64</sup> 42 USC 4333 (Supp 1970).

<sup>65</sup> *Ibid.*

<sup>66</sup> 42 USC 4334 (Supp 1970).

<sup>67</sup> 42 USC 4335 (Supp 1970).

<sup>68</sup> S REP No. 296, 91st Cong., 1st Sess. 7 (1969).

<sup>69</sup> 42 USC 4331 (Supp 1970). S REP No. 296, 91st Cong., 1st Sess 9 (1969). *E.g.*, the NATIONAL ENVIRONMENTAL POLICY ACT should require the Atomic Energy Commission to take environmental factors other than radiation hazards into account before taking action. *See*, *State of New Hampshire v. Atomic Energy Commission*, 406 F2d 170 (1 Cir. 1969), *cert. den.* 395 U.S. 962.

mandate, a body of law and a set of policies to guide their actions which have an impact on the environment. Though Congress has enacted numerous laws over the past decade that constitute "congressional mandates on various aspects of environmental policy,"<sup>70</sup> areas of federal policy and action have existed which have no environmental goals or policies "or in which the conflicting operational policies of different agencies are frustrating and complicating the achievement of environmental quality objectives which are in the interest of all."<sup>71</sup>

Many older operating agencies of the federal government, for example, do not at present have a mandate within the body of their enabling laws to allow them to give adequate attention to environmental values. In other agencies, especially when the expenditure of funds is involved, an official's latitude to deviate from narrow policies or "the most economical alternative" to achieve an environmental goal may be strictly circumscribed by congressional authorizations which have overlooked existing or potential environmental problems or the limitations of agency procedures. There is also reason for serious concern over the activities of those agencies which do not feel they have sufficient authority to undertake needed research and action to enhance, preserve, and maintain the qualitative side of the environment in connection with development activities.

S. 1075, as reported by the committee, would provide all agencies and all federal officials with a legislative mandate and a responsibility to consider the consequences of their actions on the environment. This would be true of the licensing functions of independent agencies as well as the ongoing activities of the regular federal agencies.<sup>72</sup>

THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 is also designed to reemphasize the importance of existing statutory programs on the environment. Prior to the passage of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, existing legislation in some areas of federal activity did not provide "clear authority for the consideration of environmental factors which conflict with other objectives."<sup>73</sup> Many federal agencies have not given substantial

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<sup>70</sup> Some of the statutes that would be included in such a category would be the FISH AND WILDLIFE COORDINATION ACT 16 USCA § 661 *et seq* (1970); the MULTIPLE-USE SUSTAINED-YIELD ACT, 16 USCA § 528 *et seq* (1970).

<sup>71</sup> S REP No. 296, 91st Cong., 1st Sess 14 (1969).

<sup>72</sup> *Id.* at 15.

<sup>73</sup> *Id.* at 19.

and consistent consideration to environmental factors in decision making in certain areas of their responsibility. Section 102 is designed to remedy these shortcomings in the statutory foundation of existing agency programs by incorporating the policies and goals set forth in section 101 into the actions and programs of federal agencies that carry out their responsibilities to the public. Section 102 is designed "to establish action-forcing procedures which will help to insure that the policies enunciated in Section 101 are implemented\*\*\*."74

Prior to the passage of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, planning and decision making that might have an effect on the quality of the environment was too often the "exclusive province of the engineer and cost analyst."75 The Act requires that federal agencies consider all relevant points of view and draw "upon the broadest possible range of social and natural scientific knowledge and design arts" in planning and decision making that may have an impact on the environment.76

In the past, federal agencies have all too frequently ignored environmental factors in planning and decision making or omitted them from consideration in the early stages of planning "because of the difficulty in evaluating them in comparison with economic and technical factors."77 The NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 requires federal agencies and officials to strive to develop the methodology and techniques necessary for the determination of the total environmental impacts and full costs of actions by the federal government. Section 102(C) requires that each federal agency which proposes major action, such as construction, new legislation, regulations, policy statements, expansion or revision of agency programs, determine the effect of that proposal in the environment. If the agency finds that the proposal will have a significant effect on the environment, the agency recommendation or report supporting the proposal must make findings with regard to the environmental factors set forth in section 102(C)(i)-(v). These reports or recommendations must find that "the environmental impact of the proposed action has been studied and that the results of

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74 *Ibid.*

75 *Id.* at 20.

76 *Ibid.*

77 *Ibid.*

the studies have been given consideration in the decision leading to the proposal."<sup>78</sup> A finding must also be made that adverse environmental effects cannot be avoided by reasonable alternatives and that these effects are justified by other considerations of national policy, which must be stated. The use of local, short-term resources of man's environment must be found to be consistent with the "maintenance and enhancement of the long-term productivity of the environment."<sup>79</sup> Proposals involving significant commitments of resources that are irreversible and irretrievable under the conditions of known technology and reasonable economics must be found to be warranted.<sup>80</sup>

The Senate Committee on Interior and Insular Affairs intended that section 102(D) require federal agencies to "develop information and provide descriptions of the alternatives in adequate detail for subsequent reviewers and decision makers, both within the executive branch and in the Congress, to consider the alternatives along with the principal recommendation."<sup>81</sup> Section 102(E) directs all federal agencies which have international responsibilities to support international programs attempting to prevent a decline in the quality of the environment of the earth.<sup>82</sup>

The statement of the managers on the part of the House at the conference state that under section 102(C), the requirements for comment by other agencies should not unreasonably delay a federal agency from submitting proposals for major federal action.<sup>83</sup> The House managers indicated that the conference compromise bill anticipated that the President would prepare and establish by executive order a list of agencies that have "jurisdiction by law" or "special expertise" with respect to particular environmental matters within the meaning of section 102(C).

The House managers indicated that a federal agency's proposal need not seek the comments of state and local agencies with only a remote interest and that are "not primarily responsible for development and enforcement of environmental standards\*\*\*."<sup>84</sup> In most

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<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> *Id.* at 21.

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*

<sup>83</sup> CON REP No. 765, 91st Cong., 1st Sess 8 (1969).

<sup>84</sup> *Id.* at 9.

cases, the requirement that state and local agencies comment on the proposals of federal agencies will be satisfied by published notice of the proposed action in the *Federal Register* and by supplying additional information on the proposal upon request of state and local agencies. To prevent unreasonable delay in the consideration of proposals by federal agencies, the House conferees recommended that the President establish a time limitation for the acceptance of federal, state and local agency comment.

The statement of the House managers supports the position of the Senate Committee on Interior and Insular Affairs that the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 requires all federal agencies to comply with the goals, policies and procedures of the Act unless the agency's statutory authority expressly prohibits such compliance or it would be impossible for the agency to fully comply.<sup>85</sup> The House managers also stated that section 103 is to operate only where a federal agency finds "a clear conflict between its existing statutory authority" and the Act.<sup>86</sup>

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<sup>85</sup> "The conference substitute provides that the phrase 'to the fullest extent possible' [Section 102] applied with respect to those actions which Congress authorized and directs to be done under both clauses (1) and (2) of Section 102 (in the Senate Bill, the phrase applied only to the directive in clause (1)). In accepting this change to Section 102 (and also to the provisions of Section 103), the House conferees agreed to delete Section 9 of the House amendment from the conference substitute. Section 9 of the House amendment provided that 'nothing in this Act shall increase, decrease or change any responsibility or authority of any federal official or agency created by other provision of law.' In receding from this House provision in favor of the less restrictive provision 'to the fullest extent possible', the House conferees are of the view that the new language does not in any way limit the congressional authorization and directive to all agencies of the Federal Government set out in subparagraphs (A) through (H) of clause (2) of Section 102. The purpose of the new language is to make it clear that each agency of the Federal Government shall comply with the directives set out in such subparagraphs (a) through (h) unless the existing law applicable to such agency's operations expressly prohibits or makes full compliance with one of the directives impossible. If such is found to be the case, then compliance with the particular directive is not immediately required. However, as to other activities of that agency, compliance is required. Thus it is the intent of the conferences that the provision 'to the fullest extent possible' shall not be used by any federal agency as a means of avoiding the language in Section 102. Rather, the language in Section 102 is intended to assure that all agencies of the Federal Government shall comply with the directives set out in said section 'to the fullest extent possible' under their statutory authorizations and that no agency shall utilize an excessively narrow construction of its existing statutory authorizations to avoid compliance." CON REP No. 765 91st Cong. 1st Sess 9-10 (1969).

<sup>86</sup> CON REP No. 765, 91st Cong., 1st Sess 10 (1969).

A federal agency should not construe its present statutory authority in "an unduly narrow manner"; a federal agency should recommend changes in their statutory authority under section 103 only when a provision of their enabling statutes "clearly precludes full compliance" with the Act.<sup>87</sup>

Section 105, according to the House conferees, is a statement that the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 does not repeal existing legislation. "This section does not, however, obviate the requirement that the federal agencies conduct their activities in accordance with the provisions of this bill unless to do so would clearly violate their existing statutory authorizations."<sup>88</sup> Senator Jackson, the author and sponsor of S. 1075, and manager for the Senate at the conference, expressed basic agreement with the statement of the managers for the House as to the effects of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 on the statutory duties and responsibilities of federal agencies with respect to questions of the quality of the environment. Prior to passage of S. 1075, Senator Jackson stated that S. 1075 was a statutory enlargement of the responsibilities of all agencies of the federal government, indicating that the statement of national environmental policy in the Act would serve "a constitutional function in that administrators may refer to it for guidance in making decisions which find environmental values in conflict with other values."<sup>89</sup>

During the Senate debates on the conference compromise bill, Senator Jackson stated that the provisions of section 102, "direct any Federal agency which takes action that it must take into account environmental management and environmental quality considerations."<sup>90</sup> He accepted the position of the statement of the managers on the part of the House, with respect to sections 102, 103, and 105. He stated that sections 102 and 103 did not change the manner in which federal agencies with responsibilities in the field of environmental control, such as the National Park Service, the Federal Water Pollution Control Administration, and the National Air Pollution Control Administration, carried out their environmental protection authority. Section 102 "is, however, clearly designed to assure con-

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<sup>87</sup> *Id.* at 10.

<sup>88</sup> *Ibid.*

<sup>89</sup> 115 Cong Rec S 7815 (daily ed. July 10, 1969).

<sup>90</sup> 115 Cong Rec S 17451 (daily ed. Dec. 20, 1969).

sideration of environmental matters by all agencies in their planning and decision making—especially those agencies who now have little or no legislative authority to take environmental considerations into account.”<sup>91</sup> Senator Jackson stated that the conferees did not intend that federal agencies construe their present statutory authority so as to avoid full compliance with the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969. Rather, the intent of the conferees is that all federal agencies shall comply with the provisions of section 102. However, the Senate conferees did not intend that section 103 should require environmental control agencies such as the Federal Water Pollution Control Administration and the National Air Pollution Control Administration to examine their statutory authority, regulations, and policies which were already designed to maintain and enhance the quality of the environment.<sup>92</sup>

The comments on proposals for major federal action by state and local agencies, required by section 102(C), could be restricted, according to Senator Jackson, to such agencies which had jurisdiction over areas of the environment within the proposed action.<sup>93</sup> Section 102(C) is not intended to apply to local agencies with only a remote interest and without primary responsibility for developing and enforcing environmental standards, and section 104, directing that the requirements of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 were not to be a substitute for statutes concerning certain actions or agencies that

prescribe specific criteria or standards of quality for environmental indicators, or which prescribe certain procedures for coordination or consultation with State or other Federal agencies, or which require recommendations or certification of other Federal agencies as a prerequisite to certain actions.<sup>94</sup>

Congressmen Dingell, a sponsor of H.R. 12549 and a House manager at the conference, said that Senator Jackson's statements in the Senate on December 20, 1969, were not inconsistent with the statement of the House managers.<sup>95</sup> Congressman Dingell agreed that

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<sup>91</sup> *Id.* at S 17453.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Id.* at S 17455.

<sup>94</sup> *Ibid.*

<sup>95</sup> 115 Cong Rec H 13092 (daily ed. Dec. 23, 1969).

environmental control agencies such as the Federal Water Pollution Control Administration would not be required by the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 to change the manner in which they carry out their environmental protection authority, and that section 102 was

primarily designed to assure consideration of environmental matters by agencies in their planning and decision making — but most especially those agencies who now have little or no legislative authority to take environmental considerations into account.<sup>96</sup>

Congressman Mailliard indicated that he regarded the Senate bill,

as positive direction to all agencies of the Federal Government that they shall administer their programs to the fullest extent possible in a manner which reflects the declaration of national environmental policy set forth in the bill.<sup>97</sup>

Congressman Mailliard was a House manager at the conference.

Only Congressman Aspinall, who was a House manager but who did not sign the statement of the managers on the part on the House, thought that the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 did not give federal agencies new statutory authority. He argued that the language of sections 102 and 103 did not support the interpretation given in the statement of the House managers. Aspinall argued that the Act required federal agencies only to follow to the fullest extent possible under their existing authority the procedures required to make their actions consistent with the environmental policy of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.<sup>98</sup> However, in earlier debates on H.R. 12549, Congressman

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<sup>96</sup> *Id.* at H 13093.

<sup>97</sup> *Ibid.*

<sup>98</sup> 115 Cong Rec H 13094-H 13095 (daily ed. Dec. 23, 1969). "The conference report language requires the agencies to determine whether there are any deficiencies in their statutory authority which prohibit compliance, and you cannot make 'deficiencies in statutory authority', mean 'clear conflict between its existing statutory authority and the bill' merely by statements of intent and interpretation in the statement of managers. A deficiency in an agency statutory authority which prohibits compliance cannot be interpreted to mean that 'Each agency \* \* \* shall comply \* \* \* unless the existing law applicable to such agency's operations expressly prohibits or makes full compliance \* \* \* impossible.'"

Aspinall had implied that S. 1075 gave additional authority and direction to existing authority of federal agencies. This interpretation of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 by Congressman Aspinall cannot stand in the face of the overwhelming legislative history which supports the statement of the managers on the part on the House.<sup>99</sup> Senator Jackson, the author and sponsor of S. 1075, supported the position stated by the House managers and indicated that the Senate conferees agreed to the statement of the House managers.<sup>100</sup> Senator Allott, also a Senate manager at the conference, implied that he agreed with the statements of Senator Jackson.<sup>101</sup> Under the rules for interpretation of legislative history,<sup>102</sup> the interpretation of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 stated by the managers of the bill for the House

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<sup>99</sup> 115 Cong Rec H 8282 (daily ed. Sept. 23, 1969).

<sup>100</sup> 115 Cong Rec S 17453 (daily ed. Dec. 20, 1969).

<sup>101</sup> *Id.* at S 17457.

<sup>102</sup> The rules for the interpretation of legislative history as an aid to interpretation of a statute allow the use of reports by committees of Congress in reporting a bill as an aid to determining the meaning of a statute. *Wright v. Vinton Branch of Mountain Trust Bank*, 300 US 440, 464 (1937); *Duplex Printing Press Co. v. Deering*, 254 US 443, 474 (1921). Statements by the sponsor or by the committee members in charge of a bill, made during debates, are regarded as supplemental reports on a bill, and may similarly be resorted to for the meaning and purpose of a statute. *Wright v. Vinton, supra*; *Duplex Printing Press Co.* at 475; *National Woodwork Mfrs. Assn. v. NLRB*, 386 US 612, 640 (1967).

<sup>103</sup> The effect of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 upon the existing statutory authority of federal agencies should be described as "supplemented" rather than "modified" or some other word. The word "supplement" like the word amend" is used where the purpose of a new statute is

"to enforcement of the existing law, or to reach situations which were not covered by the original statute even though in its original wording the new statute does not purport to amend the language of the prior act. Whatever supplements existing legislation, in order to achieve more successfully the societal object sought to be obtained, *may be said to amend it.*" (emphasis in original) *Balian Ice Cream Co. v. Arden Farms Co.*, 94 FSupp 796, 799 (SD Cal 1950).

Another court has defined "supplemental" as "additional". *Texas & Pacific Motor Transport Co. v. United States*, 87 FSupp 107, 112 (ND Tex 1949). The word "modify", on the other hand, connotes "both by derivation and dictionary meaning, a limitation, not an extension of that which is modified." *Best Foods v. United States*, 158 FSupp 583, 589 (Customs Ct 1957). The word "modify" does not connote a major change, *State Airlines, Inc. v. CAB*, 174 F2d 510, 514 (DC Cir. 1949), but alteration only of the thing modified." *Best Foods v. United States, supra*, at 589. To "modify" the change must "not be great and must not result in so transforming the original thing to be modified as to make of it something entirely new and different in substance. Volume VI of the OXFORD ENGLISH DICTIONARY (1933 edition) defines 'modification' as the action of limiting, qualifying or "toning down" (a statement etc.); a limitation, restriction, or qualification.'" *State Airlines, Inc. v. CAB, supra* at 514-515.

of Representatives is the correct interpretation of the Act.

Representative Aspinall's individual interpretation of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 must give way to the interpretation of the bill's managers from the House, particularly since their interpretation is supported by the Senate Committee on Interior and Insular Affairs; the interpretation of Senator Jackson, who was chairman of the Senate Committee on Interior and Insular Affairs, and by Congressman Dingell, chairman of the Subcommittee on Fisheries and Wildlife of the House Committee on Merchant Marines and Fisheries, which was in charge of the House version of the bill. Senator Jackson indicated that his position was supported by the Senate conferees at the conference.

The NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 "supplements" 103 rather than "modifies," existing statutory authority of federal agencies. Sections 103 and 104, and the use of the words "to the fullest extent possible" in section 102, make clear that the Act is intended to supplement existing statutory authority of federal agencies to require them to follow the policies, goals, and procedures of the Act unless the existing law governing such agency's operations expressly prohibits full compliance with the Act's directives. If a federal agency finds that its statutory authority, regulations, policies or programs are inconsistent with the Act, the agency is required to propose to the President such measures as may be necessary to bring its statutory authority and practices into conformity with the Act. However, other actions of federal agencies must comply with the intent, purposes, and procedures of the Act.

Under section 103, no federal agency is to interpret its existing statutory authority in such a way as to avoid compliance with the directive of the Act, and all federal agencies must comply with the policies, goals and procedures of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 unless the agency finds a clear conflict between its existing statutory authority and the Act.<sup>104</sup> Unfortunately, it appears that the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 does not affect the statutory authority of the Federal Water Pollution Control Administration and the National Air Pollution Control Administration in the area of environmental con-

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<sup>104</sup> President Nixon issued EXECUTIVE ORDER No. 11514, 35 Fed Reg 4247, on March 5, 1970, directing federal agencies to comply with the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.

trol; and it seems that the NATIONAL ENVIRONMENTAL POLICY ACT of 1969 is not intended to apply to actions of federal agencies in the areas of environmental control and protection. Rather, the Act is intended to apply to those federal agencies whose actions have an impact on the environment but which have little or no legislative authority to take environmental factors into consideration in their planning and decision making.

The effect of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 on the statutory authority of certain federal agencies can be reasonably predicted. The Act would not apply to most of the activities of the National Park Service,<sup>105</sup> which are environmental protection and enhancement programs,<sup>106</sup> but would apply to the granting of rights of way for power and communication facilities<sup>107</sup> to the construction of airports,<sup>108</sup> and roads.<sup>109</sup> The Act would also apply to the Forest Service of the Department of Agriculture.

The MULTIPLE-USE SUSTAINED-YIELD ACT<sup>110</sup> would be modified by the Act to the extent that environmental values would receive consideration equal to timber management in the utilization of the nation's forests.<sup>111</sup>

The NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 would fully apply to the Bureau of Public Roads of the Department of Transportation,<sup>112</sup> strengthening and reemphasizing the environmental factors that the Bureau of Public Roads must already consider in administering the federal-aid and interstate highway systems.<sup>113</sup>

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<sup>105</sup> 16 USC § 1 *et seq* (1960).

<sup>106</sup> See 115 Cong Rec S 17453 (daily ed. Dec. 20, 1969).

<sup>107</sup> 16 USC § 5 (1960).

<sup>108</sup> 16 USC § 7a (1960).

<sup>109</sup> 16 USC § 8 (1960).

<sup>110</sup> 16 USC § 471 *et seq* (1960).

<sup>111</sup> 16 USC § 528-538 (1970).

<sup>112</sup> See, *eg.*, J. M. McCloskey, *Natural Resources - National Forests - the Multiple Use-Sustained Yield Act of 1960*, 41 OR.L.REV. 49 (1961).

<sup>113</sup> Title 23, USC (1966). See, 115 Cong Rec S 17460 (daily ed. Dec. 20, 1969).

However, the WATER QUALITY IMPROVEMENT ACT OF 1970<sup>114</sup> has preempted the consideration of water pollution, both as to actions of the agencies and to issuance of licenses and permits.<sup>115</sup>

The activities of the Atomic Energy Commission, both in its testing of nuclear explosive devices,<sup>116</sup> and its licensing of nuclear power facilities,<sup>117</sup> are covered fully by the Act.<sup>118</sup> The NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 supports the WATER QUALITY IMPROVEMENT ACT OF 1970 and requires that an applicant for a license for a nuclear power plant certify to the Atomic Energy Commission that it will comply with applicable water quality standards for the control of thermal pollution.

The Act will also fully apply to the United States Army Corps of Engineers, and its construction of river and harbor improvements,<sup>119</sup> flood control projects,<sup>120</sup> issuance of permits for deposit of refuse,<sup>121</sup> and for structures, excavations or fill in navigable waters.<sup>122</sup> The NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 also strengthens the effect of the FISH AND WILDLIFE COORDINATION ACT,<sup>123</sup> with respect to actions and decision making by the Corps of Engineers.

The actions of the Federal Power Commission, with respect to the licensing of hydroelectric projects and other power facilities would not be significantly affected by the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, since the FPC is already required to give full consideration to environmental factors in its decision making.<sup>124</sup> The NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

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<sup>114</sup> See, 49 USC § 1651 *et seq* (1970).

<sup>115</sup> P.L. 91-224, 91st Cong. 2d Sess (1970).

<sup>116</sup> Cong Rec S 4401 (daily ed. Mar. 24, 1970).

<sup>117</sup> 42 USC § 2011 *et seq* (1970).

<sup>118</sup> 42 USC § 2131-2140 (1970).

<sup>119</sup> See, 115 Cong Rec S 17460 (daily ed. Dec. 20, 1969).

<sup>120</sup> 33 USC § 540 (1957).

<sup>121</sup> 33 USC § 701 (1957).

<sup>122</sup> 33 USC § 407 (1957).

<sup>123</sup> 33 USC § 403 (1957).

<sup>124</sup> 16 USC § 661-667e (1960).

only serves to emphasize the responsibility of the FPC to consider environmental factors by the procedures established by the Act.

The NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 also applies to the actions of the Department of the Interior in the management of the public lands, particularly with respect to mineral lands and mining,<sup>125</sup> and to the Outer Continental Shelf lands.<sup>126</sup>

The goals, policies and procedures of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 are also applicable to the registration of environmentally significant pesticides such as the chlorinated hydrocarbons, DDT, dieldrin, endrin, aldrin, toxaphene and heptachlor, by the United States Department of Agriculture under the FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT.<sup>127</sup>

The NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, however, should not be regarded as having changed specific statutory procedures for consideration of certain environmental values. Thus the Act should not be considered as changing the procedures for cooperation by the Corps of Engineers, the Bureau of Reclamation, and the Federal Power Commission with the Fish and Wildlife Services of the Department of Interior and with state agencies under the FISH AND WILDLIFE COORDINATION ACT.<sup>128</sup> Neither should the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 be interpreted as changing the specific procedures for compliance by federal agencies with the NATIONAL WILD AND SCENIC RIVERS ACT.<sup>129</sup>

The NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 is a "relevant statute" within the meaning of the ADMINISTRATIVE PROCEDURE ACT,<sup>130</sup> thus giving standing to conservation organizations to obtain judicial review of actions and decisions of federal agencies that allegedly have not followed the policies, goals or procedures of the Act.<sup>131</sup>

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<sup>125</sup> See, 16 USC § 803(a) (1960); Scenic Hudson Preservation Conf. v. FPC, 354 F2d 608 (2d Cir. 1965); Udall v. FPC, 387 US 428 (1967).

<sup>126</sup> Title 30, USC (1942).

<sup>127</sup> 7 USC §§ 135-135k (1964).

<sup>128</sup> 43 USC § 1331 *et seq* (1964). See, N.Y. Times, April 14, 1970, at 1, col 1 (issuance of stay against Alaska gas pipeline).

<sup>129</sup> 16 USC §§ 661-667e (1960).

<sup>130</sup> 16 USC §§ 1271-1287 (1970).

<sup>131</sup> 5 USC § 702 (1967).

In addition, a private citizen, under the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, should have standing to challenge actions and decisions of federal agencies allegedly in violation of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, where the action or decision threatens to have adverse effects on the ecosystem in which he resides or on the ecosystem that he uses for recreation. Section 101(c) of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 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."<sup>132</sup> Section 101(c) of the Act is indication that Congress intended to recognize the interests of individual citizens in the protection of the ecosystem in which they reside or which they use for recreation. An individual citizen, who alleges that decisions or actions of federal agencies are in violation of the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 and have or will adversely affect the ecosystem in which he resides or which he uses for recreation, consequently has standing under the ADMINISTRATIVE PROCEDURE ACT to seek judicial review of such action. Such an individual citizen is within the class of persons which the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 was designed to protect, and is thus a person "adversely affected or aggrieved."<sup>133</sup> within the meaning of the ADMINISTRATIVE PROCEDURE ACT, and entitled to judicial review of such agency action.<sup>134</sup> Indeed, the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, without the explicit statutory provision of the ADMINISTRATIVE PROCEDURE ACT is sufficient to confer standing on such an individual citizen because he is within the class of persons which the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 is designed to protect.<sup>135</sup>

<sup>132</sup> See, *Scenic Hudson Preservation Conf. v. FPC*, 354 F2d 608 (2d Cir 1965); *Road Review League, Town of Bedford v. Ford*, 270 FSupp 650 (SD NY 1967); *Citizens Committee for the Hudson Valley v. Volpe*, 302 F Supp 1083 (SDNY 1969), *aff'd* — F2d — (1970); *Parker v. United States*, 307 FSupp 685 (D Colo. 1969); *Sierra Club v. Hickel*, — FSupp — (ND Cal July 23, 1969); *Crowther v. Seaborg*, — FSupp —, 38 USLW 2512-2513.

<sup>133</sup> 42 USCA § 4331(c) (Supp 1970).

<sup>134</sup> 5 USC § 702 (1967).

<sup>135</sup> See, *Barlow v. Collins*, 90 SCt 832 (1970); *Hardin v. Kentucky Utilities Co.*, 390 US 1, 6-7 (1968); *Association of Data Processing Service Org., Inc. v. Camp*, 90 SCt 827 (1970); *Norwalk Core v. Norwalk Redevelopment Agcy.*, 395 F2d 920, 933 note 26 (2d Cir 1968); *Shannon v. Department of Housing and Urban Dev.*, 305 FSupp 205, 211 (ED Pa 1969); *Powelton Civic Home Owners Assoc. v. Department of Housing and Urban Dev.*, 284 FSupp 809, 823-829 (ED Pa 1968).

The national goals and policies for the protection, establishment, and enhancement of this nation's environment established by the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

is more than a statement of what we believe as a people and as a Nation. It establishes priorities and gives expression to our national goals and aspirations. It provides a statutory foundation to which administrators may refer for guidance in making decisions which find environmental values in conflict with other values.

What is involved is a congressional declaration that we do not intend, as a government or as a people, to initiate actions which endanger the continued existence or the health of mankind: That we will not intentionally initiate actions which will do irreparable damage to the air, land, and water which support life on earth.

An environmental policy is a policy for people. Its primary concern is with man and his future. The basic principle of the policy is that we must strive in all that we do, to achieve a standard of excellence in man's relationship to his physical surroundings. If there are to be departures from this standard of excellence, they should be exceptions to the rule and the policy.<sup>136</sup>

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<sup>136</sup> 115 Cong Rec S 17451 (daily ed. Dec. 20, 1969). (Senator Jackson).