Around the nation

Testing the movement. It's time to save NEPA

The word is spreading through the environmental grapevine: "NEPA is in trouble. Save NEPA."

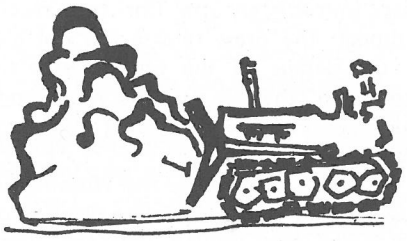
NEPA, as all environmentalists, bureaucrats and moguls of industry know, is the National Environmental Policy Act of 1969. In its two-year, four-month existence, it has done more to preserve and protect the environment than all the previous environmental protection measures combined. It has been used extensively to delay destructive federal projects and to reevaluate federal policy decisions so as to assure that proper consideration is given to environmental considerations. Put bluntly, it has severely shaken all those to whom the status quo has meant profits, progress and pollution.

Now, the very agencies that have been hit the hardest with NEPA-based lawsuits – the Atomic Energy Commission, the Corps of Engineers, the Transportation Department – and, more important, their corporate backers – the utilities, the nuclear industry, the steel, paper and chemical companies and other major water polluters, and the highway lobby – are gearing up to gradually destroy the Act. The fight, which has been centered in the courtroom for the past two years, is moving back to where it originally began – the halls of Congress.

NEPA's history is a fascinating one. Engineered principally by Senator Henry Jackson (D-Wash.) and Rep. John Dingell (D-Mich.), the Act was conceived as a result of the rising concern over the deteriorating state of the environment, but interestingly, it predated the frenzy of Earth Day, 1970 by many months. In fact, many observers attribute the strength of the Act to the fact that few congressmen realized that it could ever be put to use as potently as it has. NEPA provided the environmental movement with the very teeth it was never supposed to develop.

Even President Nixon underestimated NEPA's potential. He chose the auspicious moment of New Year's Day, 1970 to sign the law and proclaim that the 1970s "absolutely must be the years when America pays its debt to the past by reclaiming the purity of its air, its waters and our living environment. It is literally now or never." At present the Administration has several bills in Congress which would emasculate NEPA to varying degrees.

NEPA has been instrumental in temporarily halting a wide variety of projects which environmental groups feel would result in a major degradation of the environment. Although few cases have been as spectacularly won as the Cross-Florida Barge Canal, in which the President terminated the project, NEPA has usually brought about a more careful and rational study of the environmental effects of governmental programs.



NEPA's strength lies in the fact that it requires all government agencies to fully consider all the environmental and social costs of their major activities. It also requires the agencies to explore all feasible alternatives to guarantee that they will choose the best ways to accomplish their objectives. Most important, it assures citizens the opportunity to actively participate in the decision making processes which concern them and the environment.

The federal bureaucracy did not take well to the passage of NEPA. The Atomic Energy Commission decided to ignore the Act for over a year until it was hauled into court. The Department of Interior adopted a policy of secrecy-until-the-last-moment. The State Department claimed it was beyond the reach of the Act. The Soil Conservation Service sought to file occasional impact statements on a haphazard basis. The Corps of Engineers resorted to the preparation of flimsy, superficial analyses.

Ultimately, most of Washington's bureaucrats found themselves in court – and most of them lost their cases. Transportation Secretary John Volpe lost to a park users' group in California, a student group in South Dakota and a suburban coalition in Virginia. Army Secretary Stanley Resor lost on the Florida Barge Canal, the Gilham Dam across the Cossatot River in Arkansas, the Tennessee-Tombigbee Waterway project in the Deep South, and, in the *Kalur* decision, on the entire Corps of Engineers permit program. Interior Secretary Rogers Morton lost in Alaska on the pipeline, in Maryland on paving over the towpath along the C&O Canal, and on the sale of oil and gas leases in the Gulf of Mexico. Atomic Energy Commission Chairman Glenn Seaborg was brought to justice in the Calvert Cliffs decision. Even the Justice Department was enjoined from giving a grant for prison construction because it failed to comply with NEPA.

The fact that a project is temporarily halted in court, of course, does not mean the demise of the plan. It does mean, however, significant delays and more extensive research. Congress gradually became frustrated with the courts for slowing the progress of the nation. And the only way to deal with the courts is to pass new laws.

The bills are now beginning to flood in. Thus far, early in the campaign to destroy NEPA, there are eight of them, all in the House. When the Senate adds its own and when the slower-moving agencies join the bandwagon, the number is expected to rise sharply.

None of these new bills specifically voids the National Environmental Policy Act. In an election year that would be politically unwise. However, each one contains clauses which exempt certain activities from the obligation to comply with NEPA. Foes of the environmental movement hope to include this clause in enough new legislation to make the Act itself irrelevant.

In fact, one bill containing this clause has gone through. Both the House and Senate versions of the Clean Water legislation (*see story below*) contain provisions which would modify and severely weaken NEPA as it relates to water polluters.

The major onslaught at present stems from the Atomic Energy Commission which is seeking new legislation making it easier for power plants to be constructed, especially at times and in places where a "crisis" is declared. In its power plant siting bill, the Administration is also including this provision. If passed, it

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would block virtually all environmental efforts to question the siting, need and desirability of a particular plant.

Despite the seriousness of this threat, it is merely a harbinger of what is to come. Should the AEC open the gates, other agencies are sure to follow suit in their attempts to rid themselves of what is widely regarded in Washington as the most annoying and troublesome law to be passed in recent years — the National Environmental Policy Act. **Peter Harnik**

WHAT TO DO:

Because of the extreme complexity of this issue and because Congress is able to act very quickly when it wishes to ignore the desires of its constituencies "back home," environmental lobbyists in Washington have launched the "Save NEPA" campaign. Environmental Action strongly urges readers to write senators and representatives to work against any provision in any bill which would abrogate any section of the National Environmental Policy Act. Bills do not have to be named specifically, but our strength must be shown. If we lose on the issue of NEPA, the credibility of the entire movement will be jeopardized.

The clean water bill. A victory for the polluters

The anti-environmental backlash that has been nurtured by industry and certain congressmen took on rip-tide proportions at the end of March as the House of Representatives sunk a series of "clean water" amendments and overwhelmingly passed a sadly deficient version of the Clean Water Bill.

The bill, officially titled The Federal Water Pollution Control Act of 1972, will now join its sister version, the noticeably stronger Senate bill, in conference committee where the differences must be ironed out.

Although the House bill, H.R. 11896, is more generous than its Senate counterpart, S. 2770, in authorizing funds for the water pollution control effort—$24.6 billion versus $20 billion over a three-year period—environmentalists are disturbed that it is also far more generous in providing loopholes and exemptions to polluters. The House has also included provisions which would greatly restrict the right of citizen groups to take polluters or the administrator of the Environmental Protection Agency to court.

The history of the water bill in the House is extremely tangled. Although the House Public Works Committee had begun to hold hearings on the subject last summer, little was accomplished until the Senate passed its version of the bill in November. Then, with Rep. John Blatnik (D-Minn.), chairman of the committee, in the hospital, the committee members began to put together a bill.

On December 16, the committee issued a press release announcing the approval of a bill and indicating that it would be released immediately after Christmas recess. Although the press release did not give all the details of the bill, it gave the impression that it was a moderately tough one, roughly paralleling the Senate bill.

At about that time, the Washington, D.C. District Court reached a decision on the *Kalur* case, ruling that the Army Corps of Engineers must submit an environmental impact statement on each major permit issued under the Refuse Act. It also ruled that the Refuse Act did not permit any discharges into non-navigable streams, placing numerous polluters around the country in immediate violation of the law.

The *Kalur* decision, presently being appealed by the Corps, stirred the wrath of many congressmen, and the House Public Works Committee began to rewrite the new water bill to take into account this mounting frustration. Scores of executive (secret) sessions were held, and the bill was not released in its final form until mid-March. During the intervening months, the White House began to exert real pressure, apparently to steal the limelight from one of its prime foes, the author of the Senate bill, Edmund Muskie (D-Me.), and also to assist the many large contributors to the Republican Party who want as weak a bill as possible. The National Association of Manufacturers and individual corporations also put heavy pressure on the committee to keep the bill "moderate."

When the bill finally emerged from committee in mid-March with indications that it would be brought to a floor vote almost immediately, environmentalists were appalled. During the preceding three months, rumors had been flying but the committee had made few direct contacts with any non-industry groups. Every congressman had voiced "concern" over water pollution, but it was impossible to determine until after committee deliberations precisely what this meant. By then it was virtually too late.

Among its other flaws, H.R. 11896 has three prime shortcomings:

- It significantly weakens the Senate provision for 1981 and 1985 "zero discharge" goals. Although the House indicated these same goals, it calls for a National Academy of Sciences study on their feasibility, after which a new law will have to be passed. In effect, the House version eliminates any clean-up requirements beyond 1976.
- It places clean water regulation almost solely in the hands of the states. Although both the House and Senate require the Environmental Protection Agency to set up guidelines for the states to follow, the House does not give EPA the right to continue to review discharge permits on an individual basis. This leaves officials vulnerable to strong local pressures which only the federal government might be able to withstand. Furthermore, it leaves open the possibility of environmental blackmail, as factories could relocate in states with weaker standards.
- It forbids citizens from initiating law suits under the act unless they can show that they are directly affected in the area where the violation occurs or that they have been actively engaged in monitoring administrative actions.

In response to these faults, Reps. John Dingell (D-Mich.) and Henry Reuss (D-Wis.) and about 40 other congressmen introduced a set of amendments to strengthen the bill and bring it more in line with the Senate version. A coalition of 30 environment, consumer and labor groups, including Environmental Action, lobbied strongly for the passage of the so-called "Clean Water Package," but they were just as strongly opposed by the White House, the Council on En-