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## National Environmental Policy Act



Public Law 91-190  
91st Congress, S. 1075  
January 1, 1970

### An Act

To establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.  
*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "National Environmental Policy Act of 1969".

**VOID**

Sec. 2. The purpose of this Act is to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to provide a means by which our Federal and State governments, and the people, can understand and stimulate the health and welfare of man; and to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

### TITLE I

#### DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101. (a) 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

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# Omnibus bill bypasses crucial step

Conservationists and environmentalists fear that the pending passage of the Omnibus Rivers and Harbors Act of 1970 is fading the National Environmental Policy Act of 1969 into obscurity, not unlike the 70-year dormancy of the 1899 Refuse Act. A vote for the Omnibus bill by legislators will ignore key sections of the environment act which guarantee the public information.

The act and its history reveal a legislative intent and mandate difficult for federal agencies to ignore. Yet, the provisions of the legislation, particularly its Section 102(2)(C), seem doomed to executive branch inertia and congressional oversight.

The importance of Section 102 cannot be underestimated. It not only specifies the types of government agencies which must comply, but it also identifies types of proposed legislation which must meet requirements of the law, and deliberately notes that the Public Information Section of the United States Code must be observed. Most important is the final clause of Section 102(2)(C), which states that detailed five-point environmental statements "shall accompany the proposal through the existing agency review processes."

The Omnibus Rivers and Harbors Act of 1970, expected to be passed in late November when Congress reconvenes, has become a key focal point of controversy over Section 102. This act authorizes approximately 50 construction projects to be carried out by the Army Corps of Engineers.

The procedure followed by the Corps with the Omnibus Rivers and Harbors Act reveals non-compliance with the legislative mandate set forth in the Environmental Policy Act. Section 102 requires statements be available for review by the agencies, congressional committees and the public, but the Corps did not have statements ready to accompany the project proposals through the existing agency review process.

At the closing of public hearings, the Corps had written only 33 draft statements, but no statements had been completed. The 102(2)(C) statements for each Corps project did not accompany project proposals for review and comments by the appropriate agencies and the Office of Management and Budget (OMB). They were also not available for hearings before the House and Senate Public Works Committees.

The statements go to the Council on Environmental Quality (CEQ) for information purposes only. The OMB receives

the final statements for review and clearance.

Both House and Senate Committees have completed public hearings on the projects, without the public having the required statements. Brigadier General Richard Groves, Deputy Director of Civil Works for the Corps, in numerous appearances before Senate and House Public Works Committees, was candid in admitting that the required 102(2)(C) statements had not been written. He reassured the Committees, however, that "the Corps of Engineers intends fully to abide by both the letter and the spirit of the Environmental Policy Act." It is precisely this failure by the Corps to comply with the letter and spirit of the Environmental Policy Act which should make the passage of the Omnibus Rivers and Harbors Act unacceptable to this Congress.

The letter of the law requires that 102(2)(C) statements for each project "shall accompany the proposal through the existing agency review processes." The spirit of the Act requires that the environmental impact statements be available to the public and the committees prior to public hearings to allow and encourage public debate.

When the Senate Public Works Committee met October 7th in executive session, many members hoped that the prized \$630 million projects would be reported out favorably. Sensing the controversial nature of the Corps projects, the Senate committee decided to recess until November 19th, at which time it hopes to have the Corps' environmental statements for the Omnibus projects. The Committee notified the Corps that the 102 statements must be filed before it reconvenes or projects without them will not be included in the Omnibus bill.

On the House side, the Public Works Committee avoided a pre-election executive session on the Omnibus Rivers and Harbors Act, after trying to calm concerned public witnesses by promising that no action would come on projects that did not have 102(2)(C) statements.

These reassurances rang hollow, however, when committee members interrupted witnesses to argue that there is no difference between 102 statements and traditional agency comments. They then insisted that the required statements had already been filed with the Committee. That same day, the Corps, CEQ, and OMB had made it no secret that no 102(2)(C) final statements existed. The House Public Works Committee has followed the Senate lead by delaying its



# Omnibus...

executive session until the week of November 16th.

Significant to environmentalists, however, is the fact that the act has been violated even if the Corps submits the required 102(2)(C) statements on the eve of the executive sessions. Dr. Spencer M. Smith, Jr., a registered conservation lobbyist and secretary of the Citizens Committee on Natural Resources, illustrated this concern when he told the House Public Works Committee at the time of the public hearing:

The reports on the projects in the present proposal are not available to me and I can be of little service to the committee, the general public, and/or critic alike unless I am able to have the opportunity for this review. The language of the statute would indicate to me that such availability should have been accomplished. It is, therefore,

difficult to be knowledgeable about alternatives, especially if the impact on the environment is deleterious, when the environmental reports are unavailable.

His comments offer stark contrast to the glowing rhetoric which preceded passage of the National Environmental Policy Act. The Senate Interior Committee which reported out the Environmental Policy Act stated that "a primary purpose of the bill is to restore public confidence in the federal government's capacity to achieve important public purposes and objectives and at the same time to maintain and enhance the quality of the environment."

With a legislative history that clearly expresses the intent of Congress in passing the Environmental Policy Act, the Corps failure to comply with Section 102(2)(C) allows the House and Senate Public Works Committees only one responsible course of action. The committees can return the project proposals to the Corps for full compliance with the letter and the spirit of the act.

## Section 102

Section 102(2)(C) states:

The Congress authorizes and directs 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 set forth in this Act, and (2) all agencies of the Federal Government shall -

(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 -

- (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 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;

## eco info

The Environmental Law Institute has published the first edition of the *Environmental Law Digest*. Available for \$1.00, it contains the most authoritative listing to date of law cases dealing with the environment.

In November the organization will have the first issue of their new *Environmental Law Reporter* available. It will be published monthly in loose-leaf form. A valuable source for lawyers, a subscription for one year costs \$50.

The *Digest* and subscriptions to the *Reporter* are available from the Environmental Law Institute, Suite 620 Dupont Circle Building, 1346 Connecticut Avenue, N.W., Washington, D.C. 20036.

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The Student Executive Council of McMaster University in Canada has published a special issue of their newspaper, *TI ESTIN*, on pollution and related problems. It is one of the best single publications on the topic *Environmental Action* has received.

The university is making a special edition available to interested individuals for \$.50. Bulk rates may be obtained on request. Inquiries should be addressed to *TI ESTIN*,<sup>3</sup> McMaster Students' Union, McMaster University, Hamilton 16, Ontario, Canada.

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A staff of scientists and poets in England publish a quarterly called *your environment* which offers some interesting information. Regular features bear such intriguing titles as "Who'll kill king car," "Oil pollution map," and "Environmental who's who." Other sections cover literature reviews, political progress reports, letters and editorial comment.

The publication costs \$5 for one year (four issues) and may be obtained by writing to *your environment*, 10 Roderick Road, London NW3, England.

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The Council on Environmental Quality's report *Ocean Dumping* records valuable information about what kinds and quantities of wastes are dumped into oceans, what the effects of ocean pollution are on marine life and human health, and what alternative disposal systems are available.

Copies may be purchased for \$.55 from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Tag your order with the report's document number, 0-404-547 to get a speedier response.