

**THE  
FEDERAL  
ROLE IN THE  
FEDERAL SYSTEM:  
THE DYNAMICS OF  
GROWTH**

**Protecting the Environment:  
Politics, Pollution, and Federal Policy**

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A Commission Report



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**ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS**  
Washington, D.C. 20575 • March 1981

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# Preface

**T**he Advisory Commission on Intergovernmental Relations was established by P.L. 380, which was passed by the first session of the 86th Congress and approved by the President on September 24, 1959. [Section 2 of the act] sets forth the following declaration of purpose and specific responsibilities for the Commission:

Sec. 2. Because the complexity of modern life intensifies the need in a federal form of government for the fullest cooperation and coordination of activities between the levels of government, and because population growth and scientific developments portend an increasingly complex society in future years, it is essential that an appropriate agency be established to give continuing attention to intergovernmental problems.

It is intended that the Commission, in performance of its duties, will:

(1) bring together representatives of the federal, state, and local governments for the consideration of common problems . . .

(5) encourage discussion and study at an early stage of emerging public problems that are likely to require intergovernmental cooperation.

(6) recommend, within the framework of the Constitution, the most desirable allocation of governmental functions, responsibilities, and revenues among the several levels of government . . .

Pursuant to its statutory responsibilities, the Commission has from time to time been requested by the Congress or the President to examine particular problems impeding the effectiveness of the federal system. Section 145 of the 1976 extension legislation for General Revenue Sharing (P.L. 94-488) mandated that the Commission:

. . . study and evaluate the American federal fiscal system in terms of the allocation and coordination of public resources among federal, state, and local governments, including, but not limited to, a study and evaluation of: (1) the allocation and coordination of taxing and spending authorities between levels of government, including a comparison of other federal government systems . . . (5) forces likely to affect the nature of the American federal system in the short-term and long-term future and possible adjustments to such system, if

any, which may be desirable, in light of future developments.

The study, *The Federal Role in the Federal System: The Dynamics of Growth*, of which the present volume is one component, is part of the Commission's response to this mandate. Staff were directed to: (a) examine the present role of the federal government in the American federal system; (b) review theoretical perspectives on American federalism, the assignment of functions, and governmental growth; and (c) identify historical and political patterns in the development and expansion of national governmental domestic activities. This case study on the federal role in environmental protection is one of seven prepared by Commission staff pursuant to this assignment.

**Abraham D. Beame**  
**Chairman**

# Acknowledgments

**T**his volume was prepared by the Governmental Structure and Functions section of the Commission staff. Cynthia Cates Colella had responsibility for the research and preparation of this case study. Other members of the Governmental Structure and Functions section—including David R. Beam, project manager, Timothy Conlan, Bruce D. McDowell, Carol Monical, Mavis Mann Reeves, and Albert J. Richter—reviewed the manuscript and made helpful suggestions. Delores Dawson assumed the enormous task of preparing the manuscript.

The following people also reviewed the volume and offered valuable advice: Michael A. Colella, J. Clarence Davies III, Charles O. Jones, Raymond Shapek, Lettie M. Wenner, and Joseph V. Yance.

The report would not have been possible without the cooperation and assistance of the persons identified above, and the Commission gratefully acknowledges their contribution.

Full responsibility for content and accuracy rests, of course, with the Commission and its staff.

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# CONTENTS

Chapter 1. Preventing Waterborne Diseases and Smoky Skies: Early State and Local Pollution Control . . . . .	1
Chapter 2. Federal Entrance Into Environmental Protection: An Inconspicuous Beginning, 1948-55 . . . . .	5
The Water Pollution Control Act of 1948 . . . . .	5
The Air Pollution Control Act of 1955 . . . . .	6
Chapter 3. Congress as Environmental Protector: The Enforcement Debate, 1956-67 . . . . .	9
Federal Water Pollution Legislation . . . . .	9
The Water Pollution Control Act Amendments of 1956 . . . . .	9
The Federal Water Pollution Control Act Amendments of 1961 . . . . .	10
The Water Quality Act of 1965 . . . . .	11
The Clean Water Restoration Act of 1966 . . . . .	11
Federal Air Pollution Legislation . . . . .	12
The Clean Air Act of 1963 . . . . .	12
The Motor Vehicle Pollution Control Act of 1965 . . . . .	13
The Air Quality Act of 1967 . . . . .	14
Chapter 4: The Federal Role Comes of Age, 1969-80 . . . . .	17
Earth Day and the Rise in Environmental Consciousness . . . . .	18
The National Environmental Policy Act . . . . .	18
The Council on Environmental Quality . . . . .	21
The Environmental Protection Agency . . . . .	22
The Big Amendments: Air and Water Legislation in the 1970s . . . . .	23
The Clean Air Act Amendments of 1970 . . . . .	23
The Water Pollution Control Act Amendments of 1972 . . . . .	24
The Role of the Courts in Environmental Protection . . . . .	25
Solid Waste, Noise, Chemicals, Ad Infinitum . . . . .	28
Juggling Extensions with Deadlines: The Newest Air and Water Amendments. . . . .	30
The Changing Shape of Environmental Policy: The Effects of the New Antiregulatory Mood and State Department Turnover . . . . .	38

Chapter 5. The Unequal Partnership: The Continuing Role of the States and Areawide Planning . . . . .	41
Chapter 6. From Increments to Giant Steps: Analysis of the Growth of a Federal Function. . . . .	45
Stage One: Policymaking by Incremental Adjustments . . . . .	46
1. Forces Generating Greater Federal Involvement: Problem Recognition. . . . .	46
2. Policy Development: Entrepreneurs, Support Groups, and the Effect of Party . . . . .	46
3. Constraints on Federal Expansion: Pollution Control as a State and Local Responsibility. . . . .	50
Stage Two: Speculative Augmentation . . . . .	51
1. Forces Generating Greater Federal Involvement . . . . .	51
2. Policy Development . . . . .	52
3. Constraints on Federal Expansion: Policymaking "Without" Constraints . . . . .	54
Stage Two: Epilogue, a New Realization of Constraints . . . . .	55
Speculations on the Future of the Federal Environmental Role . . . . .	56

## Tables

1. Most Important Domestic Problems . . . . .	19
2. Growth of Municipal Waste Water Treatment Construction Grants, 1957-77 . . . . .	26
3. Percentage of Votes in Support of Water Pollution Control on Related Roll Calls in the House of Representatives, 1956-61, by Party of Representative . . . . .	49
4. Escalation of Air Pollution Proposals, 1970 . . . . .	53
5. Estimated Total Pollution Abatement and Environmental Quality Expenditures, 1978-87 . . . . .	57

## Charts

1. Evolution of Policy Objectives, Incentives, and Conditions and Ensuing Problems in the Federal Water Pollution Program . . . . .	27
2. Biggest Problems Facing People, 1970-76 . . . . .	36
3. Public Opinion Responses Indicating that the Federal Government is Spending "Too Little" on These Federal Programs, 1973-77 . . . . .	37

## Figures

1. Major Federal Environmental Legislation . . . . .	31
2. Selected Data on Areawide Environmental Programs . . . . .	43
3. Stage One: Federal Pollution Policy Development and Implementation, 1948-68 . . . . .	47
4. Stage Two: Federal Pollution Policy Development and Implementation, 1969-72 . . . . .	47
5. Major Congressional Committees and Subcommittees Involved in Environmental Policy . . . . .	58

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# Preventing Waterborne Diseases And Smoky Skies: Early State And Local Pollution Control

The notion that environmental protection is a proper function of governments did not originate in Washington. Nor did a “get tough” attitude toward certain polluters first emanate from the wording or intent of the *National Environmental Policy Act of 1969* (NEPA). More than 600 years prior to NEPA’s enactment the King of England proclaimed a “no nonsense” pollution control law, complete with penalties for offenders. Unlike EPA administrators, the King did not consider it necessary to weigh the effectiveness of various deterrents such as fines or emissions fees. Instead, in 1308 he tried the simple and more straightforward strategy of executing the polluter. The effectiveness of this particular policy output was immediately apparent: The polluter in question never again burned coal in his furnace.<sup>1</sup>

Even in the United States, protection of the environment is no newcomer to the realm of legitimate government activities. Prior to independence, Massachusetts Bay Colony enacted regulations to prevent pollution in Boston Harbor<sup>2</sup> and, following the Revolution, most coastal states took some action to ensure that no large floating debris would obstruct navigation of the waterways within their borders.

Throughout the 18th and 19th centuries and well into the 20th, local governments bore primary responsibility for the regulation of water and air pollution. Unfortunately, localities found themselves quite helpless to control water pollution coming from upstream and a shift in the prevailing winds was apt to make a sleepy little hamlet the unwilling recipient of smoky particles from a more industrialized village. Such inadvertent boundary violations offered municipalities

little incentive to control their own pollution sources.<sup>3</sup>

Early court actions against polluters were no more effective. Suits generally took the form of negligence, nuisance, and trespass actions and the parties involved were usually two individuals—the plaintiff and the defendant. Lawsuits were too costly for the average person to initiate and damages were seldom awarded since the burden of proving malicious negligence lay with the plaintiff.

By the end of the 19th century the connection between dirty water and contagious diseases had stimulated most states to enact water pollution laws. Such legislation bore little resemblance to present water pollution control laws in that early state statutes were primarily concerned with the human health aspects of dirty water rather than with controlling or abating pollution.<sup>4</sup> The result of the health emphasis which states placed upon pollution was a tendency for the issue to be buried in public health agencies that largely ignored the problem once a disease had been eradicated.

States took even less interest in controlling air pollution which, despite its potential to travel, was considered a localized phenomenon. (The actual enforcement of air pollution regulations at the state level was an idea whose time did not come in even a single state until 1952.<sup>5</sup>) Pollution meant smoke. And heavy industrial concentration and the lack of effective means to enforce antismoke ordinances resulted in more than one Pittsburgh—a city described early on by Charles Dickens as “hell with the lid lifted.”<sup>6</sup>

In the areas where smoke and other industrial pollutants were the most onerous, city leaders were faced with the difficult prospect of improving public health at the possible expense of the local economy. The problem was aptly stated by a barber in a Pennsylvania steel city: “When smoke is pouring, people get a haircut. When there isn’t any smoke, people don’t spend money.”<sup>7</sup> Indeed, in many cities pollution meant jobs, and an industry pushed to clean up its smoke with costly pollution control devices might pack up and leave, taking tax revenues and jobs with it. While such threats were often more perceived than real, the decision to “push” a major industry did not come easily to city officials.

In *The Un-Politics of Air Pollution*, Matthew Crenson illustrates the difficulties of initiating pollution control legislation in a city dominated not only by an industry but by one company within that industry.<sup>8</sup> Gary, IN, is such a city. Founded by, built by, and economically dependent upon the U.S. Steel Corporation, Gary was

unable to muster support for any air pollution ordinance until 1962. In the Gary pollution “debate,” U.S. Steel was a powerful force, not because it actively participated in a movement to stop legislation but because its very presence kept the issue at a low-key, *nondebate* level. The quiet concern centered not upon what city officials could do about their heavily polluted city but rather upon what U.S. Steel might do if a pollution ordinance were enacted.

... even U.S. Steel could not afford to do anything it pleased: no one believed that the company would respond to the costs of a local pollution control program by closing down its Gary plant. There were other less drastic actions, however, that could still bring substantial hardship to Gary. It was feared that the corporation might seek to minimize the cost of pollution regulation by diverting production increases or plant expansion from its Gary mill to other installations subject to more lenient pollution control regulations. Or, when the company faced the need for production cutbacks, it might concentrate those reductions at the Gary works rather than at other mills where dirty air restrictions were less stringent.<sup>9</sup>

Thus, steel officials did not have to become involved in overt political machinations even on those rare occasions when they were directly confronted with the issue. As one antipollution activist put it, “The company executives . . . would just nod sympathetically and ‘agree that air pollution was terrible and pat you on the head. But they never did anything one way or the other. If only there had been a fight, then something might have been accomplished.’”<sup>10</sup>

Gary did not even begin to consider the pollution issue until 1955—years after other cities had taken up the battle—and final legislation was not forthcoming for seven more years. When the ordinance finally passed it was fairly lenient toward U.S. Steel and the company wisely remained silent. The city ordinance was prompted by a state law which was to become effective in 1963 and which would allow state officials to proceed against any municipality which failed to deal appropriately with a pollution problem. In addition, the U.S. Department of Health, Education, and Welfare’s Public Health Service had begun to voice concern over Gary’s air—the worst in the nation, according to a 1962 study. U.S. Steel’s silent acquiescence with the city ordinance, then, was certainly in its own best interest. In a particularly blunt statement, a member of

the Chamber of Commerce asserted that the steel industry preferred pollution legislation at the local level "because that's where we can get at it."<sup>11</sup>

The Gary case is unusual only because the silent opposition to pollution control was such a unified entity. Other cities faced similar, if less extreme, dilemmas. While a single industry can overwhelm a locality, its influence becomes diluted as the pollution issue moves up the rungs of the local-state-federal "stepladder." It is consistent with this dilemma of urban administrators that among the major initial supporters of pollution control legislation at the national level were the National League of Cities, U.S. Conference of Mayors, and the National Association of Counties. To these groups, national standards meant that one city could not undercut another with less stringent environmental standards.<sup>12</sup>

The lack of effective pollution controls at the state and local levels and the early reticence of the federal government to become involved were not merely by-products of industry intransigence. Very simply, pollution did not arouse a great deal of public interest.<sup>13</sup>

Although the pollution problem was far more deadly in a literal and immediate sense in the 1940s and 1950s<sup>14</sup> than it was in the 1970s, it was not a visible political issue around which public opinion could coalesce. The first half of the 20th century was a period of war, followed by depression, followed by war, and, finally, rapid growth and prosperity. The good life was built, torn apart, and rebuilt economically and politically rather than environmentally.

Further, relevant interest groups were small, catering to a narrow audience. The thrust tended to be conservationist rather than environmentalist and, thus, more limited in scope. Groups such as the Sierra Club and the Izaak Walton League were far more concerned with conserving wildlife and preserving forests than with purifying polluted urban air and streams.<sup>15</sup> In short, the conservation movement did not appeal to, nor did it attempt to appeal to, the Gary steelworker. Decisive environmental action was dependent upon a certain amount of public interest; the public interest needed a visible issue; and the issue was in need of a broader forum.

## FOOTNOTES

<sup>1</sup> Lettie McSpadden Wenner, *One Environment Under Law*, Pacific Palisades, CA, Goodyear Publishing Co., Inc., 1976, p. 7.

<sup>2</sup> J. Clarence Davies III, "The Greening of American Politics," *The Wilson Quarterly*, Vol. 1, No. 4, Summer 1977, pp. 85-86.

<sup>3</sup> J. Clarence Davies III and Barbara Davies, *The Politics of Pollution*, Indianapolis, IN, The Bobbs-Merrill Co., Inc., 1975, p. 152.

<sup>4</sup> The early "human health" emphasis in water pollution control meant that concern centered upon waterborne germs such as typhoid which directly contributed to human disease. Currently recognized threats to waterways, such as eutrophication (stagnation) and carcinogens and other toxic substances ingested by fish and other life forms, were not dealt with under these early (human-health oriented) programs.

<sup>5</sup> The first state to pass such legislation was Oregon. Source: Davies, *The Politics of Pollution*, p. 158.

<sup>6</sup> Charles O. Jones, *Clean Air: The Policies and Politics of Pollution Control*, Pittsburgh, PA, The University of Pittsburgh Press, 1975, p. 21.

<sup>7</sup> *Ibid.*, p. ix.

<sup>8</sup> Matthew A. Crenson, *The Un-Politics of Air Pollution*, Baltimore, MD, The Johns Hopkins Press, 1971, pp. 35-82.

<sup>9</sup> *Ibid.*, p. 78.

<sup>10</sup> *Ibid.*, pp. 76-77.

<sup>11</sup> *Ibid.*, p. 72.

<sup>12</sup> Davies, *The Politics of Pollution*, pp. 92-93.

<sup>13</sup> According to Anthony Downs, this period could be described as "the preproblem stage [which] prevails when some highly undesirable social condition exists but has not yet captured much public attention, even though some experts or interest groups may already be alarmed by it. Usually, objective conditions regarding the problem are much worse during the preproblem stage than they are by the time the public becomes interested in it." The "preproblem stage" is the first of five stages through which most issues cycle. Source: Anthony Downs, "Up and Down with Ecology" *The Public Interest*, Number 28, Summer 1972, p. 39.

<sup>14</sup> Several events in the late 1940s and early 1950s were profoundly illustrative of the devastating effects of air pollution. In 1948, in Donora, PA, a heavy smog was alleged to have caused 20 deaths and 1,440 serious cases of illness. Greater than usual levels of air pollution coupled with fog hung over London for five days in 1952, reportedly resulting in almost 4,000 deaths. In 1953, in New York, an inverted air mass trapped industrial automotive wastes over the city and is believed to have caused 200 deaths. Source: Jones, *Clean Air*, p. 27; Crenson, *The Un-Politics of Air Pollution*, pp. 1-6.

<sup>15</sup> Davies, "The Greening of American Politics," pp. 85-96.

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# Federal Entrance Into Environmental Protection: An Inconspicuous Beginning, 1948-55

Federal involvement in the environment during the first half of this century can be described as piecemeal at best. Prior to 1948, antipollution legislation was primarily aimed at keeping interstate and coastal waterways free from debris for the smooth flow of navigation. The *Refuse Act of 1899*<sup>1</sup> forbade dumping into navigable waters without a permit from the Chief of the Corps of Engineers and the *Oil Pollution Act of 1924* banned oil discharges into coastal waters. In addition, the *Public Health Act of 1912* provided the federal government with the authority to investigate waterways that could be sources of contagious diseases. Such acts frequently went unenforced and could only loosely be termed environmental legislation.<sup>2</sup>

This early self-denial of federal powers is understandable since controlling the environment was traditionally interpreted as protecting the health, safety, and welfare of the people—a proper function for the states under their police powers.<sup>3</sup> Actions such as those taken under the *Refuse Act* were justified as legitimate federal functions through strict interpretation of the commerce clause.

Early Presidential concern with the environment tended to be conservationist in nature. Notable in this respect were the two Roosevelts—Theodore and Franklin. Both men were committed conservationists prior to taking office and this commitment was reflected in a number of resource and conservation policies initiated during their administrations.<sup>4</sup>

## THE WATER POLLUTION CONTROL ACT OF 1948

The first breakthrough in water pollution legislation at the national level was provided by Senators Alben



Barkley (D-KY) and Robert Taft (R-OH) in 1948. The *Water Pollution Control Act of 1948* was significant not because of what it could accomplish but, rather, because it represented federal recognition of water pollution as a national problem.<sup>5</sup> In fact, the act did little more than provide research and technical assistance to the states. In addition, although loans for individual projects were made available Congressional appropriations were scant and relatively useless.<sup>6</sup> The act, then, legitimized federal entrance into the realm of water pollution (no matter how inconspicuous) on the basis of its power to tax and spend for the general welfare.<sup>7</sup> This initial form of involvement was later to be replicated in the field of air pollution.<sup>8</sup>

Congress was exceedingly careful to limit its own powers by asserting state authority:

... it is hereby declared to be the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of the states in controlling water pollution . . .<sup>9</sup>

This Congressional assertion of state control over pollution matters was prompted as much by the preponderance of industrial lobbyists as it was by constitutional concerns. Barkley, the Democratic Senator from Kentucky, and his colleague, Kentucky Congressman Fred Vinson, pressed for legislation that would limit federal investigations and thereby protect Ohio Valley coal and industrial interests.<sup>10</sup> Thus, the act identified pollution as a national concern but chose not to attack it through a national effort.<sup>11</sup> Industry, though not as powerful at the national level as it was at the local level, was still able to maintain considerable influence through individual legislators from industrial regions.

## THE AIR POLLUTION CONTROL ACT OF 1955

At all levels, the recognition of air pollution as a problem requiring governmental action followed belatedly on the footsteps of similar recognition in the field of water pollution. The first national legislation in air pollution did not come until 1955. The fact that Congress waited so long to act is even more surprising in light of "pollution events" which had been occurring since at least 1947. Between 1948 and 1953 killer smogs

in Donora, PA, London, and New York reputedly took thousands of lives. Los Angeles was already suffering from its famous smogs and had begun an antipollution control program in 1947. Four years later, Dr. Arie Haagen-Smit of the California Institute of Technology first discovered that the more obvious forms of pollution, such as smoke, were far less damaging to health and the environment than the odorless, invisible exhaust fumes from automobiles.<sup>12</sup> However, despite several attempts by individual legislators to turn these events into meaningful legislation, Congress as a whole turned a deaf ear.

When the *Air Pollution Control Act of 1955* finally materialized, it very much resembled the 1948 *Water Pollution Control Act* in both scope and thrust. The law authorized a federal program of research, training and demonstrations relating to air pollution control. In addition, the bill authorized grants-in-aid to states and localities and other public and private institutions for antipollution research and related activities.<sup>13</sup> (In authorizing these grants, the air pollution control law did differ from the 1948 water pollution control law, which had authorized only loans.) However, once again, the federal role was intentionally limited. A portion of the Senate report on this legislation illustrates Congressional self-denial:

The committee recognized that it is primarily the responsibility of state and local governments to prevent air pollution. The bill does not propose any exercise of police power by the federal government and no provision in it invades the sovereignty of states, counties, or cities. There is no attempt to impose standards of purity.<sup>14</sup>

It is notable that the air act, unlike the water act, was generous in recognizing the responsibility of local governments to prevent air pollution. This could only be construed as a recognition of reality, for in 1955 few states had abrogated local hegemony in air pollution control. Likewise, most of the grant-in-aid funds which were authorized in the 1955 act were received by local governments. Not until 1963 did the focal point of federal air pollution legislation switch from the cities to the states.<sup>15</sup>

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## FOOTNOTES

<sup>1</sup> *The Refuse Act* (popularly known as the *River and Harbor Act*) was rediscovered by the Environmental Protection Agency (EPA) in 1971. Under the provisions of this act, the EPA began, for the first time, to bring a large number of enforcement actions against industrial polluters. Source: Davies, *The Politics of Pollution*, p. 123.

<sup>2</sup> Cynthia H. Enloe, *The Politics of Pollution in a Comparative Perspective*, New York, NY, David McKay Co., Inc., 1975, pp. 146-147.

<sup>3</sup> Frank P. Grad, George W. Rathjens, and Albert J. Rosenthal, *Environmental Control: Priorities, Policies, and the Law*, (New York, NY, Columbia University Press, 1971, p. 49.

<sup>4</sup> See for example: Frank E. Smith, *The Politics of Conservation*, New York, NY, Pantheon Books, 1966, p. 87-109 and 240-263.

<sup>5</sup>M. Kent Jennings, "Legislative Politics and Water Pollution Control," in *Congress and Urban Problems*, ed. by Frederick N. Cleveland, Washington, DC, The Brookings Institution, 1969, p. 74.

<sup>6</sup>*Ibid.*

<sup>7</sup>Grad, Rathjens, Rosenthal, *Environmental Control*, p. 50.

<sup>8</sup>*Ibid.*

<sup>9</sup>*The Water Pollution Control Act of 1948*, P.L. 80-845 (1948).

<sup>10</sup>Arnold W. Reitze, Jr., *Environmental Law*, Washington, DC, North American International, 1972, p. 4-34.

<sup>11</sup>*The Water Pollution Control Act of 1948* provided only temporary au-

thority and was to have expired after five years. However, in 1953 the act was extended in the same form for an additional three years. Source: Davies, *The Politics of Pollution*, p. 28.

<sup>12</sup>Davies, *The Politics of Pollution*, p. 19.

<sup>13</sup>Randall B. Ripley, "Congress and Clean Air: The Issue of Enforcement, 1963," in *Congress and Urban Problems* p. 231.

<sup>14</sup>Special Report No. 389, 84th Cong., 1st Sess., Washington, DC, U.S. Government Printing Office, p. 3. Source: Grad, *Environmental Control*, pp. 51-52.

<sup>15</sup>*Ibid.*

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# Congress As Environmental Protector: The Enforcement Debate, 1956-67

**W**hile more stringent and comprehensive legislation has been introduced and enacted since 1968, the federal role in pollution control began to take shape during the 12-year period from 1956-67. The ideas and initiatives which provided the impetus for this formative period emanated from Congress—in particular from its Democratic membership.

## FEDERAL WATER POLLUTION LEGISLATION

### The Water Pollution Control Act Amendments of 1956

The *Water Pollution Control Act of 1948* was to have expired for the second time in 1956. In the eight years since enactment of this first major water pollution bill, the condition of the nation's rivers and lakes had not noticeably improved and, in some cases, had deteriorated. The situation was beginning to elicit more active concern among conservationists and their Congressional allies, who felt that some permanent form of legislation was essential. A receptive vehicle for improved legislation was found in Congressman John A. Blatnik (D-MN), chairman of the House Public Works Committee's Subcommittee on Rivers and Harbors.<sup>1</sup>

As might have been expected, the 1956 debate centered on the expanding federal role in the realm of water pollution control. Less expected, however, was the focus of the debate. Seeking to strengthen a

previously passed Senate bill, Blatnik proposed \$500 million in grants-in-aid for the building of local sewage disposal plants over a ten-year period.<sup>2</sup> This hardly seemed revolutionary since grants-in-aid were increasingly becoming an intergovernmental way of life. Potentially more significant was a modest and seemingly weak federal enforcement provision which laid the basis for more stringent federal sanctions and regulations in the future.<sup>3</sup> Yet, when the battle lines were drawn, controversy erupted over the grant proposal while the enforcement clause glided by virtually unnoticed.<sup>4</sup>

The ensuing debate was drawn along partisan lines since the Eisenhower Administration was basically opposed to major grant outlays. Nonetheless, a conference report containing most of Blatnik's provisions emerged, was agreed to by both Senate and House, and was signed by the President on July 9, 1956.<sup>5</sup>

Despite a considerable amount of rancor accompanying passage of the bill, Congress, once again, had moved cautiously. The primary responsibility of the states over water pollution was reaffirmed. The legislation expanded research and training and authorized grants to states and localities for waste treatment facilities. In addition, it allowed for grants to states and interstate agencies for expanded water pollution control projects.<sup>6</sup>

While it was barely noticed during Congressional debate, the federal enforcement provision became the basic method of enforcement in water and air pollution for the next nine years. Extremely weak in what it could accomplish, its importance lay in opening the door to further federal dominance in the area of pollution control. The method of enforcement utilized was the conference technique.

Under the new federal authority HEW was empowered to call conferences on pollution either on its own initiative (whenever the health and welfare of people in different states were involved) or at the request of the Governor or pollution control agency of any state—not necessarily the state from which the pollution was originating. State agencies responsible for pollution in their areas would receive the recommendations from the conference; after six months of failure to act, the Secretary of HEW was then empowered to call a public hearing whose members could make recommendations for pollution abatement. If he chose to do so, the Secretary could send such findings to the alleged polluters and to state and interstate pollution control agencies.

A reasonable time for action was specified, not less than six months. After the second six-month period had elapsed, HEW could request the Justice Department to file suit in federal court against individual polluters.<sup>7</sup>

In fact, the conference technique, which applied only to interstate waters under the 1956 legislation, virtually tied the hands of potential federal enforcers because state consent was necessary before federal action could be taken.

## **The Federal Water Pollution Control Act Amendments of 1961**

In 1958, just two years after the passage of his original bill, Blatnik began work on new water legislation. This time, however, the Republican Administration was more adamant in its attacks on the grant provisions. The Administration request was not for a current level freeze or for fewer grants. Rather, President Eisenhower requested Congress to discontinue the grants altogether under the assumption that waste treatment was a purely local phenomenon and, therefore, a proper function for states and municipalities. Congress, however, chose to counter the Administration opposition by increasing authorizations. The result was a decidedly partisan stalemate which lasted three years and included two Presidential vetoes.<sup>8</sup>

When the *Federal Water Pollution Control Act Amendments of 1961* finally emerged under a Democratic Administration, the conference technique remained intact but with significant new provisions regarding the federal role: The federal jurisdiction was expanded from interstate waters to all navigable waters. This expansion meant that the federal government could act on almost all waters in the United States—even intrastate bodies, if pollution was damaging to interstate health or navigation. Further, the Secretary of Health, Education, and Welfare could request the Attorney General to bring an abatement suit even without the consent of state officials if pollution affected the health or welfare of people in another state.<sup>9</sup>

Although these new provisions strengthened the federal hand, they hardly gave it free rein. In the first place, federal officials had to prove that pollution in one state was damaging to the health or welfare of people in another state. In the second place, the PHS, which was responsible for investigating water pollution problems, was slow to act and gave this function low priority.<sup>10</sup>

## The Water Quality Act of 1965

The reluctance of the PHS to act decisively on water pollution, coupled with an inadequate state response, gave rise to a push for further Congressional action within a year of the passage of the 1961 amendments.<sup>11</sup> In the interim, the starring role had shifted from the House Subcommittee on Rivers and Harbors under John Blatnik to a newly created Senate Subcommittee on Air and Water Pollution under the leadership of Edmund S. Muskie (D-ME). Once again, debate focused on expanding the federal role, with both opponents and proponents becoming increasingly visible.

Understandably, those most opposed to the Muskie proposals were the lobbying arms of the industrial polluters—notably, the National Association of Manufacturers, the Pulp and Paper Association, and the Manufacturing Chemists Association.<sup>12</sup> These groups had become particularly concerned about a provision which would allow the Secretary of HEW to set water quality standards for interstate waters. Joining industry in its opposition to the proposed legislation were state water pollution control boards and similar agencies who viewed federal initiatives as an abrogation of their own powers.<sup>13</sup>

Among the most vocal proponents of the Muskie bill were the traditional conservation groups. Associations such as the Audubon Society and the Izaak Walton League were joined by the League of Women Voters and municipal interest groups, including the U.S. Conference of Mayors, in supporting the measure.<sup>14</sup>

The *Water Quality Act* was not enacted until 1965. This time the point of contention was not the increased grant authorizations for sewage treatment facilities but, rather, three provisions which signalled a new overt leadership role for the federal government in the field of pollution control.

For the first time, the stated purpose of a federal pollution bill was to establish “a national policy” for controlling pollution.<sup>15</sup> In addition, this national policy proposed to keep interstate “waters as clean as possible.”<sup>16</sup> That particular phrase was especially offensive to industry which saw it increasing costs beyond all reasonable expectations. Because of the proposed industrial objection, the phrase was made more ambiguous. However, the Federal Water Pollution Control Administration (FWPCA), created by the same legislation, subsequently issued guidelines based on the clean water approach.

The clean water approach was a substantial departure from the “older regulatory philosophy based on the traditional notion of waste management, namely, to

use the rivers so as to maximize the waste dilution and assimilative capacity of the nation’s waters.”<sup>17</sup> Instead, the thrust of the clean water approach was to disallow “treatable waste to be discharged without the best practicable treatment or control unless there is evidence that a lesser degree of control will still provide sufficiently high water quality.”<sup>18</sup>

Foreshadowing the rancor which followed the issuance of guidelines, a second hotly contested portion of the Muskie bill was the creation of the FWPCA in HEW. The agency was charged with the task of coordinating water pollution activities within the government; and again, it was industry and state agencies pitted against the urban lobby and conservationists. Yet, while the anticontrol interests had prevailed for the time being in changing the wording of the statement of purpose, the procontrol forces won the FWPCA battle.<sup>19</sup>

Finally, and most controversial, the legislation originally authorized the Secretary of HEW to apply water quality standards to interstate waters.<sup>20</sup> In fact, this wording was altered to accommodate state interests. In final form, the bill made each state responsible for setting standards within its jurisdiction. If, after one year’s time a state failed to file with HEW a letter of intent to set appropriate water quality regulations, the Secretary could then enforce federal standards.<sup>21</sup>

## The Clean Water Restoration Act of 1966

On October 2, 1965, President Johnson signed the *Water Quality Act* into law, remarking that “additional bolder legislation will be needed in the years ahead.”<sup>22</sup> In fact, however, the President had to wait only one year before additional legislation emerged.

The bill which created the *Clean Water Restoration Act of 1966* was very much the handiwork of Senator Muskie. It was also substantially different from the bill the President had envisioned. Whereas the Administration wanted to establish a regional approach to water pollution control,<sup>23</sup> Muskie was committed to the pivotal role of the states as it existed under the 1965 law. Muskie’s purpose in the new act was to increase construction grants rather than to radically change previous legislation. The final product did exactly that and little else, authorizing \$3.55 billion in grants-in-aid over five years. Despite his disappointment, the President signed the new bill on November 3, 1966.<sup>24</sup>

The history of federal water pollution control initiatives from 1948 to 1966 is a vivid example of government action through incremental changes.<sup>25</sup> More

specifically, the federal government increased its own powers and authority severalfold through small but cumulatively meaningful alterations in legislative language and actions. Viewed year-by-year over a period of two decades, the changes seem small and piecemeal; but a different picture emerges upon comparing the federal "scorecard" at a single glance.

From 1948 to 1966, federal spending for water pollution control increased from a small loan program funded at about \$1 million per year to a grant-in-aid outlay of \$3.55 billion over five years. In the same period, Congress moved from a posture of denying federal authorities any enforcement powers to requiring the enactment of national water quality standards in the event that an individual state chose not to specify its own clean water criteria. In order to rationalize its emerging enforcement powers, the federal government moved from timid reliance upon its powers to tax and spend for the general welfare as a basis for its intrusion into the area of water pollution control to increasingly broader interpretation of the interstate commerce clause. It institutionalized its role as protector of the nation's waters by elevating a small administrative section buried within an agency within a department to agency status. Finally, the stated purpose of legislation underwent a significant metamorphosis, from protecting the rights and responsibilities of the states to establishing a national policy. During roughly the same period, though always one step behind, a similar scenario was occurring in the field of air pollution.

## FEDERAL AIR POLLUTION LEGISLATION

If the causes of air pollution are simplified to the "nth degree," they can be divided into two basic source types—those that are stationary (for example: industry, homes) and those that move (for example: cars, trucks). In fact, air pollution policy development from 1956 until 1966 tended to evolve according to the assumptions of just such a division.

### The Clean Air Act of 1963

The 1955 *Air Pollution Control Act* authorized a relatively modest \$5 million annually for federal research and training and for state and local air pollution agencies.<sup>26</sup> It legislated little and, correspondingly, accomplished little. Yet, it was retained as the basic (and only) federal law dealing with air pollution

for the next eight years.<sup>27</sup> This was not to suggest that no one in government was considering the problem. Rather, as illustrated in the case of water pollution, a familiar argument developed over the extent of the federal role.

Interestingly, major opposition to federal expansion through some type of enforcement provision came from within the federal bureaucracy itself and, within that bureaucracy, objection was loudest from the agency which potentially stood to gain the most in terms of jurisdictional expansion. In opposition to its own boss, the Secretary of HEW, the PHS stood steadfastly by the conservative notion that it was a professional research-oriented organization, which faced being tainted by politics if made to enforce standards. In addition, it claimed a positive working relationship with state agencies that would be ruined within the framework of a regulatory situation.<sup>28</sup> Such a bureaucratic stance illustrates not only the occurrence of government infighting but an important factor in intergovernmental relations as well. As the federal government increases its jurisdiction over a particular function, it seldom moves as one monolithic machine running rampant over states' rights. Rather, the participants are multiple and frequently in conflict and the process is fluid and incremental. In the case noted above, PHS was able to gain Presidential approval of its views through 1961. However, in 1962 a surprise actor, Assistant Secretary of HEW for Legislation Wilbur Cohen, gained access to President Kennedy and convinced him that federal enforcement was a key to doing something positive about air pollution. In a matter of two days the President abandoned the PHS "research-only" approach in favor of federal enforcement.<sup>29</sup>

As had been true with water pollution legislation, the major arena for the development of air pollution policy was Congress. Of course, any bill that legislates increasing dollar amounts and a first step toward federal enforcement is never enacted without at least some opposition. Nonetheless, Congressional initiatives in the field of air pollution flowed somewhat more smoothly than those in the area of water pollution.

This amenable situation was the result of three circumstances. In the first place, the Kennedy Administration was far less reticent regarding an expanded federal role than the Eisenhower Administration had been.<sup>30</sup> Thus, despite division in the ranks (notably from PHS) Kennedy tended to support Congressional initiatives. Second, the industrial lobbyists, who strongly wanted air pollution control to be kept at the state and local levels, simply did not commit themselves fully to this particular battle because they were more

concerned with water pollution legislation being considered at the same time.<sup>31</sup> Finally, the urban lobby, effectively led by Hugh Miels, associate director of the U.S. Conference of Mayors, stood firmly behind both increased grant-in-aid funds and intrastate enforcement by the Secretary of HEW.<sup>32</sup>

Through the work of Abraham Ribicoff (D-CT) and Edmund Muskie in the Senate and Kenneth Roberts (D-AL) in the House, a bill reflecting input from several lobby groups was introduced and signed into law by President Johnson on December 17, 1963. This legislation—the *Clean Air Act of 1963*—was significant in several respects. In the first place, it signalled an important change in the role of the federal government and in the pattern of federal-state-local relationships.<sup>33</sup> In regard to the federal role, the act authorized the Secretary of HEW to establish nonmandatory air quality criteria. In addition, the Secretary was authorized to intervene in the pollution problems of a state if the state could not itself deal appropriately with the problems. In terms of the changing pattern of federal-state-local relations, the act significantly altered the thrust of the 1955 legislation. Under the *Air Pollution Control Act*, grants-in-aid had primarily gone directly to local governments. However, the 1963 act made states the prime recipients.

[I]n providing for grants-in-aid to the states for air pollution control, [the 1963 act] exerted an enormous influence in the development and enactment of the states' own air pollution control legislation. Moreover, the 1963 act, departing considerably from the notion of strictly local control of air pollution, gave recognition to the need for regional planning and provided tangible incentives for regional cooperation in its grants-in-aid program—a larger portion of the costs establishing, developing and improving air pollution programs was to be reimbursed by the federal government if the grantee agency was an intermunicipal or interstate agency than if it served only a single city or other governmental unit.<sup>34</sup>

Further, although the Conference of Mayors had desired direct federal enforcement upon the request of a local government, the legislation provided that the Governor of a state must approve local requests for federal intervention.<sup>35</sup>

Another significant aspect of the act was what it did not contain. Except for a provision mandating a study on the effects of auto pollution, the legislation con-

cerned itself almost exclusively with stationary source pollution. For the moment, Detroit was spared—but only for the moment.

## The Motor Vehicle Control Act of 1965

Actually, federal control over moving pollutants was a far simpler matter in terms of Constitutional justification. Clearly, cars do move across interstate lines.<sup>36</sup> In addition, California legislation provided federal policymakers with an example and impetus. The example was a 1961 law passed by the California legislature which required the addition of a crankcase control device on new cars sold in the state. This law was followed in 1963 by another which required exhaust control devices.<sup>37</sup>

The impetus for Congress to act was also provided by California initiatives. Illustrative of this was a 1964 exchange between Senator Muskie and a representative of the Automobile Manufacturers Association:

SENATOR MUSKIE. Let me ask you this. You told the Governor of California that your 1967 model can incorporate some design changes which will effectively control exhaust emissions, as I understand your statement?

MR. DELANEY. It will meet their specifications . . . .

SENATOR MUSKIE. It controls exhaust emissions in accordance with California's standard?

MR. DELANEY. Right.

SENATOR MUSKIE. Now what harm does it do to control the same emissions in 49 other states?

MR. DELANEY. There would be no harm, but it is an economic burden on the— —it may be an economic burden on the rest of the country.<sup>38</sup>

Despite seemingly airtight justification and exemplary state legislation, enactment of a national auto pollution control law was hardly an example of legislative smooth sailing for Senator Muskie. Throughout the hearings on the matter, Muskie's subcommittee was caught between two contradictory streams of thought. On the one hand, HEW and Bureau of the Budget representatives acknowledged the serious nature of the problem but felt more data were needed before enactment of major legislation. On the other hand, auto industry spokesmen and women maintained that they could speed up technology but that auto pollution was not a serious environmental hazard and, thus, did not warrant sophisticated control devices. The perplexity of the situation was summed up in a tongue-in-cheek statement by Muskie:



I must say that we find ourselves in a curious situation . . . the Department of Health, Education, and Welfare indicated that although we have a problem that needs to be dealt with we don't have the know-how to deal with it now.

Yesterday in Detroit the testimony of the automobile industry was that there is no problem that needs this kind of action now, but that if there is, the industry does have the know-how to deal with it. If we can get the two together, we can get some action.<sup>39</sup>

In spite of these conflicting positions, enactment of auto pollution control legislation was forthcoming. Administration objections were cooled somewhat by increased interest in air pollution by the press. Thus, when an assistant secretary of HEW voiced President Johnson's opinion that the Administration would prefer to seek voluntary cooperation from the auto industry, *The New York Times*, *The Wall Street Journal*, *The Washington Post*, and *The Los Angeles Times* all editorialized strenuously against the President's decision.<sup>40</sup> The event proved politically embarrassing to Johnson who sent the beleaguered assistant secretary back to Congress to testify that his remarks had been "completely misunderstood."<sup>41</sup>

In addition to the change in the Administration's position, Congressional action was made easier by relative industrial quiescence. By 1965 the auto industry had decided that one uniform federal standard would be far less difficult to implement than 50 different state standards.<sup>42</sup>

In deference to the auto industry and earlier HEW objections regarding the availability of technical expertise, the Secretary of HEW was authorized by Congress to prescribe "practicable" emissions standards "as soon as possible."<sup>43</sup> (Subsequent to the enactment of the law, HEW agreed to establish regulations for 1968 model cars—the same regulations which California had established for its 1967 autos.)<sup>44</sup> In addition, the Secretary was given authority to enforce emissions standards on new automobiles without necessarily receiving input from state or local agencies.<sup>45</sup> The federal government had taken another giant step.

## The Air Quality Act of 1967

A series of events beginning in the mid-1960s made passage of stricter, more comprehensive air legislation imminent. In 1965 the auto industry suffered an extreme public relations setback following a monumental

faux pas involving Ralph Nader. After Nader published *Unsafe at Any Speed*, a stinging indictment of auto industry safety standards, General Motors decided to investigate Nader's personal life. Unfortunately, the investigation included an attempt to add spice to Nader's life without Nader's permission. General Motors found out the hard way that "you don't mess around with Ralph"—the president of GM was forced to apologize to Nader in front of Congress and on national television.<sup>46</sup> The event seriously weakened the auto industry's public image and, subsequently, its objections to stronger legislation.

In 1966 New York City was again visited by air inversion conditions. The four-day inversion reportedly caused 80 deaths and heightened public concern over dirty air—a concern which had been growing steadily since 1963.<sup>47</sup>

The New York incident was followed in December by the Third National Conference on Air Pollution in Washington, DC. The conference was attended by 4,000 people and prompted Muskie and Administration spokesmen and women to promise rapid government action.<sup>48</sup> These were not empty promises, since both Muskie's subcommittee and HEW personnel had already begun shaping legislation. In January of 1967, President Johnson submitted to Congress a proposal for broad new legislation to be known as the "Air Quality Act."

The proposed act was to include national emissions standards for major industrial sources of pollution and the establishment of regional air quality commissions to enforce pollution control measures in "regional airsheds" which cut across state and local boundaries. The President also called for federal assistance to initiate state automobile pollution inspection systems, a major increase in the federal air pollution research effort, and federal registration of motor fuel additives such as tetraethyl lead.<sup>49</sup>

In addition, HEW had been examining sulfur oxides as a major pollutant and, as a result, was recommending stringent standards which industry claimed might eliminate the use of coal in major metropolitan centers.<sup>50</sup>

Although Muskie was in favor of stronger legislation, he had several reservations regarding the Administration stance. In the first place, the President's proposals envisioned a dominant role for the federal government in setting stationary source emissions standards—a

function which Muskie believed to be a state prerogative.

In the second place, the sulfur oxide issue threatened coal-producing states. This was especially significant in view of the position of Muskie's subcommittee. The Air and Water Pollution Subcommittee was part of the Public Works Committee—a committee chaired by Senator Jennings Randolph of West Virginia. This clearly placed Randolph in a position of influence over pending legislation which he exerted by inserting in the legislation a requirement that HEW reconsider its sulfur oxides criteria.<sup>51</sup>

A final point of contention centered on California. After passage in the Senate on July 15, the bill arrived in the House and immediately caused friction between the Michigan and California delegations. Rep. John Dingell of Michigan sought to delete Senate language which allowed California to retain its stricter-than-national standards. Reacting to public outburst on the part of its citizens, the California delegation acted swiftly to reverse Dingell's proposed amendments. The success of this action became apparent when the House voted 152-58 to retain the original Senate language.<sup>52</sup>

The Air Quality Act of 1967 continued grants-in-aid at a higher level. More significantly, it also enlarged the federal enforcement role. The act required the Secretary of HEW to establish both air quality control regions and clean air criteria. Upon issuance of these criteria the states would be required to set and plan to implement their own standards. "These standards were to be designed to meet air quality standards for the specific air quality regions or parts of regions within the state's boundaries."<sup>53</sup> Further, if a state failed to enforce its air standards the Secretary, through the Attorney General, was authorized to bring suit.<sup>54</sup>

A final clause, noteworthy for its enhancement of federal enforcement powers, allowed the Attorney

General to "bring abatement action in any air pollution situation which presented an imminent and substantial danger to health, without the necessity of a prior conference or hearing."<sup>55</sup>

George Washington Plunkitt, a Tammany Hall boss noted for speaking his mind, once remarked, "I seen my opportunities and I took 'em."<sup>56</sup> So too, an opportunity missed at the state and local levels was picked up at the national level. The Air Quality Act solidified the federal role as environmental protector. However, in expanding its own role, the federal government had not really impinged on the functional prerogatives of the 50 states. In fact, a more accurate assertion would be that the federal government had given to most states a function which they otherwise had chosen to ignore. Beginning with the Clean Air Act of 1963 state control over matters of air pollution had increased rather than diminished. The environment had become a shared function rather than a nonfunction. Perhaps the only "losers" had been the municipalities but, for the time being, these were grateful losers who viewed any steps toward uniform standards as a way out of their own economic/environmental dilemmas.

The 1950s and 1960s brought forth a wealth of pollution control legislation undreamed of in the first half of the century. Pollution had become an issue, but the forum for that issue was still relatively narrow and the participants relatively few in number. While public concern over pollution had grown since 1963, environmentalism could hardly be called a grassroots issue. Though groups like the Sierra Club had increased their numbers,<sup>57</sup> they still were largely conservationists—not environmentalists. And though the federal government had expanded its role through broad new legislation, the environment remained a one-branch issue—awaiting more concerted and intense interest on the parts of the executive branch and the courts.

## FOOTNOTES

<sup>1</sup>Davies, *The Politics of Pollution*, p. 66.

<sup>2</sup>Jennings, "Legislative Politics and Water Pollution Control," pp. 75-77.

<sup>3</sup>*Ibid.*

<sup>4</sup>In support of the Blatnik bill were the Congressional Democrats, conservation groups, and a number of city officials. Opposed to the bill were Congressional Republicans, the Eisenhower Administration, some industries, and most state health officials. Source: Jennings, "Legislative Politics and Water Pollution Control," pp. 75-77.

<sup>5</sup>*Ibid.*, p. 77.

<sup>6</sup>Other provisions included strengthening the pollution control advisory board and a program that aimed to control pollution from federal installations. Source: Grad, *Environmental Control*, pp. 59-60.

<sup>7</sup>Wenner, *One Environment Under Law*, p. 81.

<sup>8</sup>These vetoes and the ensuing party line votes were not viewed altogether unfavorably by Congressman Blatnik since they allowed public attention to be focused on the issue and made the Democrats appear to be the antipollution "good guys." Source: Jennings, "Legislative Politics and Water Pollution Control," pp. 79-93.

<sup>9</sup>Philip P. Micklin, "Water Quality: A Question of Standards," in *Congress and the Environment*, ed. by Richard A. Cooley and Geoffrey Wandersforde-Smith, Seattle, WA, University of Washington Press, 1970, p. 133.

<sup>10</sup>*Ibid.*

<sup>11</sup>Davies, *The Politics of Pollution*, p. 32.

<sup>12</sup>Micklin, "Water Quality: A Question of Standards," pp. 134-135.

<sup>13</sup>While the state water pollution agencies were opposed to national standards they tended to favor expansion of grants for sewage treatment facilities. Source: Micklin, "Water Quality," p. 135.

<sup>14</sup>*Ibid.*

- <sup>15</sup> Grad, *Environmental Control*, p. 60.
- <sup>16</sup> Micklin, "Water Quality" p. 136.
- <sup>17</sup> Grad, *Environmental Control*, pp. 63-64.
- <sup>18</sup> *Ibid.*
- <sup>19</sup> Micklin, "Water Quality," pp. 136-138.
- <sup>20</sup> *Ibid.*, p. 138.
- <sup>21</sup> *Ibid.*, pp. 140-141.
- <sup>22</sup> Davies, *The Politics of Pollution*, p. 34.
- <sup>23</sup> In 1966 the FWPCA was transferred from HEW to the Department of the Interior. This was in keeping with the administration position since Interior was not as committed to working through state agencies as HEW had been. Source: Davies, *The Politics of Pollution*, p. 34.
- <sup>24</sup> *Ibid.*, p. 35.
- <sup>25</sup> For a discussion of incrementalism see: David Braybrooke and Charles E. Lindblom, *A Strategy of Decision*, New York, NY, Free Press, 1963.
- <sup>26</sup> Randall B. Ripley, "Congress and Clean Air: The Issue of Enforcement, 1963," p. 231.
- <sup>27</sup> The 1955 act was extended until it was superseded by the *Clean Air Act of 1963*.
- <sup>28</sup> Ripley, "Congress and Clean Air," p. 233.
- <sup>29</sup> *Ibid.*, pp. 244-245.
- <sup>30</sup> *Ibid.*, p. 235.
- <sup>31</sup> *Ibid.*, p. 258.
- <sup>32</sup> *Ibid.*, p. 268.
- <sup>33</sup> Grad, *Environmental Control*, p. 52.
- <sup>34</sup> The act provided for \$95 million over a three-year period. *Ibid.*, pp. 52-53.
- <sup>35</sup> Ripley, "Congress and Clean Air," p. 270.
- <sup>36</sup> Jones, *Clean Air: The Policies and Politics of Pollution Control*, p. 61.
- <sup>37</sup> Henry D. Jacoby and John D. Steinbruner, et al, *Clearing the Air: Federal Policy on Automotive Emissions Control*, Cambridge, MA, Ballinger Publishing Co., 1973, p. 10.
- <sup>38</sup> U.S. Senate, Committee on Public Works, Special Subcommittee on Air and Water Pollution, hearings, *Clean Air*, 88th Cong., 2d Sess., Washington, DC, U.S. Government Printing Office, 1964, pp. 879-880. Source: Jones, *Clean Air*, p. 63.
- <sup>39</sup> U.S. Senate, Committee on Public Works, Special Subcommittee on Air and Water Pollution, hearings, *Air Pollution Control*, 89th Cong., 1st Sess., Washington, DC, U.S. Government Printing Office, 1965, p. 118. Source: Jones, *Clean Air*, p. 65.
- <sup>40</sup> Davies, *The Politics of Pollution*, p. 48.
- <sup>41</sup> *Ibid.*
- <sup>42</sup> *Ibid.*
- <sup>43</sup> Jones, *Clean Air*, p. 65.
- <sup>44</sup> Other provisions of the act included abatement measures for "U.S. air pollution sources which endangered the health or welfare of persons in Canada or Mexico, and authority for HEW to call a conference to focus attention on potential sources of air pollution." Source: Davies, *The Politics of Pollution*, p. 49.
- <sup>45</sup> Grad, *Environmental Control*, p. 53.
- <sup>46</sup> Jacoby and Steinbruner, *Clearing the Air*, p. 10.
- <sup>47</sup> Davies, *The Politics of Pollution*, p. 49.
- <sup>48</sup> Previous conferences had been held in 1958 and 1962. Jones, *Clean Air*, pp. 32, 37, 66.
- <sup>49</sup> Davies, *The Politics of Pollution*, p. 50.
- <sup>50</sup> *Ibid.*
- <sup>51</sup> *Ibid.*, pp. 51-52.
- <sup>52</sup> *Ibid.*, p. 51.
- <sup>53</sup> Thus, the legislation reflected both Johnson's concern for regionalism and Muskie's concern for state prerogatives. Source: Grad, *Environmental Control*, p. 54.
- <sup>54</sup> *Ibid.*
- <sup>55</sup> *Ibid.*
- <sup>56</sup> William L. Riordan, *Plunkitt of Tammany Hall*, New York, NY, E.P. Dutton & Co., Inc., 1963, p. 3.
- <sup>57</sup> Davies, "The Greening of American Politics," p. 92.

# The Federal Role Comes Of Age, 1969-80

There is some indication that the close of the 90th Congress late in 1968 may mark the end of this remarkable period in the history of conservation politics . . . Some members of Congress, as well as of the new Republican Administration, have suggested that we are reaching the end of a long wave of significant and highly visible progress, and that the widely hailed "environmental crisis" has, in a certain sense, passed the peak of critical national interest and public concern.<sup>1</sup>

**T**he paragraph quoted above was written in 1969 by two noted experts in the field of environmental politics, Richard Cooley and Geoffrey Wandesforde-Smith. Although history has proved that Professors Cooley and Wandesforde-Smith were not prophets, their remarks are certainly reflective of the wane of enthusiasm over environmental matters which occurred in the late 1960s.

In 1968 the environment was competing with, and losing ground to, another issue: the Vietnam War. Public opinion, which for five years had shown some growing interest in pollution control, was now divided between doves and hawks—antiwar and prowar.

So too, the press (following or preceding public opinion, depending on one's interpretation) was, understandably, more prone to report antiwar demonstrations and film napalmed Vietnamese villages than it was to write features on the smog problem in Los Angeles.

In the 1960 and 1964 campaigns, presidential candidates had, at least, paid lip service to the environment. In 1968, the candidates barely did that. *Nixon Speaks Out*, a publication released by the Nixon-Agnew Committee, contained 34 major policy statements—only one of them related to the environment.<sup>2</sup> “In the Humphrey camp, things were just as quiet. The Vice-President dedicated a park in San Antonio, TX., on August 10, and the John Day Dam in Oregon on September 28, using both occasions to discuss the environment and conservation. Otherwise, he said nothing on the issue.”<sup>3</sup>

Even Congress, stalwart protector of the nation’s resources, was content to put the environment on the back burner. Edmund Muskie was now Hubert Humphrey’s runningmate and, although he retained his own interest in the environment, the press and public wanted him to answer questions on the war, inflation, and crime.

Yet, within four months of the November elections, the Senate had introduced its version of the first comprehensive environmental legislation. By late 1970, both an environmental agency and a council had been established and the *Clean Air Act* had been significantly amended. In the interim a mass phenomenon called Earth Day had occurred and the environment became a fundamental issue of the 1970s.<sup>4</sup>

## **EARTH DAY AND THE RISE IN ENVIRONMENTAL CONSCIOUSNESS**

In 1967, public opinion experts Lloyd A. Free and Hadley Cantril published a 23-item list of issues which concerned Americans. Nothing even loosely resembling pollution or the environment appeared on the list.<sup>5</sup> Yet, three years later, in late April of 1970, the Gallup Poll asked the question: “Which three of these national problems would you like to see government devote most of its attention to?” In marked contrast to the 1967 poll, 53% of the polled population named reducing air and water pollution as the most serious national problem, second only to crime.<sup>6</sup> This sudden explosion of the public consciousness regarding the environment which surrounded it was exhibited in other polls as well. (See *Table 1*.)

Certainly, the most visible expression of this new public concern with the environment occurred on April 22, 1970, Earth Day. Although Earth Day has been occasionally reported as a near-spontaneous outpouring of popular sentiment, it was, in fact, a well-planned production, the author of which was a U.S.

Senator, Gaylord Nelson (D-WI).

Inspired by the response to antiwar demonstrations, Senator Nelson decided that an environmental “teach-in,” like the antiwar teach-ins, would convince the American people that a clean environment required an activist public.<sup>7</sup> Nelson was joined in this effort by Representative Paul McCloskey (R-CA), who served as co-chairman of the event, and a former antiwar activist, Denis Hayes, who acted as coordinator.<sup>8</sup>

The eventual success of this effort must have surprised even Senator Nelson. Public response was enormous and nationwide in scope. In addition, the nation’s citizens were joined by their elected officials, most of whom could not afford to ignore this newest “motherhood” issue.<sup>9</sup> “So many politicians were on the stump that Congress closed down. The oratory, one of the wire services observed, was ‘as thick as smog at rush hour.’”<sup>10</sup>

Together, Earth Day and environmental opinion present themselves as a puzzling example of the age-old “chicken and egg” dilemma. It is true that much of the tremendous gain which the environment made in public opinion polls followed Earth Day. At the same time, it is difficult to establish a definite causal link between the two. The growth in public opinion relative to the environment has remained somewhat of a public opinion “mystery.” Thus, according to poll expert Hazel Erskine:

A miracle of public opinion has been the unprecedented speed and urgency with which the ecological issues have burst into the American consciousness. Alarm about the environment sprang from nowhere to major proportion in a few short years.<sup>11</sup>

This newly awakened American consciousness made certain critical demands upon its government—demands that were translated into the far-reaching air and water legislation of the 1970s. If Earth Day did not cause this consciousness (and the resulting demands), it certainly contributed to it as did another environmental “event” which preceded Earth Day by four months. That “event” was a piece of legislation known as NEPA, the *National Environmental Policy Act*.

## **THE NATIONAL ENVIRONMENTAL POLICY ACT**

For a bill which subsequent to its enactment had such profound impacts on administrative arrangements and court decisions, NEPA was unattended, in its formative stages, by much public interest or by a great deal of spe-

Table 1

**MOST IMPORTANT DOMESTIC PROBLEMS**  
(in percentage of population polled)

**Q: Aside from the Vietnam War and foreign affairs, what are some of the most important problems facing people here in the United States?**

Problem	May 1971 Survey	May 1969 Survey	Significant Changes
Inflation/cost of living/taxes	44%	34%	+ 10%
Pollution/ecology	25	1	+ 24
Unemployment	24	7	+ 17
Drugs/alcohol	23	3	+ 20
Racial problem	22	39	-17
Poverty/welfare	20	22	
Crime	19	15	+ 4
Unrest among young people	12	6	+ 6
Education	8	5	+ 3
Housing	6	—	—

SOURCE: Opinion Research Corporation, "Public Opinion on Key Domestic Issues," mimeographed, Princeton, NJ, May 1971, p. 17. May 1969 and May 1971 polls. Whitaker, *Striking A Balance: Environment and Natural Resources Policy in the Nixon-Ford Years*, Washington, DC, American Enterprise Institute for Public Policy Research, 1976, p. 8.

cial-interest lobbying. In fact, by and large emotions ran high over its wording and passage only among members of Congress and these emotions seemed to be prompted not so much by ideological differences as by jurisdictional jealousies.<sup>12</sup>

The beginnings of NEPA probably can be traced back to two reports which were issued during the summer of 1968.<sup>13</sup> One of the reports, *Managing the Environment*, was published by the House Subcommittee on Science, Research, and Development of the Committee on Science and Astronautics. The unique feature of this particular report was that it focused on the interrelationship between environmental quality and management functions within the federal government.<sup>14</sup> For the first time, such a report laid some blame on the federal government as opposed to industrial and automotive polluters and state and local governments:

There are conflicts when environmental quality is managed by different policies, originating in conservation, agriculture, aesthetics, recreation, economic development, human health, and so on . . . The operational

engineering programs which may affect the quality of the environment are not coordinated through a single group, but are handled through individual interagency liaison (if they are coordinated at all).

. . . Existing institutions can do the job if they operate (1) under a coherent national policy for the environment, and (2) with an expanded understanding of ecological facts and processes.<sup>15</sup>

At the same time, the Senate Committee on Interior and Insular Affairs, under the chairmanship of Henry Jackson (D-WA), released a report by Lynton Caldwell entitled *A National Policy for the Environment*. Prof. Caldwell pointed out a number of issues that should be contained in an all-encompassing environmental policy. Primary among these was Caldwell's concept of "total human environment." This concept divorced environmentalism from the "resource-conservation-only" mentality which had pervaded it since the time of Teddy Roosevelt. Instead, Caldwell's report stated that environmental policy should ". . . necessarily be con-

cerned with natural resource issues. But the total environmental needs of man—ethical, aesthetic, physical, and intellectual, as well as economic—must also be taken into account . . .”<sup>16</sup>

NEPA was first introduced in the Senate in February of 1969 as S. 1075 by Senator Jackson.<sup>17</sup> As reported out of committee on June 18, the Jackson bill bore the imprint of the parade of witnesses which had been testifying during the previous four months—in particular, Lynton Caldwell.

Significant portions of S. 1075 included a statement of national environmental policy and the rights of each citizen to a “healthful environment.”<sup>18</sup> In addition, the law sought to expand the functions of all executive agencies to include consideration of the environment. The enforcement provision of Jackson’s bill mandated that the executive agencies file “a short statement of environmental findings” which would accompany budget proposals “through agency decisionmaking, through the BOB, and to Congress.”<sup>19</sup> These environmental statements (including a discussion of alternatives) would supplement the review process and “their absence would provide a budget examiner with an additional excuse for challenging a proposed agency expenditure.”<sup>20</sup>

Considering the lack of hostile testimony and intense lobbying, Jackson’s bill normally would have sailed smoothly into the House. However, the Congressional source of past environmental legislation forewarned a jurisdictional struggle that was bound to occur: Edmund Muskie, understandably, was not inclined to see his own subcommittee eclipsed in the field of environmental protection by Jackson’s committee. In the first place, both Muskie and Jackson were already eyeing their party’s presidential nomination.<sup>21</sup> Being considered a staunch protector of the environment was becoming a real candidate asset. In the second place, Muskie had worked hard to build and enhance the work and reputation of the Air and Water Pollution Subcommittee and, thus, thought of his subcommittee as the rightful and traditional source of environmental legislation.<sup>22</sup> Finally, the two Senators disagreed about the fundamental role of environmental policy.

Senator Jackson’s view was that with enactment of NEPA, mission-oriented public works agencies would internalize environmental values as they began to develop evaluations of projects’ environmental impacts. But Senator Muskie and the Public Works Committee staff harbored grave misgivings about the self-enforcement qualities of NEPA’s action-forcing

provisions. They believed that some form of external policing mechanism was needed; the mission-oriented agencies could not be trusted to consider seriously the environmental consequences of their actions and the requirement for environmental findings provided but the narrowest basis for outside review.<sup>23</sup>

A compromise more to Muskie’s liking was forthcoming. The requirement of environmental findings by agencies was replaced with a mandate requiring a “detailed statement” of environmental impact. These statements were to be constructed upon consultation with other agencies and, finally, circulated to agencies at the federal, state, and local levels, the President, the public, and to an environmental council, a board of environmental quality advisors.<sup>24</sup> The board would approve or disapprove agency actions based on anticipated environmental impacts. To ensure the continuing importance of state environmental agencies, the compromise bill ordered that federal agencies should, in addition, act in accordance with the rules and standards set by these offices.<sup>25</sup>

In the House, NEPA was introduced by Rep. Dingell as H.R. 6750 and reported out of committee as a “clean bill,” H.R. 12549. However, prior to passage, H.R. 12549 also became the target of jurisdictional maneuvering. The challenge in this chamber came from Arizona Congressman Wayne Aspinall, chairman of the Interior and Insular Affairs Committee. Aspinall succeeded in adding two amendments to Dingell’s bill before it was passed by the full House. One, which was subsequently dropped in conference, would have practically voided the substance of the Senate bill by declaring that nothing in the act would in any way change the responsibilities of federal agencies.<sup>26</sup>

The other amendment was a direct attack upon Dingell’s subcommittee jurisdiction over fish and wildlife. In the original House bill, environmental impacts would have applied only to fish and wildlife. In the amended version, the bill applied to all impacts.<sup>27</sup>

With Senate and House bills in hand, the conferees eventually met in December. Before a final version was agreed upon, however, the proposed legislation was subject to several changes. The Senate bill had asserted the right of each person to a “healthful environment.” Assertion of a right was bound to have profound legal implications, “enforceable in court against governmental failure to provide such an environment.”<sup>28</sup> Thus, the conferees changed the declaration of a right to a more innocuous statement that citizens should enjoy a healthful environment.

A second change established the Council on Environmental Quality (CEQ), as proposed by the House bill, but to consist of three members rather than the originally proposed five members.<sup>29</sup>

Yet another change embodied a compromise between the Senate desire for a strong enforcement provision and Aspinall's amendment to the House bill. The result of this compromise was a statement requiring agencies to "comply with the action-enforcing provisions [only] 'to the fullest extent possible.'"<sup>30</sup> However, it should be noted that the courts have been inclined to give strict interpretation to this phrase. This interpretation is partially based upon a document developed by the managers of the House bill. In this unusual document, the managers seemed to interpret the language to mean approximately what Senator Jackson had intended.<sup>31</sup>

It is the intent of the conferees that the provision "to the fullest extent possible" shall not be used by any federal agency as a means of avoiding compliance with the directives set out in Section 102 . . . no agency shall utilize an excessively narrow construction of its existing statutory authorizations to avoid compliance.<sup>32</sup>

On January 1, 1970, President Nixon signed NEPA into law. The environment was still not a top presidential priority and Nixon was reticent regarding the creation of the CEQ. He was particularly bothered by the potential of such a council to become an advocate of extreme environmental views. In addition, his reorganization plans already included a proposal for the Environmental Protection Agency which, in keeping with his organizational philosophy, would encompass broad functions rather than narrow programs.<sup>33</sup> Nonetheless, Nixon chose to make the New Year's Day signing a matter of great moment:

It is particularly fitting that my first official act of the new decade is to approve the *National Environmental Policy Act*—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.<sup>34</sup>

## THE COUNCIL ON ENVIRONMENTAL QUALITY

In his book, *The End of Liberalism*, Theodore Lowi describes most modern Congressional legislation as "policy without law." Such policy, Lowi contends, mandates authority to an administrative agency

without specific standards or guidelines.<sup>35</sup> Although Lowi published his indictment of interest-group liberalism and the policymaking system it had spawned prior to enactment of NEPA, the act and the council it created are prime examples of this theory.

According to its legislative mandate, CEQ was to develop policies in accordance with the purposes of NEPA and was to evaluate other federal programs in order to determine if their activities were contributing to the purposes of the act. Had NEPA set specific standards, CEQ would have encountered a difficult enough time defining the scope of its policymaking and watchdog functions. But, no guidelines were contained in the statement of purpose and the council was faced with the additional task of interpreting its meaning:

The purposes of this act are: 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>36</sup>

In essence, it seems clear that the stated purposes of the act were more symbolic than real.<sup>37</sup> In addition, interpretation of such phrases as "a national policy which will encourage productive and enjoyable harmony between man and his environment" would seem to require the mind of a philosopher shaped by years of introspective thought relating to the qualities of the "good life" much more than that of a public administrator. Yet, despite the fact that Aristotle's objective condition prevented his serving on the council, the members and their staff had to create a role for themselves in concert with their interpretation of Congressional intent.

In conjunction with the Office of Management and Budget (OMB, the successor to BOB), CEQ publically defined its role with the issuance of Executive Order 11514 on March 5, 1970. Under the terms of NEPA, CEQ was to assist the President in the preparation of a yearly report, *Environmental Quality*, and to act as Presidential advisor on matters of the environment. With Executive Order 11514, the council broadened its role considerably to include major responsibility in defining the environmental impact statement process<sup>38</sup> as well as the substantive requirements of NEPA.<sup>39</sup>

This responsibility took the form of guidelines for federal agencies (issued in 1970, 1971, and 1973), a series



of memoranda which served to supplement the guidelines, and, finally, in 1977, a set of regulations to replace the guidelines. It is conceivable that under the broad terms of NEPA, CEQ could have captured some additional functions. For instance, except on rare occasions, the council has not chosen for itself the role of impact statement commentator. This is understandable since CEQ has a permanent professional staff of about 30 women and men. In addition, budget constraints have kept the council's role at a minimal level.<sup>40</sup> Later, these staff and budget woes were compounded by a withdrawal of Presidential support, leaving CEQ until recently with little political leverage outside of the courts.<sup>41</sup>

## THE ENVIRONMENTAL PROTECTION AGENCY

CEQ was authorized to monitor compliance with a single statute. The bulk of environmental legislation was divided among other agencies. In particular, the National Air Pollution Control Administration (NAPCA) was housed in HEW while the Federal Water Quality Administration (FWQA) was in Interior. In addition, there were separate administrative units dealing with solid waste, pesticides, radiation, and occupational health and safety. This sort of fragmentation was antithetical to the orthodox organizational philosophy of Richard Nixon which centered on consolidation and broad, functional administrative departments, rather than the small, programmatic units favored, throughout the years, by Congress.

In December of 1969, the President's Advisory Council on Executive Organization (the Ash Council) accepted the task of suggesting a reorganization scheme for all the federal environmental programs.<sup>42</sup> Like reorganization commissions before it, the Ash Council met with bureaucratic territory-guarding and expansion drives. Few were inclined to relinquish programs while some favored reorganizing all the environmental agencies under their jurisdiction.<sup>43</sup> In the end, the council opted for a scheme in which everyone would lose a little. The unanimous choice was the Environmental Protection Agency (EPA). The proposed agency would take the FWQA from Interior, NAPCA from HEW, the Environmental Control Administration from HEW, the pesticides registration program from Agriculture, and some of the radiation protection standards functions from the Atomic Energy Commission.<sup>44</sup> The Ash Council suggestion was submitted to the Congress as Reorganization Plan No. 3 of 1970 and EPA was officially created on December 2, 1970.

The fact that EPA had come into existence did not

necessarily mean that all the problems of administrative coordination had been solved:

All reorganizations cause some confusion and trauma for the individuals and agencies involved, but the creation of EPA was unprecedented in terms of the number and size of disparate agencies brought together under a new organizational structure. In many cases parts of different agencies which had been rivals or opponents for years found themselves suddenly part of the same organization. . . . The problems of joining disparate parts of other agencies have been aggravated by EPA's internal organization. The Ash Council staff considered how the new agency should be organized, and generally concluded that the basic structure should be along functional lines such as enforcement, research, and standard-setting. This was a departure from the traditional programmatic approach focusing on air and water pollution.<sup>45</sup>

As if this was not confusing enough for the young agency, the EPA workload demanded that a program approach would also have to be incorporated. Thus, EPA was built along half functional and half programmatic lines—an organizational scheme which exists today, blurring the lines of effective authority.<sup>46</sup>

The creation of EPA established another link in the complex of federal-state-local environmental relations. As grant distributor and environmental regulator, EPA is necessarily and integrally involved in state and local environmental and pollution programs.<sup>47</sup> The establishment of CEQ and EPA firmly institutionalized the federal environmental role. This institutionalization was legitimized by an act defined as national. With the passage of NEPA, the federal government declared that it would "encourage . . . harmony between man and his environment" and "eliminate damage to the environment." It did not pay lip service to the previously supposed hegemony of states and localities in environmental matters; it merely asked for their cooperation. Yet, once more, in broadening its own scope, the federal government proved that the environment is not a fixed field in which the increasing presence of one actor necessarily limits the presence of others. Indeed, NEPA broadened state and local functions. State and local agencies were authorized to comment on the actions of federal agencies which were potentially damaging to the environment. Protection of the environment was truly a growth business for all concerned.

## THE BIG AMENDMENTS: AIR AND WATER LEGISLATION IN THE 1970s

### The Clean Air Act Amendments of 1970

By 1970 a political actor who did not chose to appear concerned about the state of the environment was engaging in political suicide. Ten years earlier, few would have even thought to question a politician on his or her environmental views. The environment had blossomed as a big issue—the big issue—and everyone wanted a piece of the action. Nixon, who was philosophically opposed to increasing government regulation of the private or other public sectors, began to manifest an uncharacteristic tendency to “talk environmental.” His 1970 State of the Union message was reflective of this new stance—nearly one-third of it was devoted to the environment.<sup>48</sup>

Politically, the environment had become even more important to Nixon than it might have been to the average politician. At the time, it seemed obvious that his two strongest potential opponents in the 1972 presidential race would be the very men who were most readily identified as environmental lawmakers, Senators Muskie and Jackson.

The pressure was just as intense on Capitol Hill. The 1967 *Clean Air Act* had proven to be less than a panacea for the dirty air problem in the view of most environmentalists and they were beginning to shape and rally public opinion. On March 4, 1970, Senator Muskie introduced the “National Air Quality Standards Act.”<sup>49</sup> Muskie, too, was disappointed in the progress of the 1967 act. In the three years that had passed, only 21 states had submitted implementation plans, none of which had been approved in Washington. This, of course, made enforcement impossible.<sup>50</sup> Yet, as of early 1970 Muskie was still committed to a policy of strong state and local involvement. His intention, under the terms of the new act, was not to weaken state or local responsibilities but rather, “to clarify and slightly expand existing (federal) authority.”<sup>51</sup> This was a policy of refinement rather than radical alteration.

By September, Muskie’s attitude had changed considerably. Between March and September a series of events forced the Senator either to endorse much stronger air legislation or risk losing his star status in environmental matters. The challenges came from all around him.

In the first place, Nixon was clearly challenging Muskie’s position. Just a few days prior to the introduction of the March 4 bill, the Administration pro-

posals were sent to Congress. These proposals included the setting of federal emissions standards for stationary sources, a federal function which Muskie had long opposed.<sup>52</sup>

In the second place, the House of Representatives quickly, and perhaps unexpectedly, endorsed the Administration proposals. In fact, the House chose to go further. For instance, where the Administration bill authorized the secretary of HEW to establish air quality standards in six months, the House bill (H.R. 17255) gave him only 30 days.<sup>53</sup>

Finally, Muskie’s most severe challenge came from outside government. In May of 1970, Ralph Nader’s organization published *Vanishing Air*, which, among other things, directly attacked Muskie:

Muskie is, of course, the chief architect of the disastrous *Air Quality Act of 1967*. That fact alone would warrant his being stripped of his title as “Mr. Pollution Control.” But the Senator’s passivity since 1967 in the face of an ever-worsening air pollution crisis compounds his earlier failure. Muskie has rarely interceded on behalf of accelerated pollution . . . Perhaps the Senator should consider resigning his chairmanship of the subcommittee and leave the post to someone who can devote more time and energy to the task.<sup>54</sup>

Muskie’s response to all these challenges was a bill stronger still than either the Administration or House bills. Heavy press coverage of the Muskie proposals, coupled with intense public interest, almost ensured that very little modification would result from the Conference Committee meetings.<sup>55</sup> It seemed clear that any attempt to significantly change the Senate language would brand the politician responsible as a puppet of industry.

Throughout the period, lobbying was intense from both industry and environmental groups, but public attention to the debate made industry the sure loser. Indeed, the bill that emerged was almost identical to the Senate version—a fact that placed Muskie, once again, in the environmental limelight. The bill as agreed to in conference was certainly like no other, both in terms of the significantly increased authority of the federal government and its “get tough” attitude toward industry. Among other things, the *Clean Air Act Amendments of 1970* mandated national air quality standards, air quality control regions to be designated by the secretary of HEW,<sup>56</sup> and emissions standards to be applied to new stationary sources of pollution, as well as to emissions from existing stationary sources deemed to be

hazardous. In addition, it required 1975 automobiles to adopt emissions standards 90% below those for 1970 autos (though manufacturers could request a slight extension); it allowed for federal assemblyline testing of vehicles; and it authorized citizens to bring suits for violations of standards.<sup>57</sup>

The scope of the legislation was clearly beyond the technological capability which industry was known to possess at the time. Thus, Congress, in response to immediate public pressure, had legislated nonexistent technology. According to Charles O. Jones, this sort of ill-considered policymaking or, "speculative augmentation," marked a radical departure from the normal decisionmaking process:

The most striking feature of the policy action in 1970 was the escalation of proposals leading to the enactment of a law admittedly beyond the immediate capabilities to apply. I have labelled this speculative augmentation. Normally decisionmakers are expected to refine existing policy by determining what is technically and administratively feasible, as well as what is within the limits of acceptability to those being regulated. In speculative augmentation, however, the basis of decision-making changes. Feasibility is less important than estimating what will be acceptable to a rather indistinct "public" perceived to be demanding stringent action. Since decisionmakers cannot be certain what is acceptable, however, they are forced to speculate in designing satisfactory changes in the law, and whatever specific form these changes take, they must constitute more than a mere increment in existing law, regardless of administrative and technological capabilities.<sup>58</sup>

### **The Water Pollution Control Act Amendments of 1972**

The *Clean Air Act Amendments* were profound in both scope and potential impact. Yet, they appear mild compared to pending Congressional initiatives in the field of water pollution control. These initiatives followed close behind, but then far exceeded, Administration proposals and set the scene for a head-on battle between Nixon and Congress.

Indeed, Nixon had taken the lead in proposing new water legislation. His first environmental message to Congress on February 10, 1970, had stressed the importance of water pollution control over that of air pollution control.<sup>59</sup> Forthcoming Congressional action, as

previously noted, however, was in the field of air pollution. This was understandable since a series of public relations setbacks had made the auto industry ripe for plucking. However, Congress could not afford to put the Presidential challenge for cleaner waters on the back burner for long.<sup>60</sup>

During February of 1971, Muskie began turning his subcommittee's attention toward revision of the *Water Pollution Control Act*. The bill was, far and away, the most far-reaching piece of environmental legislation ever proposed—its underlying premise being the elimination of the effects of man on water. The proposed act declared it "to be national policy that . . . the discharge of pollutants into navigable waters be eliminated by 1985."<sup>61</sup> In addition, it authorized an unprecedented \$14 billion in waste treatment construction grants to be federally financed up to 70% of cost through 1975<sup>62</sup>—this, despite the fact that states and localities had been making excellent progress in this area prior to 1971. This far exceeded the President's proposals in a number of areas. Nixon aide John C. Whitaker notes five items which caused considerable concern among the President and his advisors:

First, the total price tag . . . was a budget busting \$18 billion, compared to a three-year cost of \$6 billion for Nixon's proposal. Second, the stated policy of the bill, "that the discharge of all pollutants into navigable waters be eliminated by 1985," could be construed literally to mean zero discharge, not only an impossible goal to achieve, but also an unreasonable limitation because it did not permit consideration of the costs of removing the last few percent of effluent in relationship to the benefit of that result. . . .<sup>63</sup>

Third, the so-called fishable, swimmable waters provision of the bill . . . called for the use of best available pollution abatement technology by 1981. In spite of qualifying language, the fact was that the policy statement extended a promise that could not be fulfilled.

[The fourth] objection to the bill was that, in providing for federal guidelines and 100% federal financing of waste water management planning, it would give the federal government a dominating position in the planning process. State authority would be severely curtailed.

Finally, in the administration's view the standards incorporated in the Senate bill not only were unrealistic, but also were inequitable and costly.<sup>64</sup>

On the basis of these objections, Nixon sought to modify the bill while it was still in the Senate. The fact that the Senate was not inclined to share Nixon's point of view was illustrated in grand measure when it passed the original bill by an 86-0 vote.<sup>65</sup>

This staggering defeat directed White House attention toward the House of Representatives. An array of Administration officials including EPA Administrator William Ruckelshaus, CEQ Chairman Russell Train, and the Chairman of the Council of Economic Advisers, Paul McCracken, were sent to testify against the Senate proposals before the House Public Works Committee.<sup>66</sup> Despite these and other efforts, the House modifications were minor. The only significant change provided for further Congressional action before enforcement of the 1981 and 1985 deadlines could be implemented.<sup>67</sup> This change was largely retained by the Conference Committee.

When the conference report emerged it looked more like the tough Senate bill than the slightly modified House bill. Aside from the 1981 and 1985 goals (in contrast to Senate language which had made the deadlines policy)<sup>68</sup> other provisions of the bill included: increased authorization of \$24.7 billion over three years; a requirement that industrial polluters produce "the best practicable control technology by 1977 and the best available technology by 1983;" EPA veto power over permits for pollution discharge; and a grant of authority to the EPA Administrator for the initiation of suits, as well as to private citizens if they could prove that they, personally, had been adversely affected by a polluter.<sup>69</sup>

The terms of the amendments, as passed by both houses on October 4, 1972, were anathema to Nixon. Therefore, in order to avoid an anticipated pocket veto, Congress delayed its scheduled adjournment until October 18, overrode the President's veto, and the *Water Pollution Control Act Amendments of 1972* became law.<sup>70</sup>

Subsequent legislation indicates that 1972 signalled the high-water mark in federal air and water pollution control. 1974 and 1977 amendments to the air act and 1977 amendments to the water act have, in some instances, modified and contracted previous legislation rather than expanded it. If Jones' concept of "speculative augmentation," discussed earlier, is expanded to the case of water, the conclusion, based on an admittedly shaky sample population, is that such policymaking results in failure and disappointment. Of course, it must be noted that the amendments have succeeded in reducing the amount and impact of air and water pollutants. But, many goals and deadlines

have been repeatedly delayed, extended, and unmet.

The amendments have been successful in further defining the federal role in the environment. Massive grant authorizations (See *Table 2*) have given the federal government a substantial say over the terms of state, local, and regional projects, particularly in the area of wastewater treatment plant construction:

[This] balancing of incentives and conditions in the evolution of the construction grant program has moved it from one characterized by minimal federal conditions to one where the federal government (before it will pay three-fourths of the construction cost of a treatment plant): (1) establishes construction priorities by requiring states to [require permits for] all municipal and industrial discharges (if they do not, the Environmental Protection Agency has the authority to do it for them); (2) requires states to establish a network of basin, regional, and local planning that must be approved by [EPA]; and (3) determines the level of treatment necessary for pollution control and abatement in the various communities.<sup>71</sup> (See *Chart 1*.)

As noted above, the *1977 Water Pollution Control Act Amendments* provided a statutory basis for a new means of federal enforcement—that is, enforcement by permit, a method long employed by states and localities.<sup>72</sup> The act "authorized EPA to issue permits for the discharge of pollutants from any point source into U.S. waters."<sup>73</sup> This authority could be turned over to a state but only after state compliance with federal criteria. Even then, the appropriate state agency had to submit permit proposals to EPA for its comments prior to issuance.<sup>74</sup>

Finally, The *Clean Air Act* and the *Water Pollution Control Act*, coupled with NEPA, provided for the final and ultimate legitimation of the federal environmental role. In authorizing federal and citizen suits these acts brought the consummate legitimizing agent squarely into the fray—Congress, the executive, and now, finally, the federal courts were all protecting the environment.

## THE ROLE OF THE COURTS IN ENVIRONMENTAL PROTECTION

The *Clean Air Act Amendments* and the *Water Pollution Control Act Amendments* both provided for citizen suits:

**TABLE 2**  
**GROWTH OF MUNICIPAL WASTE WATER**  
**TREATMENT CONSTRUCTION GRANTS, 1957-77**  
(in millions of dollars)

Year	Authorization	Appropriations	Obligations	Outlays
1957	50	50	38	1
1958	50	45	47	17
1959	50	47	46	36
1960	50	46	48	40
1961	50	46	45	44
1962	80	80	64	42
1963	90	90	92	52
1964	100	90	85	66
1965	100	90	84	70
1966	150	121	118	81
1967	150	150	131	84
1968	450	203	191	122
1969	700	214	201	135
1970	1,000	800	424	176
1971	1,250	1,000	1,152	478
1972	2,000	2,000	860	413
1973	7,000 <sup>1</sup>	3,900 <sup>2</sup>	2,989	684
1974	6,000	3,000	2,608	1,553
1975	7,000	4,000	4,131	1,938
1976 <sup>3</sup>	0	9,000	4,853	3,347
1977	7,700	1,980	7,168 <sup>4</sup>	3,546
<b>Total</b>	<b>30,020</b>		<b>25,376<sup>5</sup></b>	<b>12,928</b>

<sup>1</sup>Includes \$2 billion for reimbursement to municipalities for prior construction.

<sup>2</sup>Includes \$1.9 billion for reimbursement to municipalities for prior construction.

<sup>3</sup>Includes transition quarter.

<sup>4</sup>Includes \$0.5 billion for reimbursement to municipalities for prior construction.

<sup>5</sup>Includes \$2.3 billion for reimbursement to municipalities for prior construction.

SOURCE: U.S. Environmental Protection Agency, Office of Planning and Management, "Activities of the Grants Assistance Programs," Washington, DC, September 1977.

... any citizen may commence a civil action on his own behalf—(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard [emission standard] or limitation under this act or (B) an order issued by the Administrator [of EPA] or a state with respect to such a standard or limitation, or (2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this

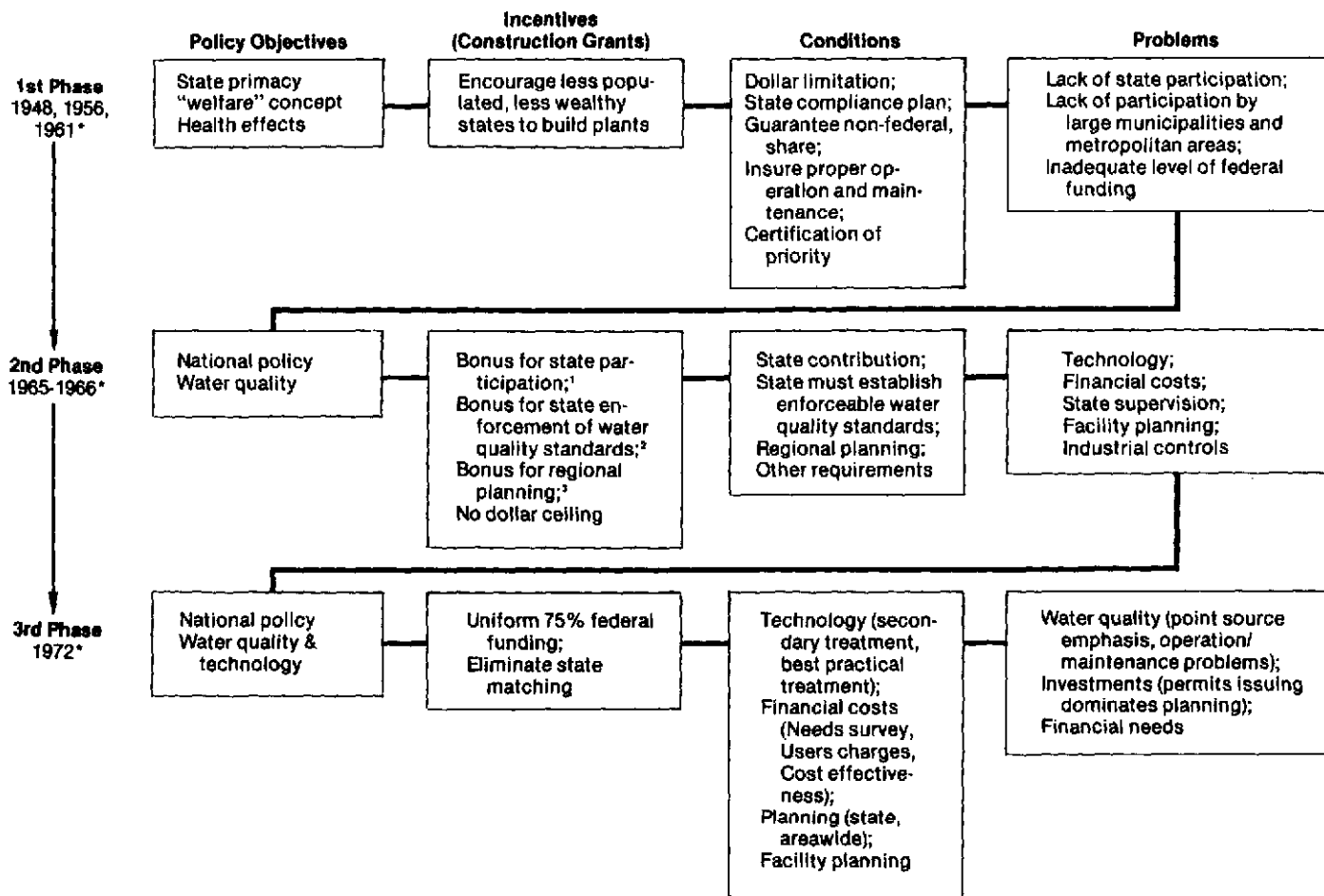
act which is not discretionary with the Administrator.<sup>75</sup>

In addition, while NEPA does not specifically provide for citizen suits, it has been interpreted as justifying such suits in cases where federal agencies fail to adequately prepare the environmental impact statements legislated in section 102 of the act.<sup>76</sup> The result of these three acts has been to bring the courts directly into the business of environmental protection.

The bulk of the environmental cases brought before the courts have been concerned with agency obligations under the terms of Section 102 of NEPA. In other

Chart 1

## EVOLUTION OF POLICY OBJECTIVES, INCENTIVES, AND CONDITIONS AND ENSUING PROBLEMS IN THE FEDERAL WATER POLLUTION PROGRAM



\*Dates refer to federal water pollution legislation.

<sup>1</sup>Encouraged state participation by including a provision which allowed the dollar ceiling to be dropped entirely if a state agreed to match the federal share.

<sup>2</sup>Allowed the federal share to be increased to 50% if the state contributed 25% and established enforceable standards.

<sup>3</sup>If a project was part of a metropolitan regional plan the base federal share could be increased by 10%.

SOURCE: Robert D. Thomas and Ralph A. Luken, "Balancing Incentives and Conditions in the Evolution of a Federal Program: A Perspective on Construction Grants for Waste Treatment Plants," *Publius*, Summer 1974, pg. 63.

words, what are the obligations of the federal government concerning a cleaner national environment? This, however, has not meant that the courts have seen fit to judge the substance of agency decisions. Rather, their role has been one of judging how well agencies have responded to the procedural mandates of NEPA.<sup>77</sup> More substantive rulings have occurred under interpretations of the air and water act amendments.

Two cases brought to court after enactment of the *Clean Air Act Amendments* illustrate the thrust and difficulty of substantive court decisions in the highly technical area of pollution control. The first of these is *International Harvester vs. Ruckelshaus*. In this case International Harvester, along with General Motors, Ford, and Chrysler, filed suit against EPA in an effort to gain a one-year extension of the 1975 emissions standards.

The companies involved provided data which indicated that the technology needed to meet such a deadline was not yet available. Their data were substantiated by a National Academy of Sciences study.<sup>78</sup> Yet, despite overwhelming evidence in favor of the motor companies, EPA had refused a deadline extension on the basis of predicting "available technology" rather than on actual "available technology."<sup>79</sup>

The court ruled that the burden of proof lay with EPA and ordered the Administrator to give further consideration to the case—it did not specifically grant an extension. However, the effect of the decision had the same result, for the administrator did suspend the standards until 1976.<sup>80</sup>

The justices' decision to remand the case back to EPA was due largely to the technical nature of the issue. They "were not completely comfortable dealing with these substantive aspects nor in passing judgement on the relative worth of conflicting scientific opinion. Therefore, the cases were remanded."<sup>81</sup>

The second case, *Sierra Club, et al vs. Ruckelshaus*, was fought over the conditions of state implementation plans. As originally conceived, the EPA guidelines had included a nondegradation policy. Nondegradation policy forbade deterioration of existing air quality. Such a provision meant that a state could not move a source of pollution from a highly polluted area to an area within the state whose air quality exceeded national standards. However, the final guidelines did not reflect this nondegradation policy. The Administrator of EPA had decided to delete the provision in order to make meeting air quality standards a simpler and less economically devastating matter for the states.

Upon issuance of the final guidelines, the Sierra Club filed suit against EPA, claiming that the *Clean Air Act* did not allow for degradation of any air—no matter

how clean. The courts found in favor of the Sierra Club in requiring state programs to "provide for nondegradation of the air 'no matter how presently pure that quality in some section of the country happens to be.'"<sup>82</sup> Thus, the courts upheld the strictest interpretation of the act.

Increasingly, western states, eager to develop their lands for economic and recreational purposes, have become disgruntled over court rulings which tend to favor environmentalists and the EPA over developers. One of the major reasons for this, westerners contend, is that the environmentalists are able to have their cases heard before the District Court and the Court of Appeals in Washington, DC—far removed from the fray and allegedly more amenable to environmental claims than to those who advocate development. To circumvent this, in March of 1980, Senators Dennis DeConcini (D-AR) and Paul Laxalt (R-NV) introduced an environmental venue bill which, if enacted, would require environmental cases to be heard "where a substantial portion of the impact or injury" occurs.<sup>83</sup>

Court intervention into the environment has had at least two consequences. In the first place, the court system has provided one more arena in which environmental battles can take place. This has been especially true in increasing the visibility of environmental and conservation interest groups. In the second place, the federal court system has served to further expand the federal environmental role both by strictly interpreting NEPA—and thus giving meaning to a sometimes vague piece of national legislation—and by putting its weight, as the third branch of government, behind the federal environmental effort.

## SOLID WASTE, NOISE, CHEMICALS, AD INFINITUM

The history of federal intervention into the local problem of solid waste disposal closely parallels federal efforts in the fields of air and water pollution control. That is, federal intervention began as a research and grant program devoid of any federal regulatory effort.<sup>84</sup> The purpose of the *Solid Waste Disposal Act of 1965* was to create a "national research and development program for new and improved methods of proper and economic solid waste disposal. . ."<sup>85</sup> Primary responsibility for disposal sites and methods was kept at the state and local levels.

Of course, as presaged by air and water legislation this approach was not to last for long. In 1970, Congress responded to the expiration of the *Solid Waste Disposal Act* by enacting the *Resource Recovery Act*. The new act was opposed and almost vetoed by the Nixon Adminis-

tration which saw it as "a first step toward an all-out program that would shift responsibility for solid waste disposal construction from the local to the federal government just as sewage construction funding gradually had been shifted from a state and local responsibility to a federal one."<sup>86</sup>

The act still relied primarily on grants-in-aid, but in major new proportions. It authorized recycling demonstration grants and resource recovery studies. In addition, planning and demonstration resource recovery grants were to be made available, up to 75% of cost, to regional, state, and intermunicipal units of government.<sup>87</sup>

Moreover these grants were not to be given as "no-strings-attached" bonuses. States receiving funds for solid waste management plans were directed to submit an inventory of existing solid waste disposal facilities. Further, states were to provide material-recycling or recovery plans.<sup>88</sup>

In 1976 new legislation, the *Resource Conservation and Recovery Act*, created several new programs and further expanded the federal role in a once purely local service function. Grant authorizations and other financial outlays were increased, along with the federal regulatory role. The act provides for federal regulation, by permit, of hazardous wastes. This includes the enactment of federal standards over all facets of hazardous solid wastes—generation, transport, storage, and disposal. In addition, the act requires that all open dumps be phased out within seven years.<sup>89</sup>

Solid waste disposal has, indeed, become big federal business. In 1977 outlays for control and abatement of solid waste pollutants were \$101.9 million—the largest outlay for a single pollutant.<sup>90</sup> The growth of solid waste control efforts over the past 13 years is instructive for several reasons. In the first place, while the evolution of solid waste control is a mirror image of early air and water control, it reflects that image at a greatly accelerated pace. From the standpoint of legislation, the federal government first became interested in water pollution control in 1948 but did not begin a program of regulating by permit until 1972—a total of 24 years. On the other hand, it took less than half that amount of time—11 years—to initiate such a program in the field of solid waste.

Second, efforts in the field of solid waste control are illustrative of the increasing boldness with which the federal government assumes functional and programmatic responsibility. Air and water can seldom be assumed to stay in one location or, often, even in one state. Yet, federal control over these pollution media was attended by over two decades of soul searching and

debate. Solid waste disposal, on the other hand, has generally been thought of as a very local service function. Cities have long generated, collected, transported, and dumped their own garbage. However, despite protests from Nixon, prompted as much by budgetary concerns as by concern over the proper federal role,<sup>91</sup> there seemed to be little hesitancy in asserting an ever-greater federal responsibility in the field of solid waste disposal.

Finally, as in the cases of air and water pollution control, the assumption of increasing responsibility by the federal government has also meant increasing the role of other levels of governments, particularly states and regional bodies. Like air and water pollution control, responsibility for solid waste has not been assumed in a fixed field of control. Like air and water pollution control, there seems to be room for everyone in solid waste control.

Another area which, until recently, was considered a purely state and local problem is noise pollution. In the past, city ordinances have been aimed at noise sources such as overenthusiastic partygoers, radios, car horns, and the like. States have commonly regulated urban noises through two means. First, state labor and safety codes have often provided for industrial noise levels. Second, automobile owners have long been prohibited from driving cars without effective muffler systems.<sup>92</sup>

The first federal effort to control excessive noise came in 1968 as an amendment to the *Federal Aviation Act of 1958*.<sup>93</sup> The act authorized the Federal Aviation Administration to set noise limits for new planes. This was followed in 1969 by U.S. Department of Labor noise rulings based on previous labor laws. The new Labor regulations "set decibel limits for industrial noise to protect the health and safety of employees in all industrial concerns with government contracts in excess of \$10,000."<sup>94</sup>

The most recent federal initiative in noise pollution control was *The Noise Control Act of 1972*.<sup>95</sup> The act authorized the establishment of federal noise emissions standards for products distributed in commerce and increased research and information activities by EPA.<sup>96</sup> While states and localities are to retain primacy in the field of noise pollution control, no laws or regulations which are seen as conflicting with federal standards may be enacted.

Two major pieces of federal legislation currently regulate the distribution of chemicals in inter and intrastate commerce. *The Federal Environmental Pesticide Control Act of 1972* gives EPA the authority to regulate the banning, manufacture, commercial sale, and use of pesticides.<sup>98</sup> The definition of pesticides includes insecti-



cides, rodenticides, herbicides, fungicides, and disinfectants. As of 1975, 29,000 such pesticides had been registered with EPA. The major federal chemical control act is *The Toxic Substances Control Act of 1976*.<sup>99</sup> This act authorizes testing and, when necessary, restricts use of toxic chemicals.<sup>100</sup>

In the 1960s, the Santa Barbara oil spill, the Cuyahoga River fire, and reports of heavy smog and air inversion conditions served as the symbolic centerpieces of calls for stringent federal air and water pollution laws. Of similar potential emblematic value in the area of toxic wastes has been the Love Canal disaster—the irresponsible dumping and tragic leakage of chemical wastes, resulting in abnormally high levels of cancer, miscarriages, birth defects, and other illnesses among the residents of Niagara Falls, NY. Responding to Love Canal and similar calamities in Massachusetts, Maine, Tennessee, and Michigan, Congress passed P.L. 96-510, the *Comprehensive Environmental Response, Compensation, and Liability Act of 1980*. The Act establishes liability—generally to a maximum of \$50 million—for owners or operators of facilities or vessels which release hazardous substances into the environment. In the event that liability is established, it will be transferred to and assumed by a Post-closure Liability Fund (popularly known as “superfund”) financed by a tax on owners and operators of \$2.13 per dry ton weight of hazardous waste upon receipt at waste disposal facilities.<sup>101</sup>

Space does not permit the review of all federal environmental efforts. However, legislation cited previously by no means exhausts the realm of federal environmental legislation. Other laws dealing with land use, animal protection, and consumer and occupational health and safety have all contributed to an increased federal environmental role since 1970. (See *Figure 1*.)

## **JUGGLING EXTENSIONS WITH DEADLINES: THE NEWEST AIR AND WATER AMENDMENTS**

In 1977 Congress passed amendments to both the *Clean Air Act* and the *Water Pollution Control Act*. The result of these amendments is a mixed and confusing bag of tough regulations coupled with relaxed standards, and deadlines coupled with extensions.

Congressional contradictions are understandable in light of the overall decline which the environment, as an issue, has undergone in the past few years. As it once fought for precedence over the Vietnam issue, it has now taken the back seat to an economy beset, at once,

with high unemployment, low productivity, and inflation and a declining reservoir of energy-producing resources. If Congress often acts after reading the “national pulse,” it has had to deal with the environment on the bases of very contradictory readings.

*Chart 2* illustrates the declining public importance of the pollution issue both in an absolute sense and relative to other problems. Clearly, pollution can hardly be considered among the biggest problems which face most people. However, as exhibited in *Chart 3*, when people are explicitly asked if they think government is spending “too little” on the environment, a significant number respond affirmatively.

An obvious public groundswell of support for innovative environmental legislation had inspired Congress to act in 1970 and 1972. By 1977 the environment was no longer the “issue of the 1970s.” Rather, in a surprisingly few short years, it seems to have joined the ranks of such “institutionalized” and enduring problems as education and health. The “national environmental pulse rate” is no longer inclined to “race” and neither, with a few notable exceptions, is Congress.

The initial “softening” of the *Clean Air Act* occurred in 1974 on the heels of the first of the so-called energy crises. The propitious nature of this moment was not lost on industry. Nor was Senator Muskie insensitive to the need for guarding his act from extinction. In fact, some of the proposed amendments sought to delete entire portions of the act.<sup>102</sup>

In a significant way the Senator’s vigilance paid off. The act remained intact, subject only to technical amendments. However, these technical amendments, themselves, were important in modifying some impacts of the 1970 legislation. The new amendments allowed EPA to suspend, for limited periods of time and under specific conditions, stationary source emissions limits. In addition, all 1975 auto emission standards were extended through 1976 and limited extensions on hydrocarbon and carbon monoxide standards were allowed through 1978.<sup>103</sup>

The 1977 amendments to the *Clean Air Act* went further in deferring reductions of automobile fumes until at least 1981.<sup>104</sup> However, in a very significant way the amendments signal a more stringent stance toward stationary source pollution. The targets of this stringency are “nonattainment areas” generally found in the northeast and Great Lakes regions of the country. Under the new provisions, an area which could not meet air quality standards by 1979 is not allowed to introduce new sources of pollution—in other words, new industrial plants—unless the responsible state has adopted a plan ensuring full compliance by 1982.<sup>105</sup>

Figure 1

## MAJOR FEDERAL ENVIRONMENTAL LEGISLATION

<b>Date</b>	<b>Title</b>	<b>Important Provisions</b>
<b>WATER POLLUTION CONTROL</b>		
1899	Refuse Act, 30 Stat. 1152	Required permit from Chief of Engineers for discharge of refuse into navigable waters.
1948	Water Pollution Control Act P.L. 80-845	Gave the federal government authority for investigations, research, and surveys. Left primary responsibility for pollution control with the states.
1956	Water Pollution Control Act Amendments P.L. 84-660	Established federal pollution policy for 1956-70 period. Provided (1) federal grants for construction of municipal water treatment plants; (2) complex procedure for federal enforcement actions against individual dischargers.
1961	Federal Water Pollution Control Act Amendments P.L. 87-88	Strengthened federal enforcement procedure.
1965	Water Quality Act P.L. 89-234	Created Federal Water Pollution Control Administration.
1966	Clean Water Restoration Act P.L. 89-753	Increased grant authorizations.
1970	Water Quality Improvement Act P.L. 91-224	Established liability for owners of vessels which spill oil and created new rules regarding thermal pollution.
1972	Federal Water Pollution Control Act Amendments P.L. 92-500	Set policy under which the federal government now operates. Provided (1) federal establishment of effluent limits for individual sources of pollution; (2) issuance of discharge permits; (3) large increase in authorized grant funds for municipal waste treatment plants.
1974	Safe Drinking Water Act P.L. 93-523	Directed EPA to set standards, applicable to all public water systems, to protect human health from organic, inorganic, and microbiological contaminants and for turbidity in drinking water.

Figure 1 (Continued)

## MAJOR FEDERAL ENVIRONMENTAL LEGISLATION

Date	Title	Important Provisions
1977	Federal Water Pollution Control Act Amendments P.L. 95-217	Relaxation of some standards under 1972 amendments. Relaxes existing industrial antipollution standards on suspended solids, fecal bacteria, and oxygen demand of discharge if it can be shown that the cost of equipment exceeds benefits.

### AIR POLLUTION CONTROL

1955	Air Pollution Control Act P.L. 84-159	Authorized a federal program for research, training, and demonstrations relating to air pollution control (extended for four years in 1959).
1963	Clean Air Act P.L. 88-206	Gave the federal government enforcement powers through enforcement conferences similar to the 1956 approach to water pollution control.
1965	Motor Vehicle Air Pollution Control Act P.L. 89-272	Added new authority to 1963 act, giving HEW power to prescribe emission standards for automobiles as soon as practicable.
1967	Air Quality Act P.L. 90-148	(1) Authorized HEW to oversee state standards for ambient air quality and state implementation plans; (2) set national standards for auto emissions.
1970	Clean Air Act Amendments P.L. 91-604	Greatly expanded the federal role in setting and enforcing standards for ambient air quality and established stringent new emission standards for automobiles.
1974	Clean Air Act Amendments P.L. 93-319	Technical amendments. Some relaxation of standards.
1977	Clean Air Act Amendments P.L. 95-95	Required states with air quality nonattainment areas to adopt plans for full compliance by 1982. Deferred further reductions in automobile toxic fumes until 1981.

Figure 1 (Continued)

## MAJOR FEDERAL ENVIRONMENTAL LEGISLATION

Date	Title	Important Provisions
<b>SOLID WASTE AND RESOURCE RECOVERY</b>		
1965	Solid Waste Disposal Act (Title II of P.L. 89-272) as amended by the Resource Recovery Act of 1970 (P.L. 91-518 and P.L. 93-14, 973)	(1) Promoted the demonstration, construction, and application of solid waste management and resource recovery systems; (2) provided technical and financial assistance to states, local govern- ments, and interstate agencies in the planning and development of resource recovery and solid waste disposal programs; (3) provided for national research for improved management techniques; (4) provided for federal guidelines.
1976	Resource Conservation and Recovery Act P.L. 94-580	Provided technical assistance for the develop- ment of management plans and facilities for recovery of energy and other resources from dis- carded materials. Regulated management of hazardous wastes.
<b>NOISE POLLUTION CONTROL</b>		
1968	Air Act to Require Aircraft Noise Abatement Regulation P.L. 90-411	Amended Federal Aviation Act of 1958 to require aircraft noise abatement regulation.
1972	Noise Control Act P.L. 92-574	(1) Provided for coordination of federal research and activities in noise control; (2) authorized es- tablishment of federal noise emission standards for products distributed in commerce.
<b>CHEMICALS</b>		
1972	Federal Environmental Pesticide Control Act (as amended by P.L. 94-51 and P.L. 94-140)	Authorized federal regulation of pesticides and related chemicals including banning, manufac- ture, commercial sale, and use.
1977	Toxic Substances Control Act P.L. 94-469	Required testing and necessary use restriction on certain chemical substances.

Figure 1 (Continued)

## MAJOR FEDERAL ENVIRONMENTAL LEGISLATION

Date	Title	Important Provisions
<b>WATER RESOURCES AND LAND USE</b>		
1964	Water Resources Act P.L. 88-379	Established water resource research centers to promote a more adequate program of water research.
1965	Water Resources Planning Act P.L. 89-80	Provided for the "optimum" development of the nation's natural resources through coordinated planning of water, and related land resources. Established a water resources council and river basin commissions.
1972	Coastal Zone Management Act P.L. 92-583 <i>as amended</i>	(1) Provided for assistance to states to develop and implement management programs for use of land and water resources of the coastal zone areas; (2) encouraged participation and cooperation among the public, federal, state, local, and regional authorities in development of coastal zone management programs.
1976	Federal Land Policy and Management Act P.L. 94-514	Provided an organic act for the Bureau of Land Management (Department of the Interior.) Directed that unless otherwise specified, the management of public lands be on a multi-use and sustained-yield basis.
1976	National Forest Management Act P.L. 94-588	Required comprehensive assessment of present and anticipated uses, demand for, and supply of renewable resources from the nation's public and private forests and rangelands.
1972	Marine Mammal Protection Act P.L. 92-532	Regulated the taking of marine mammals and replenishing any species or population stock which has diminished.
1973	Endangered Species Act P.L. 93-205	(Same as above for endangered nonmarine animals.)

Figure 1 (Continued)

## MAJOR FEDERAL ENVIRONMENTAL LEGISLATION

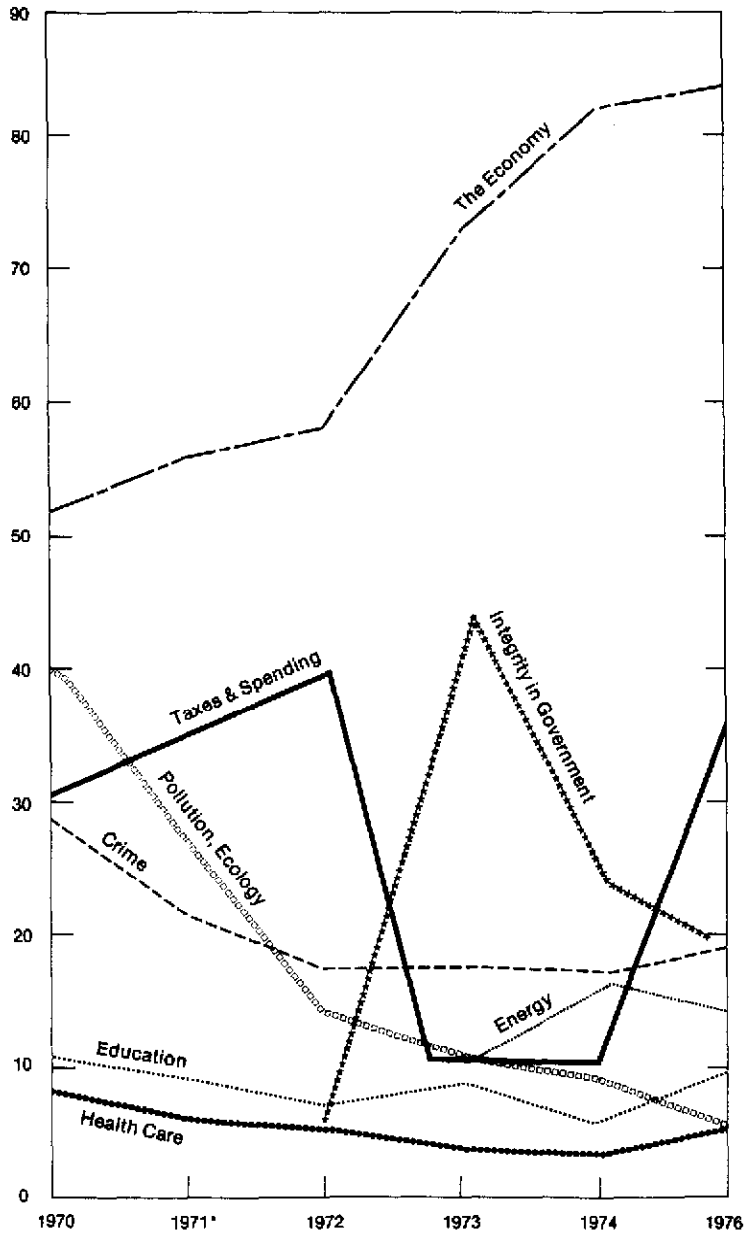
Date	Title	Important Provisions
<b>COMPREHENSIVE ENVIRONMENTAL ACTS</b>		
1969	The National Environmental Policy Act (as amended by P.L. 94-52 and P.L. 94-83.)	Established a national environmental policy; required information on and coordination of federal projects and programs impacting upon the environment; established the Council on Environmental Quality.
1970	Environmental Quality Improvement Act (Title II of P.L. 91-224)	Required each federal department and agency conducting or supporting public works activities which affect the environment to implement the policies established under existing law.

### HEALTH, SAFETY, AND CONSUMER ACTS (Date and title only)

1960	Federal Hazardous Substances Labeling Act
1965	Service Control Act
1966	National Traffic and Motor Vehicle Safety Act
1966	Federal Metal and Nonmetallic Mine Safety Act
1968	Natural Gas Pipeline Safety Act
1968	Flammable Fabric Act
1969	Federal Coal Mine Health and Safety Act
1969	Child Protection and Toy Safety Act
1970	Federal Railroad Safety Act; Hazardous Materials Transportation Control Act
1970	Occupational Safety and Health Act
1971	Federal Boat Safety Act
1972	Ports and Waterways Safety Act
1972	Consumer Products Safety Act
1974	National Mobile Home Construction and Safety Act
1974	Motor Vehicle and School Bus Safety Act
1975	Hazardous Materials Transportation Act

Chart 2

**BIGGEST PROBLEMS FACING PEOPLE, 1970-76**  
(in percent of response)



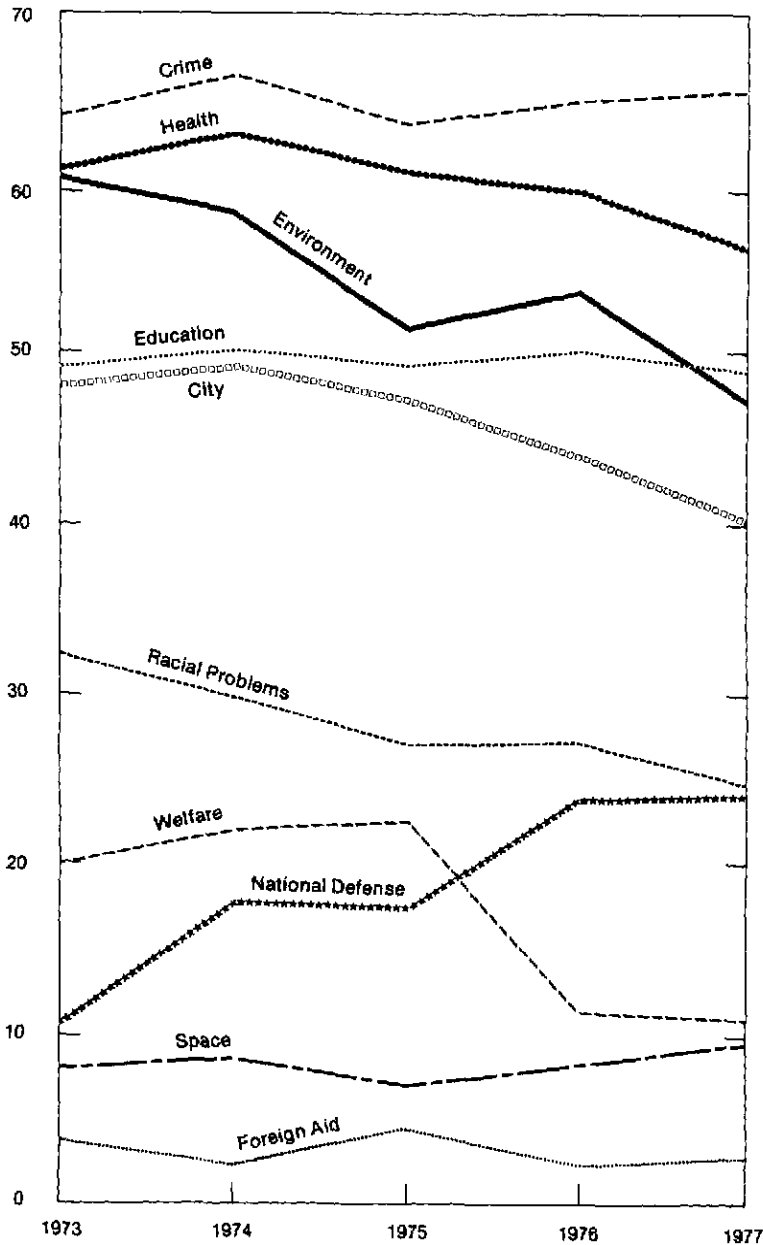
Harris survey question: "What are the two or three biggest problems facing people like yourself which you would like to see the next President (Congress) do something about? Any others?" (Problems omitted are welfare reform, older people, foreign policy, racial discrimination, and housing.)

\*No data were available for 1971.

SOURCE: "What the Public Thinks," *Resources*, No. 57 (January - March, 1978), 2.

Chart 3

**PUBLIC OPINION RESPONSES INDICATING THAT THE FEDERAL GOVERNMENT IS SPENDING "TOO LITTLE" ON THESE FEDERAL PROGRAMS, 1973-77**  
(in percent of persons polled)



National Opinion Research Center, General Social Survey.  
SOURCE: "What the Public Thinks," *Resources*, No. 57  
(January - March, 1978), 21.



In 1970, criticism of the *Clean Air Act* came only from industry and even this was guarded criticism since it was hardly advantageous from a public relations standpoint to be "propollution." That "the times they are a changin'"<sup>106</sup> is evident from the very vocal outcry that attended the nonattainment provisions. Nor did this opposition come only from industry, as this excerpt from an article by former EPA Deputy Administrator John Quarles illustrates:

This provision, like a loose cannon on a pitching deck, threatens a path of destruction.

The new law is likely to stop construction of new plants or plant expansions in heavy industries such as steel, rubber, cement, mineral processing or chemicals in many of the largest cities and most industrialized areas throughout the Great Lakes and Northeastern regions of the country. It probably will prevent any expansion after 1979 of the petroleum and petrochemical industries in Southern California, and it may have similar effects along the Gulf Coast in Texas and the East Coast from Virginia to Maine.<sup>107</sup>

In December of 1977, Congress promulgated amendments to the *Water Pollution Control Act*. Unlike the air amendments, with their conflicting patterns of stringency and lenience, the water amendments can only be interpreted as a Congressional attempt to "back off" from the strict standards imposed by the 1972 act.

Under the terms of the 1977 amendments, clean up of "conventional" pollutants (i.e: suspended solids, fecal bacteria, etc.) can be delayed if the agency finds that the cost of new antipollution equipment would exceed the benefits derived.<sup>108</sup> In addition, the deadline for compliance was moved from 1983 to 1984. Understandably, this portion of the amendments has been favorably greeted by industry and termed "a serious step backward" by environmentalists.<sup>109</sup> Congressional framers of the amendments see it as a compromise solution to the economic/environmental impasse. According to Senator Jennings Randolph, "There comes a time when you have to compromise or you don't bring out a bill."<sup>110</sup>

Also to the chagrin of environmentalists is a provision which will exempt federal projects, authorized by Congress, from the need for a permit to dredge wetlands.<sup>111</sup> State, local, and private projects still need to obtain such a permit from the Army Corps of Engineers and EPA, but under the exemption Congressionally authorized projects will be required only to submit an impact statement to the appropriate Congressional committee.

Like the air amendments, however, the water amendments have loosened some screws while tightening others. For instance, the act mandates stricter control over 129 toxic chemicals. Accordingly, industry is required to install "the best available technology" to abate such pollutants by 1984. Supposedly, no exemptions will be granted.

## **THE CHANGING SHAPE OF ENVIRONMENTAL POLICY: THE EFFECTS OF THE NEW ANTIREGULATORY MOOD AND STATE DEPARTMENT TURNOVER**

Intrinsically related to the problems of an ailing economy and rapidly diminishing energy resources is the current antiregulatory sentiment. The notion that industry is now overregulated,—to the point that resultant annual costs range in the billions of dollars and initiative and creativity are stifled at every turn,—has gained recent widespread acceptability. Of course, those citing excessive regulation are not merely aiming their displeasure at pollution control and abatement. Occupational, transportation, and consumer product safety regulations, among others, have generated considerable criticism. However, because the benefits of pollution abatement and control are so difficult to measure,<sup>112</sup> the costs of environmental regulations have been particularly susceptible to attack. Realizing this, EPA has begun taking steps to instill more flexibility in its regulatory procedures.

Thus, in a move that was greeted less than enthusiastically by environmentalists, EPA instituted the "bubble" policy. So named because it conceives of each industrial plant as being "contained in an imaginary bubble that has a single stack emitting pollutants,"<sup>113</sup> the policy allows "companies to decide where to cut emissions as long as overall air quality standards are met."<sup>114</sup> Moreover, in a recent response to President Carter's pledge to "reduce the regulatory burden"<sup>115</sup> on the struggling U.S. auto industry, EPA has decided to delay, and in some cases reverse, a number of its emissions and exhaust standards.

Equally as critical to the future shape of environmental policy was a series of foreign policy events occurring in the spring of 1980 which lead to the resignation of Cyrus Vance as Secretary of State and the appointment of Edmund Muskie as his successor. Muskie's departure from the Senate marked a critical turning point in environmental policymaking for a number of reasons.

First, the Maine Democrat's seniority and influence always assured environmental matters a serious hearing on Capitol Hill. Second, since 1970, Muskie had generally adhered to the more stringent forms of pollution control—sometimes swimming against the antiregulatory tide. Hence, the effects of his absence were felt just 15 hours after his formal resignation from the environmental subcommittee, when the remaining members voted unanimously to repeal a provision of the *Clean Water Act* which required industrial users of federally funded sewerplants to pay a portion of capital costs. An industry-sponsored measure, the repeal was something against which Muskie had fought for eight years and a Senate staff member was quick to sum up the situation: "It's an indication of the measure of the

man and the power he wielded over that committee that they waited until he was gone and then rammed it right through."<sup>116</sup>

Finally, on May 15, 1980, Senator Mike Gravel (D-AK) was chosen as Muskie's subcommittee successor. Probably the last choice of environmentalists to chair "their committee," Gravel is—

Best known for his intransigence on federal control of Alaska lands and his support for development there, particularly of oil resources, [and] the Senator is an outsider in the clubby Senate circles, a factor which may further hamper environmentalist protection moves his subcommittee might want.<sup>117</sup>

## FOOTNOTES

<sup>1</sup> Davies, "The Greening of American Politics," p. 93.

<sup>2</sup> John C. Whitaker, *Striking a Balance: Environment and Natural Resources Policy in the Nixon-Ford Years*, Washington, DC, American Enterprise Institute for Public Policy Research, 1976, p. 1.

<sup>3</sup> *Ibid.*, p. 2.

<sup>4</sup> By this time, the issue-attention cycle (see footnote 13 in Chapter 1) had moved to the second step, "alarmed discovery and euphoric enthusiasm." At this juncture, the public catches on to an issue. Accompanying this new awareness is a feeling that the problem can be completely solved, in very little time "without any fundamental reordering of society itself." Source: Downs, "Up and Down with Ecology," p. 39.

<sup>5</sup> Lloyd A. Free and Hadley Cantril, *The Political Beliefs of Americans*, New Brunswick, NJ, Rutgers University Press, 1967, p. 52.

<sup>6</sup> "What the Public Thinks," *Resources*, January-March, 1978, Washington, D.C., 1.

<sup>7</sup> Jones, *Clean Air*, p. 145.

<sup>8</sup> *Ibid.*, p. 145-146.

<sup>9</sup> Whitaker, *Striking a Balance*, p. 6.

<sup>10</sup> *Washington Post*, April 23, 1970, p. 20. Source: Whitaker, *Striking a Balance*, p. 4.

<sup>11</sup> Hazel Erskine, "The Polls: Pollution and Its Cost," *Public Opinion Quarterly*, Spring 1972, p. 120.

<sup>12</sup> Richard A. Liroff, *A National Policy for the Environment: NEPA and Its Aftermath*, Bloomington, IN, Indiana University Press, 1976, pp. 10-11.

<sup>13</sup> Richard N.L. Andrews, *Environmental Policy and Administrative Change: Implementation of the National Environmental Policy Act*, Lexington, MA, D.C. Heath and Co., 1976, p. 7.

<sup>14</sup> *Ibid.*

<sup>15</sup> U.S. House of Representatives, Committee on Science and Astronautics, *Managing the Environment*, Serial S, Washington, DC, U.S. Government Printing Office, 1968, pp. 24, 30. Source: Andrews, *Environmental Policy*, pp. 7, 175.

<sup>16</sup> *A National Policy for the Environment: A Report on the Need for a National Policy for the Environment; An Explanation of Its Purpose and Content; An Exploration of the Means to Make It Effective; and a Listing of Questions Implicit in Its Establishment*, A Special Report to the Committee on Interior and Insular Affairs, U.S. Senate (Together with a statement by Senator Henry M. Jackson), 90th Cong., 2d Sess., July 11, 1968, reprinted in U.S. Congress, Senate Committee on Interior and Insular Affairs, *National Environmental Policy*, Hearing on S. 1075, April 16, 1969, Washington, DC, U.S.

Government Printing Office 1969, pp. 30-45. Source: Andrews, *Environmental Policy*, pp. 8, 176.

<sup>17</sup> Liroff, *A National Policy for the Environment*, p. 15.

<sup>18</sup> *Ibid.*, p. 16.

<sup>19</sup> *Ibid.*, p. 17.

<sup>20</sup> *Ibid.*

<sup>21</sup> Whitaker, *Striking a Balance*, p. 49.

<sup>22</sup> Andrews, *Environmental Policy*, p. 12.

<sup>23</sup> Liroff, *A National Policy for the Environment*, pp. 18-19.

<sup>24</sup> *Ibid.*, p. 19.

<sup>25</sup> *Ibid.*, pp. 19-20.

<sup>26</sup> Frederick R. Anderson, *NEPA In the Courts: A Legal Analysis of The National Environmental Policy Act*, Washington, DC, Resources for the Future, Inc., 1973, p. 7.

<sup>27</sup> *Ibid.*

<sup>28</sup> Andrews, *Environmental Policy and Administrative Change*, p. 13.

<sup>29</sup> *National Environmental Policy Act of 1969*, P.L. 91-190, Title II, Sec. 202.

<sup>30</sup> Anderson, *NEPA in the Courts*, p. 9.

<sup>31</sup> The manager's statement as appended to the conference report appears in 115 Cong. Rec. 39703 Washington, DC, U.S. Government Printing Office, Dec. 17, 1969. (Congressman Aspinall did not sign) Source: Anderson, *NEPA In The Courts*, p. 9.

<sup>32</sup> 115 Cong. Rec. 39703, Washington, DC, U.S. Government Printing Office, Dec. 17, 1969. Source: Liroff: *A National Policy for the Environment*, p. 30.

<sup>33</sup> Whitaker, *Striking a Balance*, p. 50.

<sup>34</sup> *Ibid.*

<sup>35</sup> Theodore J. Lowi, *The End of Liberalism*, New York, NY, W.W. Norton and Co., Inc., 1969.

<sup>36</sup> *The National Environmental Policy Act*, P.L. 91-190, Sec 2 (83 Stat. 852), January 1, 1970.

<sup>37</sup> For a discussion of symbolism in legislation and its effects see: Murray Edelman, "Symbols and Political Quiescence," in *Bureaucratic Power in National Politics*, ed. by Francis E. Rourke, Boston, MA, Little Brown and Co., 1972, pp. 359-376.

<sup>38</sup> Liroff, *A National Policy for the Environment*, pp. 37-38.

<sup>39</sup> The stress on the agency fulfillment of the substantive requirements of NEPA did not appear in the guidelines until 1973. Source: Andrews, *Environmental Policy and Administrative Change*, p. 36.

<sup>40</sup> In 1973, OMB impounded 14.3% of CEQ's budget. In 1974, the council's budget and 15 positions were cut and in 1975 were held to that level. Source: *Ibid.*, p. 39.

<sup>41</sup> The role of the courts in the field of environmental protection will be discussed in a later section.

- <sup>42</sup> Davies, *The Politics of Pollution*, p. 107.
- <sup>43</sup> Whitaker, *Striking a Balance*, pp. 52-56.
- <sup>44</sup> *Ibid.*, p. 53.
- <sup>45</sup> Davies, *The Politics of Pollution*, pp. 108-109.
- <sup>46</sup> *Ibid.*, pp. 109-110.
- <sup>47</sup> *Ibid.*, p. 114.
- <sup>48</sup> Davies, "The Greening of American Politics," p. 95.
- <sup>49</sup> Jones, *Clean Air*, p. 175.
- <sup>50</sup> Davies, *The Politics of Pollution*, pp. 52-53.
- <sup>51</sup> Jones, *Clean Air*, p. 175.
- <sup>52</sup> *Ibid.*, p. 182.
- <sup>53</sup> *Ibid.*, p. 187.
- <sup>54</sup> John C. Esposito, *Vanishing Air*, New York, NY, Grossman, 1970, pp. 290-292.
- <sup>55</sup> Jones, *Clean Air*, p. 205.
- <sup>56</sup> Later, such standard-setting and enforcement duties became the responsibilities of EPA.
- <sup>57</sup> Whitaker, *Striking a Balance*, p. 94, and Jones, *Clean Air*, pp. 202-203.
- <sup>58</sup> Jones, *Clean Air*, p. 176.
- <sup>59</sup> Davies, *The Politics of Pollution*, p. 40.
- <sup>60</sup> Prior to anticipated Congressional action on water pollution control, Nixon authorized EPA to move against polluters on the basis of the *Refuse Act of 1899*. This entailed industrial disclosure of effluent emissions prior to issuance of a permit. Source: *Ibid.*
- <sup>61</sup> U.S. Congress, Senate, *An Act to Amend the Federal Water Pollution Control Act*, S. 2770, Sec. 101(a)(1), 92d Cong., 1st Sess., November 2, 1971, *Congressional Record*, C XVII, P. S38865.
- <sup>62</sup> *Ibid.*, Sec. 207 (b) (1), 38872.
- <sup>63</sup> This refers to the theory of increasing marginal costs. That is, "the greater the percentage of pollutants already removed from an industrial process, the higher will be the cost of removing an additional amount." Source: Allen V. Kneese and Charles L. Schultz, *Pollution, Prices, and Public Policy*, Washington, DC, The Brookings Institution, 1975, p. 19.
- <sup>64</sup> Whitaker, *Striking a Balance*, pp. 80-81.
- <sup>65</sup> Davies, *The Politics of Pollution*, p. 41.
- <sup>66</sup> Whitaker, *Striking a Balance*, p. 81.
- <sup>67</sup> *Ibid.*, p. 82.
- <sup>68</sup> Davies, *The Politics of Pollution*, p. 42.
- <sup>69</sup> *Ibid.*
- <sup>70</sup> *Ibid.*
- <sup>71</sup> Robert D. Thomas and Ralph Luken, "Balancing Incentives and Conditions in the Evolution of a Federal Program: A Perspective on Construction Grants for Waste Treatment Plants," *Publius*, Summer, 1974, 62.
- <sup>72</sup> Under the terms of the *Refuse Act of 1899*, the federal government did have some permit authority but this was highly restricted and seldom used until 1971.
- <sup>73</sup> Whitaker, *Striking a Balance*, p. 83.
- <sup>74</sup> *Ibid.*
- <sup>75</sup> *Federal Water Pollution Control Act Amendments of 1972*, P.L. 92-500, Sec. 505(a) (1972) and *The Clean Air Act Amendments of 1970* P.L. 91-604, Sec. 304 (1970)
- <sup>76</sup> Davies, *The Politics of Pollution*, p. 130.
- <sup>77</sup> In the case of *Stryker's Bay Neighborhood Council vs. Karlen* (preliminary publication) Docket No. 79-168, 1980, the court declared that NEPA requires an agency to meet certain procedural obligations, not to make environmental factors the determinative elements in its substantive decisionmaking.
- <sup>78</sup> *Ibid.*, pp. 139-142.
- <sup>79</sup> Charles O. Jones describes such agency decisions as "implementing policy beyond capacity." Source: Jones, *Clean Air*, pp. 211-275.
- <sup>80</sup> Davies, *The Politics of Pollution*, p. 141.
- <sup>81</sup> *Ibid.*, p. 142.
- <sup>82</sup> *Ibid.*, pp. 142-145.
- <sup>83</sup> *The Washington Post*, March 27, 1980, p. A-14.
- <sup>84</sup> Grad, *Environmental Control*, p. 68.
- <sup>85</sup> P.L. 89-272, Title II, Sec. 202(b), 1965.
- <sup>86</sup> Whitaker, *Striking a Balance*, p. 113.
- <sup>87</sup> *Ibid.*, p. 112.
- <sup>88</sup> Reitze, *Environmental Law*, p. two-87.
- <sup>89</sup> U.S. General Accounting Office, "Environmental Protection Issues Facing the Nation," a staff study, Washington, DC, July 8, 1977.
- <sup>90</sup> Office of Management and Budget, *Special Analyses, Budget of the United States Government, 1979, Special Analysis O, Environment*, Washington, DC, U.S. Government Printing Office, 1978, p. 292.
- <sup>91</sup> Whitaker, *Striking a Balance*, p. 112.
- <sup>92</sup> Grad, *Environmental Control*, p. 70.
- <sup>93</sup> *Air Act to Require Aircraft Noise Abatement Regulation*, P.L. 90-411 (1968).
- <sup>94</sup> Grad, *Environmental Control*, p. 72.
- <sup>95</sup> Extension of the antinoise law is pending but has been held up over a controversial legislative veto provision.
- <sup>96</sup> *Noise Control Act of 1972*, P.L. 92-574 (1972).
- <sup>97</sup> GAO, "Environmental Protection Issues," p. 11.
- <sup>98</sup> *Federal Environmental Pesticide Control Act*, P.L. 92-516 (1972).
- <sup>99</sup> *Toxic Substances Control Act*, P.L. 94-469 (1976).
- <sup>100</sup> GAO, "Environmental Protection Issues," p. 39.
- <sup>101</sup> *Comprehensive Environmental Response, Compensation, and Liability Act of 1980*, P.L. 96-510 (1980).
- <sup>102</sup> Davies, *The Politics of Pollution*, p. 56.
- <sup>103</sup> *Ibid.*, pp. 56-57.
- <sup>104</sup> *The Clean Air Act as Amended*, August 1977 P.L. 95-95, Title II (August 1977).
- <sup>105</sup> *Ibid.*, Title I, Part D. Under President Carter's proposed urban policy, nonattainment provisions of the act would be relaxed somewhat.
- <sup>106</sup> Bob Dylan, *The Times They Are a Changin'*.
- <sup>107</sup> John R. Quarles, "The Clean Air Amendments," *The Wall Street Journal*, December 28, 1977, p. 4.
- <sup>108</sup> In this context, "benefits" are defined as pounds of pollutants removed.
- <sup>109</sup> Margor Hornblower, "Water Cleanup Eased," *The Washington Post*, November 11, 1977, p. 1.
- <sup>110</sup> *Ibid.*
- <sup>111</sup> "Congress Writes New Rules for Clean Water Game," *Conservation Foundation Letter*, December 1977, p. 5.
- <sup>112</sup> For a discussion of the extreme difficulty incurred in trying to measure environmental benefits see: Council on Environmental Quality, *Environmental Quality: The Tenth Annual Report of the Council on Environmental Quality*, Washington, DC, U.S. Government Printing Office, 1979, pp. 648-655.
- <sup>113</sup> *National Journal*, December 8, 1979, 2077.
- <sup>114</sup> *Ibid.*
- <sup>115</sup> EPA Administrator Douglas Costle quoted in *The Washington Post*, September 18, 1980, p. A2.
- <sup>116</sup> *Congressional Quarterly Weekly*, June 14, 1980, 1623.
- <sup>117</sup> *Land Use Planning Report*, Vol. 8, No. 20, May 19, 1980, 153. However, in the long run, the subcommittee chairmanship remains in a state of flux: Gravel was defeated in his bid for renomination in Alaska's August 1980 primary, and the Republicans have now gained control of the Senate.

# The Unequal Partnership: The Continuing Role Of The States And Areawide Planning

As alluded to several times in the preceding pages, massive federal intervention into the field of environmental protection has had the effect, in many instances, of creating an environmental role for the states rather than undermining a previously viable role. Since approximately 1970, states have responded to federal initiatives through general compliance and through their own laws and new administrative arrangements.

Under the terms of the *Clean Air Act Amendments*, states are required to create implementation plans for achieving pollution control limits set by EPA.<sup>1</sup> In addition, states are responsible for “establishing the boundaries of area classification to prevent significant deterioration of air quality.”<sup>2</sup> Such boundaries are established according to the desired economic activity for particular areas.

The *Water Pollution Control Act Amendments* provide for state water quality standards and for state plans to achieve those standards as well as discharge standards established by EPA. According to sections 208 and 305 of the act, states and areawide agencies are instructed to regulate “the location and construction of future waste water treatment facilities and establish strategies to control nonpoint pollution sources.”<sup>3</sup>

Many states have gone well beyond the scope of these federally mandated functions. In this regard Article XI, Section 2 of the Constitution of the state of Illinois is instructive:

Each person has the right to a healthful environment. Each person may enforce his right against any party, governmental or private,

through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.<sup>4</sup>

Clearly, declaring a right is far bolder than NEPA's assertion that citizens should enjoy a healthful environment. Other states have amended their constitutions to include references to environmental quality<sup>5</sup> and some have enacted detailed environmental policy acts.<sup>6</sup>

Total state environmental expenditures also increased significantly during the 1970s. Between 1972 and 1975, state expenditures for all environmental quality control activities increased from \$1.03 billion to \$2.89 billion—an increase of 180%.<sup>7</sup>

State response to federal environmental initiatives, as well as to indigenous legislation, is dramatically illustrated by the number of recent environmental reorganizations. Between 1967 and 1975, 34 states adopted new administrative arrangements to deal with environmental quality control.<sup>8</sup>

States generally have relied on three basic organizational types: the health department, the little EPA, and the environmental superagency.<sup>9</sup>

The health department model is the most traditional and widely criticized of the three. It represents the historic relationship between the environment and public health concerns which once served to obscure pollution control efforts. However, proponents of this model argue that health departments have well-established relationships with their local counterparts and avoid unnecessary duplication in the administration of public health and safety.<sup>10</sup>

The second type, little EPAs, have earned their designation by organizing along the lines of the Federal EPA. Finally, as suggested by the record, the minimum definition of an environmental superagency is one that includes three pollution control programs along with "at least one other state conservation or development program."<sup>11</sup>

Thus, federal intervention into the environment has stimulated state activity rather than preempted state functions. Yet, this federal-state arrangement has not endeared itself to everyone. Many state governments have expressed concern over their roles as implementors of federal pollution programs. They complain that such programs have created financial hardship due to inadequate federal funding and administrative involvement.<sup>12</sup>

In addition, representatives from northeastern and midwestern states have begun to feel that federal standards—especially ambient air quality standards—discriminate against growth in older industrial cities.

In the terms of the *Clean Air Act* New York City and New York state are, with respect to many pollutants, "nonattainment areas." This means that they do not attain "national ambient air quality standards" established by the act. And because the standards are not attained, new sources of pollution are not permitted to locate in these areas, or are permitted to do so only under very stringent regulations. New sources of pollution include power plants and factories and might otherwise be described as new sources of jobs.<sup>13</sup>

These state economic concerns are symbolic of an increasingly general reticence to improve the environment for future generations when such improvement is seen as imposing major costs on the present generation.

A recent federal attempt to provide states with more environmental flexibility is reflected in pending legislation known as the "Integrated Environmental Assistance Act."<sup>14</sup> Supported by the National Governors Association,<sup>15</sup> the stated purpose of the bill is to provide "a flexible environmental program of integrated financial assistance to state and local governments to plan, manage, and implement abatement and control strategies in a more efficient and effective manner."<sup>16</sup> Flexibility would be provided by awarding a single grant in lieu of as many as ten separate grants.<sup>17</sup> The single grant, then, is intended to allow a certain amount of financial leeway among functions in unified state environmental plans.

Another intergovernmentally significant facet of federal environmental legislation has been the creation of areawide planning agencies. Currently, three areawide programs are funded through EPA: air quality control, waste treatment management, and solid waste planning. (See *Figure 2*.)

Legally recognized air pollution control agencies can be defined in any of four ways:

- 1) a single state agency designated by the Governor of that state as the official state air pollution control agency for purposes of the [*Clean Air*] Act;
- 2) an agency established by two or more states and having substantial powers or duties pertaining to the prevention and control of air pollution;
- 3) a city, county, or other local government health authority, or, in the case of any city, county, or other local government in which

Figure 2

## SELECTED DATA ON AREAWIDE ENVIRONMENTAL PROGRAMS

	<u>Air Quality Control</u>	<u>Waste Treatment Management</u>	<u>Solid Waste Planning</u>
<b>General Purpose:</b>	To help state, local, regional, and interstate agencies plan, develop, and establish programs for prevention and control of air pollution through implementation of ambient air standards.	To encourage and facilitate the development and implementation of areawide waste treatment management plans.	To help develop plans and programs leading to the solution of solid waste management problems.
<b>Types of Activities Supported:</b>	Regulation and planning	Planning.	Planning.
<b>Eligible Areas:</b>	States and local governments and designated regions.	Urban-industrial and other areas with water quality problems.	State, interstate, municipal, and intermunicipal agencies (priority given for areawide planning).
<b>Membership of Organization:</b>	Government officials.	Elected officials from local governments or their designees (others not specified).	Not specified.
<b>State Role:</b>	<ol style="list-style-type: none"> <li>1) State is consulted before designation;</li> <li>2) State program for the same function is also federally funded;</li> <li>3) State assumes function as last resort.</li> </ol>	<ol style="list-style-type: none"> <li>1) State designates organization;<sup>1</sup></li> <li>2) State program for the same function is also federally funded;</li> <li>3) State assumes function as last resort.</li> </ol>	<ol style="list-style-type: none"> <li>1) State designates organizations;</li> <li>2) State program for the same function is also federally funded.</li> </ol>

<sup>1</sup>If the Governor does not act within 180 days, local officials may act on their own to establish needed organizations.

SOURCE: Advisory Commission on Intergovernmental Relations, *Substate Regionalism and the Federal System*, Vol. 1: *Regional Decision Making: New Strategies for Substate Districts (A-43)*, Washington, DC, U.S. Government Printing Office, 1973, pp. 171-187.

there is an agency other than the health authority charged with responsibility for enforcing ordinances of laws relating to the prevention and control of air pollution, such other agency; or

- 4) an agency of two or more municipalities located in the same state or in different states and having substantial powers or duties pertaining to the prevention and control of air pollution.<sup>18</sup>

Aside from their planning responsibilities, such agencies have responsibility for implementing air quality standards. Thus, they possess a regulatory as well as a planning function. The EPA is authorized to make grants to these agencies for up to two-thirds of the costs of planning air quality programs and up to one-half of maintenance costs. However, in order to encourage regional cooperation and broader-based planning, EPA may carry up to three-fourths of the costs of planning and three-fifths of the program maintenance costs for agencies covering a statewide, interstate, or intermunicipal jurisdiction.

According to section 208 of the *Clean Water Act*, the governors of the 50 states are responsible for designating areas with "substantial water quality control problems."<sup>19</sup> Such areas may be substate regions whose boundaries are entirely within a single state or interstate areas linking two or more states. Upon designation of an area, the Governor appoints a "representative" planning agency whose membership is to include locally elected officials.

Grants provided under 208 have been especially lucrative. For those agencies submitting plans prior to October 1, 1977, EPA was required to provide 100% of the costs of the planning process for a two-year period and 75% thereafter. This provision, of course, has made 208 quite popular. However, failure on the part of EPA to obligate funds has caused planning delays as well as a considerable amount of disappointment and frustration among regional councils.<sup>20</sup>

Finally, EPA is required to provide grants of up to 75% of the costs of planning and coordination of solid waste programs. Such grants may be awarded to state, interstate, municipal, or intermunicipal agencies. Once again, priority is given to areawide planning.

## FOOTNOTES

<sup>1</sup>States may implement standards which are stricter than federal standards if they so desire. Source: Environmental Protection Agency, "Balanced Growth and National Commitment to Environmental Quality," information paper prepared for the White House Conference on Balanced National Growth and Economic Development, January 1978, p. 12.

<sup>2</sup>*Ibid.*

<sup>3</sup>*Ibid.*

<sup>4</sup>Illinois Constitution, Art. XI, Sec. 2.

<sup>5</sup>See for example: Florida Constitution, Art. II, Sec. 7; Michigan Constitution, Art. IV, Sec. 52; New York Constitution, Art. XIV, Sec. 4, amendment; Pennsylvania Constitution, Art. I, Sec. 28, amendment; Rhode Island Constitution, Art. I, Sec. 17, amendment; and Virginia Constitution, Art. XIV, Sec. 2. Source: Reitze, *Environmental Law*, p. one-52.

<sup>6</sup>Among the more comprehensive and controversial state environmental laws is the *Michigan Environmental Protection Act of 1970*.

<sup>7</sup>U.S. Bureau of the Census, *Environmental Quality Control, Governmental Finances: Fiscal Year 1974-75*, GSS No. 83, Washington D.C., U.S. Government Printing Office, 1977, p. 1, and U.S. Bureau of the Census, *Environmental Quality Control, Governmental Finances and Employment: Fiscal Years 1971-72 and 1972-73*, GSS No. 71, Washington, DC, U.S. Government Printing Office, 1975, p. 1.

<sup>8</sup>James Breithaupt, "State Reorganization for Environmental Quality," *Environmental Comment*, September 1976, p. 9.

<sup>9</sup>The Council of State Governments, *Integration and Coordination of State Environmental Programs*, Lexington, KY, The Council of State Governments, 1975, p. 1.

<sup>10</sup>The Council of State Governments, *Integration and Coordination*, p. 2.

<sup>11</sup>*Ibid.*

<sup>12</sup>GAO, "Environmental Protection Issues Facing the Nation," p. 34.

<sup>13</sup>U.S. Congress, Senate, "The Federal Government and the Economy of the State of New York," by Senator Daniel Patrick Moynihan, June 27, 1977, *Congressional Record*, S 10829.

<sup>14</sup>U.S. Congress, Senate, *A Bill to Authorize a Flexible Environmental Program of Integrated Financial Assistance to States and Local Governments to Plan, Manage, and Implement Abatement and Control Strategies in a More Efficient and Effective Manner*, S. 1136, 96th Cong., 1st Sess., 1979 and U.S. Congress, House, *A Bill To Authorize a Flexible Environmental Program of Integrated Financial Assistance to States and Local Governments to Plan, Manage, and Implement Abatement and Control Strategies in a More Efficient and Effective Manner*, H.R. 4213, 96th Cong., 1st Sess., 1979.

<sup>15</sup>*Governors' Bulletin*, May 23, 1980, p. 1.

<sup>16</sup>S. 1136 and H.R. 4213.

<sup>17</sup>The programs covered by the act are the *Federal Water Pollution Control Act*, the *Clean Air Act*, Title XIV of the *Public Health Service Act* (Safe Drinking Water Act), the *Toxic Substances Control Act*, the *Federal Insecticide, Fungicide, and Rodenticide Act*, the *Noise Control Act*, the *Atomic Energy Act*, other provisions of the *Public Health Service Act*, functions transferred by Reorganization Plan Number 3, and in the House bill, the *Solid Waste Disposal Act*; in the Senate bill, the *Resource Conservation and Recovery Act*.

<sup>18</sup>*The Clean Air Act as Amended*, August 1977, Title III, Sec. 302.

<sup>19</sup>*The Clean Water Act as Amended*, December 1977, Title II, Sec. 208.

<sup>20</sup>"Appeals Court Decides 208 Suit, Remands Decision to District Court," *From a Regional Perspective*, Vol. 3, No. 4 (September/October, 1977), 2.

# From Increments To Giant Steps: Analysis Of The Growth Of A Federal Function

If each turning point in the history of governmental involvement in the environment had been attended by a banner headline, a collector might have had the following acquisitions by early 1978: Cities Struggle Under Blanket of Smoke; Washington Offers Clean-Up \$\$\$ To Mayors, Governors; Feds Tell States—"You Clean Up Or We Will;" States Take Cue—Begin Big Cleanup Effort; Public Says, "No More Pollution"—Environment Called Issue of The Decade; Congress Responds to Public Uproar—Legislates Nonexistent Technology; Courts Give "OK" To Environment; Costs Up, Interest Down—Environment No Longer No. 1 Item on National Agenda.

In a very simple way, these "headlines" trace the development of the federal environmental role—a development which took place in two very distinct stages. That is, up until approximately 1969, federal assumption of a traditional, though largely unrealized, state and local function was accomplished slowly over a period of at least 20 years. It was policy developed by Congressional entrepreneurs and relevant support groups; legitimated through the "proper" bargaining channels; backed primarily by one party; and, finally, applied as small adjustments to existing rules. In other words, just as life is sometimes an imitation of art, so, the reality of the stage one policymaking process was a fairly accurate "imitation" of incrementalism and the pluralist model. (See *Figure 3*.)

In marked contrast to the pre-1969 model of policymaking by incremental adjustments, the second stage illustrates the rapid growth of federal regulations and institutions when an issue becomes public. This stage cor-



responds to Jones' concept of "speculative augmentation, . . . the escalation of proposals leading to the enactment of . . . law admittedly beyond the immediate capabilities to apply."<sup>1</sup> Here, the process of legitimation, in the form of mass public demands (demonstration democracy), precedes policy formulation. The response of policymakers then becomes one of rapid policy escalation finally applied as lofty national goals. (See *Figure 4*.) The eventual outcome of stage two was, in some respects, a sort of policy backlash resulting from unrealized goals and leading to a less escalatory process and more realistic (or less unrealistic) outputs.

These stages, of course, represent two vastly different responses to the same problem—responses which were shaped by different forces and which resulted in very different policy outputs. In assessing the growth of the federal role in the field of environmental protection it will be useful to summarize, in slightly more detail, some of the factors which contributed to, and constrained its growth during each of the two stages.

## **STAGE ONE: POLICYMAKING BY INCREMENTAL ADJUSTMENTS**

### **1. Forces Generating Greater Federal Involvement: Problem Recognition**

World War II had a number of well documented primary and secondary impacts upon the American lifestyle. Certainly, it left the nation sadder and not quite so naive and, if there is a less negative side to war, it left it more powerful and productive. The increased productivity, in turn, contributed to undreamed of prosperity, but it also contributed to the nightmare of pollution. This industrial fact of life was recognized by the 80th Congress which introduced several water pollution bills in 1947<sup>2</sup> and produced the *Water Pollution Control Act* in 1948.

In the realm of air pollution, too, a problem was recognized—albeit considerably later (1955) and following far more tragic evidence of its existence (Donora, PA, London, New York.) The Congressional response to the pollution problem, in the cases of both water and air pollution, was the same. That is, the problem, once recognized, needed to be researched and, once researched, small sums of money would entice states and localities into solving the problem themselves. Thus, this first, relatively unfocused phase of problem recognition forced the creation of weak legislation. It did little to solve problems, but it was a start.

By the 1960s the state of knowledge was burgeoning and with the growth of knowledge came a new environmental sophistication. The result was an increasing recognition of the scope of the pollution problem<sup>3</sup> coupled with the realization that the problem was not being solved at the state and local levels. The response was the pollution legislation of the 1960s, measured in small adjustments to existing laws rather than radical ventures into the unknown.

Incentives, particularly waste treatment construction grants, were "sweetened" considerably. Federal regulation of state and local pollution moved from a posture of friendly persuasion to one of firm but gentle nudging. Finally, a new problem—auto pollution—was added to the agenda.

### **2. Policy Development: Entrepreneurs, Support Groups, and the Effect of Party**

#### **POLICY ENTREPRENEURS**

The first stage of environmental policymaking was decidedly Congressional. More precisely, it was policy initiated, guided, and sold primarily by a few "entrepreneurs" within Congress.

The earliest clear example of the entrepreneurial role was provided by Rep. John Blatnik, chairman of the Rivers and Harbors Subcommittee of the House Committee on Public Works.<sup>4</sup> According to M. Kent Jennings, Blatnik assumed this role for three reasons:

First, he was a conservationist, joining an academic background in natural science and mathematics with practical experience in the Civilian Conservation Corps during the depression. Second, as a member of the Rivers and Harbors Subcommittee, he was impressed with the filth and pollution he saw during his travels . . . [Third,] Congressmen generally make their mark in the House by establishing themselves as specialists in a substantive legislative area. Blatnik's record, while respectable, was not particularly notable prior to 1955, when he became chairman of the . . . subcommittee.<sup>5</sup>

Thus, Blatnik created an entrepreneurial/sponsorship role for himself born of the relationship between his natural and experiential interests and his desire for recognition.

The Minnesota Congressman was successful in nurturing this role for nearly ten years. From 1956 to 1965,

Figure 3

**STAGE ONE:  
FEDERAL POLLUTION POLICY DEVELOPMENT AND IMPLEMENTATION,  
1964-68**

	Sequence of Activities	Development		Implementation
System	→	1. Identification/Formulation	→ 2. Legitimation	→ 3. Application
Goal		Articulation of new knowledge	Insured majority	Contextual change
Process		Policy entrepreneurship/ Support group access	Bargaining	Adaptation
Output		Proposal	Incremental change	Rule adjustment

SOURCE: Based upon charts found in Charles O. Jones, *Clean Air*, pp. 17, 294.

Figure 4

**STAGE TWO:  
FEDERAL POLLUTION POLICY DEVELOPMENT AND IMPLEMENTATION,  
1969-72**

	Sequence of Activities	Development		Implementation
System	→	1. Legitimation	→ 2. Formulation	→ 3. Application
Goal		Satisfied majority	Unspecified change	Determined limits
Process		Demonstration democracy	Escalation	Risk-taking
Output		Indeterminate majority	Speculative augmentation (policy proposals beyond capability)	Rhetorical goals

SOURCE: Jones, *Clean Air*, p. 294.

if anyone could be called "Mr. Water Pollution Control" it was John Blatnik. Unquestionably, he was responsible for initiation and passage of both the *Water Pollution Control Act of 1956* and the *Federal Water Pollution Control Act of 1961*.

In a very significant way, Blatnik left his mark on all subsequent water pollution legislation. His firm commitment to grants for municipal waste water treatment plants never wavered. In increasingly larger amounts, those grants continue to be the mainstay of federal water pollution policy. Certainly, Blatnik would have enjoyed retaining his hegemony in the area of water policy; but by 1965, Senator Edmund Muskie, with the backing of the President, introduced stronger legislation. The pollution entrepreneurship shifted not only from one person to another but from the House to the Senate.<sup>6</sup>

In the late 1950s and early 1960s pollution policy entrepreneurship was divided between water and air. Thus, water pollution was attacked by Rep. Blatnik while Rep. Kenneth Roberts took the first steps toward more effective air pollution legislation. This early division of labor was due to the fragmented committee jurisdiction in the House which, at that time, was taking the lead in environmental policymaking. In contrast, the authority for the two elements was combined in the Senate. The man who engineered this consolidation was Edmund Muskie.

Actually, Muskie's prominence as the nation's chief pollution fighter was born of an adverse situation. Having once voted against Majority Leader Lyndon Johnson on the Senate cloture rule, Muskie was due for some political "punishment." That punishment manifested itself in a less-than-desirable committee assignment—the Public Works Committee.<sup>7</sup> Yet, despite lack of enthusiasm over the assignment, Muskie managed to parlay a bad circumstance into a good one when his chairman, Patrick McNamara (D-MI) designated a special subcommittee on air and water pollution. The subcommittee was officially created and given permanent status in 1963. Its chairman, the fourth ranking committee Democrat, was Ed Muskie.<sup>8</sup>

*Muskie's role as environmental policy entrepreneur par excellence* has been well documented. Though he was only partially responsible for the *Clean Air Act of 1963*, he was almost totally responsible for the air pollution acts of 1965 and 1967, as well as for the water pollution acts of 1965 and 1966. In the nature of a policy entrepreneur, he massaged each succeeding piece of legislation—thus slowly enhancing his own role while making incremental changes in the policy over which he held sway. This, of course, was the Muskie of Stage

One who responded to increasingly sophisticated information on the problems of a polluted environment with legislative adjustments. The Muskie of Stage Two reacted in a considerably different way to a considerably different set of stimuli.

## SUPPORT GROUPS

Neither Senator Muskie nor Congressman Blatnik (nor, for that matter, any of the Congressional champions of a cleaner environment) could create policy without support from outside Congress. Throughout Stage One the bulk of that support came from the urban lobby, represented by such groups as the National League of Cities U.S. Conference of Mayors, the American Municipal Association, and the National Association of Counties. Their involvement was instrumental not only in promoting the eventual passage of pollution legislation but in shaping and, in some instances, actually writing the laws.

This urban involvement began as early as 1956 when Congressman Blatnik requested American Municipal Association aid in drafting his *Water Pollution Control Act*.<sup>9</sup> The association's efforts were visible in the sewage treatment grant provisions as well as the federal enforcement provision. The power of the urban lobby was felt in the Senate also:

The [National League of Cities was] welcomed in Congressional committees that [were] not necessarily urban oriented and [was] therefore the urban lobby focus in the Public Works Committee.<sup>10</sup>

By the 1960s these mayoral lobbying efforts had succeeded in changing the thrust of pollution legislation from rural conservation to urban environmentalism. Thus, immediately upon succeeding to his new subcommittee chairmanship in 1963, Muskie sought the aid of Hugh Miels, lobbyist for the U.S. Conference of Mayors.<sup>11</sup> Miels's influence was present both in subsequent water and air legislation. In the area of water pollution control he pushed for, and received substantially larger sewage treatment grants. In addition, his own strong air pollution bill, drafted in 1962, included federal enforcement and an increase in grants-in-aid.

Air pollution legislation was supported by other urban interests as well. Testifying at the 1963 Senate air pollution control hearings and supporting federal enforcement were the likes of Mayor Richard J. Daley of Chicago<sup>12</sup> and Mayor Joseph M. Barr of Pittsburgh, whose statement in behalf of the American Municipal

Association was representative of the sentiments of many big city Mayors:

National assistance is needed in meeting a problem which cannot be bottled up within a given region. . . . It is meaningless to establish effective control programs in one locality, if another locality across a state line is unable for whatever reason to control pollution . . . . The record will show that up to the present time, local governments and states, with a few notable exceptions, have not developed adequate programs for abatement and control of air pollution.<sup>13</sup>

*Urban Mayors* and administrators, then, had several good reasons for supporting the federal environmental role as strongly as they did. First, as stated by Mayor Barr, they recognized the regional nature of pollution and the corresponding futility of a single city's efforts to abate it. Second, as seen in the case of Gary, IN, uniform federal regulations were perceived as the only way to protect the integrity of a city's air and water resources while, at the same time, holding on to a vital industry. Finally, economic incentives in the form of construction grants continued not only to grow across-the-board but, increasingly, to favor the larger urban areas.

One other group should be mentioned briefly, though it was far less significant in the Stage One

polymaking process than the urban lobby. These were the conservationists whose successors, the environmentalists, were to become such a compelling force during the early phases of Stage Two. While the conservationists always supported the growing federal environmental role in all its aspects, they were more instrumental in promoting efforts to preserve the wilderness and protect recreation resources than in determining the urban antipollution thrust of federal policy.<sup>14</sup>

## THE PARTY EFFECT

A final variable—party membership—played a significant role in Stage One policy development. This was particularly true of the 1956 to 1961 period and of water pollution control in general. (See Table 3) As Table 3 reveals, most of the meaningful party-line votes came on motions to recommit. In these cases recommitments were sponsored by Republican members of Congress with the aim of deleting or significantly weakening grant provisions. Such voting, of course, was reflective of the Eisenhower Administration's contention that "water pollution [was] a uniquely local blight."<sup>15</sup> In fact, as noted previously, the President and his Republican allies in Congress were never so concerned with an expanding federal role per se as they were with an expanding federal budget. Thus, no matter what rhetoric

Table 3

### PERCENTAGE OF VOTES IN SUPPORT OF WATER POLLUTION CONTROL ON RELATED ROLL CALLS IN THE HOUSE OF REPRESENTATIVES, 1956-61, BY PARTY OF REPRESENTATIVE \*

Roll Calls	Democrats	Republicans
1956 Recommittal	88%	21%
1956 Final Passage	97	85
1957 Appropriation Deletion	84	23
1959 Recommittal	89	9
1959 Final Passage	89	19
1960 Veto Override	90	10
1961 Recommittal	92	14
1961 Final Passage	91	47

\* All percentages reflect the pro vote on water pollution control regardless of the specific direction of the original vote. SOURCE: M. Kent Jennings, "Legislative Politics and Water Pollution Control," in *Congress and Urban Problems*, ed. by Frederic N. Cleaveland, Washington, DC, The Brookings Institution, 1969, p. 102.

was expounded, the party-line vote ultimately came down to one of dollars and cents.

This, of course, was one of the early constraints on an expanding federal role. When a Democratic Administration came to power in 1961 these budgetary constraints were loosened and grant authorizations doubled; but throughout Stage One, barriers—real or perceived—continued to keep the federal role from expanding to its full potential.

### **3. Constraints on Federal Expansion: Pollution Control as a State and Local Responsibility**

During the Stage One period of policymaking by incremental adjustments, a common theme continually surfaced with each attempted expansion in the federal role: water and air were local resources and, thus, problems to be resolved by localities and ultimately by the states. However, these “states’ rights” assumptions were never tested as genuine Constitutional questions. Rather, they served as philosophical bases for practical objections to federal expansion. These objections were reflective of two sets of concerns: (1) that federal spending was increasing too rapidly, and (2) that compliance with federal standards would be both costly and administratively cumbersome. The expression of these concerns occurred in two phases which overlapped both chronologically and in terms of actors but were, nonetheless, distinguishable.

#### **Phase 1: The Republican Budget**

Primary responsibility for solving the [water pollution] problem lies not with the federal government but rather must be assumed and exercised, as it has been, by state and local governments . . . The federal government can help but it should stimulate state and local action rather than provide excuses for inaction . . .<sup>16</sup>

The quotation noted above was taken from President Eisenhower's 1960 veto message. The veto, which succeeded in stalemating Congressman Blatnik's efforts in the field of water pollution control, was used because of proposed new sewage construction grants. In fact, it was a theme invoked by the Republican President whenever there were attempts to increase grants-in-aid for sewage construction. That the state responsibility theme was used selectively was seen in 1955 when the *Water Pollution Control Act* came up for extension. Ad-

ministration amendments would have given PHS the power to begin federal abatement procedures in any state, without its permission, if another state was adversely affected by the offending state's pollution. In addition, it would have allowed PHS to set water quality standards for interstate bodies of water. This was a considerable departure from the 1948 law and was subsequently deleted by the Senate Public Works Committee.<sup>17</sup> Thus, while the Republican Administration was intractable in its contention that states had fiscal responsibility for pollution control activities, it was willing to enforce federal standards.

#### **Phase 2: The Antienforcement Argument**

Practically any issue produces some fairly clear pros and cons. However, the universally harmful nature of pollution makes it quite different from other issues. It would probably be impossible to find even a single individual who favors pollution. The most “public be damned”-minded industrialist does not like to choke on the air he or she breathes. Thus, while the pollution issue and its successor, the environmental issue, could never simply be broken down into propollution and antipollution forces, industry, as an interest, fought hardest against federal regulatory controls.

Though their relationship was tenuous, to say the least, the federal enforcement issue often succeeded in uniting industrial interests and state interests against the urban lobby and conservationists. While the practical reasons for this stance against federal regulations differed, the philosophical rationale remained the same. A sampling of statements made in testimony prior to enactment of the *Clean Air Act of 1963* illustrates the point. The Manufacturing Chemists Association stated that “Too much stress on federal enforcement will discourage state and local level enforcement people and impair their programs.”<sup>18</sup> The American Iron and Steel Institute argued that air pollution was not serious enough to justify “intrusion of the federal government into what has hitherto been strictly local and state affairs.”<sup>19</sup> The National Association of Manufacturers contended that federal regulations would result in the “stifling of local initiative.”<sup>20</sup> Finally, the states, represented by the National Association of Attorneys General, asserted that “a self-generating federal enforcement program seems premature, to say the very least.”<sup>21</sup> The message of the statements was clear—the federal government was intruding where it was neither wanted nor needed. Pollution was a state responsibility and the regulation of polluters was a state prerogative.

By 1965, the states' rights issue had become somewhat less convenient for industry—in particular, for the auto industry. Suddenly a uniform federal emission standard seemed far less difficult to implement than 50 different state standards. The *Motor Vehicle Pollution Control Act* signalled the beginning of a decline in industrial influence over the Congressional pollution committees. The practical objections to enforcement remained but the philosophical facade had been badly eroded.

The final product of the Stage One policymaking process was the *Air Quality Act of 1967*. It was nothing if not the perfect expression of incrementalism: It continued grants-in-aid at a higher level and added to the federal enforcement role.

On January 1, 1970, the first expression of the new mode of environmental policymaking was signed into law. It marked the beginning of a series of radical departures from the "normal" policymaking process. The battle against pollution had ended; the war to preserve the environment was beginning.

## **STAGE TWO: SPECULATIVE AUGMENTATION**

### **1. Forces Generating Greater Federal Involvement**

#### **PUBLIC OPINION AND "DEMONSTRATION DEMOCRACY"**

Throughout Stage One the policy process leading to greater federal involvement in the environment was orderly and even predictable. Had environmental policymaking proceeded along such lines, the next "expected" step would have been a slight expansion of federal enforcement powers coupled with increased authorizations when the *Clean Air Act* came up for reconsideration in 1970. However, the policymaking process, like the human beings responsible for it, often deviates from the comfortable confines of predictable behavior. Environmental legislation in the 1970s ceased to be a base for incremental adjustments—it had become a launching pad. The catalysts for this policy deviation were extensive coverage of environmental disasters by the press and an unusual outpouring of public opinion.

By 1969 public interest in environmental matters was beginning to grow. Though it had hardly reached the flood tide stage that it would in the following year, it was growing enough to convince the astute politician of its issue potential. More important in 1969, however, were a series of "pollution events" which managed, tem-

porarily, to deflect front-page news away from Vietnam. Particularly disastrous were the Santa Barbara oil spill and the Cuyahoga River fire. Of such stuff was legislation born. According to NEPA scholar Richard A. Liroff:

NEPA was enacted when public interest in the environment was rising. The Santa Barbara oil spill had just occurred, the Cuyahoga River had caught fire, and the news was laden with stories of environmental trauma. Clearly a gesture of Congressional concern was in order. For many legislators, undoubtedly, a vote for NEPA was symbolic—akin to a vote for motherhood and apple pie. Little did they realize, however, that in voting to enact NEPA, they were placing a potent weapon in the hands of citizen activists.<sup>22</sup>

Thus, responding to perceived pressure from outside to be environmentally aware and active, Congress neglected to examine the potential impacts of the law. That a number of Congresspersons subsequently regretted this lack of legislative consideration is attested to by the following comments which Mr. Liroff obtained from Congressional staff aides one year after NEPA's enactment:

If we had waited another year, we would have developed legislation which wasn't so drastic in terms of program effect . . .

If Congress had appreciated what the law would do, it would not have passed. They would have seen it as screwing public works . . . The timing of the bill complicated the way it worked. Had it passed a year earlier or later, things would have been far different. . .

If Congress had known what it was doing, it would not have passed the law. . .<sup>23</sup>

Had NEPA been considered in 1968, its form and substance probably would have differed considerably from the legislation of 1969. However, it is doubtful whether Congress would have responded any differently in 1970 than it did in 1969. By 1970, public interest in the environment had reached its celebrated Earth Day proportions. Such demonstrations represented the articulation of demands upon lawmakers to clean up the environment, *now*. The demands were far-reaching—in some cases, even impossible; yet, the numerical scope and class background of those making the demands forced Congress to respond with extreme measures.

"Demonstration democracy," of course, was not unprecedented. The civil rights, poverty, and antiwar demonstrations of the 1960s had paved the way for the environmental movement. What was unusual and politically so significant about these demonstrations was the middle class initiation and involvement. The environmental movement was not peopled primarily by the alienated of society (blacks, poor, young). Rather, the demonstrators represented the "mainstream." In addition, the environment tended to be a unifying issue. It seemed to narrow the gap, if not actually join the generations. Finally, the villains, technology and growth, were easy targets—vague intangibles which could hardly be expected to respond in their own defense to outside attacks.

The sum of this public force changed the shape of policymaking. Normally policy is formulated and then legitimated. In the case of Stage Two environmental policymaking the processes were reversed. According to Charles O. Jones:

Whereas we normally think of formulation's preceding majority-building in the policy process and identify each step with the executive and legislative, respectively, in 1970 a majority seemingly awaited unspecified strong action. Thus, instead of a majority having to be established for a policy, a policy had to be constructed for a majority. Much of that occurred within Congress as proposals escalated toward various actors' perceptions of what was necessary to meet public demands.<sup>24</sup>

## 2. Policy Development

### THE CASE OF POLITICAL ONE-UPMANSHIP

Unlike Stage One, the Stage Two environmental policymaking process involved more than a few Congressional entrepreneurs and supportive interests. As the scope of public interest expanded, the number of actors directly involved in the process also expanded. In addition, policymakers began reacting not only to their perceptions of public demands but to the proposals of other policymakers as well. Thus, environmental policy came to be made in what was essentially a game of one-upmanship.

Of course, Senator Muskie was once again the pivotal figure. In order to retain his position as chief environmental policymaker he, more than anyone, was forced to react to each new actor who entered the process. Having watched his proposed "National Air Quality Standards Act" (a series of incremental adjustments to the *Air Quality Act of 1967*) eclipsed by the President,

the House, the Nelson-sponsored Earth Day, and, finally, what was almost certainly an overly critical Nader report, he was literally forced to come up with something "bigger and better" or relinquish his leadership role. Muskie's choice was reflected in the *Clean Air Act of 1970*. (See *Table 4*)

In their new reactive stance, Muskie and his subcommittee created a greatly expanded federal policy based largely on popular demands and political feasibility. The technical and economic problems of implementing such a policy were simply not considered, as this exchange between Senator Muskie and Senator Robert Griffin (R-MI) illustrates:

MR. GRIFFIN. Did the committee have any hearings in this session on this problem as to the state of the art—on the likelihood or possibility that this goal can be reached by 1975?

MR. MUSKIE. Yes, we had testimony jointly before the Commerce Committee and before our committee from the automobile companies on the state of the art. With respect to this specific deadline, no.

MR. GRIFFIN. On this particular bill?

MR. MUSKIE. No.

MR. GRIFFIN. No hearings?

MR. MUSKIE. The deadline is based not, I repeat, on economic and technological feasibility, but on considerations of public health. We think, on the basis of the exposure we have had to this problem, that this is a necessary and reasonable standard to impose on industry. If the industry cannot meet it, they can come back . . .

MR. GRIFFIN. . . . Without adequate expertise, without the kind of scientific knowledge that is needed—with [out] the hearings that are necessary and expected, this bill would write into legislation concrete requirements that can be impossible. . . .<sup>25</sup>

Nonetheless, under the pressure of unusually extensive press coverage, the Muskie proposals were unanimously passed by the Senate, agreed upon almost to the letter in conference, passed by voice vote in both chambers, and signed by President Nixon on December 13, 1970. One year later, bold water pollution policy was fashioned in much the same way.

### SUPPORT GROUPS OLD AND NEW

Throughout Stage Two, the urban lobby continued to show its power in huge grant authorizations for

Table 4

## ESCALATION OF AIR POLLUTION PROPOSALS, 1970

Major Provisions	Administration Bill	House-Passed Bill	Senate-Passed Bill
<b>Air Quality Standards</b>	+	+ +	+ +
<b>Control Regions</b>	-	+ +	+
<b>Implementation Plans</b>	+	+ +	+ + +
<b>Stationary-Source Emissions</b>	+	+ +	+ + +
<b>Automotive Emissions</b>	+	+ +	+ + +
<b>Fuel Standards</b>	+ +	+	+ +
<b>Aircraft Emissions</b>	-	+ +	+
<b>Federal Facilities</b>	-	+	+
<b>Money Authorized</b>	open	+	+ +
<b>Judicial Review</b>	-	-	+
<b>Citizen Suits</b>	-	-	+

- indicates no provision.

+ indicates provision included.

Additional + 's indicate strength of provision relative to other bills.

SOURCE: Jones, *Clean Air*, p. 204.

waste treatment and solid waste projects. In addition, grants for waste treatment management plans, though stressing regionalism, clearly favored urban areas. Section 208 of the *Federal Water Pollution Control Act Amendments of 1972* proposes:

. . . encouraging and facilitating the development and implementation of areawide waste treatment management plans . . . [in] state[s] which, as a result of urban-industrial concentrations or other factors, [have] substantial water quality control problems.

The urban thrust is clear as is the reason for its popularity:

(f)(2) The amount granted to any agency under paragraph (1) of this subsection shall be 100% of the costs of developing and operating a continuing areawide waste treatment management planning process. . . .<sup>27</sup>

While the urban lobby remained an important component in the environmental policymaking process, a new group, the environmentalists, had come to equal its input and overshadow its press coverage. In fact, the

environmentalists were a more militant and broad-based version of the old style conservationists.

In a book entitled, *Lobbying for the People*, Jeffrey M. Berry defines a public interest group as "one that seeks a collective good, the achievement of which will not selectively and materially benefit the membership or activists of the organization."<sup>28</sup> Certainly, environmentalists and their predecessors, the conservationists, have always fought for a collective good or, at least, their perception of a collective good and, thus, qualify as public interest groups. Of course, early conservation groups such as the Sierra Club had a rather narrow view of the collective good. That is, the collective good consisted of protecting forests and wildlife, presumably, from any encroachment by the collectivity. As the environment became an issue of increasing public importance, however, such venerable institutions as the Sierra Club and the National Wildlife Federation experienced rapid growth. Enlarged membership rolls tended to draw these groups into the mainstream of popular environmental concerns. In addition, a number of new groups formed and the issues and tactics changed.

First, a concerted effort was made to influence public opinion. This was certainly clear in the case of Earth Day, a "national event" coordinated by the group



which later became known as Environmental Action.<sup>29</sup> The success of their efforts was apparent.

Second, a number of the newer groups have chosen the courts as the arena in which to wage their struggle. This is particularly true of the Natural Resources Defense Council and the Environmental Defense Fund. They have been joined in the courts by some of the older groups, notably, the Sierra Club and the Izaak Walton League.<sup>30</sup>

Finally, some of the newer groups have chosen not to attract membership. Instead, their resources have been spent on lobbying Congress and acting as a public information source. This information often includes the environmental voting records of members of Congress as well as those of gubernatorial candidates.<sup>31</sup>

### THE EFFECT OF JUDICIAL INTERVENTION

A final critical factor in Stage Two policy development was the court system. This was especially true of federal environmental policy as defined by NEPA, a law whose broad language and action-forcing potential left it particularly open to judicial interpretation:

Environmentalists' dissatisfaction with agency response, their desire to see an elaboration upon NEPA's broadly stated requirements, and their viewing NEPA as an ultimate weapon to use against ongoing projects that they hitherto had unsuccessfully opposed—all combined to push many vital decisions about NEPA's meaning into the courts. NEPA's enactment at a time when the courts were increasingly opening their doors to "public interest groups" also spurred this lateral movement from the executive to the judiciary.<sup>32</sup>

The courts have facilitated the application of NEPA as well as the *Clean Air and Federal Water Pollution Control Acts* by broadly interpreting citizen-standing to sue<sup>33</sup> and, in the case of NEPA, by strictly interpreting the procedural requirements of the law. Such actions, in turn, significantly contributed to the accelerated federal environmental role in at least two ways. In the first place, court decisions regarding NEPA have succeeded in doing more than prodding a few agencies into action. The more pervasive effect has been to substantially heighten the environmental consciousness of all federal agencies. Second, the liberal interpretation of standing to sue has had a valuable side effect for those environ-

mental groups pressing claims. That is, the publicity afforded these groups by major court actions—particularly in the 1970-73 period—was instrumental in rallying public opinion to their cause.

### 3. Constraints on Federal Expansion: Policymaking "Without" Constraints

That policymaking during Stage One proceeded incrementally was due, in large measure, to the real and perceived constraints which served to delimit the federal role. These "constraints" on federal expansion included budgetary concerns, a powerful and effective industrial lobby, and a reticence to usurp a traditional state function. By 1969, the environmental policymaking process and, consequently, the scope of the federal role were beginning to change dramatically. Suddenly there seemed to be no constraints on what the federal government could or should do to save the environment. More appropriately, the following factors served to loosen many of the constraints which usually occur throughout the policymaking process:

- broad-based public demands, which, as expressed in demonstrations as well as public opinion polls, not only were the most important contributing factor but served as a catalyst for the remaining factors;
- reticence on the part of policymakers to claim budgetary or any other concerns as being more important than a clean environment;
- a feeling on the part of many federal policymakers that the states had had at least 20 years to act decisively and effectively with little or no result;
- the combination of events and changing attitudes, occurring throughout the 1960s, which made industry particularly vulnerable to attack;
- an unwillingness to seriously study possible economic and social costs of pollution control;
- genuine fear that cleaning the environment was, literally, a "now or never" proposition; and
- the ambivalent twin beliefs that the very technology which was labelled as the polluting enemy could, if properly directed, continue to maintain the same basic American lifestyle under conditions of clean air, water, and land.

## STAGE TWO: EPILOGUE, A NEW REALIZATION OF CONSTRAINTS

In the spring of 1980, Senator Muskie became Secretary of State. Though unintentionally so, this event amounted to the symbolic swansong of the "environmental decade" and the prelude to the so-called "era of constraints." Indeed, as early as 1971, the most vocal of the public demands for massive and radical environmental changes had already begun to subside and the diminution of intense public interest in the environment has continued since then. Where federal policymakers once relied upon a decisive base of mass public support for large-scale environmental measures, they are now faced with the nemeses of conflicting policy demands and diminished public interest. The normal policy constraints, once dismissed as inconsequential vis-a-vis a cleaner environment, have begun to appear.

Because the deterioration of the environment was viewed with such alarm in the period 1969-72, drastic environmental policies were felt to be needed, whether or not they conflicted with other policies. For instance, NEPA directed federal agencies to review and report the environmental impacts of anticipated and ongoing projects. This requirement, of course, could and did conflict with, delay, and even put a stop to other policy objectives. Increasingly since 1972, however, the perceived gravity of some conflicting policy outcomes has acted as a constraint upon the realization of certain environmental goals. Thus, in the case of the widely disputed Trans-Alaska Pipeline, the so-called energy crisis prompted Congress to exempt the Interior Department's environmental impact study from review by the courts.<sup>34</sup>

More recently, under the terms of the 1977 *Water Pollution Control Act Amendments*, permits for dredging wetlands could be obtained only for Congressionally authorized public works projects. And instead of the normal EPA review, such federal projects are only required to submit impact information to Congress.<sup>35</sup>

As important as conflicts between and among federal programs are some emerging policy conflicts of an intergovernmental nature. One type of intergovernmental conflict can occur when a state or locality with an established pollution policy feels that federal environmental policies are contradictory to or, in any other way, are impeding its own policies. This type of scenario occurred as early as 1972 on the occasion of the Senate *Clean Air Act* implementation hearings. In this instance, a Los Angeles County supervisor testified that the federal air regulations, a set of policies which he des-

cribed as "overkill on carbon monoxide,"<sup>36</sup> were hindering long-established California environmental programs. In his words, "We cannot stand idly by and see our programs delayed by fruitless efforts to attain the unattainable."<sup>37</sup>

A second type of intergovernmental policy conflict—air quality standards vs. urban economic revitalization—has also emerged as a constraint on the realization of environmental goals. Thus, the widely criticized "nonattainment" provisions of the 1977 *Clean Air Act Amendments*, if strictly applied, would have the effect of halting new industrial growth in cities unable to meet federal air standards. Of course, such a policy would have its greatest impacts upon those cities most in need of revitalization and industrial expansion. As a result, President Carter's urban policy initiative addressed this situation by advocating a relaxation in air standards and proposing "air quality planning grants to accommodate economic development."<sup>38</sup> Moreover, the proposed "Integrated Environmental Assistance Act" is intended to offer states and localities more control in planning their own unified environmental programs.

Aside from the constraints imposed by conflicting federal, state, and local policies, the erosion of public interest in and support of drastic environmental measures may have imposed another type of constraint on the federal role. That is, policymakers and implementors (the regulators) increasingly may be forced to deal with those who are being regulated in a more cooperative manner. In the case of an environmental policy developed within the context of speculative augmentation, this return to "regulation as usual" may have special consequences. Again, Prof. Jones offers some interesting insights:

[Speculative augmentation] has emphasized large change to be effected through an adversary relationship with industry, but it has been followed without the quantum increase in knowledge that is required for its effectuation . . . [T]he adversary approach to regulation normally requires considerable expertise on the part of the regulators . . . [but given [policymakers'] perception of public interest and concern they sought to get dramatic results by setting tough standards and forcing as much compliance from industry as possible . . . This is a highly risky venture. As long as the regulators can depend on public support, they can proceed to enforce regulations. With the erosion of public support, however, regulators are

forced to compromise with industry in determining the level of compliance . . . Thus, regulators are forced back into a cooperative mode, but without the advantage of having developed the regulations based on that approach.<sup>39</sup>

In some instances this newly realized "constraint"—the need to cooperate—has resulted in lowered standards, extended deadlines, and new agency policies offering industry more flexibility in controlling pollution sources. Unlike many regulatory policies which—while enacted with idyllic preambles nonetheless assume cooperation from the beginning with those being regulated—environmental policymaking proceeded with more than the usual symbolic zeal. In creating environmental policy the rhetorical goals of the preamble extended throughout the legislation and early implementation. When the public support that made such policymaking possible began to fade, the result was, at least, disappointment and, at most, actual policy backsliding. These results occurred, to varying degrees, in the legislation of 1974 and 1977.

A final new constraint on an expanded environmental role is the issue of costs. This can include public and private, social and economic costs. However, current reactions—typical of the new antiregulatory sentiment, generally—tend to emphasize economic costs.

A number of problems emerge here which make any assessment of pollution control and abatement costs vis-a-vis benefits difficult, if not impossible. In the first place, cost analyses from a variety of sources tend to be highly contradictory. In addition, there exist only fragmented and weak benefit data. Beyond these problems, genuine environmental cost-benefit analysis lacks an effective methodology to compare the costs of plant closures with the benefits of fewer air pollutants discharged.

What is significant for the purposes of this analysis are the emotional responses elicited by the issue of environmental costs vs. benefits. Such emotions are especially likely to be reflected in the policy process at a time when the economic state of the nation is less than ideal and the cost of living is the primary concern of most Americans.

In 1970, consideration of the costs of pollution abatement and control was minimal. The overwhelming public mood—and consequently the mood of policymakers—was one of "clean air and water at any cost!" This was consistent with the heady nature of the time and, as smog-free air had become almost an abstract concept to many city dwellers, so also, costs tended to

be abstracted—and, at any rate, those were costs someone else would pay.

By the mid-1970s the mood had changed. Not only were constraints recognized in the forms of conflicting policy goals and an overall lack of intense public interest; but suddenly the costs of controlling pollution were becoming visible. (See *Table 5*) In addition, release of figures such as those found in *Table 5* are usually unaccompanied by discussions of the environmental benefits of pollution control. When benefits are discussed, they are defined in terms such as the "reduction of criteria pollutant discharges"—certainly less comprehensible and less dramatic than billion dollar-plus price tags!

## SPECULATIONS ON THE FUTURE OF THE FEDERAL ENVIRONMENTAL ROLE

As Professors Cooley and Wandesforde-Smith discovered in 1969, predicting the course of environmental policymaking can be a risky business. Certainly, in 1969, neither scholar nor practitioner could have predicted the environmental legislation of the 1970s. Nor is it any easier in 1980 to predict the scope of the federal role in 1990. The environment is clearly volatile, both in its elemental forms and as a policy issue. Nonetheless, a few concluding statements regarding the federal environmental protection role today may be helpful in speculating on the future.

1. The loss of Senator Muskie as chairman of the Senate Environmental Pollution Subcommittee (formerly the Air and Water Pollution Subcommittee) has engendered more than a little anxiety among environmentalists, who feel that the absence of his substantial clout and seniority is "bound to drain some of the power and prestige of the group."<sup>40</sup> Moreover, his short-term replacement, Mike Gravel, is primarily noted both for certain maverick tendencies which have alienated a number of his more powerful Senate colleagues and for strong stance on developing Alaskan lands—a policy position viewed with great alarm in environmentalist circles.

2. In addition, environmentalists are less than sanguine about a Reagan presidency, which may place economic development and energy self-sufficiency before environmental protection.

3. Regardless of who occupies Congress and the White House, the problems of an unstable economy and energy depletion are likely to alter or overshadow environmental policy for some time to come. Already

Table 5

**ESTIMATED TOTAL POLLUTION ABATEMENT AND ENVIRONMENTAL  
QUALITY EXPENDITURES, 1978-87**  
(in billions of 1978 dollars)

	<b>1978 Total Annual Costs*</b>	<b>1987 Total Annual Costs*</b>	<b>1978-87 Cumulative Total Costs**</b>
<b>Air Pollution</b>			
Public	1.7	4.0	27.4
Private			
Mobile	7.6	14.4	111.4
Industrial	6.2	11.3	87.4
Utilities	3.8	13.0	79.5
<b>Subtotal</b>	<b>19.3</b>	<b>42.7</b>	<b>305.7</b>
<b>Water Pollution</b>			
Public	13.1	19.9	164.5
Private			
Industrial	4.7	12.0	85.3
Utilities	2.4	3.9	32.1
<b>Subtotal</b>	<b>20.2</b>	<b>35.8</b>	<b>281.9<sup>+</sup></b>
<b>Solid Waste</b>			
Public	1.9	3.2	27.0
Private	4.5	7.9	66.3
<b>Subtotal</b>	<b>6.4</b>	<b>11.1</b>	<b>93.3</b>
<b>Toxic Substances</b>	0.1	0.3	2.2
<b>Drinking Water</b>	0.6	1.6	12.5
<b>Noise</b>	◀.05	0.1	6.6
<b>Pesticides</b>	◀.05	0.1	0.5
<b>Land Reclamation</b>	0.1	1.0	8.0
<b>Total</b>	<b>46.7</b>	<b>94.2</b>	<b>710.7</b>

\*Includes operation and maintenance costs and capital costs.

\*\*Includes capital investment, operation and maintenance, and capital costs.

SOURCE: Council on Environmental Quality, Executive Office of the President, *Environmental Quality, 1979*, Washington, DC, U.S. Government Printing Office, 1979, p. 667.

Figure 5

**MAJOR CONGRESSIONAL COMMITTEES  
AND SUBCOMMITTEES INVOLVED IN ENVIRONMENTAL POLICY**

<b>Committee</b>	<b>Subcommittee</b>
<b>SENATE</b>	
Agriculture, Nutrition, & Forestry	Environment, Soil Conservation, and Forestry
Energy and Natural Resources	Parks, Recreation, and Renewable Resources
Environment and Public Works	Environmental Pollution Water Resources and Resource Protection
Foreign Relations	Arms Control, Oceans, International Operations, and Environment
<b>HOUSE</b>	
Agriculture	Conservation and Credit
Government Operations	Environment, Energy, and Natural Resources
Interior and Insular Affairs	Energy and the Environment
Interstate and Foreign Commerce	Health and the Environment
Merchant Marine & Fisheries	Fisheries and Wildlife Conservation and the Environment
Public Works and Transportation	Water Resources
Science and Technology	Natural Resources and Environment
Small Business	Impact of Energy Programs, Environment and Safety Requirements and Government Research on Small business

seen in the form of a number of relaxed standards, financial and fuel woes, coupled with the new wave of antiregulatory sentiment generally promise an era of more flexible or lenient environmental controls.

4. Finally, as pointed out previously, the environment is no longer dominant among the issues which arouse public attention and voter reaction.

5. Yet, despite these factors, which might work to alter environmental policy, it is highly unlikely that the federal environmental role will greatly diminish and extremely improbable that it will cease altogether. The business of environmental protection has been firmly institutionalized as a permanent function of governments at all levels. At the federal level, this institutionalization has taken the forms of an agency, a council, and the active consideration of environmental impacts by all federal agencies. In addition, four standing Senate committees and eight House committees have at least some responsibility in making environmental policy. (See Figure 5.)

Each state now has some permanent agency or department with responsibility for environmental

programs. At least four state legislatures have created special staff offices to deal with various facets of the environment.<sup>41</sup> Added to this array of federal and state institutions are the many local, regional, and substate bodies engaged in environmental activities.

6. Moreover, public interest in the environment may have declined, but it would be misleading to claim that the public is no longer interested in a healthy environment. As was noted previously, when posing questions specifically aimed at tapping public concern over environmental matters, polls indicate that a significant number of people are still concerned with the quality of their environment. The fact the environment, as an issue, seems to be leveling off at about the same point where concern about education and health leveled off may be further indication of its institutionalization. In other words, it may be that the environment has become an enduring but relatively unemotional and secondary public concern. This, in turn, may be indicative of a return to the type of policy gradualism seen in Stage One. The environment will no longer set the national agenda, but it will certainly remain a part of it.

## FOOTNOTES

<sup>1</sup>Jones, *Clean Air*, p. 176.

<sup>2</sup>S. 418, H.R. 123, H.R. 315, H.R. 470, 80th Cong., 1st Sess., (1947)

<sup>3</sup>This new type of environmental wisdom is generally attributed to the publication of Rachel Carson's *Silent Spring*, Boston MA, Houghton Mifflin, 1962.

<sup>4</sup>Of course, Blatnik was not the first member of Congress to push pollution legislation, he was merely the first to give it the bulk of his attention. The *Water Pollution Control Act of 1948* was sponsored by Senators Barkley (D-KY) and Taft (R-OH). The *Air Pollution Control Act of 1955* was sponsored by Senators Thomas Kuchel (R-CA) and Homer E. Capehart (R-IN).

<sup>5</sup>Jennings, "Legislative Politics and Water Pollution Control," p. 75.

<sup>6</sup>Blatnik retained responsibility for guiding much of Muskie's water legislation through the House.

<sup>7</sup>Davies, *The Politics of Pollution*, p. 62.

<sup>8</sup>Ripley, "Congress and Clean Air," pp. 259-260.

<sup>9</sup>James L. Sundquist, *Politics and Policy*, Washington, DC, The Brookings Institution, 1968, p. 325.

<sup>10</sup>Suzanne Farkas, *Urban Lobbying: Mayors in the Federal Arena*, New York NY, New York University Press, 1971, p. 165.

<sup>11</sup>Ripley, "Congress and Clean Air," p. 254.

<sup>12</sup>*Ibid.*

<sup>13</sup>Sundquist, *Politics and Policy*, p. 354.

<sup>14</sup>*Ibid.*, pp. 335-340.

<sup>15</sup>Message of February 23, 1960, *Public Papers of the Presidents*, 1960, p. 208.

<sup>16</sup>*Ibid.*, pp. 208-209.

<sup>17</sup>Sundquist, *Politics and Policy*, p. 324.

<sup>18</sup>Testimony of Walker Penfield, in *Air Pollution*, Hearings before the Subcommittee on Public Health and safety of the House Interstate and Foreign Commerce Committee, 88th Cong., 1st Sess. Washington, DC, U.S. Government Printing Office, March 18-19, 1963, p. 230.\*

<sup>19</sup>Testimony of Erwin E. Schulze, in *Air Pollution Control*, Hearings before the Subcommittee on Air and Water Pollution of the Senate Public Works Committee, 88th Cong., 1st Sess., Washington, DC,

U.S. Government Printing Office Sept. 11, 1963, p. 283.\*

<sup>20</sup>Testimony of Daniel W. Cannon, in *Air Pollution*, Hearings, p. 1970\*

<sup>21</sup>Testimony of Attorney General David P. Buckson of Delaware, *Ibid.*, p. 85.\*

\* Source for fns. 18, 19, 20, and 21: Sundquist, *Politics and Policy*, p. 354.

<sup>22</sup>Liroff, *A National Policy for the Environment*, p. 5.

<sup>23</sup>*Ibid.*, p. 35.

<sup>24</sup>Jones, *Clean Air*, p. 176.

<sup>25</sup>Congressional Record, September 21, 1970, pp. S 16095-96. Source: Jones, *Clean Air*, pp. 200-201.

<sup>26</sup>FWPCA, Sec. 208 (a)(2)(1)

<sup>27</sup>*Ibid.*, Sec. 208 (f)(2).

<sup>28</sup>Jeffrey M. Berry, *Lobbying for the People: The Political Behavior of Public Interest Groups*, Princeton, NJ, Princeton University Press, 1977, p. 7.

<sup>29</sup>This was the group headed by Denis Hayes. Source: Davies, *The Politics of Pollution*, p. 91.

<sup>30</sup>*Ibid.*, p. 90.

<sup>31</sup>*Ibid.*

<sup>32</sup>Liroff, *A National Policy for the Environment*, p. 8.

<sup>33</sup>See for example *U.S. vs. SCRAP*, 412 U.S. 669, 3ELR 20536 (U.S. June 18, 1973.)

<sup>34</sup>Whitaker, *Striking A Balance*, p. 335.

<sup>35</sup>*The Clean Water Act as Amended*, December 1977, Title IV, Sec. 404.

<sup>36</sup>U.S. Senate, Committee on Public Works, Subcommittee on Air and Water Pollution, Hearings, *Implementation of the Clean Air Act Amendments of 1970 - Part 3*, 92d Cong., 2d Sess., Washington, DC, U.S. Government Printing Office, 1972, p. 915.

<sup>37</sup>*Ibid.*, p. 916.

<sup>38</sup>President Jimmy Carter, "New Partnership to Conserve America's Communities," March 27, 1978, p.11.

<sup>39</sup>Jones, *Clean Air*, pp. 306-307.

<sup>40</sup>*Land Use Planning Report*, Vol. 8, No. 20, May 1980, 153.

<sup>41</sup>Council of State Governments, *The Book of the States*, Lexington, KY, The Council of State Governments, 1976, pp. 76-83.

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The Advisory Commission on Intergovernmental Relations (ACIR) was created by the Congress in 1959 to monitor the operation of the American federal system and to recommend improvements. ACIR is a permanent national bipartisan body representing the executive and legislative branches of Federal, state, and local government and the public.

The Commission is composed of 26 members—nine representing the Federal government, 14 representing state and local government, and three representing the public. The President appoints 20—three private citizens and three Federal executive officials directly and four governors, three state legislators, four mayors, and three elected county officials from states nominated by the National Governors' Association, the National Conference of State Legislatures, the National League of Cities/U.S. Conference of Mayors, and the National Association of Counties. The three Senators are chosen by the President of the Senate and the three Congressmen by the Speaker of the House.

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