

Lecture 10 overview

1. Early legislation
2. Senate bill
3. House bill
4. Conference
5. NEPA

NEPA

What was its intent?

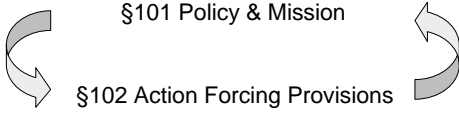
NEPA

Title 1 NEPA

Title 2 CEQ

NEPA

Title 1 NEPA



Early legislation

Issues emerged in the 1960s

- 1963: *Clean Air Act*
- 1965: *Water Quality Act*
- 1966: *Endangered Species Conservation Act*
- 1968: *National Wild & Scenic Rivers Act*

Issues fragmented & narrowly focused

Beginnings . . .

June 1968:

House Committee on Science, Research & Development:

"Managing the Environment"

- Federal agencies major contributor
- Public works, ACOE, DOT
- Fragmented decision-making
- Neglect of environment

Beginnings

Later in 1968: Joint Senate Committee

- Senate Interior & Insular Affairs, chaired by Sen. Henry Jackson
- Joint colloquium
- “*Congressional white paper on a national policy for the environment*”
- Contained basis elements of §101 of NEPA

1969: 91st Congress

S. 1075: introduced, Sen. Jackson (D) WA

- Authorized Sec. of Interior to conduct environmental research
- Created the CEQ
- No mention of national policy!



Senate

S. 1075:

- May have been stripped down to be referred to his committee, *Interior & Insular Affairs*
- Avoid jurisdictional battle with Sen. Edmund Muskie's subcommittee on *Air & Water Pollution*

Senate



Sen. Edmund Muskie (D) ME

- Introduced S. 2391 to establish the *Office of Environmental Quality* in the executive office
- Concerned about jurisdictional problems with S. 1075

Senate

Committee hearing of 4/16/69:

- Need source of advice in executive office
- Need centralized responsibility
- Grant stop-order power to council
- Make council independent from the President

Senate hearings



Testimony from Lynton Caldwell
Prof. Political Science, Indiana Univ.

- Served as a consultant to the committee & Jackson's staff
- Evaluate proposed project effects
- Supported requirements for evaluation

Senate hearings



'In the licensing procedure of the various agencies ... there should also be, to the extent that there may not now exist fully or adequately, certain requirements with respect to environmental protection'

Senate hearings



Decision-document idea:

- Drafted by William Van Ness & Daniel Dreyfus
- Council & staff members to committee
- Experience with reports that accompany water resource development proposals
- Environmental '*finding*' important part of budget approval process

Senate hearings

Jackson revisions:

- Too difficult to revamp agency operating statutes with multiple committee jurisdiction
- Better to lay down a general requirement applicable to all agencies

Senate

S. 1075 amendments

1. "declaration of national policy" (§101)
2. "*finding*" by official of impact of proposed action

Senate

3. Expand existing authority of agencies to include the environment (§103)

'The policies set forth in this Act are amendatory and supplementary to, but shall not be considered to repeal, the existing mandates and authorizations of Federal agencies'

Senate

S. 1075 amendments

4. "*each person has a fundamental and inalienable right to a healthful environment'*

The Declaration of Independence

'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness'

Inalienable rights

Unalienable: The state of a thing or right which cannot be sold.

Inalienable rights: Rights which are not capable of being surrendered or transferred *without* the consent of the one possessing such rights.

Senate

S. 1075 with amendments

- Passed unanimously from committee, June 18
- Passed unanimously from senate, July 10
- Sent to House

House



H.R. 6750: introduced, Rep. John Dingell
(D) MI

- Creation of CEQ & annual report
- Brief statement of policy
- Not new law but amendment to:
Fish & Wildlife Coordination Act

House



H.R. 6750 :

- May have been stripped down to be referred to his subcommittee, *Fisheries & Wildlife Conservation*
- Avoid jurisdictional battle with Rep. Wayne Aspinall's committee on *Interior & Insular Affairs*
 - noted for support of open exploitation of public resources

House

H.R. 6750 in committee

- No language changes
- Contents placed into H.R. 12549
- Sent to House for debate & vote

House

H.R. 12549 in House

Amended by Aspinall:

1. Applied to all environmental impacts, not just Fish & Wildlife (Dingell's jurisdiction)
2. Severely limited the effect of the bill on agency authority

House

Aspinall amendment:

'Nothing in the Act shall increase, decrease, or change any responsibility of any Federal official or agency'

House

H.R. 12549 in House

- Passed 372-15-43 on Sept. 23
- Sent to Senate

House

S. 1075 (from Senate in July)

- NEPA supporters had Speaker hold bill
- Did not assign to Aspinall's committee
- After H.R. 12549 passed:
 - S. 1075 language replaced with H.R. 12549
 - Returned to Senate, ask for conference

Senate

H.R. 12549:

Muskie-Jackson compromise

1. Ensure air & water standards would not be effected by the Act, if already obtained
 - ⇒ Created ambiguous §104

Senate

H.R. 12549:

2. 'finding' changed to 'detailed statement'
3. Added 'alternatives to proposed action'
4. 'consult & obtain comments from affected agencies' (reference to air & water pollution control agencies)

Senate

H.R. 12549:

5. 'make available to President, CEQ, public'
6. 'Accompany statement through agency review process'
⇒ Added substantial details of process

Conference

Aspinall compromise:

- Jackson's action-forcing provisions
- Aspinall's unchanged agency mandates

Modification of §102 '*to the fullest extent possible*' while deleting Aspinall amendment

Conference

Bill manager's document supported Jackson's view:

- Duties were to be complied with fully by every agency unless existing statutory law expressly prohibited full compliance or made it impossible

Conference

'each person has a fundamental and inalienable right to a healthful environment,'

changed to:

'each person should enjoy a healthful environment'

NEPA

- Reached agreement, Dec. 17
- Passed both chambers, Dec. 20
- Signed by Nixon into law, Jan. 1, 1970

! Recall public pressure on government !

NEPA Interpretations

Novel Regulatory Logic:

- Reform from within
- Accountability to the public
- Logic confounded in administrative theories of *Jefferson & Hamilton*

Jefferson vs. Hamilton

Government for the people: Jackson

- Reform from within
- Agencies would follow policy

Government by the people: Muske

- Reform from without
- Agencies must be forced to follow policy
- 102(2)(c)

Lessons from legislative history

1. Intention of major issues
2. Consequences of statutory language
3. Jurisdictional limitations
4. Political compromise
5. Final law

Next Time. . .

- Introduction to NEPA
- Read NEPA
- Reading:
 - Jain et al., chapter 3.1-3.4, Appendix A
 - Reinke & Swartz, L
- Case Law Discussion – see web site
