

# Ravaging the Land—and the Law

Among those who watch government lawlessness—in all its shadings, not merely the loud black and whites of Watergate—many believe that the National Environmental Policy Act is one of our most regularly and most casually broken laws. Governmental abuse of this law is worth studying in detail because it suggests that an attitude of habitual law-breaking is not confined to those who are called recidivists—the muggers, robbers and other repeaters supposedly hardened in their violence—but extends also to the federal offices of the praised and promoted. These are ones who may be more dangerous than the street criminals because instead of stealing our wallets and our cars they are making off with a national treasure that no insurance company can replace: the public's trust in government.

The National Environmental Policy Act (NEPA) was passed in 1969. In those prehistoric days of ecology awareness, it went through Congress as unnoticed as a resolution calling for a national sausage week. But the power of the law was soon understood, fittingly by the powerless. In this case, it was those citizens who for years had been victimized by the government's blind fervor to ravage the land, or foul the air and water, often when an agency decided to build a dam, lay down a road, allow in the strip miners or other destructions.

The relevant part of the law asked that officials draft a statement that would tell of the environmental impact of a proposed action, any adverse environmental effects which cannot be avoided should a proposal be implemented, alternatives to the proposed action, the relationship between local short-term uses and long-term productivity and any irreversible commitments of resources that would be involved in the proposed action should it be carried out.

That is the dull wording of the law, but its message to the government was clear: no more headlong pollution, no more leaping without looking. The law intended that officials provide information to the citizens, enabling the latter to dispute an action if the destructive consequence were too great. The environmental impact statement has been criticized as being pro-environmental, but it isn't. It is a neutral law, one that goes to the basics of democracy: citizens' rights to information so they can choose how their country will be used or run.

Although this law had a handsome sendoff—on Jan. 1, 1970, the President said, "It is particularly fitting that my first official act in this new decade is to approve the National Environmental Policy Act"—a year later it was as if it didn't exist. Sen. Philip A. Hart (D-Mich.) wrote the President, complaining that "time and again the agencies have ignored the provisions" of NEPA. He cited abuses of the law by the Federal Power Commission, the Interior Department, the Corps of Engineers, HEW, HUD, the Commerce Department, the Civil Aeronautics Board and the Tennessee Valley Authority. As an example of illegality, Hart told of the Federal Power Commission's licensing 14 hydro-electric plants, and not once filing an impact statement.

The evidence suggests that Hart's letter was ignored; now, nearly four years later, a consensus of several non-governmental lawyers say the law is still widely abused. "The abuses," said one lawyer who has watched NEPA, "now take the form less of ignoring it than of weak compliance. For example, an agency will make its decision but then file a paper statement that fails to address the comments of those critical of the action." Another lawyer said that "government agencies went several years before they even prepared NEPA statements. Suits had to be brought to compel them to obey the law. But I've noticed something new now. When they do hand in a statement—on say off-shore drilling or strip mining—large parts of it are mere boilerplate copies of other statements. But the courts look at the thick, 1,000 page statement and are impressed by the agencies hard work and sincerity. Actually, it is another evasion."

Malcolm F. Baldwin, director of the Environmental Impact Assessment Project, a group that examines the government's impact statements, says that even when they are written, "the procedure of reviewing them is usually a mess. Officials in EPA, the Council on Environmental Quality and other reviewing agencies are overwhelmed. I heard from one person in the Bureau of Land Management who said he had received 45 impact statements in one day to review. So in many cases the statements are approved with only minimal scrutiny."

When maximum scrutiny is given—not by the government but by groups like Baldwin's—the conclusions are grim. Baldwin's project recently exam-

ined the Interior Department's impact statement on its proposed oil shale leasing program, a program meant to find a new energy source in the West. Interior's impact statement, Baldwin's report concluded, was "deficient in significant respects," it "fails to give thorough consideration to alternatives," data "are not presented or analyzed systematically, it "made no attempt to analyze the severe environmental changes likely" to occur. This was only the top of the list of the statement's inadequacy, but Interior went ahead anyway and, leasing the land amazingly cheap, let the oil companies begin ravaging it.

At its essence, what NEPA does is detail the consequences of bad policy. It shows who will be the real victims of federal irresponsibility. A common federal response to those who raise questions is to call them "environmentalists," a code word for anti-free enterprise. Thus, a farm family in the Midwest whose livelihood is threatened by strip mining, or ranchers in the West whose water would be diverted by oil shale destruction or fishermen whose jobs would be lost by a refinery's pollution or drilling in the fishing grounds—suddenly, if these citizens dare to resist or complain, they cease to be seen as productive members of the free enterprise system but are dismissed as environmentalists.

"What the government fears," says Joseph Browder of Washington's Environmental Policy Center, "is that NEPA forces disclosures not just about the environment but also the economy. In the strip mining of the West, for example, disclosures about how much wildlife will be destroyed or air and water polluted is not so threatening to the government as how much good land will be taken out of production. The latter is endangering that region's economy, not just its ecology. If this kind of information gets out, the public will be able to see some of the real costs of the current energy policy—costs that are extremely high, wasteful and controlled by the major oil companies working with a docile government."

Perhaps the most amazing fact yet about NEPA is not that it has been broken so often, but that some administration officials recently discussed ways of gutting it. This presents a new twist in government lawlessness: weakening a law that was seldom more than weakly obeyed in the first place.