

President Nixon signs the National Environmental Policy Act (NEPA) on January 1, 1970

On a snowy New Year's Day in 1970–50 years ago today–then-President Richard Nixon signed into law the National Environmental Policy Act. NEPA's passage marked the beginning of America's modern environmental law era. It was followed by Congressional passage of a series of other federal environmental laws over the next decade–major statutes that to this day collectively remain the foundation of federal environmental environmental law and policy in the United States.

NEPA fundamentally transformed the way federal agencies approach their duties. Until 1970, those agencies were mission-oriented, focused on how to fund, build, or permit federal highways, dams, prisons, etc., in the quickest, most efficient and economical manner. NEPA for the first time required those agencies to assess the *environmental* impacts of those decisions before going forward. Equally important, NEPA requires that the federal government's environmental analysis be transparent and made available to the interested public and media.

What was the impetus behind NEPA's passage in 1970? Environmental historians generally identify three key events in the 1960's: first, in 1962 scientist Rachel Carson's book *Silent Spring* was published. For the first time, it documented the profound, adverse ecosystem and public health consequences of DDT and related pesticides. In January 1969, an offshore oil platform owned and operated by the

Union Oil Company off the California coast blew out, creating what at the time was the largest oil spill in American history. And in June 1969 the Cuyahoga River in downtown Cleveland, Ohio was so polluted with petroleum waste products that it infamously caught fire.

These dramatic and alarming events helped spur the environmental movement in the United States. Members of Congress quickly began considering federal legislation to respond to the public's and media's calls for environmental action. Senator Henry "Scoop" Jackson from Washington State authored the National Environmental Policy Act in response to that public outcry. (Jackson was a rare political figure: conservative on foreign policy and national defense issues, he was quite progressive when it came to domestic issues and quickly emerged as one of Congress' most outspoken advocates for protection of the environment.)

NEPA proved quite popular on Capitol Hill, winning strong bipartisan support in both houses of Congress. The legislation passed the House of Representatives by an overwhelming 372-15 vote, and received *unanimous* support in the Senate. In signing NEPA into law, President Nixon declared:

> "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."

NEPA contains three distinct components which have remained largely unchanged over the last half-century. First, the statute contains a number of powerful declarations of Congressional intent, including the following:

> "Congress authorizes and directs that, to the fullest extent possible…the policies, regulations and public laws of the United States shall be interpreted and administered [to] utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment…"

Second, NEPA creates the President's Council of Environmental Quality (CEQ) within the Executive Office of the President. NEPA directs the CEQ to advise the President

on environmental policy and the state of the environment. Additionally–and critically–CEQ has been designated as the principal federal body responsible for implementing NEPA.

Third and most importantly, NEPA requires that for any "major Federal actions significantly affecting the quality of the human environment," the responsible federal agency prepare "a detailed statement" analyzing the potential adverse environmental effects of and alternatives to proposed federal public works projects, funding decisions, and agency review and approval of privately-proposed projects. Under NEPA, that environmental review takes the form of a written environmental impact statement, or "EIS."

As innumerable court decisions interpreting NEPA make clear, the underlying purposes of the statute are twofold: first, to require federal decision-makers to develop an environmental analysis before it acts on a project, and to factor that analysis into the agency's substantive decision-making process; and, second, to make the environmental analysis available to the interested public so that it can participate in a fully-informed fashion in the federal agency's deliberations on the proposed project.

To be sure, this "look before you leap" process is purely procedural in nature. (Some environmental advocates argued in the early years of NEPA that the law also had a substantive component–one requiring, for example, that the environmentally-preferred project alternative identified in an EIS be adopted by federal agencies; federal court decisions quickly rejected that view, however.) Nevertheless, NEPA's legal and policy impact over the past 50 years has been considerable.

NEPA is the most overarching of America's environmental laws: as noted above, it applies to a wide array of federal actions, and its scope encompasses a project's potential environmental impacts on air and water quality, toxic pollution, land use, biodiversity and wildlife protection, etc.

NEPA is also the most transformative of the nation's environmental statutes. Before 1970, consequential decisions on federal projects with the potential for adverse environmental consequences were largely made behind closed doors, with precious little opportunity for public comment or involvement. NEPA has "opened up" that process considerably, allowing citizens and organizations to participate in a meaningful way in the federal decision-making process.

Finally, NEPA is unquestionably America's most influential and imitated environmental law. Over 100 other nations have adopted their own versions of NEPA in the past 50 years. (At a conference the Environmental Law Institute held in Washington, D.C. last month, speakers postulated that NEPA is in fact the most copied U.S. statute of *any* kind.) Here in the United States, over 35 states have adopted their own "little NEPA" laws, requiring the same type of environmental impact analysis by state and local government agencies. For example, the California Environmental Quality Act (a.k.a. "CEQA") was enacted mere months after NEPA, and has emerged as the nation's most powerful "look before you leap" environmental law; unlike NEPA, CEQA has substantive effect and requires state and local officials to avoid or mitigate a project's identified adverse environmental impacts when it is feasible to do so.

So, what lies ahead for NEPA? Fifty years after its passage, the statute as currently implemented remains controversial, with a number of cutting-edge issues still unresolved. Among them is the question of whether and how projected climate change impacts should be incorporated into environmental analysis under NEPA. Another question is how the concerns of underserved communities and communities of color can be adequately addressed in the NEPA process. And recently the Trump Administration has proposed unprecedented regulatory changes designed to reduce NEPA's regulatory reach. Those changes, if implemented, will undoubtedly be challenged in court by environmental advocates and others.

Happy anniversary, National Environmental Policy Act. Fifty years after its enactment, NEPA has unquestionably evolved to become one of the nation's most important, impactful and imitated environmental laws.