

Environmental Legislation: 1971

Not a Year for Conclusive Action

The environment has climbed rapidly from a minority concern to a top political issue since the passage of the National Environmental Policy Act of 1969, which thrust the federal government into the forefront of the action by requiring that all government-sponsored projects and legislation be subjected to rigorous environmental scrutiny before being approved.

Congress has sown hundreds of new legislative proposals, but the harvest is, as yet, modest. Last year's environmental superlaw was the Clean Air Act sired by Senator Edmund Muskie (D-Maine). This year there has been much bustle on Capitol Hill, but environmentalists see their only conclusive victory in the defeat of the SST.

In part, this is because legislative activity is heavily tinged with politics in this prepresidential year, particularly in the Senate, which is bristling with presidential hopefuls. Furthermore, the year-old Environmental Protection Agency (EPA) is struggling to consolidate itself and, at the same time, to fulfill its function as chief interpreter of the Administration's environmental policies. These circumstances have contributed to the widely held feeling that communication and cooperation between the executive and legislative branches are woefully inadequate in an area which is large, new, and extraordinarily complex.

Despite these difficulties, Congress has begun to move on a number of potent and far-reaching pieces of legislation. Chief among this year's accomplishments has been the Senate passage, by a vote of 86 to 0, of Muskie's tough Federal Water Pollution Control Act (S. 2770), which allots \$14 billion over the next 4 years for industrial and municipal sewage treatment and water pollution control. The federal share of the costs is between 60 and 70 percent. The bill tightens the screws on polluters in three stages, culminating in the elimination of all polluting discharges by 1985. As in the Clean Air Act, the water bill, by sweeping away

some legal technicalities, bestows on citizens the standing to bring both industry and the EPA to court when citizens believe standards are not being met.

The Administration's energetic attempts to prevent House passage of the bill have compounded the feeling of estrangement between the two branches of government and has environmental groups spitting with rage ("cynical bastards" was the way the head of one conservation group characterized the Presidential team).

The Administration thinks the Muskie bill is absurdly expensive and unrealistic. Nixon is pushing for a 3-year, \$6 billion federal program with a goal of 95 percent cleanup of the nation's water. Another major difference between the two bills involves a Muskie provision that would give the EPA the power to veto any state-issued industrial waste permit and the power to take a violator to court if the state fails to act against him. The Administration position is that states must be pushed into developing adequate mechanisms of their own and not foist difficult decisions onto the government, which doesn't have the resources to take care of innumerable individual cases.

Politics Intervene

Many observers feel that the conflict has developed into a Nixon-Muskie political fight. Muskie has seized the opportunity to accuse the Administration of failure to support the EPA—not only on the water bill, but in its requirement that EPA's new guidelines for state air standards be submitted to a panel dominated by the heads of the Commerce Department and the Office of Management and Budget. (Neither agency is regarded as being very friendly to forceful environmental reform.)

Another major field to which Congress has addressed itself is a national energy policy that will affect laws on a host of matters such as power plant siting, strip mining, offshore oil drilling, the Alaska pipeline, and research and

development on new ways of producing energy.

The Senate Committee on Interior and Insular Affairs, which is headed by recently-announced presidential candidate Henry M. Jackson (D-Wash.), is devoting a lot of thought to energy. A Senate resolution last year created a 2-year National Fuels and Energy Policy Study, which, with a full-time staff including lawyers, economists, and other professionals, will assess past and future energy supply and demand, try to coordinate goals of various federal agencies, and recommend future research and planning policies. The study is in two stages: the first is aimed at avoiding crises until 1985; the second, at mapping out broad policies to guide energy use and development for the succeeding three decades. No conclusions will be aired until the next presidential election is over, says an Interior Committee staff member, when there won't be a raft of presidential candidates whose motives are under fire.

The political situation is also stalling another long-term development—establishment of a Joint Committee on the Environment. Both houses of Congress have passed bills setting up such a committee. On the House side, the ranking member will probably be either John Dingell (D-Mich.), chairman of the fisheries and wildlife subcommittee of the House Merchant Marine and Fisheries Committee, or Henry Reuss (D-Wis.), chairman of the conservation and natural resources subcommittee of the House Government Operations Committee. Since the choice for ranking Senate member falls between Muskie and Jackson, no further action is expected until after next election day.

While most people are reluctant to pass judgment on the first session of a Congress that is being faced with a host of proposals in an enormous new field, private conservation groups are not. "So far the 92nd Congress has been one of the worst in recent years," says a spokesman for the National Wildlife Federation. "This year has been 'Operation Sanctuary' for polluters," says the head of the Citizens Committee on Natural Resources.

Three measures in particular are the object of their ire. The first is a power plant siting bill (H.R. 11066), now sitting in the communications and power subcommittee of the House Interstate and Foreign Commerce Committee. Sit-

ing legislation, which would break into an important area of land use, planning, was one of the top items on the environmental agenda President Nixon unveiled last February. The Administration submitted a bill that requires the establishment of state siting agencies and arranges for planning, site selection, and consideration of potential environmental and social conflicts up to 10 years in advance of construction. The bill is designed to give citizens and other agencies plenty of time to assess company plans, thus avoiding costly last-minute court fights. The subcommittee more or less ignored this bill and finally designed one that was a compromise between the Nixon measure and one put forth by its chairman, Torbert Macdonald (D-Mass.). No one seems to like the compromise bill. The power industry doesn't want any bill at all. Neither Nixon nor the environmentalists like it because

the federal role in planning and siting certification is hobbled if a state doesn't set up a siting agency to oversee the process. Citizens may bring suits, but if they are dismissed by the court the costs are assessed against the petitioner. In certain conditions of demonstrated need, facilities are exempted from energy and environmental protection laws.

Worst of all, in locally unresolvable situations, the bill puts the final decision into the hands of an ad hoc three-man panel rather than a permanent, accountable agency. Congressional staff members fault environmental groups for not having interested themselves sufficiently in the legislation. This compromise bill is probably bound for considerable revision. It has not yet been brought before the House, and the Senate, because of the controversial nature of the subject, is planning to have

its hearings held before the full Commerce Committee.

This bill is one case in which the Administration and the ecologists are on the same side. This is not so of the pesticides control bill that passed the House on 8 November. The Administration bill was watered down, with the help of heavy industry lobbying, in the Agriculture Committee. Of the three original categories of pesticides proposed—general use, restricted use, and use by permit only—the last was struck from the Administration bill. A provision was added to allow indemnity payments to a producer whose pesticide has been declared off limits, and the bill stipulates that scientific questions raised when a registration is lifted should be referred to the National Academy of Sciences—a provision that environmentalists say weakens the authority of EPA.

Briefing

Thumbs Down on Think Tanks

Bad vibrations for military think tanks have emanated from the House Appropriations Committee. Buried at the back of a 135-page report on Defense Department appropriations are statements that are tantamount to a sentence of execution or, as the report phrases it, "orderly phase-down." The committee's action probably marks the end of a 20-year era in which independent research centers such as the Rand Corporation proliferated and gained celebrity as purveyors of high-level strategic thought to the military.

The committee's kiss of death follows in the wake of a formidable breach of military security by a former Rand employee, Daniel Ellsberg. But the affair of the Pentagon papers seems to have been as much pretext as cause. Federal Contract Research Centers, as think tanks are more formally known, have long been in disfavor with Congress because they seemed to remove important issues of strategic analysis one step further away from Congressional control.

The four think tanks specifically mentioned in the committee report are the Air Force's Rand, the Army's Research Analysis Corporation (RAC), the Navy's Center for Naval Analysis (CNA) and the Defense Department's Institute for Defense Analyses (IDA). For all four the committee proposes severe budget cuts of the order of 25 percent. Similar action has been taken by the Senate Appropriations Committee.

Explaining its action on Rand's budget, the committee says it "feels strongly that the time has come for the military services to begin phasing out the 'think tank' operations which have been supported for more than two decades. The level of proficiency and pay in the government service is such that the government should be able to move these efforts in-house. The committee feels that the government officials responsible for national defense should be more closely involved in these efforts than they are under the present procedures. The committee further believes that in matters of security better control can be maintained within governmental organizations than outside the government. The reductions in this area approximate 24 percent and are based on giving the Department an opportunity for an orderly phase-down." Similar aspersions

accompany the committee's comments on RAC, CNA, and IDA.

The committee's action has come at a time when many think tanks are engaged in rethinking their roles in society, an exercise that further complicates the sufficiently delicate relationships with their military patrons. In Rand's case the diversification into urban affairs—Rand has a \$2 million contract with New York City—seems to have been one of the issues over which Rand and its president, Henry S. Rowen, decided this month to part company. Rowen is said to have favored domestic projects despite criticism from other members of Rand that civilian work would detract from Rand's effectiveness to the military.

In its desire to give both loyalty and independent advice to its masters, Rand may have succeeded in pleasing nobody. "The hawks think these places are full of Ellsbergs and the doves think they are full of sycophants and don't do anything useful anyway," says one observer. According to a staff aide on the House Appropriations committee, it is open to question just how independent the think tanks are, and whatever the virtues of independent advice there are also advantages in having the provision of advice linked with the responsibility for acting on it.—N.W.

Environmentalists tear their hair whenever they so much as think of the pesticide bill. A major criticism, for example, is that citizen intervention of the kind that led to restrictions on DDT and 2,4,5-T would no longer be possible under the bill because only those who suffer direct economic injury would have standing in court. But an official on the Council of Environmental Quality (CEQ) says this is a misinformed objection. The wording of this section, he says, which substituted in its description of eligible suers "any party at interest" for "any person adversely affected," plainly still leaves the door open for citizens. Congressman John Dow (D-Conn.) pushed through one amendment to strengthen the bill—a provision that would permit states to set tougher-than-federal restrictions. The CEQ man says this is another case of an issue being created where none existed, because the restriction on state laws only applied to "general use" pesticides, which would presumably be above question anyway if they were put in that category.

An Alaska native claims law passed by both Houses and now in conference is another cause of disgruntlement among environmentalists. Congress has been under tremendous pressure to come out with something so that the current land freeze could be lifted and decisions on the trans-Alaska oil pipeline could be made. Senate and House bills call for 40 million acres and \$1 billion to be turned over to the 55,000 natives who live off the land. The Senate bill (S. 35) is generally regarded as superior because it calls for the creation of a joint federal-state planning commission and retention of tight federal control over the ecologically delicate tundra corridor through which the pipeline would run. Those concerned with natives' rights are divided over the land distribution scheme. The Wildlife Federation says that native landowners will be sitting ducks for oil and mineral interests who want to buy or lease their grounds, while Friends of the Earth support the scheme on the grounds of aboriginal rights. A Senate Interior Committee staff member explains that the real problem is not who owns the land, but whether sound and enforceable land-use requirements are built into the legislation. The oil people, in their hurry to see the freeze lifted, are not being too fussy about how it's done, but some people see industry's silence as ominous.

Correction

An article in *Science* (26 November, page 930) incorrectly identifies Atomic Energy Commissioner Wilfrid E. Johnson as a Democrat, rather than as a Democratic appointee. Mr. Johnson is and has been continuously registered as a Republican.

Land use planning is a critical issue, and future policies will have profound effects on social, as well as environmental, developments. The Senate Interior Committee has been holding hearings on bills (submitted by President Nixon and by committee Chairman Jackson) whose provisions would cover the two-thirds of the nation's land not owned by the federal government. Both bills arrange for states to reassume zoning powers which were delegated to localities in the 1920's. The Nixon measure (S. 992), requires states to divide themselves into three categories: environmentally valuable areas, areas with key facilities (such as airports), and areas that are to be used and developed for regional benefit. The Jackson bill places heavy emphasis on comprehensive, statewide planning. An Interior Committee staff member says the Nixon approach is too piecemeal, and leaves room for a state to decide on an unbalanced pattern. According to an Administration spokesman, the Jackson bill (S. 632) means more planning rather than action, while the Nixon bill begins with a "trimmed-down proposal dealing with gut issues." A compromise is being worked upon.

Among other potentially important pieces of legislation undergoing birth throes this year is a bill that would enable citizens to take legal action on those environmental matters that are not yet covered by comprehensive legislation—for example, toxic substances and land use. The legislation, introduced by Senator Philip Hart (D-Mich.) and Congressman Dingell, would, in essence, grant citizen groups standing in court, whether or not they can prove direct injury, in suits against both industry and the government. This bill is opposed by the Administration on the grounds that it would subject courts to a flood of inconsequential actions, but environmentalists believe that con-

tinuing citizen accessibility to decision-making processes is the key to making corporate power and government responsive to popular will.

There are a number of other proposals that would give the federal government radical new powers in areas hitherto left to local or private interests. One is an ocean dumping bill (H.R. 9727), ranking high on Nixon's agenda, which has been passed by both Houses and is now in conference. The most controversial part of this legislation, a proposal to establish marine sanctuaries, was blocked by Congressman Wayne Aspinall (D-Colo.), a man who heads many environmentalists' lists of bad guys. Senator Gaylord Nelson (D-Wis.) has been trying to restore this provision and to put a 2-year moratorium on oil and gas drilling off the Atlantic Coast, a yet unexploited region in which the Interior Department recently announced areas scheduled for leasing.

Strip mining, related as it is to energy and land use policies, has also been getting stepped-up attention. Some 20 bills have been introduced, ranging from some Aspinall-sponsored suggestions for rehabilitation of mined land to the outright ban desired by Representative Ken Hechler (D-W.Va.). The Senate has taken no action so far; as for the House, foes of strip mining hold little hope that a strong bill will emerge from the Interior subcommittee on mines—heavily manned by Westerners in whom the cowboy mentality persists, despite the fact that the West contains 75 percent of the nation's yet upstripped coal.

No new heroes of the environment have emerged in this year's Congress. In the Senate, the big names are Muskie, Hart (who heads the Commerce Committee's environmental subcommittee), Jackson (although praise is qualified in some quarters because of his far-Western, pro-SST, pro-war orientations), and the two Wisconsin senators, Nelson and Democrat William Proxmire (who won his environmental spurs in the SST fight).

In the House, Reuss and Dingell are probably the most prominent. Representative John A. Blatnik (D-Minn.), one of the earliest toilers for air and water legislation, now has a prominent post as head of the House Public Works Committee, but observers say his effectiveness is hampered by the traditional road- and dam-building orientation of his committee.

Even those people who think the

Nixon team is rooting for the environmental rapists and pillagers make careful exceptions of CEQ Chairman Russell Train—although some people feel he has lost some clout by letting himself be “used” by the Administration—and EPA Administrator William Ruckelshaus. Ruckelshaus has managed to achieve the impossible. He has remained steadfastly loyal to Nixon in his public utterances and, even in the midst of trying to consolidate a brand-new agency, has built a reputation as an honest and aggressive enforcer of environmental regulations. “They talk about law and order all the time,” says one congressional staffer. “He’s the only real law and order man in there.”

As the pre-1972 political winds gather momentum, it becomes increasingly difficult to separate political maneuvering from honest endeavor. Senator Jackson, for instance, has come forth with a proposal for a National Environmental Policy Institute, a public-private Rand-type organization, to supply the kind of coordinated long-range scholarly input which is now lacking. It closely resembles the Environmental Institute which President Nixon glowingly recommended early this year but about which little has been heard since. Gordon MacDonald, a CEQ member, testified in hearings against the Jackson proposal on the grounds that authority for such an institute already exists. This is another of many instances where members of Congress can claim that legislative action is replacing Administrative rhetoric, and where the Administration can retort that the formulation of wise policies requires time and that Congress is merely trying to make political hay by premature action.

Next year promises to produce an even more intensive level of conflict. Lobbying, as well as presidential politicking, is getting more vigorous. Industry lobbyists, says one conservationist, have been rudely jolted by such developments as the defeat of the SST and the tough new stance adopted by the Atomic Energy Commission. They are coming to realize that cosmetic adjustments will not satisfy the government and that the public’s belief in the inevitability of “progress” and the virtue of new technology for new technology’s sake is rapidly disintegrating.

Environmental lobby groups continue to expand their purviews. A recently formed group is the Highway Action Coalition, whose chief objective is to get some of the money in the highway

trust fund diverted to mass transit systems.

The main danger for the movement now is probably not that it will, as has been feared, turn into a passing fad, but that the American public may decide the heavy costs of effective pollution abatement are more than it cares to bear. If radiation laws and pesticide restrictions result in power shortages and moth-eaten crops, for example, some people may find immediate personal comfort more attractive than clear air and sparkly rivers.

—CONSTANCE HOLDEN

APPOINTMENTS

Loren R. Heiple, chairman, civil engineering department, University of Arkansas, to dean, College of Engineering at the university. . . . **Lee Harrisberger**, chairman, mechanical and aerospace engineering department, Oklahoma State University, to dean, College of Science and Engineering, University of Texas. . . . **Martin Schwartz**, chairman, biological sciences department, University of Maryland, Baltimore County, to chairman, division of science at the university. . . . **Charles F. Cooper**, professor of natural resource ecology, University of Michigan, to director, Center for Regional Environmental Studies, San Diego State College. . . . **Russell H. Morgan**, professor of radiology, Johns Hopkins University, to dean, Johns Hopkins Medical School. . . . **Leslie E. McDonald**, professor of physiology and pharmacology, University of Georgia, to dean, College of Veterinary Medicine, Ohio State University. . . . **Samuel B. Gould**, chancellor emeritus, State University of New York, to vice president, Educational Testing Service, and president, Institute for Educational Development. . . . At the University of Oregon: **Harry Alpert**, professor of sociology, to vice president for academic affairs and provost; **Aaron Novick**, professor of biology, to dean, Graduate School; **Frederick W. Munz**, professor of biology, to head, biology department; **William T. Holser**, professor of geology, to head, geology department; and **Gordon G. Goles**, associate professor of chemistry and geology, to director, Center for Volcanology. . . . **Bruce E. Spivey**, associate professor of ophthalmology, College of Medicine, University of Iowa, to dean, School of Medical Sciences, University of the Pacific.

RECENT DEATHS

Bjorn Andersen, 74; chemical engineer and former vice president, Celanese Corporation of America; 27 September.

Roy C. Avery, 85; professor emeritus of bacteriology and immunology, Medical School, Vanderbilt University; 22 July.

John M. Baldwin, Jr., 56; associate professor of clinical medicine, College of Physicians and Surgeons, Columbia University; 17 September.

John D. Bernal, 70; former professor of physics, Birkbeck College, London; 15 September.

Paul C. Bibbee, 76; former professor of biology, Davis and Elkins College; 9 September.

John H. Billings, 83; professor emeritus of mechanical engineering, Drexel University; 29 September.

C. E. Brehm, 82; former president, University of Tennessee; 25 July.

Leonard J. Cole, 55; manager, immunology program, Stanford Research Institute; 13 September.

H. Chandler Elliott, 64; former professor of anatomy, University of Nebraska College of Medicine; 23 September.

Wallace O. Fenn, 78; distinguished university professor of physiology, University of Rochester; 20 September.

Merrell R. Fenske, 67; professor emeritus of chemical engineering, Pennsylvania State University; 28 September.

Carlo Foà, 91; former chairman, physiology department, University of Milan, Italy; 11 September.

Lester H. Germer, 74; senior research associate, applied physics department, Cornell University; 3 October.

Bernardo A. Houssay, 84; former chairman, physiology department, University of Buenos Aires, Argentina; 21 September.

George W. Martin, 84; mycologist and former professor of botany, University of Iowa; 11 September.

Abou D. Pollack, 73; professor emeritus of pathology, Johns Hopkins University; 1 August.

Malcolm G. Preston, 65; professor emeritus of psychology, University of Pennsylvania; 13 September.

Otto H. Schindewolf, 75; professor emeritus of geology and paleontology; University of Tübingen, West Germany; 10 June.

Philip M. Stimson, 82; professor emeritus of clinical pediatrics, Cornell University; 13 September.