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Washington), as a statute mandating systematic analysis of environmental impact and full public disclosure, but not one establishing substantive standards by which a proposed project or policy may be declared unlawful. Under this interpretation, once an agency has complied with NEPA's procedural requirements, its final decisions cannot be challenged, except under the usual rule that administrative decisions cannot be arbitrary. This interpretation now appears to have been modified but not overturned.

In *Calvert Cliffs Coordinating Committee v. Atomic Energy Commission,* the U.S. Circuit Court of Appeals for the District of Columbia held that agencies must make a "finely tuned and 'systematic' balancing analysis" in resolving conflict among environmental, economic, and social values. This ruling would seem to establish a subtle but possibly significant new standard for judging whether an agency's decision-making has been arbitrary or not. (Anthony Z. Roisman, of Berlin, Roisman, and Kessler, was chief counsel for the plaintiffs in this important precedent-setting case.)

The *Calvert Cliffs* ruling was in fact cited in the opinion last November by the Eighth Circuit Court of Appeals in the Cossatot River case, involving a challenge by EDF against a Corps of Engineers dam project in Arkansas. In an immediate sense, EDF came out a loser, for the court held that the Corps had complied with NEPA and that construction of the dam should not be stopped. But, to EDF's satisfaction, the court did emphasize that NEPA prescribes a policy—for example, among the several stated objectives of the act, there is one calling for an environment "support[ing] diversity and variety of individual choice"—as well as a procedure. The intent of NEPA, the court indicated, is not to fill government archives with futile impact studies.

Also, a 1971 ruling by the Circuit Court of Appeals for the District of Columbia in *NRDC v. Morton,* substantially upheld NRDC's contention that the Department of the Interior's impact statement on a scheduled (but later canceled) sale of 80 oil and gas leases on the Gulf of Mexico continental shelf was inadequate. NRDC had argued that a wide range of alternatives to the sale—varying from increases in oil imports to the gasification of coal and the development of solar energy—should have been thoroughly discussed. The court agreed, at least with respect to alternatives possible in the near future.

A February ruling by a federal district judge in another NRDC suit—this one opposing a small watershed (or stream channelization) project on Chicod Creek in North Carolina—was also encouraging to environmentalists. The judge, in part citing *Calvert Cliffs,* continued to enjoin construction of the project, finding that the impact statement failed to consider a number of pertinent factors, including the *cumulative* impact of such relatively small undertakings on the regional environment. Another ruling counted as significant by environmentalists was the recent one by a district judge in the case brought by the Sierra Club against the Trinity River project in Texas. There, the judge held, among other things, that the Corps of Engineers' benefit-cost analysis procedures were deficient because environmentally related benefits were counted while environmentally related "costs" were ignored.

Nonetheless, instances where the federal courts block a project or policy on its merits are expected to be rare, and many environmental lawyers want Congress to declare that each person is "entitled by right" to a quality environment and to establish a few basic criteria by which the courts can determine when that right is being infringed. A bill to accomplish this has been pending for a year or so in the Senate Commerce Committee's subcommittee on the environment which is chaired by Senator Philip A. Hart of Michigan.

As now written, the Hart bill would allow the courts to enjoin any activity, private or governmental, if the "environmental and economic costs . . . exceed the benefits" or if the purpose of the activity can be achieved in a more environmentally acceptable and no less socially beneficial manner. Private activities in compliance with standards and permits issued under the federal air and water pollution control acts would not be subject to these tests. *But* policies and decisions of all federal agencies, including the Environmental Protection Agency (EPA), would be subject to the tests insofar as they are discretionary and not arrived at through compliance with specific congressional directives. (The "citizens suit" provisions of the existing air and water pollution acts apply largely to enforcement of policies and regulations that are *nondiscretionary.*)

The Hart bill is similar in thrust to the Michigan Environmental Protection Act of 1970 and to measures enacted in Connecticut, Minnesota, and Massachusetts. It is strong stuff and it will face strong opposition, with, in all likelihood, Senator Jackson and Senator Edmund S. Muskie of Maine, the fathers of NEPA and EPA, respectively, probably among its foes, which already include Nixon Administration officials. At this point the groups that have gone on record in favor of the bill are principally environmental law and conservation organizations, although the measure has been endorsed by a few groups such as the Americans for Democratic Action, the League of Women Voters, and the Federation of American Scientists.

If enacted, the Hart bill would, in effect, represent an extension of the public trust doctrine, making the use of all resources (not merely submerged tidal lands) subject to a test in the public interest to be administered by either state or federal courts. Beyond doubt, environmentalists will be taking a risk if judges are allowed to second-guess the legislative and executive branches on the merits of environmental issues. As some recent opinions show, some judges exude the sentiments of a Thoreau while others think more like the manager of a copper smelter.

Yet the opinions of most judges are appealable, and Congress itself can set limits on judicial discretion. What Congress cannot do is to legislate comprehensively on all of the nation's important environmental questions. The whole vast problem of land use regulation is, for example, one in which the Congress probably will not legislate in any but the broadest fashion. But Congress cannot safely leave those problems on which it does not legislate in a detailed way to the largely unchecked discretion of federal and state bureaucracies. If a fail-safe is to be found to protect environmental values, it may have to be the judiciary, coaxed by a new breed of environmental attorneys.

—LUTHER J. CARTER

Erratum: A story on the Office of Technology Assessment (*Science,* 2 March) incorrectly identified the following: Richard Carpenter, executive director, Environmental Studies Board of the National Academy of Sciences and National Academy of Engineering; Steven Ebbin, senior staff scientist, Program of Policy Studies in Science and Technology, George Washington University; and Walter Hahn, acting chief, Science Policy Research Division, Congressional Research Service.