The National Environmental Policy Act of 1969 (NEPA) was the first significant federal environmental statute in the United States. Its most important legacy is the environment impact assessment process. Scholars continue to debate whether NEPA has been a powerful positive force in improving the quality of the environment, given its lack of requirements beyond the assessment of potential environmental damage.

The National Environmental Policy Act of 1969 (42 U.S.C. § 4321–4375), now typically referred to as NEPA, is considered the landmark federal environmental legislation in the United States. Title I of the act established a “national environmental policy,” while Title II created a Council on Environmental Quality (CEQ). The act was signed into law by President Richard Nixon on 1 January 1970. NEPA was the first significant piece of federal environmental legislation in the United States in the wake of the environmental movement of the 1960s that was triggered by Rachel Carson’s book Silent Spring. It was followed in rapid succession by the Clean Air Act of 1970, Clean Water Act Amendments of 1972, the Endangered Species Act of 1973, the Resource Conservation and Recovery Act of 1976, and other foundational statutes of U.S. environmental law.

NEPA’s Legacy

The enduring legacy of NEPA is the process established in Section 102 requiring that “all agencies of the Federal Government shall . . . utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental decision arts in planning and decisionmaking which may have an impact on man’s environment.” This language created the environmental impact assessment, a process that is the centerpiece of the implementation of the act. The CEQ adopted regulations for the realization of this environmental assessment requirement at the heart of NEPA in the Code of Federal Regulations (see 10 CFR 51). These regulations provide the substantive and procedural details that all federal agencies must follow in providing a detailed report of the potential impact of environmentally significant actions. As such, the regulations are at the heart of NEPA implementation. Because this requirement is the action-forcing mechanism of NEPA, there remains controversy over whether the act is truly effective at improving the quality of the environment.

In the years since the adoption of NEPA, thousands of environmental assessments and environmental impact statements have been completed by federal agencies. Early court cases, like Calvert Cliffs’ Coordinating Committee, Inc. v. Atomic Energy Commission in 1972, established agency obligations under the statute, and the CEQ has provided increasingly detailed instructions for agency compliance. Many agencies with extensive NEPA compliance activity have adopted detailed agency-specific regulations as well.

The Value of NEPA

There are two perspectives on the effectiveness of NEPA. Critics suggest that NEPA’s lack of substantive requirements makes the act little more than a procedural hoop through which federal agencies must jump. Other critics point out that NEPA’s application only to federal agency actions also limits its effectiveness. Supporters argue that the NEPA procedure changes behaviors in meaningful ways, leading to better agency decisions with fewer environmental impacts. They also suggest that agency actions have considerable reach into the private sector (for example,
granting a permit is an “action” under NEPA), extending the act’s positive impacts.

Criticism

Critics of NEPA focus on its procedural emphasis. Federal agencies follow a simple logic model in their compliance with the act. Once a proposed “action” is identified, the agency must determine whether it will have a “significant impact on the human environment.” If the agency is unsure, it must complete an Environmental Assessment (EA) to determine whether the action may pose a significant impact. If the action does not, the agency issues a Finding of No Significant Impact (FONSI) and proceeds with the action. If the action does have a significant impact, the agency must prepare an Environmental Impact Statement (EIS) documenting the environmental impacts as well as those of alternative actions. Once the EIS is complete, the agency decides whether to proceed with the action and issues a Record of Decision (ROD). Nothing in the act itself prohibits actions with adverse environmental impacts as long as they have been identified and considered when making the decision. For critics, the lack of requirements beyond the assessment phase makes the act ineffectual.

Support

Supporters of NEPA point to two benefits of these procedural requirements, suggesting that the act has been a positive force for environmental improvement. First, they suggest that agencies who take the CEQ procedural requirements seriously make better decisions because the process forces them to think about alternate means of accomplishing agency missions to create lesser environmental impact, or about means to mitigate unavoidable impacts. Of course, it is logically impossible to judge whether the decisions made by the agencies are better than those that would have been made without the process.

Second, EAs and EISs become important sources of information for opponents of agency actions, and in this sense NEPA might be considered the first of the so-called new tools for environmental protection. In the 1990s, a number of students of environmental policy began to search for alternatives to command-and-control techniques and economic incentives (taxes, subsidies, cap and trade). “New tools” became the term that applied to information-based, educational programs aimed at changing human behaviors. A good example is the Toxics Release Inventory (TRI) of the Emergency Planning and Community Right to Know Act of 1986. Anecdotal evidence suggests that the simple requirement that emitters inform the public of toxics release changes their behavior, and fewer toxics are emitted as a result. Likewise, NEPA’s procedural requirement resulting in the release of information about environmental impacts may both encourage agencies to make better decisions and provide the public with better information to challenge the wisdom of decisions.

Belief in the value of NEPA procedures resulted in encouragement for the integration of the NEPA process with the adoption of Environmental Management Systems (EMS) by federal agencies. In 2000, the Clinton administration required agencies to adopt EMSs by Executive Order (#13148), although this was not explicitly tied to NEPA.

NEPA’s Impact

The debate over the value of NEPA in terms of improved environmental quality is unresolved, yet NEPA as been widely copied. A number of U.S. states have adopted NEPA-like requirements for state agency actions, so-called mini-NEPAs. Many of these are modeled after NEPA in that they require state agencies to assess the impacts of their agency
actions. Other states extend the environmental impact assessment concept to the private sector or to local governments when these entities are pursuing activities that require state agency permits.

Globally, environmental impact assessment is important in both governmental and nongovernmental organization contexts. If the core of NEPA is the idea of environmental impact assessment, this idea has blossomed since 1960 in the United States and far beyond. Environmental impact assessments are a routine part of the work of international organizations, from the European Commission to the World Bank. The United Nations Environment Programme (UNEP) provides training to developing countries in impact assessment, and the Organisation for Economic Co-operation and Development (OECD) provides member-states with advice on how to use environmental impact assessment as part of their development aid programs. Professional associations dedicated to the practice of impact assessment exist not only in the United States—the National Association of Environmental Professionals, for instance—but also globally. The International Association for Impact Assessment claims 1,600 members from over 120 nations.

Mark W. ANDERSON
University of Maine

See also Clean Air Act; Clean Water Act; Development, Sustainable—Overview of Laws and Commissions; Ecosystem Management; Endangered Species Act; Environmental Law—United States and Canada; Natural Resources Law; Silent Spring; Wilderness Act

FURTHER READINGS