



1971

Environmental Pollution Control Laws in Pennsylvania: A Survey and Analysis - An Introduction to Environmental Law

George D. Bruch

Follow this and additional works at: <https://digitalcommons.law.villanova.edu/vlr>



Part of the [Environmental Law Commons](#), and the [Transportation Law Commons](#)

Recommended Citation

George D. Bruch, *Environmental Pollution Control Laws in Pennsylvania: A Survey and Analysis - An Introduction to Environmental Law*, 16 Vill. L. Rev. 815 (1971).

Available at: <https://digitalcommons.law.villanova.edu/vlr/vol16/iss5/2>

This Comment is brought to you for free and open access by Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.

MAY 1971]

COMMENTS

ENVIRONMENTAL POLLUTION CONTROL LAWS IN PENNSYLVANIA: A SURVEY AND ANALYSIS

AN INTRODUCTION TO ENVIRONMENTAL LAW

GEORGE D. BRUCH†

I. INTRODUCTION

The seventies have been referred to as the Decade of the Environment, propitiously ushered in as such on New Year's Day 1970 when the President signed into law the National Environmental Policy Act (NEPA).¹ This statute, hailed as the magna carta of the environmentalist, declares it to be the national policy to "encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation. . . ."² It refers to "each generation as trustee of the environment for succeeding generations. . . .," and recognizes that "each person should enjoy a healthful environment and . . . has a responsibility to contribute to the preservation and enhancement of the environment."³

The National Environmental Policy Act is, however, much more than hortatory. Though little more than a year has passed since its enactment, it has had an encouraging impact on the immense task the nation faces in restoring and maintaining environmental quality.

Moreover, NEPA provides the statutory basis for the President's Council on Environmental Quality,⁴ a three man group with very large responsibilities in the formulation of national policy and the review and appraisal of government operations affecting the environment.⁵ The preparation for the President of an annual report, a kind of State of the Environ-

† Vice-Dean and Professor of Law, Villanova University School of Law, Ph.B., Xavier University, 1938; J.D., Georgetown University, 1941; L.L.M., George Washington University, 1963.

1. 42 U.S.C. §§ 4321, 4331-35, 4341-47 (Supp. V, 1970).

2. 42 U.S.C. § 4321 (Supp. V, 1970).

3. 42 U.S.C. § 4331 (Supp. V, 1970).

4. 42 U.S.C. § 4342 (Supp. V, 1970). The current members of the Council are Chairman Russell E. Train, Robert Cahn and Gordon J. F. McDonald.

5. The functions and duties of the Council are enumerated in § 204 of the Act, 42 U.S.C. § 4344 (Supp. V, 1970).

ment Message that NEPA requires the President to transmit to the Congress annually, is a primary duty of the Council.⁶ The first such report was issued in August 1970. This document,⁷ more than any other single work with which this writer is familiar, provides a useful survey, covering many disciplines, of where we are and where we must go as a viable society seeking the protection of our environment.

In effect the Act amends all other federal laws and regulations, by directing that "to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this [Act]. . . ."⁸ It then imposes upon all federal agencies substantive and procedural duties designed to prevent for the future what so often has occurred in the past, the initiation of governmental actions without regard to their environmental effects. These duties are crystallized in Section 102(2)(C), which requires each agency to:

[I]nclude in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.⁹

Copies of these statements are required to be made available to the President, the Council on Environmental Quality "and to the public as provided by section 552 of Title 5 [United States Code]. . . ."¹⁰

Environmental groups and others are relying upon these statutorily imposed duties to contest, in court and administratively, a number of government agency actions, alleging non-compliance with the Act. Last April the United States District Court for the District of Columbia, finding that the Secretary of Interior had not complied with all of the pro-

6. 42 U.S.C. § 4344(7) (Supp. V, 1970).

7. COUNCIL ON ENVIRONMENTAL QUALITY, FIRST ANNUAL REPORT, ENVIRONMENTAL QUALITY (1970).

8. 42 U.S.C. § 4332 (Supp. V, 1970).

9. 42 U.S.C. § 4332(2)(C) (Supp. V, 1970).

10. *Id.* A list of such statements as of September 16, 1970, will be found in COUNCIL ON ENVIRONMENTAL QUALITY, PROGRESS REPORT (Sept. 16, 1970).

cedural requirements of NEPA, enjoined him from issuing a permit to certain oil company subsidiaries for the construction of a haul road from Prudhoe Bay to the Yukon River in connection with the proposed Trans-Alaska Pipeline.¹¹ More recently a federal court relied upon the Act, among others, in granting a preliminary injunction enjoining construction of the partially completed Cross-Florida Barge Canal.¹² Inadequate consideration of environmental consequences was the basis for an injunction issued to prevent the Farmers Home Administration from expending funds for a park project.¹³ The Fifth Circuit relied in part on NEPA in upholding a refusal of the Army Corps of Engineers, on the basis of a finding of adverse environmental effects, to grant a dredge and fill permit for a proposed private land development in Boca Ciega Bay, Florida.¹⁴

II. GOVERNMENT ORGANIZATION

For a number of years various agencies of the federal government have had responsibilities with regard to environmental matters, assigned in piecemeal fashion by numerous statutes. Thus, water pollution control has been largely in the hands of the Federal Water Quality Administration of the Interior Department, under the terms of the Federal Water Pollution Control Act.¹⁵ Air pollution has been primarily a function of the National Air Pollution Control Administration, located in the Department of Health, Education and Welfare, under the provisions of the Clean Air Act.¹⁶ Pesticide regulation has been divided between the Agriculture Research Service (Department of Agriculture) and the Food and Drug Administration (Department of Health, Education and Welfare) under the Federal Insecticide, Fungicide and Rodenticide Act,¹⁷ and the Federal Food, Drug and Cosmetic Act,¹⁸ and there are a number of other environmentally oriented missions that have been scattered through several departments and agencies.

On December 2, 1970, a major step in the direction of a more systematic structuring of the federal government's program in the environmental area was taken with the creation of the Environmental Protection Agency (EPA), pursuant to Reorganization Plan No. 3 of 1970.¹⁹ As

11. *Wilderness Society v. Hickel*, Civil No. 928-70 (D.D.C., Apr. 23, 1970), 1 ENVIR. REP., DECISIONS 1335 (1970).

12. *Environmental Defense Fund, Inc. v. Corps of Engineers*, Civil No. 2655-69 (D.D.C., Jan. 27, 1971), 2 ENVIR. REP., DECISIONS 1173 (1971).

13. *Texas Comm. on Natural Resources v. United States*, Civil No. A-69-CA-119 (W.D. Tex., Feb. 5, 1970), 1 ENVIR. REP., DECISIONS 1303 (1970).

14. *Zabel v. Tabb*, 430 F.2d 199 (5th Cir. 1970), *cert. denied*, 39 U.S.L.W. 3356 (U.S. Feb. 22, 1971) (No. 955), *noted in* 16 VILL. L. REV. 766 (1971).

15. 33 U.S.C.A. § 1151 *et seq.* (1970).

16. 42 U.S.C. § 1857 *et seq.* (1964), *as amended*, 42 U.S.C. § 1857b-1 *et seq.* (Supp. V, 1970).

17. 7 U.S.C. § 135 *et seq.* (1964).

18. 21 U.S.C. § 321 *et seq.* (1964).

19. 1970 U.S. CODE CONG. & AD. NEWS 2997 (No. 8, Aug. 20, 1970).

a result of this reorganization, functions of the several agencies listed above and others were transferred to EPA.

In transmitting the plan for the new agency to Congress, the President set out its principal roles and functions and explained its relationship with the previously mentioned Council on Environmental Quality in the following manner:

The establishment and enforcement of environmental protection standards consistent with national environmental goals.

The conduct of research on the adverse effects of pollution and on methods and equipment for controlling it, the gathering of information on pollution, and the use of this information in strengthening environmental protection programs and recommending policy changes.

Assisting others, through grants, technical assistance and other means in arresting pollution of the environment.

Assisting the Council on Environmental Quality in developing and recommending to the President new policies for the protection of the environment.

One natural question concerns the relationship between the EPA and the Council on Environmental Quality, recently established by Act of Congress.

It is my intention and expectation that the two will work in close harmony, reinforcing each other's mission. Essentially, the Council is a top-level advisory group (which might be compared with the Council of Economic Advisers), while the EPA would be an operating, "line" organization. The Council will continue to be a part of the Executive Office of the President and will perform its over-all coordinating and advisory roles with respect to all Federal programs related to environmental quality.

The Council, then, is concerned with all aspects of environmental quality — wildlife preservation, parklands, land use, and population growth, as well as pollution. The EPA would be charged with protecting the environment by abating pollution. In short, the Council focuses on what our broad policies in the environmental field should be; the EPA would focus on setting and enforcing pollution control standards. The two are not competing, but complementary — and taken together, they should give us, for the first time, the means to mount an effectively coordinated campaign against environmental degradation in all of its many forms.²⁰

The new agency, located in the Executive Office of the President, has at the time of this writing ten regional offices, in Boston, New York City, Philadelphia, Atlanta, Chicago, Dallas, Kansas City, Denver, San Francisco and Portland.²¹

20. 6 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 908, 912 (1970); (published in ENVIR. REP., FED. LAWS § 21:0261, 0263 (1970).

21. See ENVIR. REP., FED. LAWS § 61:1601 (1971). William D. Ruckelshaus, Esq., has been appointed first Administrator. *Id.*

III. AIR AND WATER POLLUTION

A. Air Pollution

On the last day of the year just past another major piece of legislation became law, the Clean Air Act Amendments of 1970.²² Under the original Act as amended by the Air Quality Act of 1967,²³ the states were expected, after the Secretary of HEW issued air quality criteria, to establish ambient air quality standards for their areas together with plans of enforcement. Few standards were in fact set up under the procedures provided and enforcement at the federal level was, by the terms of the Act, enormously complicated, relying principally on conference techniques with many statutorily built-in delays.²⁴ Thus far there has been only one abatement action in the courts under the Act. This case involved a rendering plant in Bishop, Maryland, charged with emitting "vile and nauseating odors" endangering the health and welfare of persons in another state, Delbyville, Delaware, two miles away. The action was successful, but five years elapsed between the date of the first conference and the final court decision during all of which time defendant continued the offending operation.²⁵

Under the amendments passed in December 1970, the Administrator of the Environmental Protection Agency is directed to establish nationwide ambient air quality standards, the states being free to establish their own stricter standards if desired. Within 60 days after promulgation of the national standards, a state may file a letter of intent that it will, within 180 days and after public hearings, adopt a plan for the implementation (principally by prescribing appropriate emission standards) and enforcement of the federal standards in its area. If the state fails to file a letter of intent or does not adopt a suitable enforcement plan, the EPA Administrator may publish proposed regulations setting forth a state plan that the state may either adopt, or, request a hearing. In the latter case, after a hearing, the Administrator will promulgate the original or a modified plan for the state and, in a case where the state may fail to enforce it, the Administrator, after due notice to the state and persons in violation, may request the United States Attorney General to bring suit to abate the pollution. A penalty of up to \$10,000 may be assessed by a court for each day during which any person fails to take action as ordered by the Administrator.²⁶ This clearly represents a definite hardening in the approach to the problem, greatly streamlining the standard setting and enforcement processes.

22. Pub. L. No. 91-604, 91st Cong., 2d Sess., 1970 U.S. CODE CONG. & AD. NEWS 6910 (No. 15, Jan. 5, 1971).

23. 42 U.S.C. § 1857d (Supp. V, 1970).

24. For detailed discussion of enforcement activities under the 1967 Act, see *Symposium*, 33 LAW & CONTEMP. PROB. 195 (1968).

25. *United States v. Bishop Processing Co.*, 287 F. Supp. 624 (D. Md. 1968), *aff'd*, 423 F.2d 469 (4th Cir.), *cert. denied*, 398 U.S. 904 (1970).

26. Pub. L. No. 91-604, 91st Cong., 2d Sess., 1970 U.S. CODE CONG. & AD. NEWS 6914 (No. 15, Jan. 5, 1971).

The 1970 Amendments to the Clean Air Act include other important provisions, dealing with aircraft emission standards, pollution by federal facilities, and emission standards for stationary sources, as to which space does not permit more than this passing reference. Let us turn now to another principal concern of the Amendments.

1. *Automobile Emissions*

In excess of sixty percent of atmospheric pollution in this country is attributable to the automobile.²⁷ It is evident that the elimination of this pollution source would advance the cause of clean air dramatically and much effort has been directed toward solving the problem during the past several years. Air quality criteria documents issued by the Secretary of Health, Education and Welfare under the Clean Air Act prior to the above-mentioned amendments indicate that the health levels of pollution agents associated with vehicle emissions have been exceeded substantially in many major cities.²⁸ The principal contaminants are carbon monoxide, hydrocarbons and nitrogen oxides. According to the HEW criteria, the ambient standard necessary to protect the public health from carbon monoxide is 8-10 parts per million (ppm). This compares with ambient air in Chicago of 44 ppm. The ambient air health standard for hydrocarbons is 0.06 ppm, a level which under existing HEW standards would not be achieved until the 1980 model year for new automobiles. The ambient health standard for nitrogen oxides is about 0.10 ppm, as contrasted with an ambient condition found in most metropolitan areas of 0.50 to 0.60 ppm.²⁹ The problem has been so serious in California that the State Senate approved in 1968, by a record vote of 25-6, legislation which would have completely barred new internal combustion engines from California by 1975. The measure died in the State Assembly.³⁰

Not satisfied with the progress made under earlier legislation requiring HEW to set enforceable automobile emission standards but imposing no deadlines for compliance, Congress included in the Clean Air Amendments of 1970 a requirement that 1975 and later model year vehicles achieve at least a ninety per cent reduction in emissions of carbon monoxide and hydrocarbons from those allowable under the HEW standards applicable to the 1970 model year, and set somewhat similar requirements for emissions of oxides of nitrogen.³¹ Recognizing, however, that these mandatory limits exceed the existing state of the art, the new legislation provides a procedure for industry to follow in obtaining an extension of the deadline, for one year only, upon a finding by the Administrator after a

27. H.R. REP. No. 1146, 91st Cong., 2d Sess. (1970), published in 1970 U.S. CODE CONG. & AD. NEWS 7492, 7495 (No. 15, Jan. 5, 1971).

28. S. REP. No. 1196, 91st Cong., 2d Sess. 25 (1970).

29. *Id.*

30. See Statements of Hon. Lionel Van Deerlin, Hon. Richard L. Ottinger and Hon. Robert O. Tiernan on H.R. 17255, 91st Cong., 2d Sess., 1970 U.S. CODE CONG. & AD. NEWS 7507, 7508 (No. 15, Jan. 5, 1971).

31. Pub. L. No. 91-604, § 6(a), 91st Cong., 2d Sess., 1970 U.S. CODE CONG. & AD. NEWS 6927-28 (No. 15, Jan. 5, 1971).

public hearing that effective control technology is not available and that the extension is "essential to the public interest or the public health and welfare. . . ."³² The Administrator's determination is subject to review in the United States Court of Appeals for the District of Columbia, but only as to the question of the one year time extension. The emission standard itself is specifically excluded from review.³³ This limited review is explained in the Senate Report as follows:

Whether or not the Secretary should determine to suspend the deadline, his decision would be subject to judicial review in the United States Court of Appeals for the District of Columbia through a procedure set forth. The Court in reviewing the Secretary's decision can affirm or reverse only after independently finding that a suspension is essential to the public interest and general welfare of the United States; that all good faith efforts have been made by the applicant; and that the applicant has established that the technology, processes or other alternatives have not been available for a period of time necessary to achieve compliance. The industry could challenge his decision not to extend and other interested parties could challenge his decision to extend the deadline. In any event such a challenge would not delay the application of the statutory standard beyond January 1, 1976, and 1975 model vehicles would be required to meet any interim standards which the Secretary determined to be technologically practicable.³⁴

Civil penalties up to \$10,000 per vehicle may be imposed for violation of the standards.³⁵

B. Water Pollution

As in the case of air pollution, federal law on water pollution has proved cumbersome. This is not to say that no gains have been made. More has been accomplished than in the case of air pollution, because congressional and public concern focused upon water pollution many years earlier. The first permanent water pollution legislation was enacted in 1956 — the Federal Water Pollution Control Act,³⁶ and was most recently amended by the Water Quality Improvement Act of 1970.³⁷

The standard-setting and enforcement requirements are similar to those applicable to air pollution. So-called enforcement or abatement conferences are convened in the case of alleged violations, followed by public hearings culminating in carefully scheduled plans, often covering a period of years, for the scaling down of the pollution.³⁸ These plans

32. *Id.*

33. Pub. L. No. 91-604, § 12(a), 91st Cong., 2d Sess., 1970 U.S. CODE CONG. & AD. NEWS 6950 (No. 15, Jan. 5, 1971).

34. S. REP. No. 1196, 91st Cong., 2d Sess. 28 (1970).

35. Pub. L. No. 91-604, § 7(a), 91st Cong., 2d Sess., 1970 U.S. CODE CONG. & AD. NEWS 6932 (No. 15, Jan. 5, 1971).

36. 33 U.S.C.A. § 1151 *et seq.* (1970).

37. Pub. L. No. 91-224, 91st Cong., 2d Sess., 1970 U.S. CODE CONG. & AD. NEWS 539 (No. 4, May 5, 1970).

38. The standard-setting and enforcement provisions of the Federal Water Pollution Control Act are set forth in 33 U.S.C.A. § 1160 (1970).

may or may not be in fact adhered to in particular cases. There have been some fifty such conferences, summaries of which have been documented.³⁹ Following this very lengthy administrative procedure, the Administrator may request the Attorney General to bring suit, but it appears this has rarely if ever been done.

Despite the substantial technological and economic difficulties often impeding rapid enforcement of water quality standards in many cases, the need for a more effective system than that provided by existing legislation has stimulated congressional consideration of additional legislation. In his Environmental Message of February 8, 1971, to Congress, the President has requested air pollution control measures quite similar to those approved by Congress in the Clean Air Act Amendments of 1970. Included are requests that:

[T]he cumbersome and time-consuming enforcement conference and hearing mechanism in the current law be replaced by a provision for swift public hearings as a prelude to issuance of abatement orders or requiring a revision of standards . . . that the Administrator of EPA be authorized to issue abatement orders swiftly and to impose administrative fines up to \$25,000 a day for violation of water quality standards . . . that violations of standards and abatement orders be made subject to court imposed fines of up to \$25,000 per day and up to \$50,000 per day for repeated violations.⁴⁰

As is well known, a major cause of the pollution of our waters is municipally owned and operated sewage disposal systems. A substantial grant-in-aid program has been in effect for a number of years to relieve this scandalous situation and in his recent Environmental Message the President also called for an appropriation of \$6 billion over the next three years to provide the federal share of a \$12 billion program planned for waste treatment facilities. In addition it was proposed that an Environmental Financing Authority be created to provide municipalities with the opportunity to sell waste treatment plant construction bonds.⁴¹ In the interim, however, lacking more effective tools for the enforcement of standards, the national administration appears to be planning increased resort for this purpose to an "ancient" statute, which will next be briefly commented upon.

1. *The Refuse Act of 1899*

An Executive Order was issued on December 23 of last year establishing a program "to regulate the discharge of pollutants and other refuse matter into the navigable waters of the United States or their tributaries and the placing of such matter upon their banks."⁴² The

39. See ENVIR. REP., FED. LAWS § 41:5201 to 5210 (1970).

40. 7 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 187, 191 (1971).

41. *Id.* at 190.

42. Exec. Order No. 11,574, 6 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 1725 (1970).

principal statutory basis for the new Order is the Refuse Act of 1899.⁴³ This old law, long neglected to the detriment of us all, makes it unlawful:

[T]o throw, discharge, or deposit . . . either from or out of any ship, barge or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water . . . provided . . . [t]hat the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; . . .⁴⁴

It is a wordy law but the meaning is unmistakable, and its enforcement is divorced of all the laboriously long and complicated procedures mentioned previously when action is attempted under the Federal Water Pollution Control Act. It has been held that it is no defense to a prosecution under the 1899 law that defendant may be in compliance with less burdensome state standards approved under the Federal Water Pollution Control Act. The court noted that the later statute expressly provides that it shall not be construed as "affecting or impairing the provisions of Section 13 [of the Refuse Act]."⁴⁵

The term "refuse" has been liberally construed. It has been applied to the negligent discharge of unused oil⁴⁶ and to commercially valuable gasoline.⁴⁷ As stated by the Supreme Court:

The words of the Act are broad and inclusive: "any refuse matter of any kind or description whatever." Only one exception is stated: "other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States." More comprehensive language would be difficult to select. . . .⁴⁸

The same Court has held that the exception for sewage was no defense in the prosecution of a steel mill for discharging solids suspended in water that passed to the river through a sewer line.⁴⁹ In this case an injunction was sustained compelling the steel company to remove waste which had accumulated on the river bottom.

43. 33 U.S.C. § 407 (1964). This Act is part of the Rivers and Harbor Act of 1899, 33 U.S.C. §§ 401 to 413 (1964).

44. 33 U.S.C. § 407 (1964).

45. *United States v. Interlake Steel Corp.*, Civil No. 68 CR 777 (N.D. Ill., Mar. 27, 1969), 1 ENVIR. REP., DECISIONS 1045 (1970).

46. *See, e.g., United States v. Ballard Oil of Hartford*, 195 F.2d 369 (2d Cir. 1952).

47. *See, e.g., United States v. Standard Oil Co. of Kentucky*, 384 U.S. 224 (1966).

48. *Id.* at 229.

49. *United States v. Republic Steel Corp.*, 362 U.S. 482 (1960).

Indirect discharges are within the scope of the statute,⁵⁰ and repeated discharges have been penalized as separate offenses.⁵¹ Penalties include fines from \$500 to \$2500 or imprisonment from 30 days to a year, and an informer provision entitles the informant to one-half the fine imposed.⁵² The Department of Justice is responsible for the legal proceedings necessary to enforce the Act and "it shall be the duty of United States attorneys to vigorously prosecute all offenders. . . ."⁵³

Until the Executive Order referred to above was promulgated, it had been the policy of the Justice Department to make use of the Act only in emergency situations or in the case of infrequent or one-time discharges, in deference to the elaborate statutory scheme worked out by Congress in the much more recent Water Pollution Control Act. Now, however, the plan is to utilize it across the board and a deadline of July 1, 1971, has been set for the submission of permit applications for existing discharges involving some 40,000 situations.⁵⁴ Close cooperation with the states and application of the states' federally approved water quality standards established pursuant to the Federal Water Quality Control Act are included in the plan.⁵⁵

III. STANDING TO SUE AND CITIZEN SUITS

Recent decisions⁵⁶ have considerably broadened the concept of standing and the courts have generally applied these liberally where citizen groups have been involved as plaintiffs in environmental suits.⁵⁷ In numerous cases the standing to sue of these groups has been upheld. The issue has recently been sharpened by a difference between the Ninth and Second Circuits⁵⁸ on the question that may be resolved at the current term of the

50. *United States v. Esso Standard Oil Co. of Puerto Rico*, 375 F.2d 621 (3d Cir. 1967) (discharge of oil upon ground in such proximity to the sea that oil flowed into the sea by force of gravity).

51. *See United States v. S.S. Mormacsaga*, 204 F. Supp. 701 (E.D. Pa. 1962).

52. 33 U.S.C. § 411 (1964).

53. 33 U.S.C. § 413 (1964).

54. *See* President Nixon's statement of Dec. 23, 1970, 6 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 1724 (1970).

55. *Id.* at 1724-25.

56. *See, e.g.*, *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970); *Barlow v. Collins*, 397 U.S. 159 (1970); *Flast v. Cohen*, 392 U.S. 83 (1968). *See also* Davis, *The Liberalized Law of Standing*, 37 U. CHI. L. REV. 450 (1970).

57. *See, e.g.*, *Environmental Defense Fund, Inc. v. Hardin*, 428 F.2d 1093 (D.C. Cir. 1970) (challenging Secretary of Agriculture's failure to take prompt action to restrict use of DDT); *Izaak Walton League v. Hardin*, No. 5-69 Civ. 70 (D. Minn., June 1, 1970), 1 ENVIR. REP., DECISIONS 1401 (1970) (petition for injunction to stop Secretary of Agriculture and U.S. Forest Service from permitting drilling in certain waters of Minnesota); *Pennsylvania Environmental Council v. Bartlett*, 315 F. Supp. 238 (M.D. Pa. 1970) (challenge to Secretary of Transportation's approval of a state secondary highway relocation project that would affect trout stream); *Crother v. Seaborg*, Civil Nos. C-1702, C-1712, C-1722 (D. Colo., Mar. 16, 1970), 1 ENVIR. REP., DECISIONS 1199 (1970) (challenge to Atomic Energy Commission operation).

58. *Compare Citizens Comm. for the Hudson Valley v. Volpe*, 425 F.2d 97 (2d Cir.), *cert. denied*, 400 U.S. 949 (1970), *with* *Sierra Club v. Hickel*, 433 F.2d 24

Supreme Court, which has granted certiorari in *Sierra Club v. Hickel*, a case where the Ninth Circuit denied standing.⁵⁹

The cause of private citizens and public-interest groups interested in pressing such suits was markedly advanced, with regard to air pollution matters, by the inclusion in the Clean Air Act Amendments of 1970 of authorization for "any person" to commence "a civil action on his own behalf"

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to be in violation of (A) an emission standard or limitation under this Act or (B) an order issued by the Administrator or a State with respect to such standard or limitation. . . .⁶⁰

Moreover, the courts are authorized by the provision to award costs of litigation (including attorney and expert witness fees) to any party.⁶¹

This new authority is founded on a belief of the Congress that government initiative in seeking enforcement under the Clean Air Act has been too restrained and that "[a]uthorizing citizens to bring suits for violations of standards should motivate governmental agencies charged with the responsibility to bring enforcement and abatement proceedings."⁶² A citizen or group of citizens planning to sue under this authorization must: (1) file a notice of intent with the Federal and State air pollution control agency and the alleged polluter; (2) file a statement of facts in accordance with regulations to be prescribed by the Administrator of the Environmental Control Agency; and (3) wait a period of time, in no case more than sixty days, to give the administrative enforcement office an opportunity to act on the alleged violation.⁶³

Similar authority will be included in the new water pollution control legislation if Congress adopts the President's recommendations which "propose an authorization for legal actions against violations of standards by private citizens, as in the new air quality legislation, in order to bolster State and Federal enforcement efforts."⁶⁴

(9th Cir. 1970), *cert. granted*, 39 U.S.L.W. 3353 (U.S., Feb. 22, 1971) (No. 939). See also *Alameda Conservation Ass'n v. California*, Civil No. 22, 961 (9th Cir., Jan. 19, 1971), 2 ENVIR. REP., DECISIONS 1175 (1971) (standing denied the Association but upheld in the case of certain landowner members whose property values would be affected); see generally 16 VILL. L. REV. 729 (1971).

59. 433 F.2d 24 (9th Cir. 1970), *cert. granted*, 39 U.S.L.W. 3353 (U.S., Feb. 22, 1971) (No. 939).

60. Pub. L. No. 91-604, § 12(a), 91st Cong., 2d Sess., 1970 U.S. CODE CONG. & AD. NEWS 6947 (No. 15, Jan. 5, 1971).

61. *Id.*

62. S. REP. No. 1196, 91st Cong., 2d Sess. 36-37 (1970).

63. Pub. L. No. 91-604, § 12(a), 91st Cong., 2d Sess., 1970 U.S. CODE CONG. & AD. NEWS 6947-48 (No. 15, Jan. 15, 1971).

64. *President Nixon's Environmental Message to Congress*, Feb. 8, 1971, 7 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 187, 191-92 (1971); ENVIR. REP., FED. LAWS § 21:0321, 0323 (1971).

IV. CONCLUSION

The foregoing really only scratches the surface of the subject. Nothing has been said of what the several states and the hundreds of local and regional governmental bodies have done and are doing at an ever-rising tempo. The student Comments that follow explore these areas in depth in the Commonwealth of Pennsylvania. Much also could be written about the attempts to get at the problem through so-called common law remedies. And even at the federal level there are many laws concerned with environmental interests that have not been discussed and which play important roles.⁶⁵ Increasingly, the problem is being recognized as having an international scope. This perspective is evidenced by the ongoing international cooperative efforts of the United States, not only with other governments, but with non-governmental organizations such as the International Biological Program and the International Union for Conservation of Nature and Natural Resources.⁶⁶

65. *See, e.g.*, *Citizens to Preserve Overton Park, Inc. v. Volpe*, 39 U.S.L.W. 4287 (U.S., Mar. 2, 1971) (No. 1066), where the Court remanded to the district court for a plenary review of the approval by the Secretary of Transportation of the use of federal funds to construct a six-lane highway through a public park, as possibly violative of section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. § 1653(f) (Supp. V, 1970), and section 138 of the Federal-Aid Highway Act of 1968, 23 U.S.C. § 138 (Supp. V, 1970).

66. *See* COUNCIL ON ENVIRONMENTAL QUALITY, FIRST ANNUAL REPORT, ENVIRONMENTAL QUALITY 199-206 (1970). *See also* *United States Oceans Policy*, Statement by President Nixon, May 23, 1970, 6 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 677 (1970); ENVIR. REP., FED. LAWS § 21:0251 (1970).