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## Case Note: Environmental Law - National Environmental Policy Act - Potential Environmental Effects of Urban Unemployment Require Preparation Of An Environmental Impact Statement

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**Environmental Law—National Environmental Policy Act—Potential Environmental Effects Of Urban Unemployment Require Preparation Of An Environmental Impact Statement.**

*City of Rochester v. United States Postal Service*, 541 F.2d 967 (2d Cir. 1976).

The City of Rochester and the Genessee-Finger Lakes Regional Planning Board sued to enjoin the Postal Service from constructing a 12 million dollar postal facility in a Rochester suburb, in contemplation of abandoning an older smaller facility within the city itself.<sup>1</sup> Plaintiffs asserted that the Postal Service's change of location was "a major Federal actio[n] significantly affecting the quality of the human environment,"<sup>2</sup> and that the National Environmental Policy Act of 1969 (NEPA)<sup>3</sup> required the preparation of an Environmental Impact Statement (EIS)<sup>4</sup> before the Service could abandon its inner city facility.<sup>5</sup> While conceding that the transfer was "a major Federal action," defendants countered that the transfer did not "significantly affect[] the quality of the human environment."<sup>6</sup>

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1. *City of Rochester v. United States Postal Serv.*, 541 F.2d 967, 971 (2d Cir. 1976).

2. *Id.* at 970.

3. 42 U.S.C. §§ 4321-4347 (1970), *as amended*, (Supp. V, 1975).

4. *Id.* § 4332(2)(c). The breadth of this section is the crux of the issue in all of the cases discussed herein. The section reads as follows:

[All agencies of the Federal Government shall . . . (C) include 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. Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes;

*Id.* (emphasis added).

5. 541 F.2d at 974.

6. *Id.* at 973.

They based their contention upon a private Environmental Impact Assessment (EIA) prepared by Postal Service consulting architects which concluded that no adverse environmental effects would be caused by the transfer.<sup>7</sup> Therefore, defendants argued, no EIS was necessary. The District Court dismissed the complaint, ruling *inter alia* that the plaintiffs' injury resulting from the abandonment of the Rochester post office was social and economic rather than environmental.<sup>8</sup>

The Court of Appeals for the Second Circuit found that the Postal Service's action would have environmental consequences.<sup>9</sup> It criticized the Service's EIA for considering only the effects of the new construction on the suburb of Henrietta, while ignoring the consequences of abandonment on the city of Rochester.<sup>10</sup> The court specifically noted that the move could result in Rochester residents losing their jobs, thus contributing to the economic and physical deterioration of downtown Rochester.<sup>11</sup> It indicated that an action by a federal agency causing the loss of a large number of employment opportunities within a community must be accompanied by an EIS.<sup>12</sup> The court preliminarily enjoined the transfer of mail processing activities and Postal Service employees from Rochester to Henrietta pending the preparation and filing of an EIS.<sup>13</sup>

The general purpose of NEPA is to prevent the abuse of the environment.<sup>14</sup> Legislative history indicates that Congress promulgated the EIS provision to force compliance with NEPA by requiring federal agencies to file a written evaluation of the potential environmental impacts of their proposals.<sup>15</sup> However the legislative history

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7. *Id.*

8. *Id.* at 971.

9. *Id.* at 973.

10. *Id.*

11. *Id.*

12. *Id.* at 973-74.

13. *Id.* at 979. The court was "reluctantly forced to conclude" that the plaintiffs were barred from enjoining the construction of the new Henrietta facility because of the overriding economic waste which would result from such an injunction. *Id.* at 977. The district court had found that at the time the suit was begun, the Henrietta mail facility was 18 per cent complete and approximately 8 million dollars had been spent not including the 1.6 million dollar cost of the site. *Id.* at 971 n.3. However the court stated that absent laches, it would have been proper for the district court to enjoin the construction of the new facility. *Id.* at 977.

14. 42 U.S.C. § 4321 (1970).

15. *See, e.g.,* 115 CONG. REC. 19009-10, 40416, 40419 (1969).

contains no discussion of whether indirect environmental effects could trigger the EIS provision or whether the deterioration of physical surroundings resulting from adverse socio-economic impacts is a significant environmental effect activating the EIS mandate of NEPA.<sup>16</sup>

Anticipating that NEPA's mandate for preparing an EIS might be too ambiguous, the Council on Environmental Equality (CEQ)<sup>17</sup> established guidelines to aid federal agencies in preparing an EIS.<sup>18</sup> Section 1500.6 of the guidelines defines "major actions significantly affecting the environment"<sup>19</sup> to include secondary or indirect environmental impacts.<sup>20</sup> In spite of these guidelines the court opinions conflict on the question of whether indirect environmental effects alone can trigger the EIS provision. Some courts view the unemployment created by federal action similar to that in *Rochester* as a social and economic problem regardless of the environmental repercussions, and therefore find NEPA and its EIS provisions inappl-

16. The legislative history describes the general purpose of NEPA, and more specifically, the purpose of section 102 rather than actual applications of the section. See S. REP. No. 296, 91st Cong., 1st Sess. (1969); H.R. REP. No. 378, 91st Cong., 1st Sess. reprinted in [1969] U.S. CODE CONG. & AD. NEWS 2751; H.R. REP. No. 765, 91st Cong., 1st Sess., reprinted in [1969] U.S. CODE CONG. & AD. NEWS 2767; 115 CONG. REC. (1969). House Report 765 is the report of a joint Senate-House conference which was formed to resolve the differences between the environmental policy bill originally passed by the Senate (S.1075) and the one originally passed by the House (H.R.12549). 115 CONG. REC. 26591, 28176, 29006, 29089 (1969).

17. The Council on Environmental Quality was established by the National Environmental Policy Act of 1969, § 202, 42 U.S.C. § 4342 (1970). Duties and activities of the Council, which is part of the Executive Office, include reviewing and appraising federal government programs designed to further the purpose of NEPA and making recommendations to the President regarding these programs. *Id.* §§ 4342, 4344(3).

18. Preparation of Environmental Impact Statements: Guidelines, 40 C.F.R. §§ 1500.1-14 (1976). Portions of these guidelines were first published in 36 Fed. Reg. 7724-29 (1971) and are sporadically supplemented by the Council. See 40 C.F.R. § 1500.14(a) (1976).

19. 40 C.F.R. § 1500.6 (1976).

20. *Id.* § 1500.6(b). "Significant effects also include secondary effects. . . ." *Id.*

Secondary or indirect, as well as primary or direct, consequences for the environment should be included in [Environmental Impact Statements]. Many major Federal actions . . . stimulate or induce secondary effects in the form of . . . changed patterns of social and economic activities. Such secondary effects, through their impacts on existing community facilities and activities, through inducing new facilities and activities, or through changes in natural conditions, may often be even more substantial than the primary effects of the original action itself.

*Id.* § 1500.8(a)(3)(ii). Furthermore, Appendix II of the guidelines lists Neighborhood Character and Continuity as an area of environmental impact. *Id.* App. II. To consider the effects of abandonment on the Rochester community, environmental effects, is certainly consistent with these guidelines.

icable.<sup>21</sup> Other courts view the environmental repercussions of unemployment as indirect environmental effects of the agency action and enforce the EIS mandate.<sup>22</sup>

*Breckinridge v. Rumsfeld*<sup>23</sup> involved the closing of a United States Army base which resulted in the transfer of military personnel and a corresponding reduction in the number of available civilian jobs in the local community.<sup>24</sup> The Court of Appeals for the Sixth Circuit held that the reduction in employment opportunities was not a major Federal action significantly affecting the quality of the human environment and therefore no EIS was required.<sup>25</sup> The court reasoned that Congress did not intend socio-economic consequences of an agency action to come within the scope of NEPA,<sup>26</sup> since congressional history was silent on this point.<sup>27</sup> Furthermore, the Sixth Circuit found the adverse economic effects of the base closure temporary,<sup>28</sup> and pointed out that temporary impacts are not ordinarily considered significant under NEPA.<sup>29</sup> The court also distinguished

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21. See, e.g., *Breckinridge v. Rumsfeld*, 537 F.2d 864 (6th Cir. 1976) cert. denied 429 U.S. 1061 (1977); *National Ass'n of Gov't Employees v. Rumsfeld*, 418 F. Supp. 1302 (E.D. Pa. 1976); *IMAGE of Greater San Antonio v. Rumsfeld*, 9 ENVIR. REP. 1183 (W.D. Tex. 1976) (BNA). Cf. *Township of Dover v. United States Postal Serv.*, 429 F. Supp. 295 (D. N.J. 1977). In *Dover*, Judge Barlow's view of the problem differs slightly from that of the other courts listed above. He focuses on whether the action proposed by the federal agency is an action within NEPA's zone of interest. *Id.* at 296. However this view is erroneous because NEPA is clearly concerned with the environmental impacts of federal actions and not with the actions themselves. 42 U.S.C. §§ 4332, 4331. Furthermore *Dover* is factually distinguishable from the other cases discussed in this casenote because the Postal Service's transfer had minimal environmental effects if any. First, the transfer only involved 120 employees; second, the employees were transferred from a suburban township not prone to urban deterioration; and third, the Dover postal facility was not being abandoned but only losing one of its functions. 429 F. Supp. at 297-98.

22. *City of Rochester v. United States Postal Serv.*, 541 F.2d 967 (2d Cir. 1976); *Prince George's County, Md. v. Holloway*, 404 F. Supp. 1181 (D.D.C. 1975); *McDowell v. Schlesinger*, 404 F. Supp. 221 (W.D. Mo. 1975).

23. 537 F.2d 864 (6th Cir. 1976), cert. denied, 429 U.S. 1061 (1977).

24. *Id.* at 865.

25. *Id.*

26. *Id.* at 866. The court did not describe what the environmental repercussions of the Army base closing would be, but merely dismissed them as beyond the scope of NEPA. *Id.* See *National Ass'n of Gov't Employees v. Rumsfeld*, 418 F. Supp. 1302 (E.D. Pa. 1976).

27. See note 16 *supra*.

28. 537 F.2d at 865-66.

29. Several sections of NEPA suggest that the Act is concerned primarily with long-term rather than short-term environmental effects. See 42 U.S.C. §§ 4331(a)-(b), 4332(2)(C)(iv)-(v) (1970). See also 40 C.F.R. § 1500.6 (1976). However, this court's determination that such economic factors and their environmental consequences are short-term is questionable in

cases which held that the environmental repercussions of socio-economic impacts trigger the EIS provision.<sup>30</sup> It noted that the federal agency actions in those cases had both a direct impact on the environment and the more remote environmental consequences of the socio-economic effects.<sup>31</sup> In *Breckinridge*, the court found only indirect environmental effects and concluded that these effects alone were insufficient to warrant an EIS.

The United States District Court for the Eastern District of Pennsylvania employed a similar rationale in *National Association of Government Employees v. Rumsfeld*.<sup>32</sup> Government employees and the city of Philadelphia sought to enjoin the closing of an Army arsenal. They charged that the closing would result in the elimination of 3,500 civilian jobs in Philadelphia.<sup>33</sup> The court granted the federal government's motion to dismiss, holding that the application of NEPA to these facts was clearly beyond congressional intent.<sup>34</sup> Moreover, it stated that the more remote environmental consequences stemming from social and economic injury could be considered in an EIS only if the agency's action also had more direct environmental impacts which independently triggered NEPA's application.<sup>35</sup> To support its decision, the court cited *IMAGE of Greater San Antonio v. Rumsfeld*,<sup>36</sup> where the Defense Department's action would have reduced the number of civilian employees

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light of the decisions requiring an EIS under similar circumstances. *City of Rochester v. United States Postal Serv.*, 541 F.2d 967, 977 (2d Cir. 1976) (potential effects of the Service's transfer of employees termed irreparable); *McDowell v. Schlesinger*, 404 F. Supp. 221, 236-37, 244 (W.D. Mo. 1975) (the court describes the long-term effects of the Defense Department's decision to transfer an Air Force unit).

30. 537 F.2d at 866. The court distinguished the following cases on the grounds that there was a primary environmental basis for requiring an EIS independent of the socio-economic factors in each of them: *Chelsea Neighborhood Ass'ns. v. United States Postal Serv.*, 516 F.2d 378 (2d Cir. 1975); *Minnesota Pub. Interest Group v. Butz*, 498 F.2d 1314 (8th Cir. 1974); *Maryland-Nat'l Capital Park v. United States Postal Serv.*, 487 F.2d 1029 (D.C. Cir. 1973); *Hanly v. Mitchell*, 460 F.2d 640 (2d Cir.) cert. denied sub nom, *Hanly v. Kleindienst*, 409 U.S. 990 (1972).

31. 537 F.2d at 866.

32. 418 F. Supp. 1302 (E.D. Pa. 1976).

33. *Id.* at 1303.

34. *Id.* at 1306.

35. *Id.* The opinion indicates that the court realized the severity of the social and economic blows to the community but simply did not consider them within the zone of interest of NEPA. *Id.* at 1304. Cf. *Breckinridge v. Rumsfeld*, 537 F.2d 864 (6th Cir. 1976), cert. denied, 429 U.S. 1061 (1977).

36. 9 ENVIR. REP. 1183 (W.D. Tex. 1976) (BNA).

at a military base.<sup>37</sup> In *IMAGE*, the district court refused to permit plaintiff employees "by 'linguistics' and 'etymology' to stretch [NEPA's] coverage to embrace their own parochial interests . . . ."<sup>38</sup> It stated that Congress did not intend NEPA to be a "National Employment Policy Act."<sup>39</sup>

Contrary to the holdings in *Breckinridge* and *National Association*, some courts have extended NEPA to situations where an action by a federal agency resulted primarily in a reduction of local employment opportunities.<sup>40</sup> In *McDowell v. Schlesinger*,<sup>41</sup> the earliest case discussing the need for an EIS on a federal agency proposal to reassign and relocate personnel, Judge Elmo B. Hunter examined in detail the relationship between the socio-economic and environmental consequences of an air base closing on the community.<sup>42</sup> He noted that the relocation would overcrowd the housing market in the abandoned community and that such a large number of vacant homes would invite increased vandalism with attendant law enforcement and fire hazard problems.<sup>43</sup> Additionally, he found that the base closing would decrease the tax base of the community resulting in a possible cutback in government services.<sup>44</sup> The court considered the loss of approximately 700,000 dollars in federal impact aid funds to the school districts of the affected community and the direct salary loss to residents amounting to 35 million dollars.<sup>45</sup>

Although the loss of employment to the overall metropolitan area was negligible, Judge Hunter concluded that the anticipated effect on the local community was "devastating"; therefore an EIS was necessary.<sup>46</sup> The court stated that: "while such secondary impacts may be generally insufficient by themselves to significantly affect the quality of the human environment, so as to require an EIS, there are circumstances in which such impacts . . . may be sufficient."<sup>47</sup>

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37. *Id.* at 1183-84.

38. *Id.* at 1187.

39. *Id.*

40. *See* note 22 *supra*.

41. 404 F. Supp. 221 (W.D. Mo. 1975).

42. *Id.* at 235-37, 254.

43. *Id.* at 236.

44. *Id.*

45. *Id.* at 234.

46. *Id.* at 235-36.

47. *Id.* at 245-46.

Prior to *Rochester*, the Court of Appeals for the Second Circuit never dealt specifically with the issue of whether socio-economic impacts leading to urban decay were significant environmental effects within the meaning of NEPA's EIS provision. However, in *City of New York v. United States*,<sup>48</sup> the District Court for the Eastern District of New York acknowledged that economic injury could lead to environmental damage. New York City and New York State had sued to annul an authorization by the Interstate Commerce Commission (ICC) permitting abandonment of a financially failing railroad by a private company. Plaintiffs claimed that the Commission had failed to compile an EIS as required by NEPA before issuing the authorization.<sup>49</sup> In evaluating the necessity of an EIS, the court noted that abandonment of the railroad might lead industrial freight shippers to move from the city, thus injuring the plaintiffs economically and leading to urban blight.<sup>50</sup> Nevertheless, the court remanded the matter to the ICC for further consideration on the basis of the simultaneous direct environmental effects rather than the indirect environmental consequences stemming from the economic injury.<sup>51</sup>

In *Rochester*,<sup>52</sup> the court found that the postal facility's move from

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48. 337 F. Supp. 150 (three judge court) (E.D.N.Y.), remanded, 344 F. Supp. 929 (E.D.N.Y. 1972) (three judge court).

49. 337 F. Supp. at 158.

50. *Id.* at 159, 162. Although the opinion was not explicit on this point, the following excerpts demonstrate that the court was aware of the environmental consequences of the possible unemployment resulting from the railroad users' departure:

[M]uch of the protestants' argument at the hearing and in their exceptions was not that users would turn to trucks but rather that *they would move away as soon as their leases expire, or perhaps even before. Whatever the merits of these opposing views, it is apparent that there is likely to be some adverse environmental effect as a result of the abandonment.*

*Id.* at 159 (emphasis added).

To be sure, the precise consequences for the City, its economy, and its people are not readily ascertainable; but the *Railroad's demise will undoubtedly be followed by the relocation of at least some users with the attendant loss of jobs for employees, loss of business for the users' suppliers and customers, and ultimately both the economic and physical deterioration in the local community.*

*Id.* at 162 (emphasis added).

51. *Id.* at 155, 158, 159 & n.10, 160-64.

52. 541 F.2d 967 (2d Cir. 1976). *Rochester* differs from most of the earlier cases dealing with the same question in that it involved a non-military agency. Cf. the cases cited in note 61, *infra*. However any distinctions among the functions of federal agencies taking major actions affecting the environment are unimportant in determining whether an EIS is necessary.



Rochester to Henrietta would result in the transfer of approximately 1,400 employees.<sup>53</sup> The court further found that the transfer of employees<sup>54</sup>

could have several *substantial environmental* effects, including . . . (2)(a) loss of job opportunities for inner-city residents who cannot afford or otherwise manage to commute by car or bus to the HMF site, or (b) their moving to the suburbs, either possibly leading ultimately [to] both economic and physical deterioration in the [downtown Rochester] community; . . . (emphasis supplied).<sup>55</sup>

*Rochester* extends the scope of NEPA's EIS mandate. The primary problems associated with the Postal Service's abandonment of its inner city facility are social and economic.<sup>56</sup> However these problems in turn generate secondary environmental problems: urban pollution if the Rochester residents commute to Henrietta; urban deterioration if they move to Henrietta<sup>57</sup> or remain in Rochester but lose their employment. The importance of the *Rochester* opinion is that these derivative, more remote environmental effects trigger the EIS mandate.<sup>58</sup> Thus the Second Circuit indicates that

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There are basically two relevant stages to enacting an agency proposal. At the first, the agency decides whether an EIS is required; at the second, it decides whether or not to follow through with the proposal despite the environmental consequences revealed by the EIS.

At the earlier stage, the agency's focus is on the environmental effects alone, regardless of the reasons the agency may have for its action. Only later, when the agency is deciding in light of its EIS whether to put its proposal into action, does the purpose of the proposal, and more indirectly the agency's overall function, become important in counterbalancing any adverse environmental effects. Solely at this later stage would it be reasonable to view a Defense Department transfer, pertaining to national security, differently from a United States Postal Service transfer. See note 63 *infra*.

53. 541 F.2d at 973.

54. *Id.*

55. Although the court employs the word "substantial" rather than "significant" in describing the environmental impacts of the loss of employment it clearly intends "substantial" to satisfy the significance requirement of section 4332(2)(C) of NEPA. *Id.* at 973, 978 n.14.

56. NEPA's provision typically is applied to situations where environmental damage, rather than social or economic injury would be the primary effect of a federal agency's proposal. See, e.g., *Minnesota Pub. Interest Research Group v. Butz*, 498 F.2d 1314 (8th Cir. 1974); *Scientists' Inst. for Pub. Info. Inc. v. Atomic Energy Com'n*, 481 F.2d 1079 (D.C. Cir. 1973).

57. Unfortunately, it is not clear from the court's opinion how the move to Henrietta by Rochester residents would cause urban deterioration. Perhaps the flight of residents from a neighborhood made undesirable by the postal facility's closing would result in the abandonment of local housing.

58. The EIS provision applies to *any* major action of a federal agency, including federal approval of the decisions of private industry. See *City of New York v. United States*, 337 F. Supp. 150 (E.D.N.Y. 1972) and text accompanying notes 48-51 *supra*. Considering the scope

loss of employment opportunities leading to environmental deterioration is a sufficiently significant environmental effect to activate the EIS mandate of NEPA.<sup>59</sup>

It is important that the court chose to be explicit in labeling loss of employment leading to urban decay a substantial environmental effect when it could have ignored the question altogether as it did in *City of New York*.<sup>60</sup> Perhaps the Second Circuit felt it necessary to decide this issue because it had recently arisen in other federal courts.<sup>61</sup>

The main purpose of an EIS is to force federal agencies to consider the environment in making their decisions<sup>62</sup> and to maximize endeavors to seek less environmentally damaging methods of accomplishing their goals.<sup>63</sup> The *Rochester* decision permits the EIS provi-

of federal regulation of private industry, the *Rochester* opinion has broad implications. Presumably federal authorization of a proposal by a private company which might result in local unemployment would require the preparation of an EIS.

59. 541 F.2d at 973. The court stated:

The transfer of 1,400 employees alone could have several substantial environmental effects, including (1) increasing commuter traffic by car between the in-city residents of the employees and their new job site . . . 2(a) loss of job opportunities for inner-city residents who cannot afford or otherwise manage, to commute by car or bus to the [Henrietta] site, or (b) their moving to the suburbs, either possibly leading "ultimately [to] both economic and physical deterioration in the [downtown Rochester] community," *cf.* *City of New York v. United States*, 337 F. Supp. 150 (E.D.N.Y. 1972) (three judge court); and (3) partial or complete abandonment of the downtown [facility] which could, one may suppose, contribute to an atmosphere of urban decay and blight, making environmental repair of the surrounding area difficult if not infeasible.

*Id.* The *Rochester* court finds that an EIS is also required under section 102(2)(B) of NEPA. 541 F.2d at 974. This section requires federal agencies to establish procedures to insure that environmental values are considered in its decision-making process. 42 U.S.C. § 4332(2)(B).

60. 337 F. Supp. 150 (E.D.N.Y. 1972). In *Rochester* the court could have ordered an EIS on the basis of more obviously environmental effects without declaring loss of employment leading to urban deterioration a substantial environmental effect under NEPA. 541 F.2d at 973.

61. *Breckinridge v. Rumsfeld*, 537 F.2d 864 (6th Cir. 1976), *cert. denied*, 429 U.S. 1061 (1977); *National Ass'n of Gov't Employees v. Rumsfeld*, 418 F. Supp. 1302 (E.D. Pa. 1976); *IMAGE of Greater San Antonio v. Rumsfeld*, 9 ENVIR. REP. 1183 (W.D. Tex. 1976) (BNA); *McDowell v. Schlesinger*, 404 F. Supp. 221 (W.D. Mo. 1975); *Prince George's County, Md. v. Holloway*, 404 F. Supp. 1181 (D.D.C. 1975).

62. 40 C.F.R. § 1500.1(a)(1976); 115 CONG. REC. 19009-10, 40416, 40419 (1969).

63. Obviously the issuance of an adequate environmental impact statement prior to any final decision by the agency on a proposal does not necessarily mean that the agency action will be prohibited. *See City of New York v. United States*, 344 F. Supp. 929 (E.D.N.Y. 1972).

The CEQ guidelines themselves refer to this important distinction at 40 C.F.R. § 1500.6(b) (1976) which states: "Significant effects can also include actions which may have both benefi-

sion to fulfill its purpose. Consideration of the environmental consequences of socio-economic effects is consistent with the broad purpose of NEPA "to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man . . . ." <sup>64</sup> Ordinarily, environmental factors are balanced against the economic and technical advantages of an agency action. <sup>65</sup> But where adverse environmental factors are caused by a primary economic injury, both economic and environmental considerations oppose the agency action. It is in exactly these circumstances that an agency action would be most questionable and EIS most beneficial because the EIS forces the agency to examine for itself and the community <sup>66</sup> all potential, though indirect, environmental consequences of its tentative action.

*Elizabeth Manning*

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cial and detrimental effects, even if on balance the agency believes that the effect will be beneficial." *Id.* See note 52 *supra*.

64. 42 U.S.C. § 4321 (1970).

65. *Id.* §§ 4321-4347 (1970), as amended, (Supp. V, 1975); See also 40 C.F.R. §§ 1500.1-14 (1976).

66. 42 U.S.C. § 4332(2)(C) and (G), as amended, (Supp. V, 1975); 115 CONG. REC. 19009, 19011, 40416 (1969).