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Environmental Policy Coordination at the Executive Level: The American Experience

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Note

A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise.

-- Aldo Leopold

A Sand County Almanac (1948)

The greatest obstacle to more rational and effective environmental policymaking at present is the absence of any mechanism for integrating and coordinating policy actions on the basis of an overall strategy or sets of priorities.

-- Norman J. Vig and Michael E. Kraft

Environmental Policy in the 1990s (1997b)

The twentieth century is quickly coming to an end. Environmental protection has become one of the most salient political issues for societies around the world. Almost all nation-states have created and developed some political systems for sound and effective environmental protection. However, a simple question remains: do those systems really work?

Bartlett notes that "most environmental decision making has proceeded by way of segmented and only loosely coordinated, if not conflicting, attacks on specific issues and problems" (1990: 235). This is the so-called coordination problem. Since jurisdiction for environmental policy is spread across levels of government, across branches within the federal or state government, as well as across agencies within branches or offices within agencies, we can see such problems anywhere (Segerson 1996: 159). In the U.S. federal government, for instance, the executive branch is "... institutionally fragmented, with at least some responsibility for the environment and natural resources located in eleven cabinet departments and in the U.S. Environmental Protection Agency (EPA), the U.S. Nuclear Regulatory Commission, and other agencies" (Vig and Kraft 1997a: 4).¹ Such fragmented decision making systems have been produced by national environmental legislation which "has accumulated in piecemeal fashion over a long period of time in response to specific problems and crises" (Vig and Kraft 1994: 371).

The systems have resulted in countless (both formal and informal) interagency disputes over environment-related decisions and brought less coherence and efficiency

to environmental and other regulation (Hearings before U.S. Congress. Senate. Committee on Environment and Public Works 1993: 2). For example, a small amphibian is large enough to cause such an interdepartmental conflict. The Jemez Mountains salamander is one such small amphibian that is found only in the Jemez Mountains of north-central New Mexico. Believing that the listing would place limitations on the agency's management of the Santa Fe National Forest, the U.S. Forest Service (FS) opposed the U.S. Fish and Wildlife Service's (FWS) listing of the small salamander as endangered under the U.S. Endangered Species Act of 1973 (U.S. GAO 1994: 56). In this case, disparate agency missions -- e.g., producing resource commodities (FS) and environmental protection (FWS) -- that are rooted in the existing framework of laws lead to conflicting views among those two federal agencies.

It does seem necessary, under such circumstances, to organize various sorts of activities around the environment, not around political jurisdictions. That is, it can be perceived there is a need for some focal point of balancing environmental concerns with those activities dealing with other national concerns, such as energy development and economic growth.

I. The Issues

What is called environmental policy coordination can be seen in both theoretical and practical contexts. In theory, environmental policy coordination can be interpreted "as a form of cross-sectoral coordination, as coordination across policy sectors" (Buhrs 1991: 2). There are several forms of policy coordination (e.g., coordination by hierarchical control, coordination by power, coordination by mutual adjustment), each of which has difficulties, particularly in terms of coordinated environmental decision making.

In reality, the U.S. Council on Environmental Quality (CEQ), created by the U.S. National Environmental Policy Act of 1969 (NEPA),² is one such political institution that attempts to achieve environmental policy coordination at the executive level of the U.S. federal government. NEPA declares that there is a need for a national policy to protect the environment (Section 101), and establishes CEQ as a small staff agency located in the Executive Office of the President (Section 202). By law, CEQ is to be composed of three members appointed by the President and subject to confirmation by

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the Senate. For appointment to the member, NEPA specifies high qualifications capable of formulating and recommending "national policies to promote the improvement of the quality of the environment" (Section 204). The Office of Environmental Quality (OEQ), established by the U.S. Environmental Quality Improvement Act of 1970, provides several dozens of staffs and support for the Council.³ Since CEQ and OEQ operate under the same budget, and the CEQ chairman also serves as the Director of OEQ, those two organizations are collectively referred to as CEQ (GAO 1981: 1). The statutory duties and functions of CEQ, as specified in Title II of NEPA and several Executive Orders related to the act, are (1) to offer environmental policy advice and recommendations to the President and the Congress; (2) to coordinate the environmental efforts of federal agencies' programs; (3) to acquire and assess environmental data, including the preparation of an annual environmental quality report; and (4) to oversee the implementation of NEPA (Bartlett 1995: 155-156; U.S. GAO 1981: 10-16).

A principal issue here is the obscurity of the relationship between theory and practice of environmental policy coordination. According to the theory, as stated more in detail in the following section of this article, environmental policy coordination is necessary for successful and sound environmental decision making, but it is said to be quite difficult to achieve. In practice, on the other hand, CEQ may overcome various difficulties and play a crucial role in achieving some sort of environmental policy coordination at the top level of the U.S. federal government (e.g., Bartlett 1995). Then, what kind of policy coordination is to be achieved at the highest political level in the U.S.? How has it performed in practice? Can the difficulties associated with policy coordination be overcome? If not, why not? And does it really work? The significance of this issue is that, even though there is an emerging consensus on the necessity for mechanisms for coordinated policy actions, the obscurity hinders deeper understanding of environmental policy coordination. Furthermore, a lack of understanding prevents us from appraising the merit of governmental processes and programs concerning it, and accordingly from producing "feedback" effects to the problem definition for new policy issues.

Since the coordination problems can be seen at any level of government, as mentioned above, quite a few scholars have so far paid considerable attention to a

variety of coordination activities in the dimension of environmental decision making: across levels of government, across branches within the federal or state government, as well as offices within agencies (e.g., Dryzek 1987 (esp. chap. 17); Holland, Morton, and Galligan 1996; Molnar and Rogers 1982; Ogle 1972; and Segerson 1996). However, in the discipline of U.S. environmental policy, environmental policy coordination across agencies within the U.S. federal government has been the subject of little scholarship. On the other hand, there is a relatively large body of literature which addresses the influence and effectiveness of CEQ (e.g., Liroff 1976; U.S.GAO 1981).⁴ Most studies, however, focus on the regulations and guidelines promulgated by CEQ for implementing NEPA's procedural requirements, and essentially overlook its role in environmental policy coordination.

Therefore this research will identify the important functioning of CEQ for the purpose of clarifying the relationship between theory and practice of environmental policy coordination at the executive level of the U.S. federal government. This subject matter can be analyzed from various perspectives, but in this study, the focus will be upon the formal structure of policy coordination as expressed in the discourse held in the U.S. Congress.⁵

The merit of this study is manifold. First of all, this study will serve as a pilot study which can lead to the first comprehensive analysis of CEQ in the dimension of environmental policy coordination. The fact that the Clinton administration formally proposed abolishing CEQ in 1993 shows that a kind of turning point has come to CEQ, and further underscores the importance of this study as it pertains to a current as well as an historical issue (Personal Letter to the Author from Dr. Richard N.L. Andrews. July 22, 1994). Second, if CEQ has not worked well and should be abolished, this study should be useful for considering an alternative to the Council by providing reasons as to why it has not worked well. On the other hand, if CEQ has worked well, this study should be useful for making it work better. Third, this study should be useful from the perspective of comparative environmental policy. The majority of the countries including Japan do not have any institutions like CEQ. It should be helpful for such countries to know the merit and worth of CEQ. Finally, the most important value of this study is conjunction with its focus on environmental decision making at the highest political level. Many have noted that it is at the executive level that the effective

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response to coordination problems is substantially important (e.g., Vig and Kraft 1997b: 368). The final report of the Carnegie Commission on Science, Technology, and Government accentuates this point:

“We argue for strengthening the capacity of the Executive Office of the President to reach out across a fragmented government to begin reformulating policies toward a more sustainable future. The White House is the only place in the federal government that allows a sweeping overview of the regulatory landscape, and is for this reason the best spot from which to view -- and repaint -- the big picture” (Carnegie Commission 1993: 57).

This paper begins with an explanation of the theory of environmental policy coordination, clarifying the characteristics and difficulties associated with several forms of policy coordination. The paper then examines the legislative history of NEPA to clarify what sort of policy coordination Congress intended to achieve, and analyzes the debates seen in the Appropriation Hearings to shed light on the functioning of CEQ in practice. When NEPA was enacted on New Year's Day of 1970, as this study reveals, congressional intent on environmental policy coordination was rather ambiguous, and CEQ's functioning on policy coordination evolved under several presidents. Since then, CEQ has not only played a unique role at the highest political level, but also to some degree achieved the necessary coordination even under the Republican presidents who tended to be harsh toward environmental protection. The paper concludes in its final section that, despite limited resources and (sometimes adverse) presidential priorities, CEQ has worked well. This American experience provides us with a new look at environmental administration as a whole, together with interesting implications in both theoretical and practical contexts.

II. Theory of Environmental Policy Coordination

The theory of environmental policy coordination was recently developed by Ton Buhrs, focusing on the role and effectiveness of central environmental agencies with some kind of special responsibilities for “the environment.” According to the theory,

the purpose of environmental policy coordination is to “cut across policy areas often not included under the term environment, such as economic policies, agricultural policies, energy policies, and transport policies” (Buhrs 1991: 2). In this vein, environmental policy coordination can be interpreted “as a form of cross-sectoral coordination, as coordination across policy sectors” (Buhrs 1991: 2 n.2). Policy coordination can be subsumed under two models: procedural and substantive coordination. The former is characterized by a point that does not require common goals; the latter by a point that requires common principles or purposes (Buhrs 1991: 3). Procedural coordination consists of three models: hierarchical control; the use of power; and mutual adjustment (Buhrs 1991: 2). Besides those forms of coordination identified by Buhrs, there is one another form of coordination -- coordination by rules. The last one is such a simple form of coordination that it is sometimes overlooked. Each form of coordination has a variety of problems in achieving fruitful environmental policy coordination.

Procedural Coordination

Coordination by hierarchical control occurs when central agencies are “responsible for enforcing particular principles or standards” subject to the legitimate power (Buhrs 1991: 7). There are several problems with this strategy,⁶ yet the most problematic one is that, particularly when they are “big” regulatory bodies, central environmental agencies are likely to pursue “their own version of what is rational” in terms of environmental protection (Buhrs 1991: 8). This is the so-called “agency capture” problem; it is commonly observed that each federal agency (=regulator) considers its main responsibilities to be to its specialized constituencies (=regulatees)(e.g., Alm 1992: 11).⁷ Such a characteristic of a central environmental agency is unlikely to fulfill the purpose of environmental policy coordination -- to cut across different and diverse policy areas. Lindblom points out that a political entity which thinks of itself as responsible for the public interest is sometimes “godlike” in its intolerance (1965: 30).

Coordination by power takes place when a powerful environmental advocate forces policy makers to adopt environmentally desirable courses of action (Buhrs 1991: 9). One may think that, since the U.S. environmental movement has enjoyed high levels of public support, environmental advocates should be very powerful (e.g., Dunlap 1991;

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Dunlap 1992; and Dunlap and Scarce 1991). Even in the Reagan era, for instance, public support for environmental protection not only survived but was apparently strengthened by the challenge posed by the Administration (Dunlap 1987). As a number of studies have shown, however, such high concerns toward environmental protection do not necessarily mean that environmental advocates are powerful and consistent enough to use such a strategy as coordination by power (e.g., Dunlap et al. 1992).⁸

Coordination by mutual adjustment is based on a simple idea that "... people can coordinate with each other without anyone's coordinating them, without a dominant common purpose, and without rules that fully prescribe their relations to each other" (Lindblom 1965: 3). This strategy uses various means such as negotiation, bargaining, persuasion, bribery, and so forth (Lindblom 1965: 33-34; Minnerly 1988: 255-258). There are several problems with this strategy. First, this strategy takes high transaction costs -- for example, "to put considerable resources into gathering information about other actors" (Buhrs 1991: 9). Many economic theories have clarified that the acquisition of knowledge about others' preferences and behavior is very costly (e.g., Arrow 1986: 391-392). Second, the degree of success of an actor attempting to achieve coordination by mutual adjustment depends primarily on the power and resources that other actors have (Buhrs 1991: 10). Particularly in American society, environmental advocates are unlikely to achieve successful coordination by mutual adjustment simply because other actors such as economic advocates usually have more power and resources in and outside government.⁹ Third, and finally, the specific characteristics of a so-called mission-oriented agency are likely to hamper the success of this coordination strategy. For instance, it is unrealistic to expect the mission-oriented agencies to criticize others' projects at some interagency committee or meeting when coordination by mutual adjustment is adopted as a principal coordination strategy.

Substantive Coordination

Coordination by common goals, a synonym of substantive policy coordination, "occurs when policies are made and implemented on the basis of goals or principles shared by all those involved in a policy area" (Buhrs 1991: 3). Substantive policy coordination is, in theory, "perceived by many environmental advocates and analysts as

necessary for tackling environmental problems successfully” (Buhrs 1991: 10). Indeed, a number of policy recommendations of late years either explicitly or implicitly support the strategy of coordination by common goals. Vice President Al Gore’s National Performance Review accentuates, for instance, the importance and necessity of “*coordinated ... approaches to pursue common goals*” in developing cross-agency ecosystem planning and management (1993: 12)[italics added]. However, it is said to be difficult to formulate common goals for environmental policy because those goals are different even among environmental advocates. Even if common goals are identified and successfully formulated by legislators, the theory tells nothing about how central environmental agencies can translate these goals into an effective and practicable mechanism to organize diverse activities around the environment. It is argued, therefore, that substantive policy coordination in the sphere of environmental policy is not only ambiguous on its actual meaning but also hard to achieve in political reality (Bartlett 1990: 235-354; Buhrs 1991: 10).¹⁰

One Another Form of Coordination

Coordination by rules is such simple a type of coordination that it is sometimes overlooked. In the simplest form, these can be rules like “drive only on the left side of the road and keep a minimum distance from the car in front of you.” In the realm of environmental policy, these can be rules requiring environmental impact statements and how to do them, and rules requiring agencies to submit policy proposals to an adequate central environmental agency for review. Rules are helpful or even necessary for solving coordination problems, and coordination by rules work well “in a situation where the incentives for cooperative action are strong” (Chayes and Chayes 1995: 137). In the case of driving, for example, it is obvious that all drivers have strong incentives to avoid accidents. In the context of environmental policy, however, most agencies have their own missions which are different from environmental protection. Under those circumstances, environmental protection is unlikely to be such strong incentives for those mission-oriented agencies for cooperative action. It can be difficult to say, therefore, that mere rules would work as a coordination strategy in the sphere of environmental policy.¹¹

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The recent development of theory seen in this section gives us an opportunity to analyze the structure of environmental policy coordination at the top level of the U.S. federal government. The following sections will explore (1) what sort of environmental policy coordination Congress intended to achieve and (2) how it has been achieved in practice.

III. An Instrument to Achieve Environmental Policy Coordination: The Intentions of the Framers of NEPA

Through an examination of the legislative history of NEPA, this section will identify the legislative intent on environmental policy coordination.¹² That is, this section will explore the original structure of policy coordination that the framers of NEPA intended to achieve at the executive level of the U.S. federal government. The focus of analysis is upon the form of policy coordination and the instrument to achieve the necessary coordination. What role in performing environmental policy coordination did Congress anticipate CEQ and/or other political institutions to play at the highest level? What kind of problems were associated with the structure? Consequently, the analysis in this section will reveal not only the original structure of policy coordination, but also the basic characteristics of central environmental agencies that attempt to achieve policy coordination.

National Environmental Policy and Coordination by Common Goals

The legislative history of NEPA begins at the end of 1950s. On August 17, 1959, Senator James E. Murray (D-Montana) introduced S.2549 (Resources and Conservation Act of 1960). The bill contained major elements "ultimately incorporated in NEPA -- a declaration of policy, an advisory council in the EOP [=Executive Office of the President], an annual report" (Caldwell 1997: 28). "Coordination" was one of the essentials of the policy statement of S.2549. Section 2 of S.2549 stated the proposed policy:

"The Congress hereby declares that it is the continuing policy and responsibility of the Federal Government ... to use all practicable means including *coordination* and

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utilization of all its plans, functions, and facilities for the purpose of creating and maintaining ... conditions under which there will be conservation, development, and utilization of natural resources of the Nation to meet human, economic, and national defense requirements, including recreational, wildlife, scenic, and scientific values and enhancement of the national heritage for future generations" (*Congressional Record* Vol.105: 15980) [italics added].

A number of bills like S.2549, designed to establish a national environmental policy, were introduced to Capitol Hill from 1959 through 1969. Many of those bills declared a national environmental policy expressing a positive role for the federal government in overall resource management, and including policy coordination to organize various sorts of activities around the environment.

One may be surprised to see that, throughout the legislative history of NEPA, the declaration of national environmental policy (and its content) received little attention among decision makers. In other words, there existed few objections to setting forth a national environmental policy. This apparently unanimous support is partly due to the circumstances under which the environmental movement as a popular political force gained momentum in American society toward the end of the 1960s. Little opposition, in turn, leads to another interpretation that the policy statement was not an important concern of most of the legislators. The reasons for the indifference of legislators toward the policy statement are twofold: (1) as is often the case with most policy statements, a national environmental policy in any bill was of little legal significance and (2) attitudes toward the environment have been "largely issue specific and subjective" (Caldwell 1997: 33).

Finally, Title I of NEPA set forth a lofty and profound national environmental policy, where policy coordination was identified as a continuing responsibility of the U.S. federal government. Section 101(b) of the statute states:

"... it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and *coordinate* Federal plans, functions, programs, and resources ..." [italics added].

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Since Section 101 is shared by all entities of the U.S. federal government, Congress appears to have adopted *coordination by common goals* as the primary strategy for environmental policy coordination in the U.S. context. As Dr. Lynton K. Caldwell, one of the principal drafters of NEPA, aptly notes, however, “[E]xhortation has seldom been an effective instrument of political or moral reform” (1982: 51). NEPA and the earlier bills had to design some mechanism to achieve the necessary coordination.

An Instrument to Achieve the Necessary Coordination

Before 1969, the legislators seem to have assumed that a small advisory council located in the Executive Office of the President would serve as a means for the necessary coordination. Besides declaring a national environmental policy, in 1959, S.2549 proposed to create a small advisory council located at the top level. The major tasks of the three-member council were to (1) prepare an annual report on environmental quality, (2) appraise Federal programs in light of the policy declaration, (3) develop environmental policies, and (4) gather and analyze information on environmental quality (*Congressional Record* Vol.105: 15981). The structure of S.2549 was comparable with the Employment Act of 1946. In his introducing the bill, Senator Murray made remarks on it:

“It (=S.2549) seeks for natural resources answers to problems comparable with the employment and economic problems dealt with the 1946 act. Our experience with that act assures that the method is workable. It demonstrates that ... the Council of Economic Advisors in the White House ... can be effective in developing answers for complex problems for national concern, and ... effective in implementing the answers with ... executive action” (*Congressional Record* Vol.105: 15979).

Then, the hearings on S.2549 were held in January of 1960, and in his opening statement, Senator Murray noted:

“Another aspect of this proposed legislation is its provision for *coordination* of resource activities. At present, resource development and conservation not only are inadequate, but also they are *uncoordinated*. This results in conflict, overlapping,

duplication of effort, and significant unheeded gaps. ... Within the Federal executive establishment, there certainly is an abundance of harmful competition, conflict, and working at cross purposes. Much of this reflects shortcomings of department administration that could be cured by more thorough and knowledgeable *executive direction*" (Finn 1972: 16)[italics added].¹³

His remarks show that the proposed council was a principal instrument to provide what Senator Murray called "executive direction" and to break away from the shackles of fragmented government responsibility for the environment.

After S.2549's failure to advance beyond committee hearings, many bills proposing the creation of a small advisory council on environmental quality in the Executive Office of the President were introduced during the 1960s. S.2805 was one of those bills, introduced by Senator Henry M. Jackson (D-Washington) and Sen. Thomas H. Kuchel (R-California) on December 15, 1967. S.2805 was not significantly different in its content from the earlier bills, yet was supported by a background paper titled "*A National Policy for the Environment.*" The report was prepared by Dr. Lynton K. Caldwell, and issued by the Senate Interior Committee on July 11, 1968. This report is one of the most important documents in the development of CEQ since it clarified the functioning of the proposed council in detail.

In the report, the functions of the proposed agency are fourfold: (1) the agency takes specified factors, including the scientific, into account in the course of its analysis and recommendations on environmental policy issues; (2) the agency is not only to have investigatory functions but also to have policy-facilitating functions; (3) its nearest functional counterpart is CEA (the U.S. Council of Economic Advisors); and (4) the agency must be located at the highest level if its advisory and *coordinative* roles are to be played effectively (Caldwell 1995: 154). In addition, Dr. Caldwell emphasizes that the agency's "membership should be broadly representative of the breadth and depth of national interests in man-environment relationships" (Caldwell 1995: 158-159).

Thus, by the end of 1968, the legislators seem to have assumed that a small advisory council located in the Executive Office of the President would develop answers (=what Senator Murray called executive direction), and the President and other top decision makers at the White House implement the answers for the necessary coordination.

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Cabinet Committee on Environment: Richard Nixon's Fast-break

On June 3, 1969, President Nixon established the Cabinet Committee on Environment (CCE) by Executive Order No.11472 (*Senate Report* No.296 1969: 15). CCE was an interdepartmental committee to discuss and deal with various environmental concerns at the executive level. The Committee consisted of the Secretaries of Interior, Agriculture, Health, Education, and Welfare, Transportation, Housing and Urban Development, and Commerce, together with the Vice President and President, as Chairman (*House Report* No.378 1969: 4). The Executive Secretary of CCE was the President's science advisor, and staffing for the Committee was provided through the Office of Science and Technology (OST) (*House Report* No.378 1969: 4). The sudden emergence of CCE as a central environmental agency stirred up Congressional debates about the role of the proposed CEQ simply because the Committee's functioning appeared to be similar to, or duplicative of, that of the proposed CEQ.

Senate

On February 18, 1969, Sen. Jackson reintroduced S.2805 as S.1075 to the Senate. The main components of S.1075 were (1) to authorize the Secretary of the Interior to conduct environmental research and (2) to establish a Council on Environmental Quality (CEQ) to advise the President and to prepare an annual environmental report. In the bill, CEQ would be composed of professional members qualified to analyze and interpret environmental trends and responsive to a variety of needs and interests of the nation. Hearings on S.1075 were held on April 16, 1969, before the full Committee on Interior and Insular Affairs chaired by Sen. Jackson (*Senate Report* No.296 1969: 10-11).

The focus at the hearings was upon the proposed creation of CEQ. Administration witnesses expressed their opposition to the creation of CEQ, insisting that President Nixon was about to establish CCE for the same purpose (Andreen 1989: 216). To defend the proposed council, many senators and others made favorable comments on CEQ. Among them, Dr. Caldwell stressed "what was needed was a new political and evaluative viewpoint on environmental policy, not the sort of technical and scientific approach that would be provided to the Cabinet council by the existing Office of Science and Technology" (Andrews 1976: 9 n.7).

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After the hearings, S.1075 was amended and then reintroduced by the Committee to the Senate in July 1969 [hereinafter Amended S.1075]. Amended S.1075 further developed the concept of an advisory council created at the highest political level. The bill proposed the establishment of the Board of Environmental Quality Advisors to the President (BEQA) and defined a variety of its functions (*Senate Report No.296 1969: 10*).

One of those tasks was to “periodically review and appraise Federal programs, projects, activities, and policies which affect the quality of the environment and make recommendations thereon to the President” (Amended S.1075 § 302(b), *reprinted in Senate Report No.296 1969: 4*). In terms of this role, the committee report explained that BEQA was to periodically examine the “general direction” of federal programs and to recommend “general changes” in direction of such programs, but not to be involved in the “day-to-day decisionmaking processes of the Federal Government or ... in the resolution of particular conflicts between agencies and departments” (*Senate Report No.296 1969: 25*). In the committee’s view, those latter functions could best be performed by the Bureau of the Budget, by CCE, or by the President himself (*Senate Report No.296 1969: 25*).

According to the Senate Committee Report on Amended S.1075, the functions and activities of BEQA and CCE were to be “not in conflict” (*Senate Report No.296 1969: 16*). The committee explained that the former was to provide “objective and impartial advise as well as a long-range overview and problem identification function,” and the latter was to be “action oriented and composed of those Cabinet officers chiefly concerned with environmental matters” (*Senate Report No.296 1969: 16*).

On July 10, 1969, amended S.1075 was passed by the Senate and then sent to the House of Representatives.

House of Representatives

On July 11, 1969, the Subcommittee on Fisheries and Wildlife Conservation of the House Committee of Merchant Marine and Fisheries, chaired by Rep. John Dingell (D-Michigan), reported H.R.12549 after 7 days of hearings held during May and June (*House Report No.378 1969: 2*). As Amended S.1075, H.R.12549 also proposed a declaration of policy and the creation of a small advisory council located in the

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Executive Office of the President. The House Committee Report noted that the proposed council should review federal plans and activities continuously and inform the President of the degree that these plans and activities conform with the policy statement (*House Report No.378 1969: 10*).

In terms of the relationship of the proposed council to CCE, the House Committee Report explained that CCE was “a means of *coordinating* and resolving internal policy disputes” between different federal agencies, whereas the proposed council was a high-level, independent body to “provide a consistent and expert source of review of national policies, environmental problems and trends, both long term and short term” (*House Report No.378 1969: 8*)[*italics added*]. The Report, in particular, stressed that “[a]n *independent review* of the interrelated problems with environmental quality” was of critical importance (*House Report No.378 1969: 3*)[*italics added*].

The framers of NEPA acknowledged the coordinative character of CCE and the independent one of the proposed council. It was the Congressional intent that, even though those two bodies would perform different tasks, CCE and the proposed council were complementary with regards to their functioning. That is, the proposed council was to develop answers for complex problems with environmental quality, and CCE was to implement the answers with executive action.

Besides the proposed council and CCE, on the other hand, the related bills had the so-called action forcing provisions, one of which was to require environmental impact statements (EISs). Since it would be applicable to all agencies that had responsibilities that affect the environment, the requirement was to serve as a device for promoting coordination (by rules). During the legislative history of NEPA, however, the provision for EISs requirement was not explored in depth. There was little discussion among the framers of NEPA to make it clear how to require EISs.

After several minor changes were made in the related bills by the conference committee, the committee submitted its report on December 17, 1969.¹⁴ Without debates over the merits of the conference report, both houses promptly approved the report, and then, on January 1, 1970, President Nixon signed NEPA into law.

Summary: Ambiguity, Compromise, and Suspicion

The analysis of NEPA history helps clarify the original structure of environmental policy coordination at the executive level of the U.S. federal government. Throughout the NEPA history, the legislators acknowledged the necessity for mitigating and resolving the so-called coordination problems. The legislators' concern resulted in incorporating "coordination" as an essential part of the national environmental policy. Since they also became aware that a mere declaration of policy was seldom an effective instrument of administrative reform, however, the drafters of NEPA needed to design some mechanism to achieve the necessary coordination. By 1969, as the record suggests, the legislators of NEPA appear to have thought that a small advisory council located in the Executive Office of the President would serve as a principal means for the necessary coordination: the proposed CEQ would develop answers (=what Senator Murray called executive direction), and the President and other top decision makers at the White House would implement the answers for the necessary coordination.

When President Nixon suddenly assembled CCE as a central environmental agency in June 3, 1969, the legislators of NEPA had to defend the concept of an independent and advisory council, since the functioning of the proposed CEQ appeared to be akin to, or duplicated by, that of CCE. The legislators of NEPA took the position that both CCE and the proposed CEQ were necessary: those two bodies would perform different tasks, yet their function and activities were complementary. That is, the proposed CEQ was anticipated to provide the advice, recommendations, and other information that were necessary for policy coordination to happen by such an action-oriented institution as CCE.

Under the original structure formulated by the Nixon administration and the drafters of NEPA, thus, not so much CEQ as other entities like CCE would be the principal instruments to achieve environmental policy coordination at the executive level. However, many of the legislators were suspicious whether CCE would work well as an effective and practicable coordination body in political reality. They were aware of the broadly-appealing rhetoric that the interagency committees like CCE "exemplify a need for co-ordination and provide evidence (*which may or may not be valid*) that coordination is occurring" (Caldwell 1970: 193)[*italics added*]. That is, the interagency committees like CCE were to give the strong *appearance* that policy coordination was

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occurring.

Even among the supporters of the related bills, on the other hand, few recognized the importance of one another mechanism for coordination -- EISs requirement as a means to facilitate coordination (by rules).

The next section will explore environmental policy coordination *in practice*, where CEQ has played a significant role as a principal instrument for the necessary coordination.

IV. Coordination by CEQ:

Environmental Policy Coordination in Practice

Through examining the debates seen in the Appropriations Hearings, in this section, the functioning of CEQ in practice will be identified and discussed. Once it became obvious that CCE was no longer an effective vehicle to achieve the necessary coordination, as this section will reveal, it was CEQ that took its place. However, few have so far had a firm grasp of how the Council has achieved its task in policy coordination and under what sort of structure. Quite a few have, even worse, thought that CEQ could hardly achieve the necessary coordination simply because it does not have "the final decision-making authority" to resolve interagency disputes (e.g., Hearings before U.S. Congress. Senate Committee on Environment and Public Works. 1993: 2, 31). The analysis in this section will clarify the current structure of environmental policy coordination at the executive level of the U.S. federal government, under which CEQ has played its role well.

Dysfunction of CCE and Emergence of New Structure

As pointed out in the former section, CCE was to be a principal instrument to achieve the necessary coordination. In practice, however, CCE made little contribution in working out fragmented and inconsistent decision making systems since each of the heads of the federal agencies gave precedence to his or her agency's statutory mission, rather than coordinated environmental policy (e.g., Donovan 1971: 323-324; Sandler 1970: 140-141). Russell E. Train, the Administration spokesman while NEPA was under consideration in the U.S. Congress, states in an interview:

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“... it [=CCE] wasn't terribly effective. It tended to represent what I would call the lowest common denominator among the existing agencies, rehashing what they were doing already or wanted to do in the future. There was no new cutting edge there” (U.S. EPA 1993: 4).

Before the passage of NEPA, in fact, most of the legislators had doubted if CCE would work well as a principal instrument to achieve the necessary coordination (e.g., *House Report No.378 1969: 6*). Sen. Jackson had noted, for example, that CCE “is a highly visible but ineffectual gesture on behalf of environmental policy; that it promises more rhetoric than action; and that it will be an unobtrusive symbol of concern” (Wandesforde-Smith 1970: 221).

At interdepartmental committee meetings, as shown in Russell Train's statement, it was unrealistic to expect mission-oriented agencies to criticize their own programs or those of other agencies. Moreover, CCE would have involved mutual adjustment, but only a very limited form of it, among Cabinet level secretaries only, and then only if the secretaries were willing to carry through coordination through hierarchical control (E-mail to the Author from Dr. Robert V. Bartlett. March 25, 1999). There was nothing in the CCE structure that was likely to lead mutual adjustment coordination by lower levels of the respective agencies.

The dysfunction of CCE was followed by the growth of CEQ's role in policy coordination. On the one hand, two Executive Orders vested CEQ the authority to issue guidelines and regulations to clarify how to require EISs, which substantially strengthened the Council's role in coordination by rules. On March 5, 1970, President Nixon issued Executive Order No.11514, which ordered CEQ to “*Coordinate Federal programs related to environmental quality*” (Executive Order No.11514 § 3(f), *reprinted in Council on Environmental Quality 1970: 280*)[italics added]. As one of the means to achieve the necessary coordination, the order gave CEQ the authority to issue guidelines and other instructions for federal agencies to use in the preparation of EISs (Executive Order No.11514 § 3(h)and(i), *reprinted in Council on Environmental Quality 1970: 280*). In 1978, this authority was strengthened by Executive Order No.11991, which vested CEQ to promulgate NEPA regulations that would be binding on all federal agencies (Executive Order No.11991, 3 C.F.R. 123 (1978)). In

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1979, in *Andrus v. Sierra Club*, the U.S. Supreme Court granted substantial deference to CEQ regulations issued in 1978, by which the authority of CEQ as a principal interpreter of NEPA was reinforced.¹⁵

On the other hand, the 1970 creation of a brand-new central environmental agency -- the U.S. Environmental Protection Agency (EPA) -- and the same year's passage of the Clean Air Act Amendments reassured the role of CEQ in policy coordination, and made the Council directly involved in it. Just a few months after issuing Executive Order No.11514, President Nixon released the "Message of the President Relative to Reorganization Plans Nos. 3 and 4 of 1970" to establish EPA (Council on Environmental Quality 1970: 294). The message identified one of the most major roles of CEQ as policy coordination, whereas EPA's role was in "setting and enforcing pollution control standards" (Council on Environmental Quality 1970: 300). The relationship between those two central environmental agencies was also seen in Section 309 of the Clean Air Act Amendments of 1970 which was signed into law on December 31, 1970 (Andreen 1989: 229 n.182). The section authorized the Administrator of EPA to refer proposals involving possible unsatisfactory environmental effects to CEQ (42 U.S.C.A. § 7609(b) (1995)). Since a specific matter would be referred to CEQ as a consequence of the interagency conflicts, the referral under the section exemplified the higher-level authority of CEQ as opposed to that of EPA, particularly in the dimension of environmental policy coordination.

Under the accumulation and enhancement of authority to perform the necessary coordination, then, how has CEQ attempted to achieve it *in practice*?

The Program Responsibilities of CEQ in Coordinating Environmental Policy

According to *Budget Justification* prepared by CEQ for the use of the Appropriations Committees that have authority over the activities and budget of the Council, the basic statutory mandates of CEQ are threefold: (1) environmental policy analysis and development, (2) interagency coordination of environmental quality programs, and (3) environmental data acquisition and assessment (e.g., Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1988). Each of the key statutory mandate is briefly explained below.

Under the first category "Environmental Policy Analysis and Development," CEQ is

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to “[D]evelop and recommend national policies which foster and promote the improvement of environmental quality to meet the health, natural resources, economic, social and other requirements and goals of the nation” (Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1984: 65). Since its inception of 1970, CEQ has played a significant role in the development of new environmental policy initiatives. For example, CEQ was deeply involved in the issue that the chemical toxins used for predator control “often destroy other species in the ecological chain who feed on the predator’s poisoned carcass” (Caragher 1986: 657). In 1971, CEQ issued a report on predator control with the recommendation that the use of chemical toxins for predator control on federal lands should be restricted (Council on Environmental Quality 1972: 141). Subject to CEQ’s recommendation, on February 8, 1972, President Nixon issued Executive Order No. 11643 titled *Environmental Safeguards on Activities for Animal Damage Control on Federal Lands* (Executive Order No. 11643, 3 C.F.R. 140 (1973), reprinted in Council on Environmental Quality 1972: 422). CEQ has so far taken many other environmental initiatives both in the domestic and international contexts.¹⁶ Under this category, in addition, CEQ is required to prepare and publish an annual environmental quality report.

Under the second category “Interagency Coordination of Environmental Quality,” CEQ is to “[A]ssist federal agencies in the implementation and coordination of programs and activities which protect and improve environmental quality” (Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1984: 65). CEQ applies a considerable amount of its limited resources to this category. In 1979, for example, CEQ requested \$3,123,000 for Fiscal Year 1980, and \$1,094,000 (about 35% of the requested budget) was to be applied to interagency coordination (Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1979: 1, 43). The program responsibilities composed of this second category will be explained more in detail in this section.

Under the third category “Environmental Data Acquisition and Assessment,” CEQ is to “[G]ather and analyze information relevant to conditions and trends in the quality of the environment and compile and submit to the President studies relating to such conditions and trends” (Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1984: 65). For example, CEQ was involved in

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developing a computer system and information network, providing analytic support for other agencies.

Then, what program responsibility consists of the statutory mandate -- "Interagency Coordination of Environmental Quality"? Each year's *Budget Justification* shows the following three major program responsibilities in this area: (1) oversight of agency implementation of NEPA [hereinafter NEPA oversight], (2) coordinating federal environmental programs, and (3) coordination and clearance of proposed legislation and executive orders. Each responsibility is further described below with regards to its content.

(1) *NEPA Oversight*: The role of CEQ in NEPA oversight is not clearly specified in NEPA and, as explained above, has evolved under several presidents. In performing NEPA oversight, according to CEQ, it wants to see "whether agency implementation of NEPA could be streamlined to make it more efficient; promote the integration of environmental, social, and economic factors; and ensure openness in government - as called for under the Act" (Council on Environmental Quality 1997: 3). In *Budget Justification* for FY 1989, the following activities are identified as NEPA oversight.

First, CEQ issues regulations to federal agencies to implement the procedural aspects of NEPA, which require all federal agencies to prepare EISs for major federal actions that will have a significant effect on the quality of the human environment. In 1978, CEQ promulgated the formal regulations which would be binding on all federal agencies (43 *Federal Register* 55978 (1978)). The regulations have been sometimes supplemented by the formal guidance issued by CEQ. On July 28, 1983, for instance, CEQ issued such guidance with regards to six topics in NEPA process such as "scoping" and "categorical exclusions" (48 *Federal Register* 34263 (1983)).¹⁷ Assisted by those regulations and guidance, all federal agencies adopt their own procedures to implement the procedural requirements of NEPA.¹⁸

Second, CEQ reviews those procedures adopted by federal agencies and their amendments for conformity with NEPA and the CEQ regulations (40 C.F.R. § 1507). Through this reviewing process, CEQ informally forces greater environmental awareness and more careful planning in environment-affecting agencies. In Fiscal Years 1983 and 1984, for example, CEQ reviewed the amendments to NEPA

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procedures for Tennessee Valley Authority, Rural Electric Administration, Department of Agriculture, Farmers Home Administration, and the Army Corps of Engineers (Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1984: 85).

Third, and finally, CEQ can receive a referral from other federal agencies with regards to interagency disagreements on proposed major federal actions which might cause unsatisfactory environmental effects, and take a variety of actions -- e.g., holding public meetings or hearings, publishing CEQ's findings and recommendations, submitting the referral and the response together with CEQ's recommendation to the President for action -- to resolve the conflicts between agencies (42 U.S.C.A. § 7609(b); 40 C.F.R. § 1504.3(f)).

(2)*Coordinating Federal Environmental Programs*: the main activity of CEQ under this category is to chair and participate in a variety of interagency commissions, committees, and task forces (Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1984: 51-55). Together with other agencies, CEQ is to develop policy and program recommendations for such interagency commissions (Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1979: 50). Chaired and coordinated by CEQ, for instance, the Toxic Substances Strategy Committee made "recommendations for reducing research overlaps and gaps, improving data sharing ... , and for developing a uniform federal cancer policy" (Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1980: 1084).

(3)*Coordination and Clearance of Proposed Legislation and Executive Orders*: CEQ is to provide official comments upon draft legislation affecting the environment as requested by other top decision makers. Legislative clearance is the mechanism used for the implementation of consistent environmental policy and preservation of the spirit of NEPA. Anticipating conflicts between proposed legislation and NEPA, in particular, CEQ attempts "an early resolution of those issues" (Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1988: 693-694). In the Ford era, for example, CEQ made a formal recommendation on H.R.8122 (Public Works for Water and Power Development and Energy Research Appropriation Act of 1976). The purpose of the bill (H.R.8122) was to appropriate a considerable amount of money

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(\$7,278,712,500) for activities of the old-line agencies like the U.S. Corps of Engineers (Memorandum for the President from James T. Lynn, December 23, 1975). CEQ made a formal recommendation that the President veto the bill on the ground that the budget allocations to the Corps of Engineers and the Bureau of Reclamation are objectionable for both economic and environmental reasons (Memorandum for the President from Russell W. Peterson, December 19, 1975).

Two Cases of Policy Coordination by CEQ

Mere description of *Budget Justification* is not enough to have a firm grasp of how CEQ has achieved the necessary coordination in practice. This study looks at two cases: (1) the referral on the U.S. Corps of Engineer's amendment to its NEPA procedure and (2) the Interagency Task Force on Acid Precipitation. In terms of the relationship to the above-stated program responsibilities, the first case corresponds to *NEPA Oversight* and the second one to *Coordinating Federal Environmental Programs*. These two cases will show how CEQ coordination has worked, and accordingly will to some extent tell us what environmental policy coordination means in reality.

The Referral on the U.S. Corps of Engineer's Amendment to Its NEPA Procedures

NEPA requires all the federal agencies to consider the full scope of project impacts and alternatives in NEPA documents. However, the agencies often seek to narrow the required scope of NEPA analysis to the project effects that can be handled within their regulatory jurisdiction. Such limited scope of analysis is likely to result in disregard of cumulative or indirect effects that are still reasonably foreseeable, which can be contradictory to the ambitious goals of NEPA. This is the so-called "small handle" problem (Anderson, Mandelker, and Tarlock 1990: 791-792).¹⁹

Supported by Vice President Bush's Regulatory Reform Task Force, in 1984, the U.S. Corps of Engineers [the Corps] proposed to amend its regulations so as to narrow its NEPA review to those project effects that are within its control and responsibility (Parenteau 1990: 750). EPA immediately raised a red flag against the proposal, expressing its view that the Corps had gone "too far" in scaling back its NEPA analysis (Parenteau 1990: 751). After two years of negotiation, EPA and the Corps were unable

to resolve their disagreements, and in December 1986, EPA finally referred the Corps' proposal to CEQ (*Environmental Law Reporter (BNA)* June 12, 1987). Four major issues were identified in the dispute, but the most salient one is the above-mentioned "small handle" problem.²⁰

CEQ held informal public meetings to consider the issues raised in the referral, and also deliberated the many written comments which were received. The comments ranged from the opinion that the Corps had no necessity to change its regulations, to the position that the Corps should have gone further (*52 Federal Register* 22518-22522 (1987)). After a thorough review of the matter, CEQ issued its Findings and Recommendations (*52 Federal Register* 22517 (1987)), and then worked with the Corps to implement the suggested changes to the proposed amendments (Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations 1988: 687).

This does not mean that EPA and the Corps accepted *all* the recommendations that CEQ made. However, the Corps called the CEQ decisions "a reasonable compromise" (*Environmental Law Reporter (BNA)* June 12, 1987). And EPA was also satisfied with the progress the Corps made, admitting that "the referral process had improved the [Corps of Engineers'] regulations" (Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations 1988: 611).

The Interagency Task Force on Acid Precipitation

The Interagency Task Force on Acid Precipitation was established by the Acid Precipitation Act of 1980 (Title VII of the Energy Security Act of 1980, P.L.96-294, 42 U.S.C.A. § 8901 et seq. (1995)) in order to develop and implement a comprehensive National Acid Precipitation Assessment Program (NAPAP) (Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1983: 73).²¹ By law, the Task Force was to be composed of the senior officials of twelve federal agencies including CEQ, the directors of four national laboratories, and four presidential appointees, and was to be jointly chaired by the Department of Agriculture (USDA), EPA, and the National Oceanic and Atmosphere Administration (NOAA) (42 U.S.C.A. § 8902 (1995)).²² CEQ was originally designated to be the executive secretary by staffing and serving as the clerical focal point for the Task Force (Hearings

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before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1980: 1053).

The large number of projects and agencies involved led to inconsistency and fragmentation of policy development in the Task Force, and the necessity for coordination there (Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1983: 33). On January 31, 1983, the White House asked CEQ to head up the coordinating unit, and CEQ was designated a "lead coordinating agency" with responsibility for directly managing and supervising the activities of the Task Force (Memorandum for Department and Agency heads from Edwin Meese III, Counselor to the President. January 31, 1983, *reprinted in* Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1983: 39).

The following remarks of a CEQ member are helpful in understanding how CEQ attempted to coordinate the overall policy related to acid rain issues. At the Appropriations Hearings of 1983, Nancy Maloney, one of the three members of CEQ, testified that the role of CEQ in coordinating the overall policy concerning acid rain issues was not so much a scientific/technical one as a management/administrative role (Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1983: 39). She stated that

"... I have no intention of getting involved in the science. ... What I see myself doing is coordinating ... that the questions that you in the Congress are asking the public are being addressed. ... When you have a number of agencies and scientists in the agency, if there are no parameters somewhere, we couldn't go on. Certainly there are questions being asked – the major one is what happens when the power plant is running and what does it look like in a particular area and can you identify the source? That is the major question. We have to focus on that and other relevant questions to be sure that research is oriented towards that and those relevant questions are being answered" (Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1983: 39-40).

Her remarks show that CEQ coordinates the White House and federal agencies concerned with acid precipitation to insure that the federal research effort is responsive

not only to scientific/technical questions but also to a broad range of policy questions being asked by Congress and other policy makers. In this respect, CEQ could be viewed as a catalyst to develop a cutting-edge policy across sectors, and to make sure that other entities are involved. What her remarks imply is, on the other hand, that it would be necessary to have some parameters in case that a number of agencies participating in a coordinating unit should rehash what they have already done and want to do in the future.

In 1984, an ad hoc external review panel chaired by John Deutch of the Massachusetts Institute of Technology found several weaknesses in NAPAP developed and implemented by the Task Force, but the panel was, in fact, "favorably impressed with the progress that NAPAP has made ... the manner in which the interagency process is working to coordinate research projects in the participating agencies, and the scope of the present research effort" (Regens and Rycroft 1988: 56).

As the leading coordinating agency, in addition, CEQ not only took part in the discussions with the Cabinet Council on Natural Resources and the Environment²³, but it also presented the President with a paper in which CEQ offered a set of options for tackling acid rain problems (Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1984: 28).²⁴

Summary: What Policy Coordination Means in Practice

The analysis of *Budget Justifications* and the discourse held in the U.S. Congress sheds light on the current structure of environmental policy coordination, where CEQ has played a central role. After the exposure of CCE's dysfunction as a principal instrument to achieve the necessary coordination, CEQ in practice replaced the functioning of CCE. The current structure of policy coordination was developed under several presidents.

While it does not have the final decision-making authority to resolve interagency disputes, in practice, CEQ has performed its tedious task of coordination through a variety of practical modes. Coordination activities by CEQ vary in their nature, and this study looked at the two cases in order to have a firm grasp of what an ambiguous term such as "policy coordination" means in political reality. In those two cases, CEQ coordination actually worked, and the Council attempted to achieve the necessary

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coordination even under the Republican presidents.

The following section will summarize the analysis in this paper and conclude that CEQ has functioned well under the current structure of policy coordination. The conclusion will provide several implications both in theoretical and practical contexts, which will give us a new look at environmental administration as a whole.

V. Summary and Concluding Remarks

This paper has so far explored the functioning of CEQ in environmental policy coordination at the top level of the U.S. federal government. Then, what is clarified in this study with regards to the relationship between theory and practice of environmental policy coordination in the U.S. context? That is, what sort of policy coordination was to be achieved at the highest political level in the U.S.? How has it been performed in practice? Can the difficulties associated with policy coordination be overcome? If not, why not? And does the system of environmental policy coordination really work?

The analysis of NEPA history shows that, under the original structure of policy coordination, it was not so much CEQ as CCE that would be a principal vehicle to achieve the necessary coordination. CEQ was anticipated to provide CCE with objective and impartial information that was necessary for policy coordination, but not to be directly involved in coordination activities such as the resolution of interagency conflicts. The latter functions were to be performed by such an action-oriented institution as CCE. As seen in the previous section, however, CCE did not work in reality. The dysfunction of CCE was followed by the growth of CEQ's role in policy coordination. The issuance of several Executive Orders, the creation of EPA, and the passage of Clean Air Act Amendment of 1970 together led to the emergence of current structure of policy coordination.

Under the current structure, CEQ has played a central role in policy coordination, using *all* forms of coordination -- hierarchical control, power, mutual adjustment, common goals, and rules -- as coordination strategy: e.g., CEQ reviews each agency's procedures to implement EISs requirement (coordination by rules) in the light of the policy set forth in Section 101 of NEPA (coordination by common goals); as a lead coordinating agency, CEQ facilitates mutual adjustment among a number of agencies

involved in a variety of interagency commissions, committees, and task forces (coordination by mutual adjustment); in the case of NEPA referral subject to Section 309 of Clean Air Act, CEQ tries to resolve the conflicts between agencies by showing the evidence that public opinion against the matter referred to the Council has mounted (coordination by power) or by solicit presidential decrees (hierarchical control). CEQ is not strongly endowed with any of those forms of coordination, but it has just enough to have *some* effectiveness as a policy coordinator (E-mail to the Author from Dr. Robert V. Bartlett, March 25, 1999).²⁵ In the two cases examined in this study, for instance, CEQ coordination actually occurred even under the Republican administrations.

Then, an important question still remains unanswered: why has CEQ coordination worked well in political reality, despite the fact that the Council is a small staff agency without being given the power to veto agency projects or disapprove EISs prepared by agencies? This question can be to some extent explained from the structural perspective that is taken in this study. That is, it can be argued that the current institutional design of the environmental administration should ensure that policy coordination by CEQ will happen in practice. This argument is supported in the following respects.

First of all, CEQ possesses institutional authority, drawing on its position as a presidential advisor and its location in the Executive Office of the President (Sections 202 and 204 of NEPA). In turn, EPA has ample regulatory power and resources, but its departmental status results in the fact that its oversight role "has not always made the Agency [EPA] popular with ... sister federal agencies" (Wilson 1988: 24). The institutional authority helps the Council fulfill its program responsibilities, including policy coordination. The success of the referral process under Section 309 of the Clean Air Act provides one good example. In the case of *the Referral on the U.S. Corps of Engineer's Amendment to Its NEPA Procedures*, it would have been hard for EPA to fight well against the Corps which was supported by the Vice President's Task Force, without referring the issue to the level of CEQ.

Second, the statutory basis of CEQ can mitigate to some extent the mal-effects of the so-called *administrative presidency*, which ensures CEQ's competency for the task of policy coordination even under the Republican administrations.²⁶ It is well-known that the Reagan administration almost succeeded in eviscerating U.S. environmental policies by appointing anti-environmentalists to the Administrator of EPA and the

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Secretary of the Interior Department (e.g., *CQ Almanac* Vol.39 1983: 327-335). Since Title II of NEPA requires the members of CEQ to have high qualifications and the appointment to CEQ is subject to confirmation by the Senate, it is hard for the President to appoint anti-environmentalists to the Council. On May 15, 1981, for example, Ronald Reagan nominated James E. McAvoy, director of the Ohio Environmental Protection Agency, to serve on the Council (*Environmental Law Reporter (BNA)* May 22, 1981). Two Republican Senators -- Slade Gorton (R-Washington) and Robert T. Stafford (R-Vermont) -- expressed their objection to Reagan's decision. In a letter, those Senators recommended that Reagan reconsider McAvoy's nomination, saying that "Mr. McAvoy's confirmation could be difficult" because of his poor environmental record and considerable public criticism toward him (Personal Letter from Slade Gorton and Robert T. Stafford to the President. September 14, 1981). Reagan finally had to withdraw his intent to nominate McAvoy to be a member of CEQ (Personal Letter from Max L. Friedersdorf to Slade Gorton. September 23, 1981).

Third, and finally, CEQ's high status gives the members of the Council many chances to infuse environmental awareness and sensitivity into top decision-makers at the White House level, which can more or less affect the outcome of policy coordination. The Administrator of EPA is unlikely to play that role because there are actually many deliberations within the White House in which Cabinet officers are not included. In the Bush era, for instance, the internal White House deliberations started with a daily 7:00 a.m. staff meeting, where the President's administrative Chief of Staff gathered the Press Secretary, the National Security Advisor, the Director of OMB, and the Chairmen of CEA and CEQ (Hearings before U.S. Congress. Senate. Committee on Environment and Public Works 1993: 47). The CEQ Chairperson's participation in those highest level deliberations is primarily due to his or her Senate-confirmed status, that is, to the institutional design. Michael R. Deland, who chaired CEQ under the Bush administration, notes that it would be a major loss "if you would not have the environment represented at that meeting" and "if you would not have a White House voice, as distinct from Cabinet voice, representing the environment as a senior level" (Hearings before U.S. Congress. Senate. Committee on Environment and Public Works 1993: 47).

Thus, this study concludes that, despite limited resources and (sometimes adverse) presidential priorities, CEQ has worked well under the current institutional design, where policy coordination (by CEQ) is institutionally set *above* command-and-control (by EPA). Of course, this conclusion does not mean that command-and-control by EPA has not been useful for improving environmental quality. Rather, this paper argues the importance of recognizing that the functions and activities of CEQ and EPA are complementary in a unique fashion particularly in the context of environmental policy coordination, which accordingly helps illustrate what components are necessary in designing environmental administration as a whole.

This American experience has both theoretical and practical implications. The theoretical implication is that the role of policy coordinator in providing a larger direction is important particularly in the context of environmental policy. To clarify such a direction is not necessary in such a "crisis" as depression or war, where anyone can see what the number one priority [=common goals] is.²⁷ In the sphere of environmental policy, however, anyone must confront the tough public policy question of "who wins" in a conflict between priorities such as aesthetic, cultural, scientific, and socio-economic ones. Instead of supporting one side or specific priority, CEQ provides a larger direction that is necessary for long-term environmental protection, with its authority to interpret such an ambiguous terms as "policy coordination" set forth as a common goal in Section 101 of NEPA. This kind of larger direction is to become the basis upon which various agencies or priorities reach a compromise. In order to help such compromise to happen, CEQ uses all forms of coordination that are relevant to one corner of the world of environmental administration. Even though mere rules may not work as a coordination strategy in the realm of environmental policy, for instance, they are likely to work when a larger direction toward long-term environmental protection is provided by policy coordinator such as CEQ.

The practical implication is closely related to the theoretical one. The American experience implies how the environmental administration *as a whole* should be designed in order for the necessary coordination to occur. As clarified in this study, CEQ coordination has worked well under the current institutional design, where policy coordination (by CEQ) is set *above* command-and-control (by EPA). However, few

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have seemed to understand the merit and worth of the current system in the U.S.. Indeed, quite a few, including Bill Clinton, have little hesitation to abolish CEQ and replace it to with the proposed Department of the Environment (e.g., *Congressional Digest* Vol.73 No.2 1994: 33-63). And others outside the U.S. (for instance, quite a few in Japan) seem to believe that a central environmental agency *somehow* should be a big regulatory agency like EPA. The American experience suggests in- and outside the U.S. that a simple question has to be revisited just before the arrival of the next millenium: Is one big regulatory agency (or to make it bigger) enough for sound and effective environmental administration?

Since Bill Clinton entered office, indeed, CEQ has played a substantial and vital role in shaping national environmental policies (Vig 1997: 113). According to Ray Clark, Senior Staff of the Council, Kathleen A. McGinty, current chairperson, meets with the Vice President on the daily basis (Interview with Mr. Ray Clark, June 9, 1997). However, CEQ's functioning is not only to promote environmental protection aggressively in a pro-environmental era, but also to stop backlash "at the water-line" in an anti-environmental atmosphere. By providing a larger direction that is necessary for long-term environmental protection, moreover, CEQ functions to produce a sort of "majority" position in the context of environmental policy making at the top level. These frequently underestimated, yet significant, functions of the small advisory council should be more fully understood and paid more attention to in observing U.S. environmental policy, and particularly in designing an environmental administration in a comprehensive manner.

VI. Limitations and Implications for Future Research

Further research into this theme -- environmental policy coordination -- is necessary to identify and evaluate the overall functioning of CEQ. It is fair to say that this study reasonably infers that the current structure in terms of environmental policy coordination has some merit and has functioned well. However, the structural analysis done in this study is not enough to argue that the coordination activities by CEQ really are effective. The Budget Justification for FY 1986 prepared by CEQ states that:

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at the center of NEPA (Boggs 1993: 25). That is, "NEPA legislatively establishes an essentially moral framework that gives direction to the links between knowledge and action ..." (Boggs 1993: 27). Through cognitive reform, NEPA has sought to affect "institutional transformations" of how to recognize various environment-related factors in the decision making process at the all levels of the U.S. federal government in the long run (Bartlett 1994: 180; Caldwell 1982: 60).

³ During FY 1997, for instance, CEQ operated with 19 Full Time Equivalent (FTE) staffs (Statement of Kathleen A. McGinty, Chair, Council on Environmental Quality, Executive Office of the President before the House Appropriations Subcommittee on VA, HUD and Independent Agencies. 1997: 2).

⁴ Studies on CEQ are categorized as the following two types. First, most of the studies analyze the character of guidelines and regulations issued by CEQ to implement NEPA provisions in the legal context (Comment 1980; Fischer 1979; Lynch 1975; McDermott 1979; Stevens 1974; and Whitney 1991). The focus of those studies is upon the relationship of the statute [=NEPA], the guidelines and regulations, and the court decisions. Second, a study explores the political effects of CEQ on executive level decision making, occurring at the backstage of the legal process (Liroff 1976). By examining personal letters and memos exchanged between and among top decision-makers, Liroff concludes that in several cases CEQ's advice actually influenced environment-related decision making.

⁵ Since the nearest functional counterpart of CEQ is considered to be the U.S. Council of Economic Advisors (CEA) (Caldwell 1995: 154), it is not unreasonable to look at the literature analyzing the functioning of CEA in launching a study on that of CEQ. There are quite a few studies on the functioning of CEA (Canterbery 1961; Hargrove and Morley 1984; Feldstein 1989 and 1992; Flash 1965; King 1986; Norton 1977; Nourse 1963; Sloan 1990; and White 1981). Asking why and when presidents accept or reject the best available economic advice provided by CEA, some of those studies analyze not so much "policy outcomes" as "process or structure of high-level decision making" (e.g., King 1986: 200). This paper follows a similar research direction.

⁶ On various difficulties with this strategy, see Buhrs (1991).

⁷ The literature on "agency capture" is both extensive and diverse (e.g., Bernstein 1955). One of the recent and insightful studies related to environmental policy and

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at the center of NEPA (Boggs 1993: 25). That is, "NEPA legislatively establishes an essentially moral framework that gives direction to the links between knowledge and action ..." (Boggs 1993: 27). Through cognitive reform, NEPA has sought to affect "institutional transformations" of how to recognize various environment-related factors in the decision making process at the all levels of the U.S. federal government in the long run (Bartlett 1994: 180; Caldwell 1982: 60).

³ During FY 1997, for instance, CEQ operated with 19 Full Time Equivalent (FTE) staffs (Statement of Kathleen A. McGinty, Chair, Council on Environmental Quality, Executive Office of the President before the House Appropriations Subcommittee on VA, HUD and Independent Agencies. 1997: 2).

⁴ Studies on CEQ are categorized as the following two types. First, most of the studies analyze the character of guidelines and regulations issued by CEQ to implement NEPA provisions in the legal context (Comment 1980; Fischer 1979; Lynch 1975; McDermott 1979; Stevens 1974; and Whitney 1991). The focus of those studies is upon the relationship of the statute [=NEPA], the guidelines and regulations, and the court decisions. Second, a study explores the political effects of CEQ on executive level decision making, occurring at the backstage of the legal process (Liroff 1976). By examining personal letters and memos exchanged between and among top decision-makers, Liroff concludes that in several cases CEQ's advice actually influenced environment-related decision making.

⁵ Since the nearest functional counterpart of CEQ is considered to be the U.S. Council of Economic Advisors (CEA) (Caldwell 1995: 154), it is not unreasonable to look at the literature analyzing the functioning of CEA in launching a study on that of CEQ. There are quite a few studies on the functioning of CEA (Canterbery 1961; Hargrove and Morley 1984; Feldstein 1989 and 1992; Flash 1965; King 1986; Norton 1977; Nourse 1963; Sloan 1990; and White 1981). Asking why and when presidents accept or reject the best available economic advice provided by CEA, some of those studies analyze not so much "policy outcomes" as "process or structure of high-level decision making" (e.g., King 1986: 200). This paper follows a similar research direction.

⁶ On various difficulties with this strategy, see Buhrs (1991).

⁷ The literature on "agency capture" is both extensive and diverse (e.g., Bernstein 1955). One of the recent and insightful studies related to environmental policy and

politics is Freudenburg and Gramling's article in which they tackle the issue from the sociological perspective (1994).

⁸ There are two dimensions for explaining the substantive weakness of public opinion toward environmental protection. The first dimension is *Environmental Behavior*. A number of scholars have observed that high concerns toward environmental protection (*attitudes*) do not necessarily mean that many persons have adopted more ecologically responsible lifestyle (*behavior*). Several reasons why attitudes and behavior are at variance have been identified. First of all, public concerns can be weakened by increasing government attention to environmental issues: "[t]he media and public tend to assume the problem is being solved and turn their attention to more pressing matters" (Dunlap 1989: 90). Second, the public tends to see institutions, not individuals, as the primary culprits; individuals, in turn, believe that institutions take the lead in cleaning up the environment (Allen and Popkin 1988: 11; Dunlap 1991: 34; and Dunlap and Scarce 1991: 654-655). Third, the public may lack sufficient information on how to act in ways that are environmentally responsible (Dunlap 1991: 34; Scott and Willits 1994: 255). Fourth, and finally, the absence of strong leadership in terms of environmental protection may lead some to believe that lifestyle changes would not be urgent (Dunlap 1991: 35). The second dimension is *Political Effectiveness*. Brick argues that high concerns toward environmental protection are unlikely to be transformed into effective public policy in the future (1995). He raises the following reasons to support his thesis. First, the U.S. environment is actually cleaner than on the first Earth Day of 1970. A cleaner environment makes it harder to convince the public that continued vigilance is necessary. Second, the U.S. has already had major environmental statutes and regulations concerning such relatively "easy" task as cleaning up point source pollution. The remaining environmental problems are very difficult ones to be dealt with and often require the public to assume increasing costs to solve them. Third, it is less clear how much the U.S. public is willing to sacrifice for a clean and healthy environment in an era of budget cuts, anti-government sentiments, and industry belt-tightening. Fourth, the environmental movement has suffered from an acute identity crisis. That is, the movement is being salvaged from the left and right -- not only anti-environmentalists are attacking it for being too tough but environmentalists on the left are also attacking it for not being tough enough. Fifth, and finally, the recent rise of the anti-environmental movement [=wise use movement] is substantially remarkable. The number of the organizations belonging to this movement was only 200 in 1988, but it increased to 1500 by 1995.

Note

⁹ On the marginalization of environmental values by privileging business expertise in environmental policy making, see Kan (1986). More generally, on the circumstances that American political culture affords business a privileged position in public policy making, see Lindblom and Woodhouse (1993).

¹⁰ The term *political reality* implies the actual complexity of the policy making process. Healy and Ascher say, for instance, that "... policy is made not by a single decision or unitary decisionmaker, but by a multi-stage process in which contending interest groups or stakeholders attempt to advance or to protect their interests and preferences" (1995: 10).

¹¹ In the context of international agreements, Downs, Rocke, and Barsoom note that "... environmental regulation may begin with agreements that require little enforcement, but continued progress seems likely to depend on coping with an environment where defection presents significant benefits" (1996: 397).

¹² On the significant role of legislative intent in statutory interpretation, see e.g., Farber and Frickey (1988).

¹³ At the same hearings, other witnesses also recognized the bill's functioning on policy coordination. For example, Senator Philip A. Hart (D-Michigan) said "[T]he aspect of this bill [S.2549] which seems to me especially important is its *coordinating function*" (Finn 1972: 18)[italics added].

¹⁴ One of the major changes made by the conference committee was that the Muskie-Jackson language requiring "review and approve" by the proposed council of the agencies' "methods and procedures for giving appropriate consideration to presently unquantified environmental values" was weakened by the conference committee to require mere "consultation" (*Congressional Record*, October 8, 1969: S12117-12118). As Richard N.L. Andrews notes, this change suggests that the proposed council would not be given broader veto powers (1976: 14).

¹⁵ *Andrus v. Sierra Club*, 442 U.S. 347, 358 (1979). The issue treated in *Andrus* was whether NEPA requires a federal agency to prepare EISs to accompany an appropriation request. The plaintiff alleged that proposed curtailment in the budget of the National Wildlife Refuge System would adversely affect the quality of the human environment. *Id.* at 348-349.

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¹⁶ During the early 1970s, for instance, CEQ's initiatives were: "Clean Water Act revisions; a Clean Air Act with uniform national standards; toxic substances and noise control; sulfur emissions and lead in gasoline taxes; tax proposals to encourage historic preservation; a World Heritage Convention; a moratorium on the commercial hunting of whales; pesticide legislation overhaul; and endangered species, national land use policy, ocean dumping control, oil spill control, safe drinking water, power plant siting, and surface and underground mining control legislation" (Hearings before U.S. Congress. Senate Committee on Environment and Public Works. 1993: 16).

¹⁷ The six topics are scoping, categorical exclusions, adoption procedures for EISs and environmental assessments, contracting provisions, selection of alternatives in licensing and permitting situations, and tiering.

¹⁸ By analysis and evaluation of those implementing procedures, Malik and Bartlett assess to what extent federal agencies have emphasized and adopted appropriate percepts of scientific quality in their procedures (1993).

¹⁹ From the legal perspective, the central issue in the "small handle" problem is "whether ... the NEPA EIS requirement is triggered by the entire factual consequences of a federal action or focuses exclusively on the effects of the federal component of the project" (Plater, Abrams, and Goldfarb 1992: 617).

²⁰ Other issues in the dispute were: (1)the purpose and need section of EISs, (2)the necessary analysis of alternatives in environmental assessments, and (3)the page limits on EISs (Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1988: 686).

²¹ With the purpose for increasing the understanding of the causes of acid precipitation, the National Program consists of "research, monitoring, and assessment activities that emphasize the timely development of a firmer scientific basis for decision making. This program of policy-oriented research issues Annual Reports describing research progress and the current state of knowledge about acid precipitation and its implications" (Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1984: 89).

²² The members of the Task Force were to be representatives of USDA, EPA, NOAA, CEQ, the Department of the Interior, the Department of Energy, the Tennessee Valley

Note

Authority, the Department of Health and Human Services, the Department of Commerce, the National Aeronautics and Space Administration, the National Science Foundation; the Directors of Argonne, Brookhaven, Oak Ridge, and Pacific Northwest National Laboratories; and four presidential appointees.

²³ This shows that CCE did not disappear -- the Cabinet Council on Natural Resources and the Environment is its successor.

²⁴ At this time, Reagan made the decision that "sufficient scientific knowledge was not there to justify moving ahead with further regulations" (Hearings before U.S. Congress. House Subcommittee of the Committee on Appropriations. 1984: 28). This is the typical example of the Reagan administration's "research before action" strategy, which resulted in acid rain stalemate.

²⁵ Perhaps not as effective as would be ideal, but CEQ does make a difference.

²⁶ There is a relatively large body of literature which generally addresses the so-called *administrative presidency*. The administrative presidency is defined as "an approach in which presidents may use two or more of their powers ... to promote change in the goals and priorities of federal agencies at the administrative level, rather than modifying policy through the passage of legislation" (Shanley 1992: 9). There are a variety of instruments of the administrative presidency including "those of appointment and removal of federal agency officials, the executive budget process, administrative reorganization of federal agencies, delegation of authority to the states, and presidential executive orders and presidential proclamations" (Shanley 1992: 9). Robert A. Shanley (1992) and Norman J. Vig (1997) are the scholars who have long examined environmental politics and the administrative presidency.

²⁷ The model of *coordination by common goals* has been originally developed as a "crisis" management strategy during depression or war (Minnery 1988: 259).

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