The foreword to the first edition of this book was written by the Honorable Gaylord Nelson, former senator from Wisconsin and one of the authors of the National Environmental Policy Act (NEPA) of 1970. As Senator Nelson noted, NEPA is a remarkable statute. It revolutionized the decision processes of federal agencies by making “environmental protection a part of the mandate of every federal agency and department”1 and introducing “action-forcing mechanisms” to ensure that the agencies take a “hard look”2 at the potential impacts of their activities before making irretrievable commitments to them.

Forty two years after the passage of NEPA, and more than a decade after the publication of the first edition of the NEPA Litigation Guide in 1998, it is fair to say that NEPA’s contribution to environmental law and to protection of the environment is more significant than ever. Environmental problems grow increasingly complex and the need to understand the consequences of human activities on the environment is ever greater.

NEPA has held up well. Despite some complaints about the time and expense of NEPA review, Congress has made no real changes to the statute or legislated large exceptions to its coverage. Nor have federal agencies significantly altered or limited their regulatory requirements for compliance. And the concept of considering the environmental consequences of proposed action on a “preventative and anticipatory basis”3 has taken hold in the United States and around the world.

This second edition of the NEPA Litigation Guide reviews how the courts have dealt with the NEPA issues presented to them since 1998, identifies important new court decisions, and discusses issues, such as climate change, not considered in the earlier edition. The updated chapters also provide information on new policies, such as monitoring and mitigating, from the Council

on Environmental Quality (CEQ), the body created by the statute
to provide guidance and oversight to other federal agencies on
NEPA compliance. As in the first edition, we have included the
text of the statute, the CEQ’s implementing regulations, and its 40
Most Asked Questions Memorandum as appendixes.

The intent of the update was not to simply list the latest cases
on a particular question, but to examine the principles involved.
Thus, while many recent cases are cited, the authors chose those
opinions offering the clearest analysis of the issues at hand. Often
that analysis was set forth in decisions written in NEPA’s early
decades, as the courts fleshed out the statute’s relatively spare
language to give life and shape to its important objectives. These
early decisions continue to be cited with approval and to have an
ongoing relevance to NEPA jurisprudence.

This update honors the memory of Senator Nelson and the
other congressional authors of NEPA, as well as judges such as
Skelly Wright who noted in Calvert Cliffs’ Coordinating Committee
v. AEC, the very first court interpretation of NEPA, that courts
have a duty “to see that important legislative purposes, heralded
in the halls of Congress, are not lost or misdirected in the vast
hallways of the federal bureaucracy.”4 We hope this book will
continue to be useful to environmental lawyers who look to NEPA
for constructive tools to foster sound environmental decisions and
policy.