



Memorandum

Environment Committee

Lands Committee

Coal Policy Task Force

Minerals Policy Task Force

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Supreme Court Limits Expansive NEPA Reviews

In a victory for the mining industry, the U.S. Supreme Court (Court) last week issued an [opinion](#) in the case *Seven County Infrastructure Coalition v. Eagle Co.* regarding the scope of National Environmental Policy Act (NEPA) reviews by federal agencies and the deference afforded agencies. The unanimous 8-0 decision reversed a lower court decision requiring the Surface Transportation Board (STB) to consider environmental effects of upstream and downstream projects that are separate in time or place from the original action. Justice Kavanaugh delivered the majority opinion of the Court, joined by Chief Justice Roberts and Justices Thomas, Alito, and Barrett, ruling that the lower courts failed to afford "substantial judicial deference" to the STB, while also addressing the appropriate scope of NEPA reviews. Justice Gorsuch recused himself from the case.

Recall, the National Mining Association (NMA) filed an *amici curiae*, or friend of the court, [brief](#) asking the Court to provide more clarity and set parameters around NEPA reviews from federal agencies. The NMA partnered with the American Petroleum Institute, the National Association of Homebuilders, the National Association of Manufacturers, and the National Rural Electric Cooperative Association in filing this brief.

Background of the Case

This case arose out of the STB's approval of the construction and operation of a new 88-mile rail line in Utah's Unita Basin that is being sponsored by the Seven County Infrastructure Coalition (SCIC). The railway would connect the Unita Basin to the national rail network and carry a variety of commodities, including crude oil, to refinery markets in the gulf. The STB approved the SCIC's proposal for the rail network in 2021, following the preparation of a 3,600-page environmental impact statement (EIS).

Eagle County Colorado and environmental organizations subsequently sued in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), alleging that the STB's approval was reliant on a deficient NEPA process. Petitioners claimed that the STB should have considered the new rail line's effects on increased oil drilling in Utah and Colorado, as well as oil refining activities hundreds of miles away.

Relying on the U.S. Supreme Court's 2004 decision in [*Department of Transportation v. Public Citizen*](#), the STB argued that it had no direct authority to prevent or mitigate indirect effects of the development of the railroad, and therefore under NEPA it did not need to analyze those impacts. The D.C. Circuit disagreed with the STB, holding that it had violated NEPA for failing to consider such impacts.

SCIC filed a petition for [*certiorari*](#) asking the Court to review the decision. Citing, among other things, a circuit court split regarding the interpretation of the *Public Citizen* case, SCIC urged the Court to determine whether NEPA requires an agency to study environmental impacts beyond the proximate effects of the action over which the agency has regulatory authority.

Summary of NMA's Brief

NMA's brief argued that NEPA is not currently functioning as intended by Congress for informed agency decision making. By requiring NEPA analyses of actions and effects outside of an agency's authority to control, federal agencies are constantly forced to stray from NEPA's purpose for informed decision making. We emphasized that the circuit court split exacerbated the need for proper NEPA guardrails and outlined how regulated entities, such as

the mining industry, overwhelmingly bear the brunt of the unintended consequences and subsequent litigation from outside parties. We also explained that in attempting to "litigation proof" NEPA documents, federal agencies do a disservice to the public and regulated community by drafting environmental impact statements that are thousands of pages long and analyze issues wholly outside of the federal agency's expertise. We highlighted that these NEPA documents are often duplicative of state and local agency environmental reviews, and result in additional strain on federal agency resources.

Notably, our brief outlined the real-world implications and illustrated the enormous burdens on the economy and the regulated community in attempting to obtain a federal permit to operate. The brief highlighted examples from the mining industry to show on-the-ground impacts. One example included a coal mine in Montana that had its 2015 permit to mine federal coal remanded three times for ever-broader NEPA reviews each time. See *350 Mont. v. Haaland*, 50 F.4th 1254 (9th Cir. 2022).

Another example in the brief described how the U.S. Court of Appeals for the Ninth Circuit determined that the Bureau of Land Management failed to assess the air impacts of transporting and processing ore at a separately owned facility 70 miles from the mine. The court was unmoved by the fact that the processing facility was permitted under a state-issued Clean Air Act permit. See *S. Fork Band of Council of W. Shoshone v. U.S. Dep't of Interior*, 588 F.3d 718, 725-26 (9th Cir. 2009).

Summary of the Court's Opinion

The Court agreed with many of the arguments made in NMA's brief. First, the Court held "when determining whether an agency's EIS complied with NEPA, a court should afford substantial judicial deference to the agency." Op. at 9. Noting that "some courts have assumed an aggressive role in policing agency compliance with NEPA," and "engaged in overly intrusive (and unpredictable) review in NEPA cases," the Court found "it important to reiterate and clarify the fundamental principles of judicial review applicable in [NEPA] cases." Op. at 8 and 12.

The Court explains that NEPA is a "*purely procedural statute*" that "imposes no substantive constraints on the agency's ultimate decision to build, fund,

or approve a proposed project." Op. at 9. Instead, "the adequacy of an EIS is relevant only to the question of whether an agency's final decision (here, to approve the railroad) was reasonably explained." *Id.* The Court recognizes that "judicial deference in NEPA cases can take several forms," including on matters related to: (1) whether an EIS is sufficiently detailed, which the Court asserts "should not be excessively second-guessed by a court;" and (2) identifying significant environmental impacts and feasible alternatives, which also warrant "substantial deference."

Second, relying on NEPA's textual focus on "proposed action," meaning "the project at hand," the Court directs:

So long as the EIS addresses environmental effects from the project at issue, courts should defer to agencies' decisions about where to draw the line-including (i) how far to go in considering indirect environmental effects from the project at hand and (ii) whether to analyze environmental effects from other projects separate in time or place from the project at hand. Op. at 11.

Accordingly, "[c]ourts should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness."

Applying deference, the Court agreed with the STB's determination that its EIS need not evaluate possible environmental effects from upstream and downstream projects that are separate from the Unita Basin Railway. According to the Court, "[t]he agency may draw what it reasonably concludes is a 'manageable line'-one that encompasses the effects of the project at hand, but not the effects of projects separate in time and place." Op. at 19. In other words, the fact that a federal project might foreseeably lead to the construction or increased use of a separate project does not mean the agency must consider that separate project's environmental effects. The Court noted that this is particularly true where separate projects fall outside of the agency's regulatory authority.

Notably, the Court warned:

Citizens may not enlist the federal courts, "under the guise of judicial review" of agency compliance with NEPA to delay or block agency projects based on the environmental effects of other projects separate from the project at hand. Op. at 22.

The Court also clarified that an EIS found deficient should not necessarily result in the vacatur of the agency decision, "absent reason to believe that the agency might disapprove the project if it added more to the EIS." Op. at 14.

Justice Sotomayor penned a concurring opinion, joined by Justices Kagan and Jackson, agreeing with the reversal of the D.C. Circuit decision but on a narrower basis. Justice Sotomayor asserts that the majority "unnecessarily ground[s] its analysis largely in matters of policy" when previous Supreme Court precedent already places "limitations" on the scope of an agency's NEPA review. Specifically, that an agency like the STB has no obligation to review an issue under NEPA when its organic statute precludes the issue's consideration. Concurring Op. at 9-10. Moreover, "[e]ven a foreseeable environmental effect is outside of NEPA's scope if the agency could not lawfully decide to modify or reject the proposed action on account of it."

Overall, the Court's decision is a positive step forward for NEPA permitting and compliance for the mining industry. By putting appropriate guardrails on judicial review of agency's decisions regarding NEPA review, we are hopeful that protracted litigation regarding the scope of NEPA reviews will be minimized. While agencies retain deference on the scope of their analyses, we hope it discourages lower courts from interfering with agency environmental analyses and the unnecessary expansion of the scope of EISs at the behest of overly litigious groups that merely seek to delay and stop projects.

If you have any questions on this matter, please contact Tawny Bridgeford at tbridgeford@nma.org or Katie Mills at kmills@nma.org.

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