

Supreme Court Significantly Scales Back Scope of NEPA Review for Infrastructure Projects



May 30, 2025

Charleston, WV

Environmental Alert

(by [Robert Stonestreet](#))

Through a unanimous 8-0 decision, the Supreme Court of the United States addressed what it described as “continuing confusion and disagreement in the Courts of Appeals” over the scope of judicial review for claims asserting violations of the National Environmental Policy Act (NEPA). [Seven County Infrastructure Coalition v. Eagle County, No. 23-975 \(May 29, 2025\)](#). In doing so, the Supreme Court clarified that decisions by federal agencies under NEPA are entitled to substantial deference, and courts should not be in the business of second-guessing how agencies weigh competing considerations under NEPA. “The bedrock principle of judicial review in NEPA cases can be stated in a word: Deference.” Additionally, the Supreme Court ruled that NEPA does not compel federal agencies to address the environmental effects of projects separate in time or place from the construction and operation of the proposed project at issue.

Justice Kavanaugh authored the main opinion joined by Justices Alito, Thomas, and Barrett along with Chief Justice Roberts. Justice Sotomayor penned a separate concurring opinion joined by Justices Kagan and Jackson. Justice Gorsuch did not participate in the case.

Rail Project at Issue

In December 2021, the federal Surface Transportation Board approved an application to construct an 88-mile rail line in Utah’s Uinta Basin that would primarily transport crude oil to interstate rail lines and ultimately to refineries along the Gulf Coast.

NEPA required the Board to evaluate environmental impacts of the proposed project and consider potential alternatives to the project that would avoid or minimize those impacts. The Board’s NEPA evaluation was reflected in an Environmental Impact Statement (EIS) spanning more than 3,600 pages. Several non-governmental organizations and a local county filed a legal challenge under NEPA in the District of Columbia Circuit Court of Appeals, alleging that the Board failed to adequately consider the impacts of certain “upstream and downstream” activities that are separate from the proposed rail line. Specifically, the Board did not perform a detailed analysis of (1) increased crude oil development that may occur in the Uinta Basin once the rail line goes into service; or (2) air emissions at refineries along the Gulf Coast associated with processing crude oil extracted from the Uinta Basin.

Court of Appeals Decision

Finding in favor of the challengers, the D.C. Circuit agreed that future crude oil development and refining were “reasonably foreseeable impacts” that the Board should have evaluated. The D.C. Circuit rejected the Board’s position that those effects arose from other projects that were separate in time and space from the rail line and were also beyond the jurisdiction of the Board, which does not regulate crude oil extraction or refining.

Kavanaugh Opinion

The main court opinion makes clear that judicial review under NEPA involves affording substantial deference to the decisions by the federal agencies involved. That is because assessment of environmental effects and feasible alternatives involves “a series of fact-dependent, context-specific, and policy-laden choices.” Thus, courts “should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness.” Nevertheless, Justice Kavanaugh observed that “[s]ome courts have strayed and not

applied NEPA with the level of deference demanded by the statutory text and this Court's cases." In doing so, "NEPA has transformed from a modest procedural requirement into a blunt and haphazard tool employed by project opponents (who may not always be entirely motivated by concern for the environment) to try to stop or at least slow down new infrastructure and construction projects."

Kavanaugh's opinion wholly rejects the notion that NEPA requires federal agencies to consider other existing or potential future projects that are separate in space and time from the proposed project under consideration. The opinion observes that NEPA's focus is the "project at hand – not other future or geographically separate projects that may be built (or expanded) as a result of or in the wake of the immediate project under consideration." Consequently, "NEPA does not require the agency to evaluate the effects of that separate project." The Board was therefore "[a]bsolutely correct" in concluding that it need not perform a detailed analysis of the potential for future crude oil development in the Uinta Basin and refining activities along the Gulf Coast.

Lastly, Kavanaugh observed that NEPA litigation should not be a forum for project opponents "to air their policy objections to proposed federal actions." "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."

Concurring Opinion

The concurring opinion authored by Justice Sotomayor and joined by Justices Jackson and Kagan observes that the Board lacked jurisdiction over potential future crude oil development and refinery activities, and lacked authority to restrict transportation of crude oil on the proposed rail line. Therefore, there was no need for the Board to consider impacts of those activities.

What's Next?

NEPA has been called one of the most litigated environmental statutes in the United States. This decision should set a higher bar for project opponents to succeed on NEPA claims. The Court made clear that the judiciary should afford substantial deference to how federal agencies weigh the respective impacts and benefits of a proposed project. Whether this pronouncement will prompt developers to move forward with additional projects, and how much deference will actually be afforded by the lower courts, remains to be seen. This decision does not directly affect the legal landscape for challenges brought under substantive environmental statutes like the Clean Water Act, Clean Air Act, or Endangered Species Act, although actions challenging major projects that allege violations of these statutes are often paired with a NEPA claim.

If you would like to discuss this decision or NEPA in general, please contact Robert M. Stonestreet at rstonestreet@babstcalland.com or 681.265.1364.

