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ENERGY IN THE LAW

# NEWS ALERT

May 29, 2024

## Supreme Court Issues a Course Correction to Bring Sanity Back to NEPA Reviews



Today, in a unanimous [decision](#), the Supreme Court of the United States issued a “course correction. . .to bring judicial review under NEPA back in line with the statutory text and common sense.”<sup>1</sup>

In *Seven County*, the Court held that the D.C. Circuit Court of Appeals erred in finding deficiencies in the agency’s NEPA analysis for approval of a railroad line. The Court determined that the lower court both: (1) failed to afford the agency “substantial deference” in reviewing NEPA analyses; and (2) erred in determining that the agency was required to evaluate possible upstream and downstream environmental effects.

The Court recognized that some courts have assumed an “aggressive role in policing agency compliance with NEPA.”<sup>2</sup> It noted that “NEPA has transformed from a modest procedural requirement into a blunt and haphazard tool employed by project opponents.”<sup>3</sup> Recognizing this

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<sup>1</sup> *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, No. 23-975, slip op. at \*13 (U.S. May 29, 2025).

<sup>2</sup> *Id.* at \*2.

<sup>3</sup> *Id.* at \*12.

transformation was inconsistent with the statutory text and common sense, the Court’s decision is an intentional course correction that seeks to limit the use of NEPA to hinder infrastructure development under the guise of “just a little more process.”<sup>4</sup> The Court did not mince words when indicating that, going forward, courts are to give agencies “substantial deference” when reviewing the adequacy of NEPA analyses.

In addition, the Court placed sideboards on the required scope of NEPA reviews. It noted that the text of NEPA places the focus on the proposed action—that is, the project at hand. If the environmental effects of an agency action arise from a separate project, NEPA does not require the agency to evaluate the effects of the separate project, even if those effects may be “reasonably foreseeable.”

Further, the Court stated that agencies are not required to evaluate the environmental effects of projects over which they have no regulatory authority. Provided the agency drew a reasonable line between the effects of the project (which the agency analyzed) and the effects of other potentially interrelated projects, the reviewing court should not substitute its judgment as to where to draw that line.

Finally, the Court provided helpful language regarding vacatur of agency action based on allegedly insufficient NEPA analysis, noting that a NEPA deficiency “may not necessarily require a court to vacate the agency’s ultimate approval of a project.”<sup>5</sup>

For information on how this decision may impact your pending NEPA reviews or litigation, please contact: [Malinda Morain](#) or [Bret Sumner](#).

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<sup>4</sup> *Id.* at \*13.

<sup>5</sup> *Id.* at \*14.