

Federal case law under the National Environmental Policy Act (NEPA)

Federal courts have looked at a wide range of factors in deciding the adequacy of a NEPA analysis. There are certain guiding principles that typically apply in NEPA litigation. These principles include:

- **NEPA Process:** NEPA incorporates “look before you leap” principles. 42 U.S.C. § 4332.
- **Alternatives:** In addition to the proposed project, agencies must consider alternatives to the proposed action—including no action—and compare the environmental consequences of those alternatives against the proposed action. 40 C.F.R. § 1502.14.
- **Effects:** An agency must analyze three types of effects from the proposed project:
 - Direct effects are caused by the action and occur at the same time and place. 40 C.F.R. § 1508.1(g)(1).
 - Indirect effects are caused by the action and are later in time or farther removed in distance but are still reasonably foreseeable. They “may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.” 40 C.F.R. § 1508.1(g)(2).
 - Cumulative impacts are the effects on the environment “that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable future actions regardless of what agency...or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.1(g)(3).
- **Scope and Detail of Analysis:** An agency must assess impacts that bear a “reasonably close causal relationship” to the change in the physical environment.¹ An agency need not consider wholly speculative impacts, even where the consequences could be severe.
- **Standard of Judicial Review:** A court will consider whether the agency's action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.²
 - The reviewing court can only uphold an agency's action on the basis articulated by the agency itself and may not substitute its judgment for that of the agency's.³
 - A decision is arbitrary and capricious “if the agency has relied on factors Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”⁴ An agency's action is valid if the agency considered the relevant factors and articulated “a rational connection between the facts found and the choice made.”⁵
 - An agency’s decision must be supported by substantial evidence.

¹ *Department of Transportation v. Public Citizen*, 541 U.S. 752, 767 (2004). See also *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983).

² 5 U.S.C. § 706(2)(A)).

³ *Eagle County v. Surface Transportation Board*, 2023 U.S. App. LEXIS 21649, *84, 82 F.4th 1152 (D.C. Cir. Aug. 18, 2023).

⁴ *Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L. Ed. 2d 443 (1983).

⁵ *Id.* (internal quotation marks omitted).

- **Agency Duties:** Agencies must take a hard look at the environmental consequences of their actions and provide for broad dissemination of relevant environmental information.⁶ An agency is entitled to deference regarding its technical judgments, but it still must provide a reasoned explanation for its decisions.⁷

NEPA established a Council of Environmental Quality (CEQ) within the Executive Office of the President to ensure that Federal agencies meet their obligations under NEPA. CEQ oversees NEPA implementation, principally through issuing guidance and interpreting regulations that implement NEPA's procedural requirements. CEQ also reviews and approves Federal agency NEPA procedures, approves alternative arrangements for compliance with NEPA for emergencies, and helps to resolve disputes between Federal agencies and with other governmental entities and members of the public.

The National Association of Environmental Professionals provides a NEPA Case Law Review that is posted and available on the [CEQ website](#). Additional information is available at the links below:

- [Major Cases Interpreting NEPA \(1971 – 1996\)](#)
- [NAEP Annual Reports Summarizing NEPA Cases \(2009 – 2022\)](#)

⁶ *Pub. Emples. for Env't Resp. v. Hopper*, 827 F.3d 1077, 1082 (D.C. Cir. 2016).

⁷ *Del. Riverkeeper Network v. FERC*, 45 F.4th 104, 111 (D.C. Cir. 2022).