

What in the World Is Going on with NEPA?

Recent U.S. Case Law in a Year of Change

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Seven County Infrastructure Coalition v. Eagle County, Colorado, 605 U.S. 168, 145 S.Ct. 1497 (2025)



- On May 29, 2025, the U.S. Supreme Court restrained the National Environmental Policy Act of 1969 (NEPA), the U.S. Environmental Impact Assessment Law, by both requiring greater deference to agency decisionmaking in NEPA cases and limiting the required environmental impact assessment to the “effects of the project at issue.”

Seven County Infrastructure Coalition v. Eagle County, Colorado, 605 U.S. 168, 145 S.Ct. 1497 (2025)

- In May 2020, the Seven County Infrastructure Coalition ("Seven County") petitioned the Surface Transportation Board ("STB") for approval to construct "an approximately 88-mile railroad line."
- The railroad would transport waxy crude oil from the Uinta Basin, a roughly 12,000–square mile area in northern Utah and Colorado rich in crude oil and other minerals, to the "national rail network." From there, the oil could be carried onward to refinement facilities, largely on the Gulf Coast of Texas and Louisiana.

Seven County Infrastructure Coalition v. Eagle County, Colorado, 605 U.S. 168, 145 S.Ct. 1497 (2025)

- Public involvement involved six public meetings and over 1,900 comments, the Board published an EIS of over 3,600 pages in August 2021.
- The EIS addressed potential “significant and adverse impacts” of the railway, such as “disruptions to local wetlands, land use, and recreation,” as well as “minor impacts” like “air pollution and big-game movement around the construction site.”
- The EIS analyzed the regional, statewide, and global effects of GHG emissions, and noted, but did not fully analyze, the potential environmental effects of increased upstream oil drilling in the Uinta Basin and increased downstream refining of crude oil.

Seven County Infrastructure Coalition v. Eagle County, Colorado, 605 U.S. 168, 145 S.Ct. 1497 (2025)

- Environmental organizations and a county in Colorado each filed a petition for review in the D.C. Circuit.
- The D.C. Circuit vacated the Board's final approval for the project.
- Court agreed with the petitioners that "certain upstream and downstream" effects such as increased oil combustion were "reasonably foreseeable impacts" of the project that the final EIS "ignored."
- The Applicant and the Railway filed a petition for a writ of certiorari with the Supreme Court.

Seven County Infrastructure Coalition v. Eagle County, Colorado, 605 U.S. 168, 145 S.Ct. 1497 (2025)

- In a majority opinion written by Justice Kavanaugh, the Court first held that the D.C. Circuit failed to give the STB “the substantial judicial deference required in NEPA cases.”
- Need for a “course correction” involving NEPA.
- the Court concluded that “[c]ourts should afford substantial deference and should not micromanage those agency choices” that are reasonable.”
- NEPA’s growth from a “legislative acorn . . . into a judicial oak” had caught projects in endless delays such that “fewer projects ma[d]e it to the starting line [of construction].”
- NEPA is a “purely procedural statute,” even a project with a deficient EIS can proceed if there is no “reason to believe that the agency might disapprove the project if it added more to the EIS.”

Seven County Infrastructure Coalition v. Eagle County, Colorado, 605 U.S. 168, 145 S.Ct. 1497 (2025)

- The D.C. Circuit erred in requiring “upstream oil drilling or downstream oil refining” impact assessment under NEPA.
- Proximate Cause: Project A does not “proximate[ly] caus[e]” the environmental impacts of Project B, even if such impacts are “factually foreseeable” consequences of Project A, such that Project B’s impacts are not part of the “proposed action” for NEPA purposes.
- The agency gets to set “a ‘manageable line’ . . . that [includes] the effects of the project at hand, but not the effects of projects separate in time or place.”
- Discretion: Second, in an EIS, agencies need only “analyze the effects of projects over which they . . . exercise regulatory authority” to fulfill their NEPA obligations.
- Because the STB could not approve subsequent drilling projects in the Uinta Basin or refining projects along the Gulf Coast, it did not have to analyze the effects of those activities.

Seven County Infrastructure Coalition v. Eagle County, Colorado, 605 U.S. 168, 145 S.Ct. 1497 (2025)

- Concurrence written by Justice Sotomayor.
- Following *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004), NEPA requires consideration of effects only when “such consideration would result in information on which the agency could act.”
- STB's statutory authority “contains a clear presumption in favor of approving new railways” and, “[a]s common carriers,” operational railways must serve any party who pays for their services.
- STB “could not lawfully consider” upstream or downstream environmental effects in deciding whether to approve a railway project.



High Government Success Rate Post Seven County

- Agencies were successful in all but 1 cases (partial prevail) of the 13 cases in 2025 (92% agency success rate (96% if partial cases are counted))*
- Post *Seven County*, the standard is "deferential"
- Thus, Courts relied heavily on evidence in AR and agency discretion
- Agencies were successful in all 2026 cases at the federal appellate level
- Low number of appeals and petitions filed in Federal Courts of Appeal in 2026

2025 Federal Appellate Cases (Post Seven County)

1. *Appalachian Voices v. Fed. Energy Reg. Comm'n*, 139 F.4th 903 (D.C. Cir. 2025) (Agency Prevailed)
2. *Coalition to Stop CPKC v. Surface Transp. Board*, No. 23-1165, 2025 WL 1720672 (D.C. Cir. Jun. 20, 2025) (Not for Publication) (Agency Prevailed)
3. *Center for Biological Diversity v. U.S. Bureau of Land Mgm't*, 141 F.4th 976 (9th Cir. 2025) (Agency Partially Prevailed)
4. *American Wild Horse Campaign v. Raby*, 144 F.4th 1178 (10th Cir. Jul. 15, 2025) (Agency Prevailed)
5. *Sierra Club. v. Fed. Energy Reg. Comm'n*, 145 F.4th 74 (D.C. Cir. Aug 1, 2025) (Agency Prevailed)
6. *Shoshone-Bannock Tribes of the Fort Hall Reservation v. U.S. Dep't of Interior*, 153 F.4th 748 (9th Cir. 2025) (See Dissent) **Not counted in the statistics

2025 Federal Appellate Cases (Post Seven County)

7. *Cascadia Wildlands v. U.S. Bureau of Land Mgm't*, 153 F.4th 869 (9th Cir. 2025) (Agency Prevailed)
8. *Sierra Club v. Fed. Energy Reg. Comm'n*, 153 F.4th 1295 (D.C. Cir. 2025) (Agency Prevailed)
9. *Badger Helicopters v. Fed. Aviation Admin.*, 154 F.4th 902 (8th Cir. 2026) (Agency Prevailed)
10. *Gas Transmission Northwest, L.L.C. v. Fed. Energy Reg. Comm'n*, 157 F.4th 674 (5th Cir. 2025) (Agency Prevailed)
11. *Friends of the Everglades, Inc. v. U.S. Dep't of Homeland Sec.*, No. 25-12873, 2025 WL 2598567 (11th Cir. Sept. 4, 2025)
12. *American Whitewater v. U.S. Forest Serv.*, 2025 WL 2945591 (9th Cir. Oct. 17, 2025) (Agency Prevailed)
13. *Center for a Sustainable Coast v. U.S. Army Corps of Eng'rs*, No. 24-14171 (11th Cir. Oct. 20, 2025) (Agency Prevailed)

2026 Federal Appellate Cases (Post Seven County)

1. *Friends of the Animals v. Burgum*, 164 F.4th 738 (9th Cir. 2026) (Agency Prevailed)
2. *Adams v. Fed. Aviation Admin.*, 168 F.4th 1271 (10th Cir. 2026) (Agency Prevailed)
3. *Arizona Mining Reform Coal. v. U.S. Forest Service*, 172 F.4th 641 (9th Cir. 2026) (amending previous 2026 opinion) (Agency Prevailed)
4. *Friends of the Everglades, Inc. v. U.S. Dep't of Homeland Sec.*, No. 25-12873, -- F.4th --- (11th Cir. Apr. 21, 2026) (Agency Prevailed)

Deference and a "Manageable Line"

- *Sierra Club v. Fed. Energy Reg. Comm'n*, 145 F.4th 74 (D.C. Cir. 2025) (rejecting claims that FERC should have considered a broad scope of indirect upstream effects of the proposed pipeline, as running “headlong” into the Supreme Court’s “course correction” in *Seven County*)
- *Gas Transmission Northwest, L.L.C. v. Fed. Energy Reg. Comm'n*, 157 F.4th 674 (5th Cir. 2025) (rejecting claims that FERC did not adequately consider safety risks of the proposed expansion project when it discussed incremental safety risks and mitigation resulting from the Department of Transportation’s safety standards, as well as the proposed compressor station’s remote location, and finding under *Seven County*, this was sufficient)

Other Notable Cases

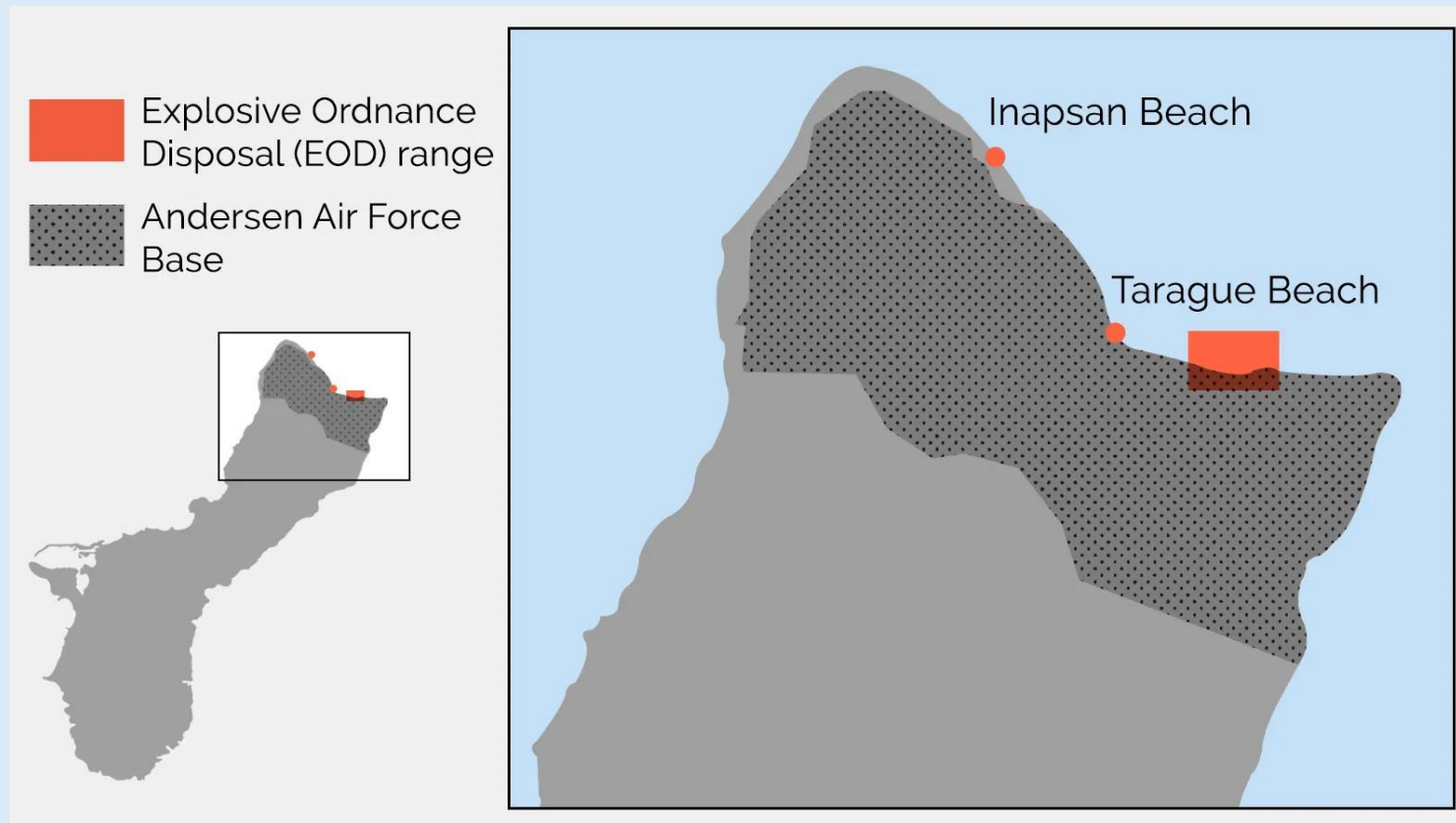
- *Friends of the Everglades, Inc. v. U.S. Dep't of Homeland Sec.*, No. 25-12873, -- F.4th -- - (11th Cir. Apr. 21, 2026) (holding that because Florida “retain[ed its] state law authority to make the decisions concerning the project,” the proposed immigration detention facility was not subject to federal control and its construction did not trigger NEPA)
- *Oregon Wild v. U.S. Forest Serv*, No. 1:22-cv-01007-MCm, -- F.3d --- (D. Ore. Jan. 13, 2026) ("[Categorical Exclusion] CE-6 is facially invalid because the Forest Service did not comply with the APA in promulgating it; the Forest Service did not support its decision that allowing commercial thinning with no acreage cap would have only insignificant effects on the environment. Leaving CE-6 in place would allow the Forest Service to continue to approve commercial thinning at any scale as a part of qualifying projects by way of a CE that was illegally promulgated.")

Other Notable Cases

- D.C. Bike Lanes, *Washington Area Bicyclist Assn., Inc. v. Burgum*, Civil Action No. 26-0988 (ABJ) (D.D.C. April 21, 2026) (finding that the project's significant impact on public safety precluded the use of a categorical exclusion and the agencies failed to analyze or explain their reasoning)
- Challenge to the construction of the East Wing Ballroom, *Nat'l Trust for Historic Preservation in U.S. v. NPS*, 25-cv-04316-RJL (D.D.C. filed Dec. 12, 2025)

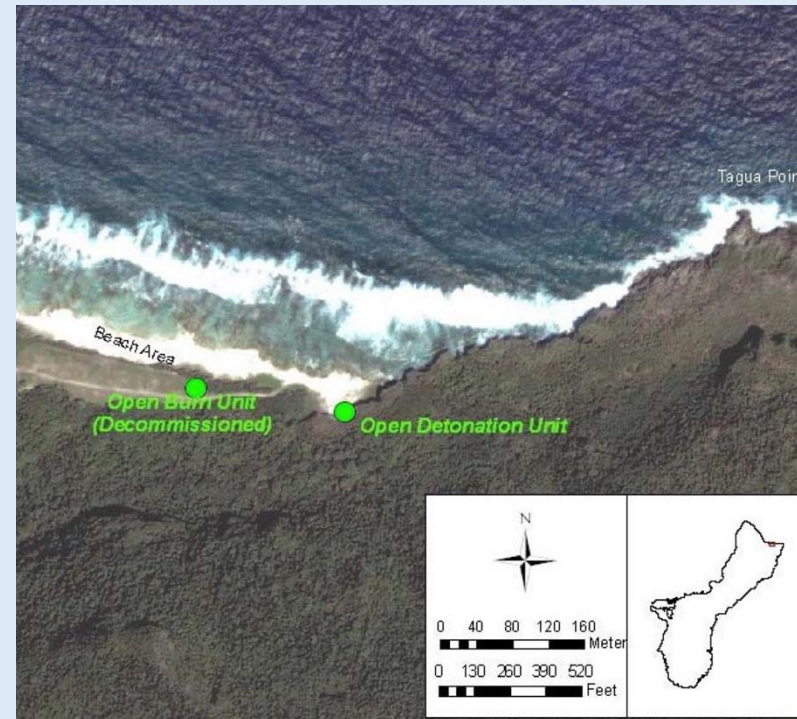
Petition for Certiorari Granted at U.S. Supreme Court

Dep't of Air Force v. Prutehi Guahan (Mar. 9, 2026)



Background and History

- Beginning in 1982, the Air Force has continuously held a RCRA permit for treating unexploded WWII-era ordnance and other munitions at Anderson AFB, an isolated facility on Guam's northern coast (near Tarague Beach). Since then, in accordance with RCRA and governing EPA regulations, the Air Force has periodically applied to renew the permit, and the Guam EPA has granted the renewal.
- The Air Force most recently applied for renewals in 2021. Guam EPA has published a draft permit, solicited comments, and held a public hearing, but it has not yet reached a final decision on the application.



Prutehi Guanam – Procedural History

Prutehi Litekyan: Save Ritidian v. U.S. Dep't of the Air Force, 128 F.4th 1089 (9th Cir. 2025)

- Agency Granted MSD Decision by the Guam District Court**
- Reversed in the Ninth Circuit

Prutehi Litekyan: Save Ritidian v. U.S. Dep't of the Air Force, 128 F.4th 1089 (9th Cir. 2025)

- USAF's decision to apply for a RCRA permit and the details of its planned activities on Tarague Beach, described in the permit application, reflected the agency's commitment to a particular location for and method of waste munitions disposal, and so was the endpoint in its decisionmaking process. That commitment also determined the agency's legal obligations. The Air Force thus engaged in final agency action that was ripe for judicial review.

Prutehi Litekyan: Save Ritidian v. U.S. Dep't of the Air Force, 128 F.4th 1089 (9th Cir. 2025)

- RCRA's permitting process is in important respects dissimilar from the environmental review mandated by NEPA and so does not make the latter superfluous. Nor do the processes outlined in RCRA suggest that Congress did not intend NEPA to apply to the decisionmaking of operational agencies (as opposed to agencies charged with assuring environmental compliance). NEPA therefore applies to the Air Force's decision to conduct OB/OD operations at Tarague Beach, and the nonprofit can state a claim by alleging noncompliance with NEPA.

Prutehi Guanam

Questions before the Court:

1. Whether the federal government's submission to a state or territorial regulator of an application to renew a Resource Conservation and Recovery Act of 1976 (RCRA) permit is “final agency action” that is immediately reviewable under the Administrative Procedure Act; and
2. Whether the federal government must comply with the general environmental-review procedures of the National Environmental Policy Act of 1969, before submitting a permit-renewal application under RCRA, which sets forth its own specific procedures to review environmental impacts in the context of hazardous-waste treatment.

Questions?

Thank you!



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