

Basel Action Network v. Maritime Administration, 285 F. Supp. 2d 58, 63-64 (D.D.C. 2003) (*Basel I*), [370 F. Supp. 2d 57 \(D.D.C. 2005\)](#) (*Basel II*).

Location: Decommissioned government vessels docked in Chesapeake Bay off Virginia were the subject of a Maritime Administration (MarAd) contract for the sale, towing and scrapping of the vessels at a facility in the United Kingdom.

Applicable Laws: [National Environmental Policy Act](#) (NEPA) ([42 U.S.C. §§ 4321 et seq.](#))

Where Laws Apply: NEPA applies in the U.S. territory and there is a presumption against the extraterritorial application of the laws outside of the United States in foreign territories without the express intent of Congress.

Holding: MarAd's environmental assessment of the impacts in U.S. territorial waters was sufficient; MarAd was not required to do an assessment of the impacts to the environment on the high seas where the United States lacks legislative control.

Overview:

The U.S. Maritime Administration (MarAd) contracted with Post-Service Remediation Partners, LLC, a company located in Teesside, England, for the sale, towing and scrapping of thirteen decommissioned vessels ("ghost ships") of the National Defense Reserve Fleet (NDRF). *Basel II*, 370 F. Supp. 2d at 61. A 2000 report by U.S. Department of Transportation to Congress explained that "[t]hese vessels are literally rotting and disintegrating as they await disposal. Some vessels have deteriorated to a point where a hammer can penetrate their hulls." *See* Maritime Administration: Limited Progress In Disposing of Obsolete Vessels: Hearing Before the Subcomm. on Coast Guard and Maritime Transp. of the Comm. on Transp. and Infrastructure, 106th Cong. 8 (2000) (statement of Thomas J. Howard, Deputy Assistant Inspector General for Maritime and Departmental Programs, U.S. Dep't of Transp.).

Two environmental organizations, the Basel Action Network (BAN) and The Sierra Club filed an action requesting a temporary restraining order and injunction on the grounds that the proposed actions would violate the procedural requirements under the National Environmental Policy Act (NEPA) and other environmental statutes. The environmental organizations claimed that the vessels contained hazardous wastes including asbestos and PCBs and the move could release pollutants into rivers or open waters in violation of the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the National Maritime Heritage Act, and the NEPA.

Procedural Posture:

On October 2, 2003, the district court issued a temporary restraining order with respect to nine of the thirteen ships, finding that MARAD had not completed an environmental assessment or an environmental impact statement. *Basel Action Network v. Mar. Admin.*, 285 F. Supp. 2d 58, 63-64 (D.D.C. 2003) (*Basel I*). Four seaworthy ships were not subject to the temporary

restraining order because MARAD had submitted the “functional equivalent” of an environmental assessment (“EA”) to Congress. *Basel I*, 285 F. Supp. 2d at 63 (quoting [Amoco Oil Co. v. EPA](#), 501 F.2d 722, 749 (D.C. Cir. 1974)). “Before sending any additional NDRF vessels through the Chesapeake Bay and United States coastal waters, MARAD must perform, at a minimum, a supplemental EA specific to those ships that addresses the environmental impact of such action in the United States.” *Basel I*, 285 F. Supp. 2d at 63

Holding and reasoning:

The MarAd EA studied the environmental impact to all U.S. waters that would be used in the tow. Because of the “customary presumption against the application of NEPA outside U.S. territorial waters,” the court held that MarAd did all that was required. *Basel II*, 370 F. Supp. 2d at 71 fn 8. MarAd was not required to do an EA for their proposed actions in the high seas. The presumption against extraterritorial application of NEPA was supported in this case by the fact that while Congress has legislated in the substantive area of exporting toxic and hazardous wastes under the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.* (1976)) and the Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.* (1976)), those laws did not apply in the high seas to the United Kingdom and there was no legal or policy-based reason to extend application of the NEPA process to the high seas in this case.