

*Environmental Defense Fund, Inc. v. Massey*, [986 F.2d 528 \(D.C. Cir. 1993\)](#), *rev'g* [772 F. Supp. 1296 \(D.D.C. 1991\)](#).

Location: McMurdo Research Station, Antarctica

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

Where Law Applies: NEPA requirements apply in Antarctica, where the United States exerts some measure of legislative control over an otherwise sovereign-less land.

Holding: The Court held that the presumption against extraterritorial application of statutes does not apply in this case because NEPA's regulation of U.S. Federal agencies and their decision making processes is a legitimate exercise of Congress' territoriality-based jurisdiction, and does not raise extraterritoriality concerns. The National Science Foundation's (NSF) decision making activities regarding the waste management program for its Antarctica facility will be conducted in the U.S. Moreover, while the U.S. has legislative control and jurisdiction over the U.S. Federal activities in Antarctica, NSF compliance with NEPA would never require enforcement in a foreign forum or involve "choice of law" dilemmas that underlie the presumption against extraterritorial application of statutes.

*General Facts:*

The National Science Foundation (NSF), under the auspices of the United States Antarctic Program, operates the McMurdo Station in Antarctica. Throughout the years, NSF disposed of food wastes by burning them in an open landfill. NSF decided to stop incinerating waste; however, before it was able to end the process, NSF discovered asbestos in the landfill. NSF stored the waste at the facility for several months but decided to resume incineration in an "interim incinerator" before a more technologically advanced incinerator could be delivered.

*Procedural Posture:*

The Environmental Defense Fund (EDF), an environmental interest group, filed a lawsuit seeking an injunction to prevent the incineration of food wastes, claiming that NSF had violated NEPA by not preparing an environmental impact statement (EIS) in the U.S. District Court for the District of Columbia. *772 F. Supp. 1926*. The district court dismissed the action for lack of subject matter jurisdiction, holding that NEPA does not apply to Federal decisions to incinerate wastes in Antarctica. An appeal was brought before the U.S. Court of Appeals for the District of Columbia.

*Holding and Reasoning:*

The court of appeals reversed the district court's opinion, holding that the presumption against the extraterritorial application of statutes did not apply to NEPA's application in this case. NSF was required under NEPA to prepare an EIS for building and operating waste incinerators at McMurdo Station in Antarctica. NEPA requires all Federal agencies to prepare an EIS for any

proposal for a “major action significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C).

There is a general presumption against the extraterritorial application of U.S. laws in foreign nations. The purpose of the presumption is to avoid conflict between U.S. laws and those of other nations which could result in international discord. *Equal Employment Opportunity Commission v. Arabian American Oil Co.*, 499 U.S. 244 (1991). However, the court of appeals stated that there are at least three general categories where the presumption against extraterritorial application of U.S. law does not apply: (1) when Congress clearly expressed intent for the statute to have extraterritorial application; (2) when failure to extend the scope of the statute will result in adverse effects in the U.S.; and (3) when the government conduct Congress seeks to regulate occurs within the U.S. or largely within the U.S.

The court of appeals found that Antarctica is not a foreign sovereign territory but, rather, is in the global common. It also found that Antarctica is an area where the U.S. exercises some measure of legislative control over the U.S. Federal activities being conducted at the Federal facility, including *exclusive* legislative control over McMurdo Station. In requiring the NSF to prepare an EIS under NEPA, the court found NSF would not be in conflict with any foreign law and that no foreign policy considerations would be implicated by requiring NSF to perform an EIS. Further, the court noted that the decision making processes of Federal agencies take place almost exclusively within the U.S.