

*NEPA Coalition of Japan v. Aspin*, [837 F. Supp. 466 \(D.D.C. 1993\)](#).

Location: U.S. military installations in Japan

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

Where Laws Apply: Under NEPA all Federal agencies "shall . . . recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment . . ." (42 U.S.C. §4332(F)).

The application of NEPA beyond U.S. territory has often been litigated in the federal courts. The key issue in such cases is whether there are substantial environmental effects within U.S. territory. Where the effects are primarily found to be within the territory of a foreign country or would not affect existing U.S. treaty rights, courts generally have held that NEPA does not apply. A factor considered by some courts is whether the decision that led to the environmental effects was made within the territory of the U.S. Notably, the Circuit Court of Appeals for the D.C. Circuit has held "that the presumption against the extraterritorial application of statutes . . . does not apply where the conduct regulated by statute occurs primarily, if not exclusively, in the United States, and the alleged extraterritorial effect of the statute will be felt in . . . a continent without a sovereign, and an area over which the United States has a great measure of legislative control" (e.g., Antarctica). *Environmental Defense Fund Inc. v. Massey*, [986 F.2d 528 \(D.C. Cir. 1993\)](#).

Holding: The Department of Defense was not required to prepare an environmental impact statement under NEPA for activities occurring on U.S. military bases located in Japan. The court emphasized that the presumption against extraterritoriality is particularly important in this case because there are clear foreign policy and treaty concerns involving a security relationship between the United States and a foreign sovereign which has power over the area subject to the U.S. federal agency action.

*Overview:*

The plaintiffs, NEPA Coalition of Japan, brought this suit in order to compel the U.S. Department of Defense (DOD) to conduct environmental impact studies (EISs), as required by NEPA, for certain activities occurring within U.S. military bases in Japan. The DOD countered that the presumption against extraterritorial application of U.S. laws applied and therefore NEPA was not applicable to their activities in Japan.

The Court agreed with the DOD and distinguished the case from *Environmental Defense Fund v. Massey*, [986 F.2d 528 \(D.C. Cir. 1993\)](#), where the court required NEPA compliance for U.S.

government activities occurring in Antarctica. In *Massey*, the Court of Appeals found that Antarctica was “not a foreign country, but rather a continent most frequently analogized to outer space.” *Massey* at 531. Here, the DOD was operating in Japan, a foreign sovereign nation not analogous to Antarctica. Further, the court noted that the DOD was operating pursuant to several treaties with Japan. In particular, the Treaty of Mutual Cooperation and Security of 1960, 11 U.S.T. 1633-35, and the Status of Forces Agreement (SOFA), 3 U.S.T. 3342-62. Article XXV of SOFA establishes the Joint Japanese/American Committee ("Joint Committee") with 15 constituent standing subcommittees. Among the subcommittees is the Subcommittee on Environment and Noise Abatement which meets biweekly to examine the types of concerns expressed by plaintiffs. By requiring the DOD to prepare EISs, the court would risk intruding upon the long standing treaty relationship between the U.S. and Japan. The court concluded that even if NEPA applied, the EISs would still not be required because U.S. foreign policy interests outweighed the benefits of EISs.