

The Burger Court Opinion Writing Database

Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.

462 U.S. 87 (1983)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

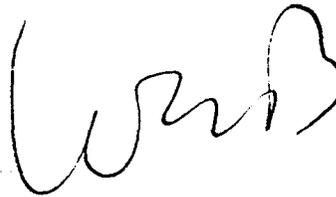
June 2, 1983

RE: 82-524) - Baltimore Gas & Electric Co. v. Natural
Resources Defense Council, Inc.
82-545) - U.S. Nuclear Reg. Comm. v. NRDC
82-551) - Comm. Edison Co., et al. v. NRDC

Dear Sandra:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'W. O'Connor', written in a cursive style.

Justice O'Connor

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 31, 1983

Re: Baltimore Gas v. NRDC, Nos. 82-524, 82-545, 82-551

Dear Sandra:

I agree.

Sincerely,


WJB, Jr.

Justice O'Connor

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 31, 1983

Re: Baltimore Gas v. NRDC, Nos. 82-524, 82-545, 82-551

Dear Sandra:

This will accompany my join. I think you have written a really fine opinion in this case. May I, however, offer one suggestion for a clarification, concerning your discussion on pp. 11-12 of the Statement of Consideration? As I understand it, the Statement is important because it goes a long way toward satisfying the "second" purpose of NEPA you mention on p. 9--informing the public that the agency has considered environmental concerns, and describing those concerns for public debate. This is quite correct. On the other hand, the Statement of Consideration is not relevant to satisfying the "first" part of NEPA--the obligation that the agency actually consider environmental concerns in its major actions. That is because the Statement is not itself part of the Rule, and hence is not part of what gets "plugged into" the individual licensing decisions. Your discussion on pp. 12-18 explains very well why the "first" point is met here; but I would prefer a footnote of some sort making more clear that material in the Statement, but missing from the Rule itself, cannot satisfy the requirement that the licensing decisions take into account all significant environmental effects.

Sincerely,


WJB, Jr.

Justice O'Connor

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 2, 1983

Re: Baltimore Gas v. NRDC, Nos. 82-524, 82-545, 82-551

Dear Sandra:

I agree with the change you suggest. Thank you for
accommodating me.

Sincerely,


WJB, Jr.

Justice O'Connor

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 1, 1983

Re: 82-524, 82-545 and 82-551 -

Baltimore Gas and Electric Co. v.
Natural Resources Defense Council,
Inc., etc.

Dear Sandra,

I agree.

Sincerely,



Justice O'Connor

Copies to the Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 31, 1983

Re: Nos. 82-524, 545 and 551-Baltimore Gas & Electric
Co v. Natural Resources Defense Council; United
States Nuclear Regulatory Commission v. Natural
Resources Defense Council and Commonwealth Edison
Company v. Natural Resources Defense Council

Dear Sandra:

Please join me.

Sincerely,

J.M.
T.M.

Justice O'Connor

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 1, 1983

Re: No. 82-524 - Baltimore Gas and Electric Co. v.
Natural Resources Defense Council, Inc.
No. 82-545 - U.S. Nuclear Regulatory Comm'n v.
Natural Resources Defense Council, Inc.
No. 82-551 - Commonwealth Edison Co. v. Natural
Resources Defense Council, Inc.

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 1, 1982

82-524 Baltimore Gas and Electric Co. v. NRDC
82-545 Nuclear Regulatory Commission v. NRDC
82-551 Commonwealth Edison Co. v. NRDC

Dear Al:

As my former law firm, Hunton & Williams, is counsel in No. 82-524 (petition for cert filed September 24), please record me "out" on the public record. My understanding is that the other two cases noted above (82-545 and 82-551), involve substantially the same issue, and also have been filed recently. Accordingly, I should be marked out on the public record in all three of these cases.

Sincerely,

L. F. P.

cc - The Chief Justice

Justice O'Connor

LFP/vde

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 1, 1983

Re: No. 82-524 Baltimore Gas & Electric v. Natural
Resources Defense Council

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 31, 1983

Re: 82-524, 82-545, 82-551 - Baltimore Gas &
Electric v. Natural Resources Defense
Council

Dear Sandra:

Please join me.

Respectfully,



Justice O'Connor

Copies to the Conference

TO: The Chief Justice

Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens

From: **Justice O'Connor**

Circulated: _____

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-524, 82-545 AND 82-551

BALTIMORE GAS AND ELECTRIC CO., ET AL.,
 PETITIONERS

82-524

v.

NATURAL RESOURCES DEFENSE COUNCIL, INC.

UNITED STATES NUCLEAR REGULATORY COMMIS-
 SION, ET AL., PETITIONERS

82-545

v.

NATURAL RESOURCES DEFENSE COUNCIL, INC.,
 ET AL.

COMMONWEALTH EDISON COMPANY, ET AL.,
 PETITIONERS

82-551

v.

NATURAL RESOURCES DEFENSE COUNCIL, INC.,
 ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE DISTRICT OF COLUMBIA COUNCIL

[May —, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

Section 102(2)(C) of the National Environmental Policy Act, 42 U. S. C. § 4332(2)(C) (NEPA), requires federal agencies to consider the environmental impact of any major federal action.¹ As part of its generic rulemaking proceedings

¹Section 102(2)(C) provides:

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 1, 1983

No. 82-524 Baltimore Gas & Electric Co. v.
Natural Resources Defense Council
No. 82-545 U.S. Nuclear Regulatory Comm'n. v.
Natural Resources Defense Council
No. 82-551 Commonwealth Edison Co. v. Natural
Resources Defense Council

Dear Bill,

I appreciate the suggestion in your letter of May 31. In footnote 12, page 11-12 of the draft, I attempted to express some concern with the fact that the Statement of Consideration was not part of an individual EIS. Perhaps the point can be strengthened by revising the last sentence of footnote 12 to read:

"The staff documents referred to in Table S-3 are public documents, however, and we note that the Commission has proposed an explanatory narrative to accompany Table S-3, which would be included in an individual EIS, that may alleviate some of the concerns of incorporation."

I will make this change in the next draft.

Sincerely,



Justice Brennan

Stylistic Changes Throughout

PP 2, 3, 6, 7, 8, 10, 12, 15

To: The Chief Justice ✓
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens

From: Justice O'Connor

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

Circulated: _____

Recirculated: JUN 3 1983

SUPREME COURT OF THE UNITED STATES

Nos. 82-524, 82-545 AND 82-551

BALTIMORE GAS AND ELECTRIC CO., ET AL.,
 PETITIONERS

82-524 v.
 NATURAL RESOURCES DEFENSE COUNCIL, INC.

UNITED STATES NUCLEAR REGULATORY COMMISSION, ET AL., PETITIONERS

82-545 v.
 NATURAL RESOURCES DEFENSE COUNCIL, INC.,
 ET AL.

COMMONWEALTH EDISON COMPANY, ET AL.,
 PETITIONERS

82-551 v.
 NATURAL RESOURCES DEFENSE COUNCIL, INC.,
 ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA COUNCIL

[June 6, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

Section 102(2)(C) of the National Environmental Policy Act, 42 U. S. C. § 4332(2)(C) (NEPA), requires federal agencies to consider the environmental impact of any major federal action.¹ As part of its generic rulemaking proceedings

¹Section 102(2)(C) provides: