# Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 98 S. Ct. 1197, 435 U.S. 519 (1978)

## What does the court tell us about the congressional compromises in passing the APA?

## Why should this influence the court’s decision?

## Are agencies free to provide more process than required by the APA?

## What did FCC v. Schreiber, 381 U.S. 279, 290 (1965) tell us about how the court should treat procedural rules formulated by an agency?

## Does this depend on the APA?

## What does the Atomic Energy Commission (the Commission) have authority over?

## What are the two permits that are required for a nuclear power plant?

## Are these two separate proceedings under the law at this time?

## What is the the Advisory Committee on Reactor Safeguards (ACRS)?

## What is its role in licensing?

## Who else advises the Commission?

## Who does the NEPA EIS?

## Who conducts the hearing?

## Who reviews any appeals?

## How is the operating permit hearing limited?

## Why might it be more limited than the construction permit?

## When did Vermont Yankee get its construction permit?

## When was the hearing on the operating license?

## What issue was excluded from hearing?

## What did the Commission do after the hearing to address the excluded issue?

## Did the agency have a public hearing for the rulemaking?

## Is this required by the APA?

## What were the limits on oral statements?

## Was cross examination by the public allowed?

## What rule did the Commission adopt?

## Did this rule require that the operator have a long term plan for managing the radioactive waste?

## Why was the NRDC unhappy with this rule?

## What is Vermont Yankee’s argument that the commission should not reopen the proceedings on its operating permit?

## How much waste will Vermont Yankee produce?

## What does that amount to over the 30 years the plant has been operating?

## What does the Commission tell us about the nature of this waste?

## What does Vermont Yankee say is the reason the appeals court invalidated the rule?

## What is theory of the NRDC?

## Why does NRDC use theory, rather than the one put forward by Vermont Yankee?

## Does the court trust either party’s analysis?

## What did the court conclude was the court’s reason for striking down the law?

## What was the intervenors' primary argument?

## How did the Circuit the Court frame the question before it?

## Does the lower court recognize that this problematic?

## What rationale does it give for doing it anyway?

## Did the lower court find the procedures were adequate?

## Does the United States Supreme Court find that there is never a right to a due process type hearing for rulemaking?

## Do we have any evidence that the court has every found one of these exceptions?

## What does the United States Supreme Court tell us is the standard from FCC v. Schreiber?

## What does SEC v. Chenery Corp., 332 U.S. 194, 196 (1947) tells us about the role of the court?

## What would the court have to have done to justify requiring more procedure under this standard?

## Did the court do this?

## What might it have argued to support its procedural requirements?

## What does the Senate report on the APA tell us?

## Why does the court look to the 1947 Attorney General's Manual on the Administrative Procedure Act as authority in interpreting the Act?

## Why not let the courts refine agency proceedings?

## Would this be consistent with congressional intent?

## What is the Monday morning quarterbacking issue?

## What would agencies have to do to avoid this?

## Why does the record in a rulemaking not depend on the process to develop the record, as opposed to the record in a trial/adjudication?

## What is the cost of this additional procedure?

## How does the NRDC try to use NEPA to argue that the court should add to the APA requirements for rulemaking?

## Does the United States Supreme Court accept this?

## Why was the case remanded on the APA procedural question?

## Under the AEA, who makes the determination about the need for power in a region?

## What is the Commission charged with reviewing?

## Was there evidence in the record supporting the need for more power in the region?

## What did the NRDC suggest as an alternative to building the reactor?

## What is their argument that this is required by NEPA?

## What did the same DCC find about alternatives under NEPA in Natural Resources Defense Council v. Morton, 458 F.2d 827 (1972)?

## Do you think energy conservation is an uncommon or unknown alternative that must be ferreted out?

## What is a problem to charge the AEC with developing energy conservation alternatives?

## When did the Council on Environmental Quality promulgate the regs about energy conservation?

## Why then?

## Was that after the preliminary EIS for this project?

## What is the problem with requiring the Commission to reevaluate applications based on information developed subsequently to submission of the application and EIS?

## Does it matter that this is a very long process, rather than a short one?

## Would it matter if the new information concerned public health and safety, such as information from the Fukushima disaster that modifies the calculations on the strength of potential earthquakes that might affect a reactor?

## What is the threshold test for comments?

## Why is this necessary to prevent paralysis in the regulatory process?

## Can the court substitute its judgment on the environmental consequences of an action for the agency’s judgment?

## Why does the NRDC want the report to discuss all aspects of the technical information about the permit in layman’s language?

## Does court find that the AEA requires such as a disclosure?

## What must be conveyed to the public?

## Were the technical source documents available to the public? (Not mentioned, but this would exclude those that contained trade secrets or security information.)

## Did the court uphold the requirement that the Commission revise the report to make it more accessible to laymen?

## What does the court say is the Congressional intent regarding nuclear power?