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Supreme Court Raises the Bar for Environmental Injunctions

Opponents suing under environmental laws to stop major projects will have a tougher time convincing courts to enter injunctions. Tuesday's decision by the U.S. Supreme Court in *Monsanto v. Geertson Seed Farms* has set aside the general presumption that "stop work" injunctions will be entered in National Environmental Policy Act cases, even if the court finds in favor of the plaintiffs.

While Venable works to help clients avoid environmental litigation whenever possible, major construction projects like new roads, residential and commercial land development, or infrastructure for utilities and other public services, too often rise and fall on compliance with environmental laws. Sometimes litigation by project opponents cannot be avoided. Venable's [Environmental Group](#) brings a wealth of experience to such cases, having litigated numerous cases in recent years, including many NEPA matters. This recent Supreme Court decision will impact not only active litigation, but pre-litigation counseling to help clients plan and build their important projects.

Prior to the *Geertson Seed* decision, many federal courts, including the Ninth Circuit Court of Appeals, had adopted a presumption that a court should issue a preliminary injunction if a Plaintiff was likely to succeed on the merits, and should issue a permanent injunction if the Plaintiff was successful in identifying a NEPA violation. While entry of an injunction normally requires a balancing of equities, this presumption in favor of environmental plaintiffs meant that no matter how important the project or how costly the delay, injunctions were routinely entered.

The Supreme Court's *Geertson Seed* decision should stop that practice. The case involved a U.S. Department of Agriculture decision regarding the regulation of a Monsanto alfalfa seed genetically engineered to be resistant to the active ingredient in Monsanto's Roundup herbicide. USDA decided that Monsanto should be permitted to sell the "Roundup Ready Alfalfa", as the company calls it, concluding in an Environmental Assessment that the alfalfa was unlikely to have a significant impact on the environment. Plaintiffs challenged that decision - claiming that USDA should not have approved the Roundup Ready Alfalfa without performing a full environmental impact statement - and won; the District Court then issued an injunction preventing the planting of any Roundup Ready Alfalfa until USDA had complied with NEPA. Monsanto argued that the injunction imposed massive costs and was not in the public interest, factors that should be considered before enjoining ongoing commercial activities.

After an unsuccessful appeal to the Ninth Circuit, the Supreme Court reversed the District Court, holding that the court's injunction was too broad and reiterating that the traditional four-factor test for issuing an injunction holds in the NEPA context - that courts should not employ a presumption that an injunction will issue.

In a clear pronouncement, the Supreme Court stated on pages 15-16 of its opinion that:

An injunction should issue only if the traditional four-factor test is satisfied. In contrast, the statements quoted above appear to presume that an injunction is the proper remedy for a NEPA violation except in unusual circumstances. No such thumb on the scales is warranted. Nor, contrary to the reasoning of the Court of Appeals, could any such error be cured by a court's perfunctory recognition that "an injunction does not automatically issue" in NEPA cases. See 570 F. 3d, at 1137 (internal quotation marks omitted). It is not enough for a court considering a request for injunctive relief to ask whether there is a good reason why an injunction should not issue; rather, a court must determine that an injunction should issue under the traditional four-factor test set out above.

By eliminating the presumption of injunction, *Geertson Seed* will require federal courts in NEPA cases to weigh injury to the project proponents before entering an injunction. While this focus may not alter all outcomes, it has the potential to affect some. More importantly, the clear, heavier burden necessary to stop a project in court should affect the pre-litigation dynamics between the parties as they attempt to determine their relative risks of litigating.

For additional information on this or other NEPA or environmental litigation issues, contact [Margaret \(Peggy\) Strand](#) at 202.344.4699, [Lowell Rothschild](#) at 202.344.4065 or [Dana Nifosi](#) at 703.760.1664.

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