Supreme Court Strikes Down "End-Result" Requirements in NPDES Permits

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On March 4, 2025, the U.S. Supreme Court issued a ruling that prohibits the U.S. Environmental Protection Agency ("EPA" or "the Agency") from setting qualitative limits based on the condition of the "receiving waters" that the permit authorizes discharge into, rather than specific limits on the permittee's discharge itself. The Court did uphold the Agency's ability to issue non-numerical (*i.e.*, "narrative") permit limits, but ruled that these limits must explicitly "spell out what a permittee must do or refrain from doing."[1] This Client Advisory will first discuss the background of the case, explain the holding, and then outline key takeaways that National Pollutant Discharge Elimination System ("NPDES") permit holders should consider moving forward.

Background

Under the Clean Water Act ("CWA" or "the Act"), EPA and authorized state agencies (in this case, the California Regional Water Quality Control Board for the San Francisco Bay Region ("the Regional Board"))[2] may impose requirements via NPDES permits on entities that discharge "pollutants" (including, but not limited to, wastewater, stormwater, or a combination of the two) into Waters of the United States ("WOTUS") like the Pacific Ocean. NPDES permits can be issued on the individual level to specific regulated entities, or via "general" permits, under which regulated entities submit a notice of intent to comply. Non-compliance may result in civil penalties and even prosecution by the government. Citizen suits are also common.

The CWA also makes clear distinctions between "effluent limitations," which are imposed by the agency to regulate a permittee's discharges, and "water quality standards" ("WQS"), which are standards by EPA and state regulators on receiving waterbodies.

This case focuses on one of San Francisco's two wastewater treatment facilities: the Oceanside facility, which discharges into the Pacific Ocean. During heavy rain events, stormwater and sewage combine and deposit into the Pacific Ocean. This "combined sewer overflow," ("CSO") is a pollutant that can cause violations of the Pacific Ocean's WQS. Because CSOs are pollutants, San Francisco's NPDES permit has always included effluent limitations for these discharges.

Nevertheless, in 2019, EPA and the Regional Board revised San Francisco's NPDES permit to include two new "narrative limitation" provisions that did not explicitly specify what the City must do, or refrain from doing, regarding CSO discharges and the Pacific Ocean's WQS. Instead, these permit provisions made San Francisco responsible for the quality of the receiving water (in this case, the Pacific Ocean) into which the City discharges pollutants. The Court refers to these as "End-Result Requirements." The two End-Result Requirements are provided below:

- Prohibitions on making any discharge that "contribute[s] to a violation for any applicable water quality standard" for receiving waters.
- Prohibition on performing any treatment or making any discharge that "create[s] pollution, contamination, or nuisance" in the receiving water as defined by California regulations.

San Francisco initially appealed the inclusion of these provisions to the EPA's Environmental Appeals Board ("EAB"), which ruled in EPA and the Regional Board's favor. San Francisco then elevated its appeal to the U.S. Court of Appeals for the Ninth Circuit, which ultimately upheld EAB's decision. In their challenges, San Francisco argued that the CWA does not allow for "narrative" permit provisions, only quantitative, numerical effluent limits. The City also argued that NPDES permits cannot include provisions regulating the "receiving water," only the permittee's discharges.

In January 2024 San Francisco filed a writ of certiorari with the U.S. Supreme Court, which ruled in its favor on March 4, 2025.

Holding

There are two main parts to the Supreme Court's holding. First, the Court held that the CWA "does not authorize the EPA to include "end-result" provisions in NPDES permits."[3] Second, the Court ruled that while narrative permit provisions are permissible, the two included in San Francisco's permit were impermissibly vague. The Court stated that "determining what steps a permittee must take to ensure that water quality standards are met is the EPA's responsibility."[4]

While the Court's decision officially split 5-4, the majority opinion, authored by Justice Alito,[5] unanimously rejected San Francisco's argument that the CWA only provides for numerical effluent "limitations." Instead, all nine Justices agreed that at numerous points throughout the statute, the CWA makes clear distinctions between quantitative limits (*i.e.*, technology-based "effluent limitations,"[6] defined as restrictions on the "quantities, rates, and concentrations of chemical, physical, biological, and other constituents,"[7]) and qualitative limits (*i.e.*, secondary, non-technology based limits set "without regard to cost or technology availability"[8]). Examples of quantitative limits include limits set on a discharge's pH levels, the concentration of certain chemicals, or the amount of discharge over a given period. Appropriate qualitative limits are non-numerical, or "narrative" requirements that still prescribe specific actions or activities, like scheduling discharge events at certain times, operating during low or high tide, installing a berm, and other operational practices.

This, however, is where the common ground ends. Justice Alito, joined by Chief Justice Roberts and Justices Thomas, Kavanaugh, and Gorsuch, held that the CWA does not authorize EPA to impose NPDES permit requirements on "whether *receiving waters* meet applicable water quality standards."[9] They also determined that narrative permit requirements must be drafted by the regulator with specificity.[10]

The Court reached these conclusions by examining the text, structure, and history of the CWA. With respect to statutory construction, the Court noted that the CWA provision authorizing narrative permit provisions, 33 U.S.C. § 1311(b)(1)(C), allows permits to contain "any more stringent *limitation*" "necessary to *meet*" WQS imposed under law; and to contain "any more stringent *limitation*" required to "*implement* any applicable WQS established."[11] The Court reasoned that, based on the use of "limitation" in the CWA's quantity-based limitation provisions at 33 U.S.C. §§ 1311(b)(1)(A)-(B), "limitations" are imposed directly by EPA, and cannot be self-generated. Moreover, the Court held that the term "implementation" tells EPA to impose requirements to

"implement" WQS – *i.e.*, to ensure by concrete measures that they are actually fulfilled.[12] Finally, the Court found that the word "meet" is operative, meaning that the imposed limitation must specify actions that must be taken to achieve (*i.e.*, "meet") the WQS. "Simply telling a permittee to ensure that the end result is reached is not a 'concrete plan' for achieving the desired result. Such a directive simply states the desired result; it does not implement that result," wrote Justice Alito for the majority.[13]

Second, the Court examined the history of the CWA. The Federal Water Pollution Control Act ("WPCA"), passed in 1948, and then completely replaced in 1972 with the CWA, included provisions under which dischargers could be held liable "if the quality of the water into which it discharges pollutants" fails to meet WQS.[14] Congress removed this provision in the 1972 rewrite. The Court found that this omission was neither accidental nor inconsequential, noting that "[t]he repealed enforcement provision went to the heart of what Congress viewed as a major defect in the old scheme."[15] The majority reasons that "the 1972 overhaul aimed to facilitate enforcement by 'making it unnecessary to work backward from an overpolluted body of water to determine which point sources [were] responsible.'"[16] Thus, the "amended WPCA sought to achieve 'acceptable quality standards' by means of 'direct restrictions' on polluters."[17] Accordingly, the Court determined that Congress's express and purposeful removal of "end-result" requirements in the 1972 CWA amendments means that these "end-result" limits are not permissible under the CWA, and therefore cannot be included in NPDES permits.

The Court reinforced its reasoning in its third conclusion regarding the CWA's broader statutory scheme. The CWA includes enforcement provisions, such as civil penalties and criminal liability, to allow regulators to address non-compliance. The Act also provides a permit "shield" that protects permittees from liability for discharges as long as the permittee complies with the terms of its permit. The Court concluded that the benefit of the permit shield could be eviscerated if EPA can "impose a permit provision making the permittee responsible for any drop in water quality below the accepted standard."[18] Indeed, "[a] permittee could do everything required by all the other permit terms. It could devise a careful plan for protecting water quality, and it could diligently implement that plan. But if, in the end, the quality of the water in its receiving waters dropped below the applicable water quality levels, it would face dire potential consequences."[19]

The Court also reasoned that including "End-Result" limits in permits is unfair from a practical standpoint as well. There are often dozens, and sometimes even hundreds, of dischargers into a same receiving water, and it is therefore patently unfair to impose on any one entity the obligation to ensure that the receiving waterbody achieves its WQS. When a waterbody receives effluent from multiple sources, any number of discharges or activities can contribute to the waterbody's failure to achieve a WQS, and it can be impossible to fairly discern what specific discharges or combination of discharges caused the impairment.[20] The Court pointed out that this practical enforceability issue was common under the WPCA, and was among the reasons Congress significantly restructured the Act: "the pre-1972 enforcement scheme made it necessary for federal authorities to 'unscramble the polluted eggs after the fact.'"[21]

Key Takeaways

The Supreme Court has made clear that EPA and state regulators cannot set limits that impose restrictions on receiving waters rather than a permittee's discharges. In other words, NPDES permits may not include End-Result requirements. However, agencies can continue to include narrative limitations in NPDES permits, provided these limitations are "concrete" and offer certainty regarding NPDES permit compliance. In California and the 45 other jurisdictions that have been delegated

authority under the CWA to issue NPDES permits, permit writers' often include the same type of "End-Result" limits that the Court prohibited in this case in stormwater and routine discharge permits alike. Accordingly, permitted entities should review their NPDES permits to ensure that all provisions contained therein are consistent with the Court's ruling in *San Francisco*. Since NPDES permits are statutorily required to be updated every five years, entities should also be diligent in ensuring that new permits take the Court's ruling in *San Francisco* into account.

Moreover, given the Supreme Court's determination that permit writers are responsible for "determining what steps a permittee must take to ensure that water quality standards are met,"[22] entities should anticipate delays in obtaining NPDES permits and renewals. The "End-Result" limits permit writers included in permits were often viewed as an expedient way to protect receiving waters without prescriptively detailing the steps permittees would need to take to ensure that their discharges did not cause those waters to fail WQS. Now that the Supreme Court has held that permit writers are responsible for identifying the concrete steps permittees must take to protect receiving waters, it is likely that permit writers may take longer to develop new WQS-based permit terms. And, given the difficulty inherent in protecting receiving water quality on a permit-by-permit basis, permit writers may respond to the Court's *San Francisco* decision by including terms in NPDES permits that are "concrete" but also far more stringent.

For inquiries on how *San Francisco* may affect you, please reach out to Wayne D'Angelo, Andrew Homer, or Zachary Lee.

[1] *City and Cnty. of San Francisco v. Envtl. Protection Agency*, No. 23-753, 2 (Mar. 4, 2025).

[2] EPA has delegated its Clean Water Act permitting authority in California to the California State Water Resources Control Board, which in turn delegates its permitting authority for point source discharges to nine Regional Water Quality Control Boards.

[3] *Id.* at 2.

[4] *Id.*

[5] Justice Alito also authored the majority opinion in *Sackett v. EPA*, and appears to be emerging as the Court's resident water law expert. 598 U.S. 651 (2023).

[6] 33 U.S.C. §§ 1311(b)(1)(A) and (B).

[7] 33 U.S.C. § 1362(11).

[8] *San Francisco* at 4 (citing *Natural Resources Defense Council, Inc. v. EPA*, 859 F.2d 156, 208 (CADC 1988)).

[9] *San Francisco* at 4 (emphasis added).

[10] *Id.* at 3, 11.

[11] *Id.* at Sec. III.A.

[12] *Id.* at 11.

[13] *Id.* at 11.

[14] *Id.* at 12.

[15] *Id.* at 13.

[16] *Id*. (citing *EPA v. California ex rel. State Water Resources Control Bd.*, 426 U.S. 200, 204 (1976)). (1976)

[17] *Ibid.*

[18] *Id.* at 15.

[19] *Id.*

[20] *Id.* at Sec. III.C.2.

[21] *Id.* at 16 (citing *Wilmington v. United States*, 157 Fed. Cl. 705, 710 (2022)).

[22] *Id.*