Holland & Hart

Supreme Court Invalidates "End-Result" Provisions in Clean Water Act Discharge Permits

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The U.S. Supreme Court last week, in a 5-4 decision, held that discharge permit “end-result” requirements—those that make a permittee responsible for the quality of the receiving water into which the permittee discharges—are not authorized by the Clean Water Act (CWA). The case, *City and County of San Francisco, California v. Environmental Protection Agency [EPA]*,[1] held that National Pollutant Discharge Elimination System (NPDES) permits cannot contain non-numeric discharge limitations tied to receiving water quality.

At issue were not numeric water quality criteria developed in part on ensuring the designated end uses of the receiving water would be protected by the discharge limitations. Rather, the case arose out of EPA's and the State of California's efforts to impose *qualitative* standards on the discharge—that is, standards that conceivably could be changed without notice. Because these “end-result” permit provisions were used extensively by both EPA and state agencies with delegated CWA permitting authority, the *San Francisco* case has nationwide implications.

Key Takeaways

To the extent that existing NPDES permits include end-result requirements, those provisions should no longer provide the basis for an agency enforcement action or citizen suit.

Permitting authorities are not likely to take immediate action to remove existing end-result provisions, but NPDES permittees may wish to seek the removal of such provisions during their permit renewal processes. The *San Francisco* decision should generally require that regulators express as numeric criteria any requirements they believe are necessary to ensure continued compliance with water quality standards.

The Court's interpretation will bind both EPA and states with delegated authority to issue NPDES permits. Most states adopted the federal program without change, but permit-holders should confirm there is no independent state-law basis to enforce generic anti-degradation standards in state-issued permits.

Background

NPDES permits regulate discharges of pollutants into “waters of the United States.” The Environmental Protection Agency (EPA) and the 47 states delegated to issue NPDES permits already develop numeric effluent

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discharge limitations based on the uses and quality of the receiving water body.

San Francisco operates the Oceanside combined treatment facility, which processes and treats wastewater and stormwater before it is discharged into the Pacific Ocean. When EPA renewed the Oceanside facility's NPDES permit in 2019, the agency added two new provisions, prohibiting discharges that (a) contribute to a “violation of any applicable water quality standard” in the receiving waters, or (b) create “pollution, contamination, or nuisance[.]” The Supreme Court referred to these as “end-result” provisions because “they make a permittee responsible for the quality of the water in the body of water into which the permittee discharges pollutants.”

San Francisco challenged these provisions, and a 5-4 majority of the Supreme Court agreed that they are not authorized by the CWA.

Majority Opinion

Notably, the Court rejected San Francisco's primary argument that all limitations in permits must be “effluent limitations,” which the CWA defines as “restrictions on the quantities, rates, and concentrations of chemical, physical, biological, and other constituents.” In addition to effluent limitations, the CWA allows EPA to impose “any more stringent limitation” necessary to meet water quality standards, and the latter category need not consist only of effluent limitations.

The Court instead focused on San Francisco's alternative argument—that the CWA does not authorize end-result provisions. The Court first noted that CWA's applicable terms, including “implementation,” “limitation,” and “necessary to meet,” indicate that a permitholder must be given concrete actions to achieve a certain objective in the present, rather than an end result that a permitholder must ultimately bring about.

The Court next considered the CWA's legislative history supporting San Francisco's argument against end-result requirements, concluding that Congress intentionally removed any requirements for permitholders to “work backward from a body of water not achieving relevant surface water quality standards to determine which point sources [were] responsible.” Instead, the statute implemented facility-specific requirements on dischargers.

The majority also reasoned that EPA's argument would render the CWA's “permit shield” meaningless. The CWA's “permit shield” offers valuable protection by allowing a permitholder to be deemed compliant with the CWA if it follows the terms in its permit.[2] End-result requirements would undermine and perhaps eliminate this protection for a permitholder that strictly complies with the terms of its permit. Further, EPA's interpretation failed to contemplate the problem of allocating liability when more than one permittee discharges into a body of water not achieving designated surface water quality standards. Because the statutory text is silent on this complex issue, the majority concluded that Congress did not intend for the

CWA to allow end-result requirements.

Dissent

Justice Barrett, joined by Justices Sotomayor, Kagan, and Jackson, dissented in part. The dissenting Justices joined in Part II of the opinion (San Francisco's primary argument), but otherwise disagreed with the majority. The dissent contended that broad “end-result” permit conditions do fit within the CWA's “any more stringent limitation” mandate. The dissenting justices would have put the burden on permit holders facing vague “end-result” terms to bring “an arbitrary and capricious challenge.”

Implications for the NPDES Program

The *San Francisco* decision has broad ramifications for both permitting agencies and dischargers. Permitting agencies can no longer include permit conditions that mandate general compliance with receiving water quality standards without imposing concrete actions that the permit holder must take to comply with its permit. This should provide dischargers with more clarity when implementing their permit terms. However, developing the requisite certainty may require more detailed data review and significantly more engagement between dischargers and regulatory agencies prior to permit issuance.

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[1] No. 23-753, slip op. (U.S. Mar. 4, 2025).

[2] Under 33 U.S.C. § 1342(k), “Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 309 and 505 [33 U.S.C. §§ 1319, 1365], with sections 301, 302, 306, 307, and 403 [33 U.S.C. §§ 1311, 1312, 1316, 1317, 1343], except any standard imposed under section 307 [33 U.S.C. § 1317] for a toxic pollutant injurious to human health.”
