Van Ness Feldman LLP
vnf.com

Supreme Court Limits Clean Water Act Permit Requirements in *San Francisco v. EPA*

MARCH 10, 2025

By Liberty Quihuis, Duncan Greene and Rachael Lipinski

On March 4, 2025, the U.S. Supreme Court in *City and County of San Francisco v. Environmental Protection Agency* held that "end-result" permit requirements are not allowed under the Clean Water Act ("CWA"). The Supreme Court characterized end-result requirements as "permit provisions that do not spell out what a permittee must do or refrain from doing," but instead make a permit holder responsible for receiving water quality. Many individual and general National Pollutant Discharge Elimination System ("NPDES") permits contain such "end-result" requirements—and the Supreme Court's ruling is expected to have significant impacts on NPDES permitting going forward.

Background

The CWA prohibits anyone from discharging "pollutants" through a "point source" into a "water of the United States" without a NPDES permit. "Pollutants" and "point source" are broadly defined in the CWA. The Supreme Court recently addressed what constitutes a "waters of the United States," which we discussed here.

NPDES permits authorizing discharges of pollutants are issued by authorized states, tribes, and/or the EPA, depending on which agency has jurisdiction over the discharge area. NPDES permits contain conditions to protect water quality, such as "effluent limits" that restrict the quantities, rates, and concentrations of pollutants that can be discharged by the permittee. They also include monitoring, reporting, and "best management practice" requirements.

San Francisco v. EPA Decision

In 2019, EPA and the California Regional Water Quality Control Board issued a renewed NPDES permit for a San Francisco wastewater treatment facility that discharged treated wastewater into the Pacific Ocean. The renewed permit contained two new "end-result" provisions that:

1. "prohibit[ed] that facility from making any discharge that 'contributes to a violation of any applicable water quality standard' for receiving waters" and
2. "provide[d] that the city cannot perform any treatment or make any discharge that 'creates pollution, contamination, or nuisance as defined by California Water Code section 13050.'"

On appeal, the Ninth Circuit Court of Appeals upheld these end-result provisions. The Court reasoned that such open-ended conditions were authorized by CWA Section 1311(b)(1)(C), which states that EPA may impose "any" limitation necessary to meet applicable water quality standards.

In a 5-4 decision, the Supreme Court reversed the Ninth Circuit and held that the CWA does not authorize the inclusion of "end-result" provisions in NPDES

permits. Rather, the agency issuing the permit is responsible for determining and spelling out specifically "what steps a permittee must take to ensure that water quality standards are met."

To support its interpretation, the Court focused on the text of Section 1311(b)(1)(C) and the broader statutory scheme. The Court pointed to the CWA's so-called "permit shield" provision, which deems a permit holder to be in compliance with the CWA if it follows all permit terms. Noting the importance of the permit shield given the CWA's imposition of strict liability and harsh penalties for violations, the Court held that the permit shield's benefit be "eviscerated" by a decision to allow end-result requirements.

The Court also emphasized differences between the CWA and the "Water Pollution Control Act" ("WPCA"), the CWA's predecessor statute. The WPCA which included a provision expressly allowing end-result requirements, an approach the Court called "backward-looking" and "impractical" –especially in situations where multiple permittees discharge pollutants into a single water body, requiring regulators to "unscramble the polluted eggs after the fact."

In issuing its decision, the majority heavily relied on the amicus briefs of regulated entities. The dissent believed end-result provisions benefit regulated entities by providing a regulatory tool that can avoid permit delays or denials, but the majority disagreed, stating that the "long list of municipalities and other permittees" supporting San Francisco's position are "sophisticated entities" who are "better positioned than the dissent to judge what is good for them."

Impact of *San Francisco v. EPA*

The Supreme Court's decision puts an end to "end-result" requirements, which have been used routinely in NPDES permits issued by states and the EPA. The Supreme Court's ruling means agencies issuing NPDES permits must translate water quality standards into specific, measurable discharge limitations, rather than simply prohibiting contributions to water quality violations.

The Supreme Court's decision, which applies equally to federal and state NPDES permits, will likely prompt more specific permit requirements. The decision could benefit some permittees by easing permit compliance, providing more certainty as to potential CWA liability, and reducing the number and scope of enforcement actions. However, the decision is also likely to cause delays in permit issuance, while states and the EPA work to implement the new standard announced by the Court.

For More Information

Van Ness Feldman closely monitors and counsels clients on water, air, and other environmental regulatory developments. If you would like more information about the implementation of the Clean Water Act, please contact Duncan Greene, Jenna Mandell-Rice, Joseph Nelson, Jonathan Simon, Rachael Lipinski, Liberty Quihuis, or any other member of our Land Use, Water, or Natural Resources practices in Seattle, WA at (206) 623-9372 or Washington, D.C. at (202) 298-1800.