

## U.S. Supreme Court Invalidates NPDES Permit End-Result Provisions



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On March 4, 2025, the U.S. Supreme Court held in a 5-4 decision in *City and County of San Francisco v. EPA, et al.* that the U.S. Environmental Protection Agency (EPA) lacks authority under the federal Clean Water Act (CWA) to impose National Pollutant Discharge Elimination System (NPDES) permit requirements that condition compliance on whether receiving waters meet applicable water quality standards (i.e., “end-result” requirements). NPDES permits are issued to allow point sources discharges of pollutants into waters of the United States. These permits typically include limitations as to the quality/quantity of effluent that can be discharged (i.e. effluent limitations). Some permits also require best management practices to reduce pollution in discharges (i.e., narrative requirements). While the Supreme Court did not question the imposition of effluent limitations or narrative requirements, the issue at hand pertained to whether NPDES permits can include “end-result” requirements (e.g., a requirement that a discharge cannot exceed water quality standards).

In 2019, two end-result requirements were added to San Francisco’s NPDES permit for its combined wastewater treatment facilities that prohibited the facility from: (1) making any discharge that “contributes to a violation of any applicable water quality standard” for receiving waters, and (2) performing any treatment or making any discharge that “create[s] pollution, contamination, or nuisance as defined by California Water Code section 13050.”

The U.S. Supreme Court granted certiorari after the Ninth Circuit denied San Francisco’s petition and held that §1311(b)(1)(C) of the CWA allows EPA to impose “any” limitations that ensure the applicable water quality standards are satisfied in a receiving body of water. This is the Court’s first major CWA case since *Sackett v. EPA* in 2023, which narrowed the extent of wetlands under the jurisdiction of the CWA.

Before the Supreme Court, San Francisco argued that EPA overstepped its statutory authority under the CWA by imposing end-result provisions, while EPA argued it had authority under §1311(b)(1)(C) to mandate “any more stringent limitation” to meet applicable water quality standards, including inserting end-result language in NPDES permits.

The majority opinion, authored by Justice Samuel Alito, held that §1311(b)(1)(C) “does not authorize NPDES permit requirements conditioning compliance on receiving water quality.” The Court evaluated the plain meaning of “meet” and “implement,” as these terms appear in §1311(b)(1)(C), and stated that this section of the CWA “tells EPA to impose requirements to ‘implement’ water quality standards – that is to ‘ensure’ ‘by concrete measures’ that they are ‘actual[ly]’ fulfilled.” Imposing an end-result requirement “simply states the desired result; it does not implement that result.” As support for its position, the Court compared the CWA’s emphasis of placing “direct restrictions” on dischargers with the “backward-looking model” of its predecessor, the Water Pollution Control Act, which held a permittee liable if its receiving water quality did not meet water quality standards.

Justice Alito opined that end-result requirements are contrary to the protections provided by the CWA’s “permit shield,” because a permittee could comply with all requirements of its NPDES permit and still face enforcement and penalties if the receiving water’s quality dropped below designated standards. Moreover, the Court noted that, when more than one permittee discharges to a receiving water, end-result requirements prohibit EPA from fairly allocating responsibility among multiple dischargers contributing to water quality violations. Therefore, the Court reversed the Ninth Circuit and held that “§1311(b)(1)(C) does not authorize the EPA to include ‘end-result’ provisions in NPDES permits.”

Justice Amy Coney Barrett authored the dissent in part, arguing that the CWA gives EPA broad authority to ensure state water quality standards are maintained, and EPA should have the ability to ensure compliance through end-result NPDES permit conditions.

As a practical implication of the ruling, EPA and authorized state agencies likely will not be able to impose or enforce permit restrictions that do not provide clear direction on how to comply with the conditions. Permittees should examine their NPDES permits for these existing conditions. For new or renewal permits, this decision could lead EPA to require submittal of additional information about a facility's discharge during the application process, which may delay permitting processes and increase costs.

For more information on the implications of the Supreme Court's decision in *City and County of San Francisco v. EPA, et al.* or water-related matters, in general, please contact Lisa Bruderly at (412) 394-6495 or [lbruderly@babstcalland.com](mailto:lbruderly@babstcalland.com), Joseph Schaeffer at (412) 394-5499 or [jschaeffer@babstcalland.com](mailto:jschaeffer@babstcalland.com), or Alexandra Graf at (412) 394-6438 or [agraf@babstcalland.com](mailto:agraf@babstcalland.com).

