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Client Alert

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Supreme Court Rules EPA's Wastewater Discharge Permits May Not Include "End-Result" Provisions

In an important environmental decision, the Supreme Court narrowed the range of discharge limitations under the Clean Water Act ("CWA") for wastewater discharges. On March 4, 2025, the U.S. Supreme Court held the CWA does not authorize the Environmental Protection Agency ("EPA") to include "end-result" provisions, a type of "narrative standard," in National Pollutant Discharge Elimination System ("NPDES") permits. The Court's new interpretation exposes NPDES permits across the country, many of which include these commonly used narrative provisions, to legal challenges and will likely result in more work for an already-stressed EPA at the national and regional levels.

BACKGROUND

In 2019, EPA renewed the City of San Francisco's ("the City") NPDES permit and added two new end-result provisions. The first provision prohibited the City's wastewater treatment facility from making any discharge that "contribute[s] to a violation of any applicable water quality standard" for receiving waters; the second provision prohibited any treatment or discharge that "create[s] pollution, contamination, or nuisance as defined by California Water Code section 13050." *Id.* at 2-3. The City objected to the end-result provisions, appealing its permit to EPA's Environmental Appeals Board ("EAB"), arguing these provisions were vague, limitless, and not permitted under the CWA. The EAB rejected the City's appeal.

The City appealed the EAB decision to the Court of Appeals for the Ninth Circuit which, though divided, affirmed the EAB's decision, holding that the CWA authorizes EPA to "impose 'any' limitations that seek to ensure" that water quality is attained in the receiving waterbody. *City and Cty. of S.F. v. EPA*, No. 23-753, 2025 U.S. LEXIS 958, at 12 (Mar. 4, 2025). The

Ninth Circuit's dissent argued the CWA maintains a distinction between the CWA's limitations the agency may impose and water quality standards themselves. *Id.* at 12. The Supreme Court granted the City certiorari and reversed.

OPINION

Justice Alito wrote the majority opinion in a 5-4 decision for the Court, holding the language of 33 U.S.C. §1311(b)(1)(C) and the broader structure of the CWA do not authorize permit requirements to condition compliance on receiving water quality. *Id.* at 3. Eight Justices joined Section II of the Court's opinion, where the Justices agreed permittees can be subject to limitations beyond effluent limitations—for example permits can contain "best practices" where permittees must comply with operational requirements and prohibitions. *Id.* at 13.

But the Court divided in Section III, where the majority used a textual and structural framework to define and understand "limitation", "implement", and "meet." As noted by Justice Alito, "a limitation that is 'necessary to meet' an objective is most naturally understood to mean a provision that sets out actions that must be taken to achieve the objective." *Id.* at 16. For the Court, "simply telling a permittee to ensure that [an] end result is reached" is stating a "desired result." *Id.* Accordingly, wastewater permits must direct a permittee to take an action or prohibit an action, rather than simply requiring the permittee to meet the receiving waterbody's water quality standard generally and without a specific directive. The Court further noted that the CWA is framed to allow EPA to impose "direct restrictions" on polluters rather than working backward from pollution to assign responsibility, and thus, EPA must directly impose restrictions, rather than forcing a permittee to meet a particular end quality. *Id.* at 18.

Dissenting, Justice Barrett, joined by Justices Sotomayor, Kagan and Jackson, also relied upon the language of the CWA and argued the majority read Section 1311(b)(1)(C) improperly and impractically. For the minority, the CWA *first* directs EPA to implement technology-based effluent limitations via Section 1311(b)(1)(A); these limitations relate, as defined in the statute at Section 1362(11), to "quantities, rates, and concentrations" of discharge. When Section 1311(b)(1)(A) limitations are insufficient to ensure a water quality standard is met, the CWA *next* grants supplemental authority, via Section 1311(b)(1)(C), to impose "any more stringent limitations." Not only was the need for supplemental authority to cover the shortcomings of tailored effluent limitations defended by state amici, but Justice Barrett also defended this framework using nearly 50-year and 30-year old precedents where the Court held that point sources, "despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels." *Arkansas v. Oklahoma*, 503 U.S. 91, 101 (1992) (quoting *EPA v. California ex rel. State Water Resources Control Bd.*, 46 U.S. 200, 205, n. 12 (1976)).

The dissent took aim at the majority's textual argument that "limitations" may only be "restrictions," arguing through analogy and definition that a "limitation" may also be a statement of an end result without prescribing what the limited party must do to meet that condition. Importantly, the dissent did not embrace all end-result limitations. Justice Barrett carefully notes that while the provisions at issue in the case are within the EPA's authority, some receiving water limitations may be unfair and subject to arbitrary and capricious challenges, just not, as here, the majority's "statutory rewrite." *City and Cty. of S.F. v. EPA*, at 36.

The majority and the dissent disagreed on the practical impact of this interpretation. For the majority, this decision should have no effect on water quality because the end-result provisions were not necessary to protect water quality. Instead, the CWA directs EPA to determine what a facility should do and then mandate those actions. In contrast, the dissent argued that end-result provisions are the necessary next step where effluent limitations fall short. Because Section 1311(b)(1)(A) is not optional, EPA "is required to issue the limitations necessary to ensure the water quality standards are met." *Id.* at 40. Where this is not possible, such as when EPA does not have the necessary information, it will be more difficult for EPA to provide municipalities and businesses the permits

necessary to continue certain operation. According to the Court's amicus briefs, scientists argue narrative standards are necessary to protect ecosystems where numeric standards are difficult to define, especially for new and emerging pollutants. In addition to EPA, States and Tribes rely on narrative standards to implement their permitting programs and limiting narrative standards will likely cause regulatory uncertainty for the agencies and permittees. EPA and many state agencies should also brace for challenges from permittees with end-result provisions in their existing permits.

With this opinion, the Supreme Court further narrows EPA's authority under the CWA. Practically, the ruling will impact federal and state agencies in their permit process and potentially cause delays for the permittees. For permittees, now is the time to review each permit in each state to identify and assess any end-result or other narrative provisions to see if they should remain in its permit.
