

SCOTUS Ruling on Clean Water Act Permits Muddies EPA Authority

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(March 11, 2025) – A U.S. Supreme Court (SCOTUS) decision involving the discharge of sewer-stormwater from the city by the bay into the bay and ocean has left the federal water quality permitting regime in a state of disarray with Clean Water Act (CWA) lawyers, permittees, and advocates on all sides of the issue trying to determine the impact the decision will ultimately have on the authority of the U.S. EPA to regulate stormwater through current and future permits. SCOTUS ruled in *City & County of San Francisco v. EPA*, No. 23–753 that the U.S. EPA did not have the authority under the federal Clean Water Act to include measures and terms in the NPDES (National Pollutant Discharge Elimination System) permit it had issued to San Francisco because part of the terms were narrative requirements focused on end results. The City had argued that narrative end result requirement language in the permit were too vague...to the point that the City would not know if it were in compliance with the permit or not. SCOTUS agreed.

Even though it is still too early to tell what the true impact the SCOTUS decision will have on existing permits (potential challenges) and permits currently being promulgated by U.S. EPA and those states – like California – that have been delegated the authority to promulgate federal CWA NPDES permits like the construction stormwater permit or the industrial stormwater permit, CWA observers do know that there are hundreds of permits throughout the country that include similar narrative end result measures that were just invalidated. Some experts anticipate the federal government to pursue the development of a policy and guidance document focused on translating narrative end result requirements into numeric limits that include specific steps to be taken by a permittee. NAIOP SoCal will continue to monitor any developments related to this case and the impact it could have on the State Water Resources Control Board adoption of the next industrial stormwater discharge permit.