San Francisco v. EPA: SCOTUS Limits Types of Clean Water Act Permit Conditions

On March 4, 2025, the Supreme Court of the United States issued a decision limiting the types of conditions EPA can include in individual Clean Water Act ("CWA") permits. In *San Francisco* v. *EPA*, 604 U.S. ___ (2025), the 5-4 majority held that the CWA "does not authorize EPA to include 'end-result' provisions in NPDES permits." *San Francisco*, 604 U.S. at *12. Instead, a valid permit condition must "set [] out actions that must be taken to achieve the objective." Effluent limitations and narrative limits in NPDES permits remain in effect.

This decision invalidates existing 'end-result' conditions in current individual NPDES permits, may expose current permit holders with such conditions to citizen suits, imposes new burdens on the understaffed agency, and will likely result in a much slower process for issuing new and renewed NPDES permits—especially in Massachusetts, where the NPDES program is not delegated to the Commonwealth.

The CWA allows EPA and authorized state agencies to issue National Pollution Discharge Elimination System ("NPDES") permits, which regulate the discharge of pollutants into Waters of The United States ("WOTUS"). Typically, NPDES permits include effluent limitations, or restrictions on the quantity, rate, or concentrations of chemical, physical, or biological constituents in water. It is also common for permits to set out other steps that a discharger must take to limit pollution, such as testing, record-keeping, and reporting requirements, as well as requirements obligating a permittee to follow specified practices designed to reduce pollution. This case involves a challenge to EPA's use of 'end-result' permit requirements, where the permit condition doesn't spell out what a permittee must do (or not do)—instead, the condition makes a permittee responsible for the quality of the water body into which the discharge goes.

San Francisco operates a combined wastewater treatment plant that discharges both wastewater and stormwater into the Pacific Ocean. During heavy precipitation, system input can exceed facility capacity, resulting in the discharge of raw sewage into the receiving waters. In 2019, EPA issued San Francisco a renewed NPDES permit with two new 'end-result' requirements. One prohibited the facility from making any discharge that "contribute[s] to a violation of any applicable water quality standard" for receiving waters. The second provided that the City could not perform any treatment or make any discharge that "create[s] pollution, contamination, or nuisance as defined by California Water Code section 13050."

On appeal, the City argued that the 'end-result' requirements exceed EPA's statutory authority under §1311(b)(1)(C) of the CWA. On review, SCOTUS agreed. The Court found that while not all limitations in permits need to be effluent limitations, §1311(b)(1)(C) does not authorize permits that condition compliance on receiving water quality. Because §1311(b)(1)(C) uses the terms "limitation," "implement," and meet", the Court determined that that EPA must set specific rules permittees must follow and comply with. Implementing standards requires concrete measures – steps taken to achieve an objective—not just mandating results. In addition, the Court opined that the EPA "has ample tools" to obtain whatever information it needs to determine the steps for water quality compliance, and "[i]f the EPA does its work, our holding should have no adverse effect on water quality." [Decision], at 3. The Court did not reconcile this conclusion with the Executive's current push for leaner agency staffing.

In addition to parsing statutory language to supports its rationale, the Court found that 'end-result' permit conditions defeat the "permit shield" protection for dischargers – where permit compliance is de facto compliance with the CWA. If compliance with the permit isn't possible, then the "permit shield" protection is illusory.

This ruling will have far-reaching impacts for individual NPDES permittees, especially those in Massachusetts. Massachusetts is one of four states without delegated authority to administer the program (the others are Idaho, New Mexico, and New Hampshire). There are thousands of current permits that contain 'end-result' provisions, and the onus is on EPA to develop, impose, and justify specific permit limitations to protect receiving waters. New permits will take longer to write, which compounds an already overwhelmed system—as of October 2024, EPA reported 49.2% of Massachusetts NPDES permit renewals were backlogged (more than 6 months behind). Without permits ensuring receiving waters meet water quality standards, permittees may be subject to Citizen Suits, or EPA may opt to impose stricter effluent limitations in future permits to eliminate any chance a discharge could result in water quality exceedances.

Importantly, the Court clarified that its holding does not prohibit EPA from including "narrative limitations" expressed in nonnumerical form in NPDES permits, so the holding in *San Francisco v. EPA* does not impact "general permits," which cover certain categories of point sources.

Anderson & Kreiger is closely following the impacts of this decision. Meanwhile, permittees should review existing permits for 'end-result' conditions and consult with counsel on the risk for citizen suit action and considerations for future permit conditions.