

Environment & Energy Insights

March 2025 Edition

Welcome to the March edition of Nutter's Environment & Energy Insights, a monthly update of current trends in environment and energy law.

The Supreme Court invalidates "end-result" requirements in Clean Water Act discharge permits.

Yesterday, the Supreme Court issued its long-anticipated decision in *City and County of San Francisco v. EPA*, which addresses the type of limits the Environmental Protection Agency (EPA) can impose in discharge permits issued under the Clean Water Act's National Pollutant Discharge Elimination System (NPDES) Program. In brief, the Court upheld EPA's authority to impose requirements besides those that simply set numeric limits on pollutants, but a 5-4 majority found that the Clean Water Act prohibits "end-result" requirements that generically require compliance with state water quality standards.

The case arose from an appeal of San Francisco's NPDES permit that authorized discharges from a combined sewer outfall into the Pacific Ocean. The permit contains two at-issue requirements, which prohibited San Francisco from making any discharge that (1) "contribute[s] to a violation of any applicable water quality standard" for receiving waters, and (2) "create[s] pollution, contamination, or nuisance" as defined by California regulation.

San Francisco principally argued that the at-issue requirements were invalid because the Clean Water Act required EPA to set *only* numeric effluent limits, i.e., limits in defined amounts or concentrations of a pollutant in a discharge. Eight members of the Court (all but Justice Gorsuch) rejected this view. Narrative limits (written descriptions of what discharges look or smell like) and other types of limits may still be imposed.

A majority of the Court, however, still invalidated the at-issue requirements, which the majority termed as "end-result" requirements: "provisions that do not spell out what a permittee must do or refrain from doing; rather, they make a permittee responsible for the quality of the water in the body of water into which the permittee discharges pollutants." The majority found, among other reasons, that these terms were inconsistent with the text and purpose of the Clean Water Act.

This decision will have a significant impact on NPDES permitting. This is especially the case in Massachusetts where all NPDES permits are issued by EPA and where most permits have end-result requirements similar to those invalidated here. According to the majority, "[d]etermining what steps a permittee must take to ensure that water quality standards are met is the EPA's responsibility," and EPA will have to revise its permits to ensure water quality standards are met. The dissent notes that this is easier said than done. Requiring individualized conditions for each permittee "will be more difficult and more time consuming for [EPA] to issue permits" and could result in more denials.

Authors



**Matthew
Connolly**



**Matthew
Snell**



**Alexander
Eddinger**

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This advisory was prepared by [Matthew Connolly](#), [Matthew Snell](#) and [Alexander Eddinger](#) in Nutter's [Environment and Energy practice group](#). If you would like additional information, please contact any member of our practice group or your Nutter attorney at 617.439.2000.

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