

US Supreme Court Rules Against EPA in Clean Water Act Permitting Dispute

Client Alerts

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The Supreme Court ruled in favor of the City and County of San Francisco in a case against the US Environmental Protection Agency involving the scope of the Clean Water Act. *See City & Cty. of San Francisco v. Environmental Protection Agency*, No. 23-753 (Mar. 4, 2025). At issue was the Clean Water Act's discharge permitting program. Specifically, the issue was whether the Clean Water Act allows permits to include limits that are based on the quality of the receiving water, or whether all permit limits must be based on the permittee's conduct.

The Supreme Court, in an opinion authored by Justice Alito, sided with San Francisco and held that receiving water-based permit terms is not allowed. The Court concluded that such limits—which it called “end result” requirements—exceed EPA's authority. The Court reasoned that the plain meaning of the statutory term “limitation,” along with the structure and history of the Clean Water Act, made clear that all permit limits must be focused on the permittee's conduct. Among other things, this interpretation preserved the full force of the so-called “permit shield,” which deems a permittee in compliance with the Clean Water Act, and shields it from liability, so long as it complies with the terms of its permit.

Going forward, this means that Clean Water Act permit terms can specify numeric limits on discharges and may also provide steps the discharger must take to reduce pollution (such as testing and reporting), but they may not impose restrictions based on water quality alone. Such permit terms had been relatively common in some types of permits, including for general permits that provide broad coverage for industries like the construction industry and others. Now, these permits will need to be more narrowly tailored, and in some circumstances more prescriptive than before. This decision could also mean that entities seeking permits could face delays if, as expected and noted in the Court's decision, EPA must gather additional information before issuing some permits.

Jenner & Block is prepared to counsel clients on the effects of this decision. Please reach out to your Jenner & Block contact for more information.

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