

GUEST COLUMN

San Francisco v. EPA: Requiem for receiving water limitations?

In *City and County of San Francisco v. U.S. Environmental Protection Agency* (2025), the U.S. Supreme Court struck down generic receiving water limitations in Clean Water Act permits, potentially reducing liability for public agencies but raising concerns about future water quality enforcement.

By Davin A. Widgerow

The federal Water Pollution Prevention and Control Act commonly known as the Clean Water Act, controls water pollution by requiring discharging parties to secure permits controlling the amounts of pollutants they release into waterbodies. In *City and County of San Francisco v. U.S. Environmental Protection Agency* (2025) 2025 WL 676441, the U.S. Supreme Court voided a significant component of these permits - and perhaps a significant source of liability for public agencies in the process.

What are Clean Water Act NPDES permits?

The Clean Water Act permit at issue in the *San Francisco* case is a National Pollutant Discharge Elimination System, or NPDES, permit (see 33 U.S.C. § 1342). Importantly, compliance with an NPDES permit constitutes compliance with the Clean Water Act - often referred to as the “permit shield” - while discharging into a waterbody without an NPDES permit, or in violation of an NPDES permit, is a violation of the Clean Water Act (*Id.* at § 1342(k)). Such violations are strict liability violations, and liability can be imposed without regard to intent or fault. (*Id.* at § 1311(a); see also *United States v. Earth Sciences, Inc.* (10th Cir. 1979) 599 F.2d 368, 374.)



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All NPDES permits contain at least four components: (1) effluent and other pollution limitations, which set limits on pollutants in discharges to waterbodies; (2) monitoring and reporting requirements; (3) any special conditions, such as compliance schedules or unique studies; and (4) standard conditions, including administrative and enforcement provisions.

The *San Francisco* case concerns the pollution limitations component of NPDES permits. Effluent limita-

tions are restrictions on the “quantities, rates, and concentrations of chemical, physical, biological, and other constituents” in discharges to waterbodies. (33 U.S.C. § 1362(11).) Effluent limitations can be “numeric,” that is, they impose actual numeric limits on pollutants - for example, no more than 3.2 µg/L of lead per day. “Narrative” limitations, conversely, are non-numeric activities that are expected to improve water quality, such as street sweeping, education campaigns, and trash control.

Pollution limitations are also divided into different categories based on the location they regulate. Technology-based effluent limitations apply at the point of discharge, for example, the end of a sewage outfall pipe. By contrast, water-quality-based effluent limitations are limitations adopted to meet water quality standards not at the discharge point, but in the *downstream receiving water*. For this reason, water-quality-based effluent limitations are also sometimes called “receiving water limitations.” Like other pollution limitations, receiving water limitations can be numeric or narrative, and do not always identify specific effluent limits. Receiving water limitations have thus far been authorized when the technology-based limitations at the discharge points nevertheless do not produce downstream water quality improvements. (33 U.S.C. § 1311(b)(1)(C).) The key statutory language used to adopt receiving water limitations for this purpose provides that regulators must impose, in addition to technology-based limitations, “any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance....” (*Ibid.* [emphasis added].)

Parties with NPDES permits are expected to keep pollutants in their discharges below both effluent limitations at the discharge point and with receiving water limitations in the downstream receiving water.

As noted, violations of these NPDES permit provisions constitute strict liability violations of the Clean Water Act, and the Act authorizes administrative penalties and citizen suits for violations of NPDES permits, with maximum civil penalties now approaching \$67,000 per violation, per day (Id. at § 1319(d), as adjusted for inflation per 40 C.F.R. 19.4).

What is the case about, and what did the court decide?

The city and county of San Francisco operate a wastewater treatment facility that discharges treated municipal wastewater into the Pacific Ocean, subject to an NPDES permit. In 2019, San Francisco's NPDES permit was revised to include two new generic receiving water limitations: First, the NPDES permit prohibited the facility from making any discharges that "contribute to a violation of any applicable water quality standard" for downstream receiving waters; and second, the NPDES permit prohibited the city from undertaking any treatment or causing any discharges that "create pollution, contamination, or nuisance as defined by California Water Code section 13050."

San Francisco challenged the provisions with two arguments using facial challenges based on the text of 33 U.S.C. § 1311(b)(1)(C). First, the city argued that the statute's reference to "any more stringent limitation" must refer to *effluent* limitations, and so the receiving water limitations' references to violations of standards or creation of nuisance conditions were impermissibly vague without defined numeric effluent limits. The court rejected this argument, finding that the phrase "any more stringent limitation" plainly included more types of limitations than just effluent limitations, such as narrative limitations, equipment spec-

ifications, or operational practices.

However, the court accepted the city's second argument. The city alternatively argued that the Clean Water Act does not authorize regulators to adopt generic NPDES permit requirements that "condition compliance on whether receiving waters meet applicable water quality standards." The city contended that conditioning compliance with an NPDES permit on the condition of the receiving water would result in a situation where an agency would be complying with all other provisions of the permit, but could still be strictly liable if the condition of the downstream receiving water erodes for any reason whatsoever.

The court's majority agreed with the city for several reasons. First, the court construed the term "limitation" in section 1311(b)(1)(C)'s "any more stringent limitation" to refer to conditions imposed "from without," that is, from a regulator, rather than a provision requiring a particular end result without further instruction. The latter, the court reasoned, required proactive decisions from the regulated party about how to achieve the end result, and therefore could not be construed as a "limitation." Second, the court noted that generic receiving water limitations ran afoul of the Clean Water Act itself, which was intended to remedy prior pollution legislation that used water quality, rather than discharges, as the focus of compliance. Third, the court reasoned that the "permit shield" that provides liability protection in exchange for NPDES permit compliance would be eviscerated if permittees could nevertheless be held liable for downstream receiving water conditions that may be out of their control. Finally, the court explained that receiving water limitations fail to account for apportion-

ing liability when multiple parties discharge into a single waterbody. For all these reasons, the court held that section 1311(b)(1)(C) does not authorize regulators to include generic receiving water limitations in NPDES permits.

Justice Barrett wrote the dissent, noting that while she agreed with the court's opinion that the phrase "any more stringent limitation" was not limited to *effluent* limitations, she disagreed with the court's conclusion that the statutory text and the Clean Water Act generally prohibited receiving water limitations. "Conditions that forbid the city to violate water quality standards," Justice Barrett summarized for the dissent, "are plainly 'limitations' on the city's license to discharge" per the "any more stringent limitation" language of section 1311(b)(1)(C). The dissent rejected the majority's reasoning as contrary to the statutory text, and noted that nonviable, vague, or unfair receiving water limitations can be challenged as arbitrary and capricious.

What happens next?

The Supreme Court's decision has apparently done away entirely with generic receiving water limitations that do not specify more detailed limitations on permittees' discharges. EPA cautioned the court that such an outcome could result in lengthier NPDES permit issuances and renewals as regulators are forced to calculate more numeric effluent limitations to offset the lost generic receiving water limitations. Advocates argue that water quality will decline as a result of this decision, because dischargers will be less susceptible to enforcement for water quality standard violations, although at least some advocates have suggested that more enforceable numeric effluent limitations may be

developed in response to the court's ruling

Additionally, the court's opinion may also remove a significant source of liability for public agencies with NPDES permits. Agencies holding NPDES permits that contain receiving water limitations have long been subject to the problem raised by San Francisco in this case - that they could be held strictly liable for violations of water quality standards in receiving waters, even if the violations are out of their control and they are dutifully complying with their NPDES permits. The Supreme Court's decision could potentially remove this significant source of liability exposure from agencies' lists of concerns and allow them to focus on controlling discharges at the source. Agencies and their counsel should closely monitor whether their NPDES regulator proposes revisions to NPDES permits as a result of the court's decision - some states, such as California, may use state laws to adopt receiving water limitations or other mechanisms to substitute for the receiving water limitations voided under federal law.

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