

SAN FRANCISCO COMBINED SEWER OVERFLOW (CSO) PERMIT LITIGATION

Internal deliberative pre-decisional - FOR USE BY 2024 PRESIDENT-ELECT TRANSITION TEAM MEMBERS ONLY

ISSUE SUMMARY:

- The key issue in this litigation is whether EPA has authority under the Clean Water Act to include broad narrative permit conditions prohibiting discharges that cause or contribute to violations of water quality standards, or whether EPA must translate the water quality standards into more specific permit limits.
- Plaintiff (City of San Francisco) challenged two such broad narrative provisions in its NPDES permit for its Oceanside Combined Sewer Overflow (CSO) system, arguing that these provisions “expose San Francisco and numerous permit holders nationwide to enforcement actions while failing to tell them how much they need to limit or treat their discharges to comply with the Act.”

KEY POINTS:

- In a split decision, the Ninth Circuit had upheld the challenged provisions, finding that EPA had authority under the CWA to include such broad narrative prohibitions. *City and County of San Francisco v. EPA*, 75 F.4th 1974 (9th Cir. 2003).
- The Supreme Court granted certiorari with respect to this question: “Whether the Clean Water Act allows EPA (or an authorized state) to impose generic prohibitions in NPDES permits that subject permit holders to enforcement for exceedances of water quality standards without identifying specific limits to which their discharges must conform.”
- On May 1, 2024, EPA separately filed an enforcement action in the U.S. district court for the Northern District of California to enforce a similar narrative prohibition in the NPDES permit for San Francisco’s other CSO system (Bayside).

ONGOING/UPCOMING REVIEWS FOR FY2024:

None.

KEY EXTERNAL STAKEHOLDERS:

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| <input type="checkbox"/> Congress | <input checked="" type="checkbox"/> Industry | <input checked="" type="checkbox"/> States | <input type="checkbox"/> Tribes | <input type="checkbox"/> Media | <input type="checkbox"/> Other Federal Agency |
| <input checked="" type="checkbox"/> NGO | <input type="checkbox"/> Local Governments | <input checked="" type="checkbox"/> Public | | | |

MOVING FORWARD:

- Supreme Court oral argument took place on October 16, 2024; awaiting decision