CITY AND COUNTY OF SAN FRANCISCO
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MEMORANDUM

TO: Mayor Daniel Lurie
Members of the Board of Supervisors

CC: Angela Calvillo, Clerk of the Board

FROM: Tara M. Steeley, Chief of Government Litigation and Appeals
Brad Russi, Deputy City Attorney

DATE: March 11, 2025

RE: *City and County of San Francisco v. Environmental Protection Agency*
United States Supreme Court Case No. 23-753

On March 4, the United States Supreme Court issued a decision in *City and County of San Francisco, California v. Environmental Protection Agency* ("Opinion"), attached as Exhibit A. The Court's decision resolved the City's longstanding challenge to provisions of the Environmental Protection Agency's (EPA) wastewater discharge permits, which imposed open-ended requirements on the San Francisco Public Utilities Commission (SFPUC) with very high monetary penalties. In its March 4 Opinion, the Court agreed with San Francisco's argument that EPA does not have legal authority to impose "end result" requirements in National Pollutant Discharge Elimination System (NPDES) permits—that is, permit terms that make the City responsible for water quality in the Bay or the Ocean—well beyond the quality of the City's discharges. Under the Court's decision, EPA must set discharge limitations that prevent pollution before it occurs, thereby ensuring that the City and other local jurisdictions and permitholders meet water quality standards. Opinion at 20.

This decision is an important victory for San Francisco and its ratepayers, but it changes none of the law, regulations, or detailed and technical requirements of NPDES permits with which San Francisco must comply. Instead, it invalidates only three sentences in San Francisco's 150-page permit. The Supreme Court issued a narrow decision that will lead to clearer permit terms and protect San Francisco's rate payers from costly and extensive litigation, while preserving the substantive requirements of the Clean Water Act and EPA's authority to regulate water quality and impose environmental safeguards.

Background

I. San Francisco's Combined Sewer System

Every jurisdiction with a sewer system, including San Francisco, must discharge treated wastewater into an adjacent body of water. While these discharges necessarily include some low

level of pollutants, they are safe and are permitted by the EPA and authorized state agencies through NPDES permits.

San Francisco's combined sewer and stormwater system collects and treats both wastewater and stormwater in a single system. The SFPUC manages two treatment plants that operate 365 days a year and a third facility that operates during rain events. This combined sewer system gives the City significant environmental advantage over other jurisdictions with separate pipe systems because it allows the City to treat wastewater and almost all stormwater before discharging it into to the Pacific Ocean or Bay, treating stormwater to the same high standards as wastewater. Other municipalities throughout the Bay Area and California do not treat their stormwater, allowing pollutants – bacteria, metals, and other contaminants—to flow into the Pacific Ocean or Bay.

San Francisco has invested more than $2 billion in upgrading its wastewater collection and treatment system to ensure the City remains an environmental leader and continues to do its part to protect the Pacific Ocean and Bay. Additionally, the City plans to invest another $2.36 billion over the next 20 years to implement eight different projects that will continue to protect water quality in San Francisco Bay.

II. The Clean Water Act and NPDES Permits

The Clean Water Act requires dischargers to obtain permits issued by EPA or authorized state agencies that set specific pollution limits to which a permitholder's discharges must conform before releasing that wastewater. 33 U.S.C. § 1311(a). Congress designed the Clean Water Act to give permitholders like the City clear, operational requirements and discharge limitations to control pollution at the source before discharge. Failure to comply with permit limitations exposes permitholders to civil penalties and even criminal prosecution. 33 U.S.C. §§1319(c) and (d). Under what is known as the "permit shield" provision, however, an entity that adheres to the terms of its permit is deemed to be compliant with the Act. 33 U.S.C. §1342(k).

EPA and the San Francisco Bay Regional Water Quality Control Board issue NPDES permits to the City. These permits are extremely detailed, 150-page documents that include extensive numeric and narrative limitations and operational requirements. When the City's Bayside Permit was up for renewal in 2013, EPA included two "end result" requirements in the permit. These requirements held the City responsible for the quality of the receiving water in the Bay, rather than for the contents of its discharges. In 2019, EPA added similar requirements to San Francisco's Oceanside Permit for discharges into the Pacific Ocean. The City cannot control the overall water quality in Pacific Ocean or Bay, in part because other agencies and individuals discharge into the Pacific Ocean and Bay, and there are many other factors that impact water quality and pollution in those water bodies.

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The SFPUC, in a good faith effort to comply with the uncertain permit requirements, worked to identify the lowest-cost capital projects that were conceptually feasible to comply with EPA's end results requirements. Just on the Bayside alone, the cost was estimated to be $10.6 billion. This expenditure would have meant very significant increases in San Francisco ratepayers' water and sewer bills, and the SFPUC anticipated that the capital projects would have had a negligible impact on improving water quality.

III. History Of The Case

When the City's Oceanside permit was up for renewal in 2019, EPA and the Regional Water Board included the two end result requirements in that permit, and later that year, under the first Trump Administration, EPA threatened enforcement of those terms against the City. The City filed suit to challenge the permits, and in 2023, a divided Ninth Circuit panel ruled in favor of EPA. *City & Cnty. of San Francisco v. U.S. Env't Prot. Agency*, 75 F.4th 1074 (9th Cir. 2023).

On January 8, 2024, San Francisco filed a Petition for Writ of Certiorari with the United States Supreme Court, which agreed to hear the case. Before the Supreme Court, San Francisco argued that the end result requirements in San Francisco's Oceanside permits are unlawful under the Clean Water Act. The City challenged two prohibitions—a total of three sentences in the 150-page permit. San Francisco's lawsuit did not challenge the Clean Water Act, or any other federal law, regulation, or agency guidance. San Francisco also did not challenge EPA's authority to enforce environmental protections. Instead, the City asked the Supreme Court to ensure EPA follows the Clean Water Act in the manner Congress intended by giving permitholders specific limits that prevent pollution before it happens. More than 60 amici supported the City's position, including the 400 cities represented by the California League of Cities, the 2,800 members of the National League of Cities, the over 2,300 members of the National Association of Counties, the National Association of Clean Water Agencies, and the California Association of Sanitation Agencies.

The Supreme Court's Opinion

On March 4, 2025, the Supreme Court issued the Opinion ruling in San Francisco's favor. The Court held that the Clean Water Act does not authorize EPA to include end result requirements in NPDES permits. While the Clean Water Act authorizes EPA "to set rules that a permittee must follow in order to achieve a desired result, namely, a certain degree of water quality," the Act does not allow EPA to impose permit terms that hold permitholders responsible for conditions in the receiving water that the permitholder cannot control. Opinion at 10.

The Court explained that the Clean Water Act's text, structure, and pre- and post-enactment context all support the City's argument that the Act does not authorize EPA to impose end result requirements. Indeed, EPA's use of end result requirements could not be reconciled

with the permit shield provision, 33 U.S.C. §1342(k), which provides that "a discharger that complies with all permit conditions can rest assured that it will not be penalized." Opinion at 15. As the Court explained, the benefits of the permit shield for local governments and other permit holders "would be eviscerated if the EPA could impose a permit provision making the permittee responsible for any drop in water quality below the accepted standard. A permittee could do everything required by all the other permit terms. It could devise a careful plan for protecting water quality, and it could diligently implement that plan. But if, in the end, the quality of the water in its receiving waters dropped below the applicable water quality levels, it would face dire potential consequences." *Id.*

The Court's decision did not weaken EPA's ability to impose permit terms to ensure water quality. Under the Clean Water Act, no one may lawfully discharge without a permit, and EPA retains the power to set permit limitations that will achieve water quality standards. 33 U.S.C. § 1311(a). As the Court explained, "[d]etermining what steps a permittee must take to ensure that water quality standards are met is the EPA's responsibility, and Congress has given it the tools needed to make that determination. If the EPA does what the CWA demands, water quality will not suffer." Opinion at 20.

In addition, in several critical respects, the Court's opinion actually strengthens EPA's authority going forward. For the first time, the Court passed upon the validity of—and upheld—EPA's authority to issue "general permits"—permits that cover an entire category of permitholders in a given geographic area or industry, such as every small construction site with industrial runoff that goes into a protected body of water. Some commentators had suggested such permits violate the Clean Water Act,[1] and we understood this to be one of the chief concerns about the City bringing this case to the Court. We drafted our briefs so as not to put general permits at risk.

Due in part to the City's careful arguments, the Court recognized that "[s]uch permits are important for certain businesses, such as home builders, other construction companies, and certain agricultural enterprises." Opinion at 19. General permits rely on narrative requirements, including "best-management practices" and "operational requirements and prohibitions" to ensure that water quality goals are achieved, and the Court's decision expressly "allows such requirements." *Id.* at 19-20. The Opinion also does not prevent EPA from using narrative requirements to protect water quality in individual permits. To the contrary, as the City expressly advocated, and the Court explained, limitations imposed under the Clean Water Act "may be expressed in both numerical and non-numerical (*i.e.,* 'narrative') form." Opinion at 19.

[1] E.g., Jeffrey M. Gaba, *Generally Illegal: NPDES General Permits Under the Clean Water Act*, 31 Harv. Envir. L. Rev. 409 (2007).

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In short, San Francisco sought—and the Supreme Court issued—a narrow opinion that requires EPA to follow the Clean Water Act by establishing clear permit requirements that prevent pollution by restricting discharges before those discharges reach receiving waters. The Supreme Court's decision provides necessary clarity about NPDES permits, leaves the Clean Water Act fully intact, effectuates Congress' intent to prevent water pollution, and provides stability for San Francisco ratepayers by eliminating the threat of costly and open-ended enforcement actions against the City.