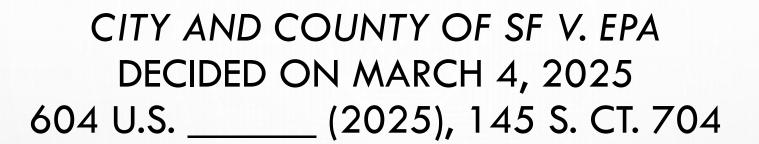
### Supreme Court of the United States Decision in City and County of S.F. v. EPA

**CEAC Policy Conference** 

Karen Cowan, Executive Director | August 22, 2025





"In sum, we hold that [section] 1311(b)(1)(C) does not authorize the EPA to include 'end-result' provisions in NPDES permits.

Determining what steps a permittee must take to ensure that water quality standards are met is the EPA's [and state's] responsibility, and Congress has given it tools needed to make that determination."

## WHY IS THIS CASE RELEVANT?

ALL NPDES PERMITS AND WASTE DISCHARGE REQUIREMENTS (WDRS) IN CALIFORNIA CONTAIN "END RESULT" PROVISIONS:

- MUNICIPAL STORMWATER PERMITS (PHASE I AND PHASE II)
- CONSTRUCTION GENERAL PERMIT
- INDUSTRIAL GENERAL PERMIT
- WASTEWATER PERMITS



# NAVIGATING THE IMPACT OF THE DECISION...

#### **PHASE I MS4 PERMITS:**

- ISSUED BY REGIONAL WATER BOARDS
- ANTICIPATED FIRST TO BE REISSUED: SANTA ANA REGION (RIVERSIDE, ORANGE, SAN BERNARDINO)

#### **PHASE II MS4 PERMIT:**

- ISSUED BY STATE WATER BOARD (STATEWIDE ORDER)
- PENDING REISSUANCE

#### **CONSTRUCTION GENERAL PERMIT:**

RECENTLY REISSUED

#### **INDUSTRIAL GENERAL PERMIT:**

WILL FOLLOW PHASE II PERMIT



## END RESULT PROVISION(S) FOR MS4S

DISCHARGE PROHIBITION EXAMPLE — DISCHARGES OF STORM WATER FROM THE MS4 TO THE WATERS OF THE U.S. IN A MANNER CAUSING OR THREATENING TO CAUSE A CONDITION OF POLLUTION OR NUISANCE AS DEFINED IN WATER CODE § 13050 ARE PROHIBITED.

RECEIVING WATER LIMITATION EXAMPLE — DISCHARGES SHALL NOT CAUSE OR CONTRIBUTE TO AN EXCEEDANCE OF WATER QUALITY STANDARDS CONTAINED IN A STATEWIDE WATER QUALITY CONTROL PLAN, THE CALIFORNIA TOXICS RULE (CTR), OR IN THE APPLICABLE REGIONAL WATER BOARD BASIN PLAN.



### TWO KEY ASSUMPTIONS

**ASSUMPTION #1** – COURT'S HOLDING IN CITY AND COUNTY OF SF V. EPA APPLIES EQUALLY TO RECEIVING WATER LIMITATION [AND PROHIBITION LANGUAGE] CONTAINED IN MS4 PERMITS AS IT DOES TO PERMITS WHEREBY LANGUAGE WAS INCLUDED PURSUANT TO SECTION 1311(B)(1)(C).

SECTION 301(B)(1)(C) OF THE CLEAN WATER ACT

**ASSUMPTION #2** – STATE WATER BOARD AND REGIONAL WATER BOARDS WILL USE THEIR DISCRETION UNDER STATE LAW TO RETAIN RECEIVING WATER LIMITATIONS LANGUAGE IN MS4 PERMITS.



#### WHAT CASQA PROPOSED TO WATER BOARD

Court's Holding in City and County of SF v. EPA Applies to MS4 Permits

#### Potential Reliance on State Law Moving Forward (Key Takeaways of Decision)

- End-Result Provisions are not authorized under the Clean Water Act but may be authorized under Porter Cologne
- Permit Language must Provide a "Permit Shield"
- Water Quality Based Effluent Limitations (WQBELs) should not be Numeric

#### Changes to MS4 Permit Structure to Implement CASQA Approach

Modifications #1 through #6

#### Example Permit Language (illustrative) Demonstrating How Modifications Can Be Incorporated

- Example 1: Phase II Prescriptive Permit
- Example 2: Phase I Prescriptive Permits (e.g., Region 2)
- Example 3: Phase I Implementation Plan-Based Permits (e.g., Regions 4, 5, and 9)

#### THE WATER BOARDS' POSITION

#### Court's Holding **DOES NOT** Apply to Phase I MS4 Permits

- MS4s regulated under CWA Section 402(p) not 301(c)
- Have not yet opined on general orders (Phase II MS4, Construction, Industrial)

Water Boards have authority under CWA and Porter-Cologne for Receiving Water Limitations

Interim guidance provides example findings for permits that support the above points

# WHERE DO WE GO FROM HERE?

- WATER BOARDS COULD UPDATE THEIR INTERIM GUIDANCE
- ABSENT CHANGE, PERMITTEES SHOULD NOT EXPECT ANY CHANGES FOR "END RESULT" PROVISIONS IN MS4 PERMITS
- PERMITTEES HAVE APPEAL / LITIGATION OPTIONS
- WE ARE LIKELY YEARS AWAY FROM ADDITIONAL CLARITY



## OTHER IMPORTANT POINTS

- CITY AND COUNTY OF SAN FRANCISCO COMBINED WASTEWATER/STORMWATER SYSTEM
- PERMIT SUBJECT OF THIS DECISION IS ISSUED BY EPA TO WASTEWATER OUTFALL
- THERE IS A SEPARATE CASE WORKING ITS WAY THROUGH THE COURTS ON THE STATE ISSUED PERMIT

