

# 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



*CITY AND COUNTY OF SF V. EPA*  
DECIDED ON MARCH 4, 2025  
604 U.S. \_\_\_\_\_ (2025), 145 S. CT. 704

“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