

23-753 SAN FRANCISCO V. ENVIRONMENTAL PROTECTION AGENCY

DECISION BELOW: 75 F.4th 1074

LOWER COURT CASE NUMBER: 21-70282

QUESTION PRESENTED:

Congress designed the Clean Water Act (CWA or the Act) to ensure that anyone holding a discharge permit issued under the Act has notice of how much they must control their discharges to comply with the law. The CWA requires that the U.S. Environmental Protection Agency (EPA) and authorized states provide this notice by prescribing specific pollutant limitations in the National Pollutant Discharge Elimination System (NPDES) permits they issue. Consistent with its text, this Court and the Second Circuit have read the Act to require EPA and states to develop specific limits to achieve goals for surface waters, called water quality standards.

Parting with these decisions, the Ninth Circuit held here that EPA may issue permits that contain generic prohibitions against violating water quality standards. Rather than specify pollutant limits that tell the permit holder how much they need to control their discharges as required by the CWA, these prohibitions effectively tell permit holders nothing more than not to cause "too much" pollution. These generic water quality terms 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.

The question presented is:

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.

CERT. GRANTED 5/28/2024