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Generic Prohibitions/NPDES Permits/Water Quality Standards: Public Wastewater/Stormwater agencies Amici Curiae Brief addressing City and County of San Francisco vs EPA (U.S. Supreme Court)

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Various municipalities and public wastewater and stormwater utilities have filed a joint Amici Curiae brief in the United States Supreme Court Case styled:

City and County of San Francisco v EPA

See Docket number 23-753

The organizations submitting the joint brief include:

- AlexRenw (VA)
- Boston Waster and Sewer Commission
- Buffalo Sewer Authority
- Citizens Energy Group (IN)
- City of Mountain View (CA)
- City of New York
- City of Sunnyvale (CA)
- City of Tacoma
- Clean Water Services (Washington County, OR)
- District of Columbia Waster and Sewer Authority
- Greater Peoria Sanitary District (IL)
- Green Bay Metropolitan Sewerage District
- Louisville/Jefferson County Metropolitan Sewer District
- Massachusetts Water Resources Authority
- Metro Water Recovery (Denver)
- Narragansette Bay Commission (RI)
- Northeast Ohio Regional Sewer District

- Pasaic Valley Sewerage Commission (NJ)
- Springfield Sewer and Water Commission (MA)

Additional national and state associations joined in the brief include:

- National Association of Clean Water Agencies
- Association in Missouri Clean Water Agencies
- California Association of Sanitation Agencies
- Illinois Association of Wastewater Agencies
- North Carolina Water Quality Association
- Oregon Association of Clean Water Agencies
- South Carolina Water Quality Association
- West Virginia Municipal Water Quality Association
- Wet Weather Partnership

Collectively (“Public Water Agencies”)

The activities of the municipalities and public wastewater and stormwater utilities are stated to include flood and stormwater management, wastewater treatment, water supply, and water conservation services. The associations’ members are stated to include municipal clean water agencies that own, operate, and manage publicly owned treatment works, wastewater and stormwater sewer systems, water reclamation districts, and infrastructure relating to all aspects of wastewater collection, treatment, and disposal.

The referenced amici utilize Clean Water Act National Pollutant Discharge Elimination System (“NPDES”) permit as they provide stormwater and sanitary services. Further, they are asserted to:

...play a unique role in NPDES implementation, as, in addition to being subject to their own discharge requirements, many of them are also charged with running NPDES pre-treatment programs and illicit discharge and detection programs designed to keep harmful pollutants from entering public sewer and stormwater systems.

The United States Supreme Court in the City and County of San Francisco v EPA is addressing the following 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.

EPA and California had in 2019 issued an NPDES permit to a City and County of San Francisco (“San Francisco”) wastewater treatment plant. San Francisco objected to the fact that instead of setting specific effluent limits the NPDES permit prohibited discharges that “cause or contribute to a violation of any water quality standard”. The NPDES permit also prohibited the creation of “pollution, contamination, or nuisance” as defined by a provision in California law.

San Francisco argued in litigation that the NPDES permit did not set specific limits in how much pollution could be discharged. It asserted that the “narrative” requirements are vague. As a result, because of the absence of more explicit limits, this was argued to make it vulnerable to enforcement proceedings on whether the applicable water quality standards were met.

The 9th Circuit Court of Appeals rejected these arguments and the United States supreme court granted a petition for writ of certiorari

The joint brief sets forth 3 overall arguments:

- The Clean Water Act does not authorize generic water quality prohibitions and discharge permits.
- The 9th Circuit Court of Appeals decision undermines congressional intent to provide finality and regulatory certainty.

- The 9th Circuit Court of Appeals decision creates significant uncertainty for communities nationwide.

A copy of the joint brief can be downloaded [here](#).