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Generic Prohibitions/NPDES Permits/Water Quality Standards: Environmental and Community Organizations' Amici Curai Brief Addressing City and County of San Francisco v. EPA (U.S. Supreme Court)

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EarthJustice and other environmental/community organizations have filed a joint Amici Curai Brief in the United States Supreme Court styled:

City and County of San Francisco v. EPA ("Brief").

See Docket No. 23-753.

The organizations jointly filing the Brief include:

- EarthJustice.
- Columbia Riverkeeper.
- Conservation Law Foundation.
- Natural Resources Defense Council.
- San Francisco Baykeeper.
- Sierra Club.
- Southern Environmental Law Center.
- Waterkeeper Alliance.

(Collectively, "EarthJustice")

An opposing brief filed by public wastewater/stormwater agencies can be found [here](#).

EarthJustice states that they have an interest in ensuring that the Clean Water Act is interpreted consistently with what they argue is Congress's stated objective to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters.

EarthJustice states that in seeking Certiorari it asks that the United States Supreme Court decide whether the Clean Water Act allows National Pollutant Discharge Elimination System ("NPDES") permits to include what are referenced as "generic" limitations.

EarthJustice argues that the Petitioners refer to limitations that generically prohibit causing or contributing to exceedance of water quality standards as being shifted (i.e., its challenge is to take issue

what they are characterizing as referring to “receiving water” limitations which they are stated to define as limitations that “condition” compliance on the quality of receiving waters).

EarthJustice contends that the Petitioners’ terms are statutory terms. It argues:

...as its own Amici recognized, because Congress enacted detailed requirements for the permitting program, tinkering with that carefully calibrated regime inherently risks “negatively impacting” the NPDES program.

They argue that the Petitioners use:

...hazy, undefined terms to describe various categories of permit limitations, terms that are nowhere to be found in the Act, magnifies that risk.

EarthJustice’s Brief addresses:

- Petitioner’s use of terms that it argues neither the Clean Water Act nor practitioners use to describe permit limitations, often without defining them clearly.
- Criticism Petitioner (echoed by its amici) levels at the enforcement of “receiving water” limitations, presumably because it hopes that this Court will work backwards to interpret the Act in line with petitioner’s policy preferences.

EarthJustice argues that this is not how statutes should be interpreted and assert that petitioner’s criticisms lack a basis in the actual cases and the available data on enforcement actions.

Their arguments include:

- NPDES permits must ensure that water quality standards are met.
- NPDES permits issued through an iterative process.
- NPDES permits commonly include several types of limitations.
- Enforcement proceedings are rare but provide important protections.
- Receiving water limitation enforcement actions are rare, but violations are clear, and clearly knowable.
- Petitioner’s criticisms of the people who use the Clean Water Act to protect themselves lack merit.

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