One if By Sea, Two if By Air . . . and NEPA:

Analyzing Four Environmental Decisions from the Most Recent Supreme Court Term

Conference on the Environment

November 6, 2025

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The Road Ahead

- Sea: *City and County of San Francisco v. EPA* (Tom)
- Air: *EPA v. Calumet Shreveport Refining* and *Oklahoma v. EPA* (Bill)
- NEPA: *Seven County Infrastructure Coalition v. Eagle County* (Lindsey)

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City & Cnty. of San Francisco, California v. Envtl. Prot. Agency, 604 U.S. 334, 355, 145 S. Ct. 704, 720 (2025)

Clean Water Act – Legal Background

Prohibits the discharge of pollutants form a point source to Waters of the United States without a permit. *See* 33 U.S.C §§ 1311 & 1362(7).

Permits issued must include:

- **Effluent limitations:** that "shall require the application of the best practicable control technology currently available."
  - Restriction on quantities, rates, and concentrations of pollutants discharged from point sources to WOTUS.
- **Any more stringent limitation**, including those necessary to meet or implement applicable water quality standards.
  - Water Quality Standards are based on uses and water quality necessary to support those uses.

33 U.S.C §§ 1311(b)(1)(A)&(C)

Oceanside Facility

- Oceanside's permit was renewed in 2019
- Two so-called "end result" provisions were added to the permit:
  - Prohibits the facility from making any discharge that "contribute[s] to a violation of any applicable water quality standard."
  - The city cannot perform any treatment or make any discharge that "create[s] pollution, contamination, or nuisance" as defined by California law.

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Questions Presented

Are the “limitations” necessary to meet / implement WQS confined to “effluent limitations,” or may they include other kinds of limitations beyond numeric restrictions?

May a permit impose “end-result” requirements that condition compliance on the quality of a receiving water?

“Effluent Limitations” v. “More Stringent Limitation”

San Francisco argues that “more stringent limitations” are confined to effluent limitations.

The Court rejects this argument.

- “Effluent limitations” are specifically referenced in certain sections of the Act but omitted in others that refer only to “limitations.”
- “Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”

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End-Result Conditions

May EPA condition permitholders' compliance on whether receiving waters meet applicable water quality standards (WQS)?

- "[A]ny more stringent **limitation**, including those necessary to **meet** or…**implement** any applicable water quality standard…."
- End-result conditions are not "limitations" and do not otherwise "meet" or "implement" applicable Water Quality Standards as required.
  - Limitation = Restriction or restraint imposed "from without."
  - Implement = to ensure actual fulfillment by "concrete measures."
  - Necessary to meet = a provision that sets out actions that must be taken to achieve the objective.

End-result conditions are not restrains imposed from "without" and are not sufficiently concrete or definite to "meet" or "implement" a WQS.

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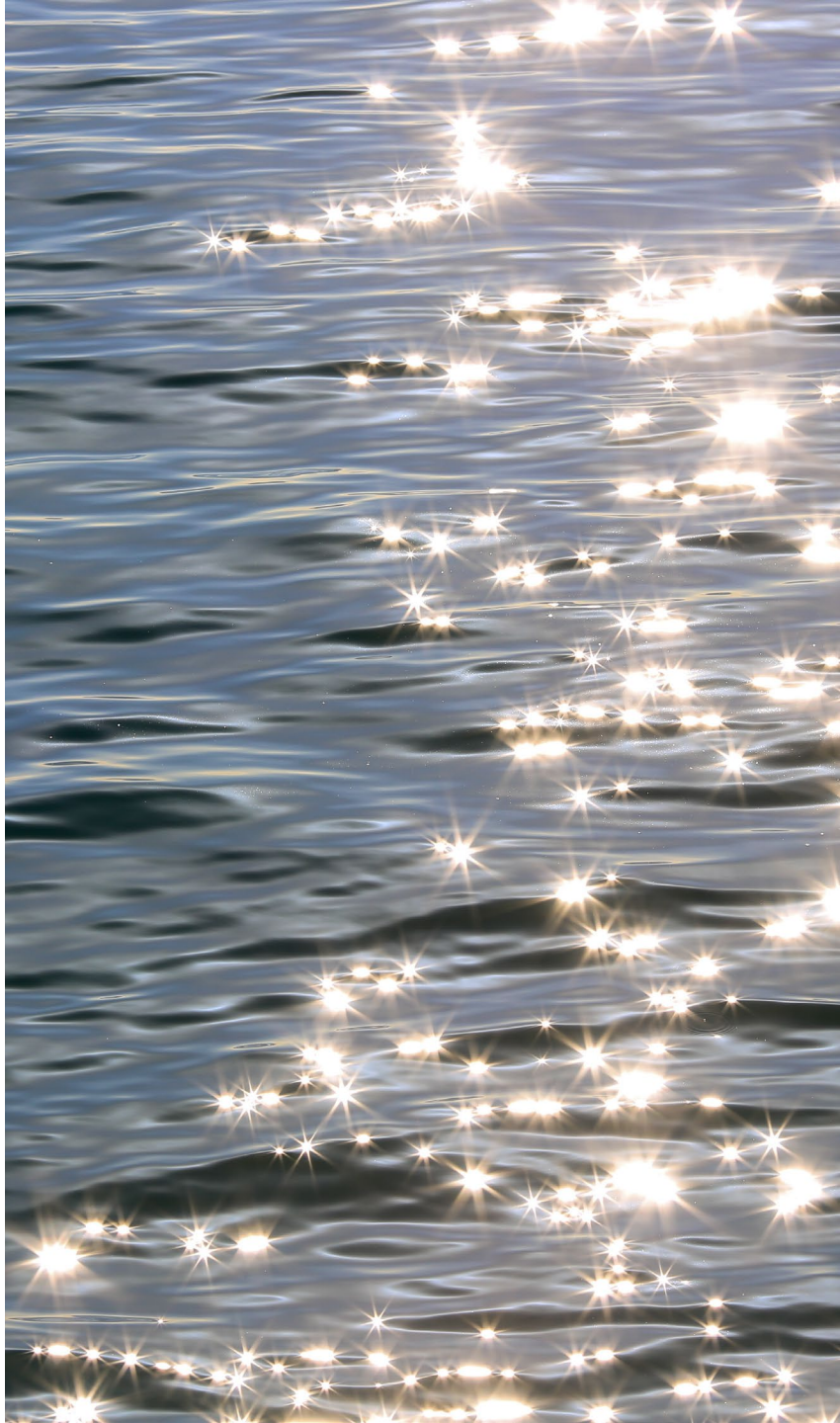
End-Result Conditions Cont.

- The pre-1972 Water Pollution Control Act expressly allowed for “end result” liability.
  - Water Quality Standards adopted for a waterbody.
  - Parties responsible for exceedances were identified retroactively.
- The post-1972 elimination of this framework was deliberate & EPA’s position would revive the approach.



Implications

- EPA must prescribe and impose specific requirements necessary to achieve Water Quality Standards.
  - Must be more than an end-result WQS-based requirements
  - May include numeric *and* narrative limitations such as “best-management practices” and “operational requirements and prohibitions.”
- Implications for the regulated community are to be determined.
  - More clarity but ultimately may result in more stringent requirements.

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Air, Part One: *Environmental Protection Agency v. Calumet Shreveport Refining, LLC, et al.*, 605 U.S. ____ (No. 23-1229)

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Background: Renewable Fuel Program

- Most U.S. refineries must blend renewable fuels to earn Renewable Identification Number (RIN) credits or buy them to comply with the RFP
- Small refineries (≤75,000 barrels/day) can request exemption for “disproportionate economic hardship.”
- EPA denied 105 exemption petitions in 2 decisions, stating:
  - Hardship must result from RFP compliance; and
  - RIN costs are passed to consumers, so no hardship for petitioners.

Review of EPA Actions

CAA section 307(b)(1) sets where EPA action challenges are filed:

- Nationally applicable actions → D.C. Circuit.
- Local/regional actions → relevant regional Circuit.
- Nationwide scope or effect (and EPA publishes as such) → D.C. Circuit

Refineries challenged RFP exemption denials in regional Circuits.

- EPA said only D.C. Circuit had jurisdiction.
- Most Circuits agreed and either dismissed or sent cases to D.C. Circuit.

But Not the Fifth Circuit

- Fifth Circuit decided it had jurisdiction because
  - decision affected petitioners specifically; and
  - EPA considered refinery-specific facts, which made them "locally or regionally applicable."
- Court ruled against EPA on the merits, vacated six denials.
- EPA appealed; Supreme Court granted certiorari to clarify venue.

The New “Venue Two-Step”

- Justice Clarence Thomas outlined a two-step test for determining venue under CAA section 307(b)(1)
    - **Step 1**: If the action is nationally applicable, the D.C. Circuit is the venue
    - **Step 2**: If locally or regionally applicable, the court checks for a “nationwide scope and effect” exception to determine if the D.C. Circuit, not regional, is the proper forum.

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Step One, Applied Here

- The “action” is defined by EPA’s substantive authority, not its description of the activity
- Here, the action was EPA’s denial of individual exemption petitions
- Each denial was considered “locally or regionally applicable” since it affected only the specific refinery

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Step Two, Applied Here

- "Nationwide scope and effect"?
- Court decided EPA's "disproportionate economic hardship" and RIN pass through theory determinations were nationwide because they affected all refineries, rationales were core of EPA's denials
- Refinery-specific details did not override the national basis
- EPA documented these nationwide reasons in its notices
- The Court vacated the Fifth Circuit's decision and sent the case back for further proceedings

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Air, Part Two: *Oklahoma, et al., v. Environmental Protection Agency, et al.*, 605 U.S. ___ (No. 23-1067)

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Good Neighbor Plan, Redux

- Second time in two years Court dealt with GNP
  - Struck GNP down in previous term
- Here, Supreme Court reviewed Tenth Circuit's transfer of Oklahoma and Utah's GNP challenges to D.C. Circuit.
- Used its new two-step venue test from the *Calumet* case.

Calumet, hot off the presses

- Justice Thomas once again
- **Step One:** The Court defined the "action" as EPA's rejection of each state's SIP, not a combined rule.
- Each SIP (dis)approval is considered a separate, locally or regionally applicable action under section 307(b)(1).

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Calumet, Step Two

- The EPA, in the *Fed Reg* notice, claimed its SIP disapprovals were based on a determination of nationwide scope and effect
- The Supreme Court disagreed, finding the decisions were “intensely factual” and SIPs rejected for reasons specific to it
- The Court remanded the case back to the Tenth Circuit for further review

Final Thoughts

- Reconsideration of other decisions, e.g., 2024 Taconite Iron Ore NESHAP?
- Two GNP-related Supreme Court decisions, yet no court has considered merits
- EPA has vowed to rescind GNP, but 2015 ozone NAAQS (and GN obligations) still have to be addressed by EPA/affected states

. . . And NEPA: *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. ___ (2025)

NEPA at a Glance

- National Environmental Policy Act (NEPA), signed into law in 1970, established the foundation for federal environmental review.
- Requires agencies to prepare a “detailed statement” assessing environmental effects of “major federal actions” and consider a reasonable range of alternatives. (42 U.S.C. § 4332(C)).
- NEPA is procedural—it mandates a review process, not specific environmental outcomes.

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Case Background

- Seven County Infrastructure Coalition sought U.S. Surface Transportation Board (Board) approval of a new 88-mile railroad through the Uinta Basin in Utah.
    - Railroad would connect Uinta Basin to the interstate freight rail network and ultimately, to refineries on the Gulf Coast and other locations.
- Project opponents claimed the Environmental Impact Statement (EIS) was deficient for multiple reasons, including failure to assess upstream (oil wells) and downstream (refineries) impacts.

Supreme Court Review

- The Supreme Court reviewed the D.C. Circuit's ruling that the Board cannot avoid environmental review on the ground that it lacks authority to prevent, control, or mitigate environmental effects.
- **Question Presented**: Does the National Environmental Policy Act require an agency to study environmental impacts beyond the proximate effects of the action over which the agency has regulatory authority?
- **Decision:** The Supreme Court unanimously reversed the D.C. Circuit opinion—although with differences in analyses leading to that conclusion.

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Bedrock Principle = Deference

- In reviewing agency NEPA compliance, courts should afford **substantial deference** to agencies.
    - In clarifying *Loper Bright* (overruled Chevron deference), the Court emphasized NEPA is a "purely procedural statute" that prescribes process and does not mandate results.
        - **Law v. Fact**: While the meaning of "detailed" is a statutory question of law to be decided by a court, which details to include and where to draw the line are factual determinations for the agency.
    - "Courts should afford substantial deference and *should not micromanage* those agency choices so long as they fall within a **broad zone of reasonableness**."

Separate Project or No Authority? NEPA Review Not Required

- Agencies need not analyze environmental effects of projects separate in time (future projects) or place (geographically distinct).
    - The indirect effects of the same project, even if later in time or geographically separate, may still require review.
- Agencies need not consider projects over which they lack regulatory authority.
    - Foreseeability and "but-for" causation alone do not trigger NEPA review.
- Gray areas remain—will they abound?

See also Dept. of Transportation. v. Public Citizen, 541 U.S. 752 (2004)

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Implications

- Narrowed scope of both agency and judicial review.
  - Reduced litigation risk and project delays?
- Combined with other NEPA and regulatory changes, potential for more streamlined and predictable permitting.
- Reduced federal analysis of indirect and cumulative impacts?
- Gray areas remain.

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