

Supreme Court Hears Los Angeles Clean Water Act Case On Stormwater Pollution

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The Environmental Protection Agency (EPA) has in recent years attempted to expand its jurisdiction and aggressively exercise its enforcement powers in relation to the Clean Water Act (CWA) and other environmental laws. These efforts have sometimes met with resistance by the courts which have pushed back against the EPA with respect to its statutory authority and final actions. In other instances, the courts have granted the EPA broad discretion to interpret environmental statutes and to design the regulations necessary to achieve the statutes purpose.

Now the US Supreme Court has agreed to hear a case involving stormwater pollution and the City of Los Angeles, a case that began when a coalition of environmental groups sued the City for dumping “harmful pollutants into the San Gabriel and Los Angeles Rivers, ultimately sending tons of sewage and trash into the Pacific Ocean.” [[Courthouse News Service – Environmental Law Review](#)] Although, the City of Los Angeles was not “dumping” as we normally use the word, rather, it was “allowing” heavily polluted stormwater that collects on our streets and stormdrains to flow into the rivers untreated.

The City has argued that it is not responsible because it isn’t the initial source of the industrial pollutants at issue, and instead argue that the region’s citizens who create the trash and pollution are the source, which they have little control over. But environmental groups argue that the City should be liable under the CWA because the Los Angeles stormwater runoff system fed the pollutants into the waterways. Basically opining, that the stormwater system is the conveyance network, and thus the City should be responsible for what comes out of it.

The trial court granted summary judgment in favor of the City with respect to two of the rivers at issue, but the Ninth District Court of Appeal reversed.

The key issue accepted by the US Supreme Court is “whether water flowing through a concrete flood control channel built into a river can be considered a discharge under the Clean Water Act.” If it is, the City will be liable under the CWA, since the pollutants at issue exceed levels allowed under the City’s National Pollutant Discharge Elimination System (NPSDE) permitting regime.

In essence, the case will determine whether a municipality that controls a municipal separate storm sewer system has a responsibility under the CWA to control industrial pollutants in the waters which flow through such system under its NPSDE permit, even if such pollutants were not initially generated by the City. If the Supreme Court rules that a “discharge” has occurred under the CWA, municipalities like Los Angeles will face greater responsibility for monitoring and treating waters that enter their sewer systems with pollutants from industrial sources. This will also add a significant amount of pressure and costs on public works departments across the country, as they will need to quickly figure out how to bring their flood control and stormwater systems into compliance with Clean Water Act standards. <http://bit.ly/T6Hlht>

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