

MAY 2025
VOL. 25-5

PRATT'S

ENERGY LAW REPORT



LexisNexis

EDITOR'S NOTE: BEYOND THE EOs

Victoria Prussen Spears

BEYOND THE EXECUTIVE ORDERS: LEGISLATIVE PROPOSALS TO STRENGTHEN THE U.S. CRITICAL MINERALS SUPPLY CHAIN

Ashleigh Myers, Robert A. James,
Allan C. Van Vliet, Amanda G. Halter,
Kelsey Parker, and Sahar J. Hafeez

POTENTIAL IMPLICATIONS OF PRESIDENT TRUMP'S WIND ENERGY EXECUTIVE ORDER ON OFFSHORE LEASING, DEVELOPMENT

Joshua L. Belcher, Mark C. Kalpin, Rafe Petersen,
Alexandra E. Ward, and Amy O'Brien

AFIDA PENALTIES ARE COMING: COSTS FOR RENEWABLE DEVELOPMENT MAY BE MORE THAN YOU THINK

Anne E. Callenbach and Alan Claus Anderson

SAFEGUARDING NUCLEAR POWER INFRASTRUCTURES: DISASTER PLANNING WITH POTASSIUM IODIDE TO SAVE LIVES

Jake Kohn and Liz Demaree

U.S. SUPREME COURT DECIDES *CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA V. ENVIRONMENTAL PROTECTION AGENCY*

Jeffrey P. Justman, Ever M. Hess, and
Christopher H. Dolan

PFAS AND CONSUMER CLASS ACTIONS: THE NEW WAVE OF PFAS LITIGATION

Frank A. Dante, Margaret Anne Hill, and
Melissa A. Scacchitti

MARYLAND FILES PFAS SUIT AGAINST DOWNSTREAM MANUFACTURER

Amanda G. Halter, Reza Zarghamee,
Ashleigh Myers, Jillian Marullo, and Kelsey Parker

NAVIGATING THE DOMESTIC CONTENT REQUIREMENTS UNDER EVOLVING IRS GUIDANCE

Nicole M. Elliott, Mary Kate Nicholson, Amish Shah,
Elizabeth Crouse, Roger David Aksamit,
Ryan Phelps, and Bryan Marcelino

BOSTON APPROVES NET ZERO CARBON ZONING PROPOSAL FOR NEW CONSTRUCTION

Adam N. Weisenberg

Pratt's Energy Law Report

VOLUME 25

NUMBER 5

May 2025

Editor's Note: Beyond the EOs

Victoria Prussen Spears

131

Beyond the Executive Orders: Legislative Proposals to Strengthen the U.S. Critical Minerals Supply Chain

Ashleigh Myers, Robert A. James, Allan C. Van Vliet, Amanda G. Halter, Kelsey Parker, and Sahar J. Hafeez

134

Potential Implications of President Trump's Wind Energy Executive Order on Offshore Leasing, Development

Joshua L. Belcher, Mark C. Kalpin, Rafe Petersen, Alexandra E. Ward, and Amy O'Brien

138

AFIDA Penalties Are Coming: Costs for Renewable Development May Be More Than You Think

Anne E. Callenbach and Alan Claus Anderson

142

Safeguarding Nuclear Power Infrastructures: Disaster Planning with Potassium Iodide to Save Lives

Jake Kohn and Liz Demaree

145

U.S. Supreme Court Decides *City and County of San Francisco, California v. Environmental Protection Agency*

Jeffrey P. Justman, Ever M. Hess, and Christopher H. Dolan

150

PFAS and Consumer Class Actions: The New Wave of PFAS Litigation

Frank A. Dante, Margaret Anne Hill, and Melissa A. Scacchitti

153

Maryland Files PFAS Suit Against Downstream Manufacturer

Amanda G. Halter, Reza Zarghamee, Ashleigh Myers, Jillian Marullo, and Kelsey Parker

156

Navigating the Domestic Content Requirements Under Evolving IRS Guidance

Nicole M. Elliott, Mary Kate Nicholson, Amish Shah, Elizabeth Crouse, Roger David Aksamit, Ryan Phelps, and Bryan Marcelino

160

Boston Approves Net Zero Carbon Zoning Proposal for New Construction

Adam N. Weisenberg

163

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the **Editorial Content** appearing in these volumes or reprint permission, please call or email:

Raesa Hoosen, LLB. at (1908) 673-3323
Email: raesa.hoosen@lexisnexis.co.za

For assistance with replacement pages, shipments, billing or other customer service matters, please call:

Customer Services Department at (800) 833-9844
Outside the United States and Canada, please call (518) 487-3385
Fax Number (800) 828-8341
LexisNexis® Support Center <https://supportcenter.lexisnexis.com/app/home/>
For information on other Matthew Bender publications, please call

Your account manager or (800) 223-1940
Outside the United States and Canada, please call (518) 487-3385

ISBN: 978-1-6328-0836-3 (print)
ISBN: 978-1-6328-0837-0 (ebook)
ISSN: 2374-3395 (print)
ISSN: 2374-3409 (online)

Cite this publication as:

[author name], [*article title*], [vol. no.] PRATT’S ENERGY LAW REPORT [page number] (LexisNexis A.S. Pratt);

Ian Coles, *Rare Earth Elements: Deep Sea Mining and the Law of the Sea*, 14 PRATT’S ENERGY LAW REPORT 4 (LexisNexis A.S. Pratt)

This publication is designed to provide authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks of RELX Inc. Matthew Bender, the Matthew Bender Flame Design, and A.S. Pratt are registered trademarks of Matthew Bender Properties Inc. Copyright © 2025 Matthew Bender & Company, Inc., a member of LexisNexis. All Rights Reserved.

No copyright is claimed by LexisNexis or Matthew Bender & Company, Inc., in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material may be licensed for a fee from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

Editorial Office
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
www.lexisnexis.com

MATTHEW  BENDER

Editor-in-Chief, Editor & Board of Editors

EDITOR-IN-CHIEF

STEVEN A. MEYEROWITZ

President, Meyerowitz Communications Inc.

EDITOR

VICTORIA PRUSSEN SPEARS

Senior Vice President, Meyerowitz Communications Inc.

BOARD OF EDITORS

SAMUEL B. BOXERMAN

Partner, Sidley Austin LLP

ANDREW CALDER

Partner, Kirkland & Ellis LLP

M. SETH GINTHER

Partner, Hirschler Fleischer, P.C.

STEPHEN J. HUMES

Partner, Holland & Knight LLP

R. TODD JOHNSON

Partner, Jones Day

BARCLAY NICHOLSON

Partner, Norton Rose Fulbright

ELAINE M. WALSH

Partner, Baker Botts L.L.P.

SEAN T. WHEELER

Partner, Kirkland & Ellis LLP

Hydraulic Fracturing Developments

ERIC ROTHENBERG

Partner, O'Melveny & Myers LLP

Pratt's Energy Law Report is published 10 times a year by Matthew Bender & Company, Inc. Copyright © 2025 Matthew Bender & Company, Inc., a member of LexisNexis. All Rights Reserved. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner. For customer support, please contact LexisNexis Matthew Bender, 9443 Springboro Pike, Miamisburg, OH 45342 or call Customer Support at 1-800-833-9844. Direct any editorial inquiries and send any material for publication to Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., 26910 Grand Central Parkway Suite 18R, Floral Park, New York 11005, smeyerowitz@meyerowitzcommunications.com, 631.291.5541. Material for publication is welcomed—articles, decisions, or other items of interest to lawyers and law firms, in-house counsel, government lawyers, senior business executives, and anyone interested in privacy and cybersecurity related issues and legal developments. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, RELX, LexisNexis, Matthew Bender & Co., Inc., or any of its or their respective affiliates.

POSTMASTER: Send address changes to *Pratt's Energy Law Report*, LexisNexis Matthew Bender, 230 Park Ave. 7th Floor, New York NY 10169.

U.S. Supreme Court Decides *City and County of San Francisco, California v. Environmental Protection Agency*

*By Jeffrey P. Justman, Ever M. Hess, and Christopher H. Dolan**

The authors of this article discuss a recent decision by the U.S. Supreme Court holding that Section 1311(b)(1)(A) of the Clean Water Act does not authorize the Environmental Protection Agency to include “end-result” provisions in National Pollutant Discharge Elimination System permits issued to entities that wish to discharge pollutants into U.S. Waters.

The U.S. Supreme Court recently decided *City and County of San Francisco, California v. Environmental Protection Agency*,¹ holding that Section 1311(b)(1)(A) of the Clean Water Act does not authorize the Environmental Protection Agency (EPA) to include “end-result” provisions in National Pollutant Discharge Elimination System (NPDES) permits issued to entities that wish to discharge pollutants into U.S. Waters. “End-result” provisions are permit requirements that make a permittee responsible for the overall water quality in a receiving water.

BACKGROUND

The case arose when the city of San Francisco challenged provisions in its National Pollutant Discharge Elimination System (NPDES) permit issued by the EPA that held the city responsible for water quality standards in the Pacific Ocean or the San Francisco Bay. The Clean Water Act (CWA) allows the EPA to issue permits under its NPDES scheme that impose requirements on entities that wish to discharge “pollutants” into U.S. waters. The issue before the Court was whether the CWA authorizes the EPA to issue a permit to San Francisco that conditioned compliance with the permit on whether receiving waters met applicable water quality standards.

Before issuing a permit regarding the discharge of pollutants, the EPA must ensure that the “discharge will meet” certain statutory requirements, including those outlined under CWA’s § 1311. Section 1311(b)(1)(A) states that the EPA must set “effluent limitations,” which specify the quantities of enumerated pollutants that may be discharged. Section 1311(b)(1)(C) requires the EPA to

* The authors, attorneys at Faegre Drinker Biddle & Reath LLP, may be reached at jeff.justman@faegredrinker.com, ever.hess@faegredrinker.com and chris.dolan@faegredrinker.com, respectively.

¹ No. 23-753.

impose “any more stringent limitation, including those necessary to meet water quality standards, . . . or required to implement any applicable water quality standard.”

San Francisco claimed that two prohibitions in its permit issued under Section 1311(b)(1)(C) were not authorized by the CWA.

One prohibition stated that San Francisco could not make any discharge that “contribute[s] to a violation of any applicable water quality standard” for receiving waters.

The other provided that the city could not perform any treatment or make any discharge that “create[s] pollution, contamination, or nuisance” as defined in a section of the California Water Code.

The EPA’s Environmental Appeals Board rejected the city’s challenge to the permit.

The U.S. Court of Appeals for the Ninth Circuit rejected the city’s petition seeking review, concluding that Section 1311(b)(1)(C) authorizes the EPA to impose “any” limitations that seek to uphold water quality standards. Judge Collins of the Ninth Circuit dissented, stating that the CWA “draws an explicit distinction between the ‘limitations’ that the agency must devise and impose on a particular permittee’s discharges” and on the water quality standards themselves.

THE SUPREME COURT’S DECISION

After granting review, the Supreme Court rejected the city’s contention that “limitations” under § 1311(b)(1)(C) were synonymous with “effluent limitations” under § 1311(b)(1)(A) based on a plain reading of the text, because Congress specifically included the word “effluent” in one provision but not another. The Court agreed, however, with the city’s view that § 1311(b)(1)(C) did not authorize the EPA to impose permit requirements conditioning compliance on whether receiving waters meet applicable water quality standards. The Court reasoned that the text, structure, and pre- and post-enactment context supported this interpretation.

First, the Court started with statutory text. The word “limitation” was defined as a “restriction or restraint imposed *from without* (as by law[]).” Accordingly, a provision that directs a permittee to do specific things is a limitation. But a provision that “simply tells a permittee that a particular end result must be achieved” is not a “limitation” within the meaning of the CWA.

Next, the plain meaning of the terms “implement” and “meet” in Section 1311(b)(1)(C) further supported its interpretation. The provision tells the EPA to “implement” water quality standards, i.e., to “‘ensure’ ‘by concrete measures’”

that they are fulfilled. It also instructs it to impose limitations that are “necessary to meet” water quality standards, which “is most naturally understood to mean a provision that sets out actions that must be taken to achieve the objective.”

Further, the history of the CWA also supported its holding. The government claimed that a permittee could be held liable if the quality of the water into which it discharges pollutants fails to meet water quality standards. But prior to 1972, federal water pollution control legislation contained a provision that imposed such liability. Post-1972, Congress removed that provision.

And finally, the “broader statutory scheme” supported the majority’s holding. The “permit shield” provision of the CWA deems a permittee compliant if it follows all terms of its permit. Under the EPA’s reading, even if a permittee complies with its permit’s directives, if the quality of the water in its receiving waters dropped below the applicable water quality levels, a permittee would face adverse consequences. Such a reading was difficult to reconcile with the permit shield provision.

Justice Alito delivered the opinion of the Court, joined by Chief Justice Roberts, Justice Thomas, and Justice Kavanaugh. Justice Gorsuch joined as to all but Part II of the opinion of the Court, and Justices Sotomayor, Kagan, Barrett and Jackson joined only as to Part II. Justice Barrett filed an opinion dissenting in part, which was joined by Justices Sotomayor, Kagan, and Jackson.²

² https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf.