

Public Land and Resources Law Review

Volume 0 Case Summaries 2013-2014

Natural Resources Defense Council, Inc. v. County of Los Angeles

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Recommended Citation

Hughes, Jill A. (2013) "Natural Resources Defense Council, Inc. v. County of Los Angeles," *Public Land and Resources Law Review*: Vol. 0, Article 8.

Available at: <https://scholarship.law.umt.edu/plrlr/vol0/iss4/8>

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Natural Resources Defense Council, Inc. v. County of Los Angeles, 725 F.3d 1194 (9th Cir. 2013).

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ABSTRACT

On remand from the United States Supreme Court, this Ninth Circuit Court of Appeals case addressed whether several government entities were liable under the Clean Water Act (CWA) for pollution exceedances in the LA MS4 stormwater drainage system. The Defendants, the County of Los Angeles (County) and the Los Angeles County Flood Control District (District), argued proof of the portion of individual entity discharge was required to determine liability under the Clean Water Act. Plaintiffs, Natural Resources Defense Council (NRDC) and Santa Monica Baykeeper, argued that Defendants violated the terms of their National Pollutant Discharge Elimination System (NPDES) permit and were therefore liable, despite lack of data determining the County's proportional contribution to exceedances. The Ninth Circuit held aviolation of the permit was sufficient to establish liability as a matter of law and that compliance requires each permittee who contributes to exceedances to mitigate its own discharges to avoid liability.

I. INTRODUCTION

Natural Resources Defense Council v. County of Los Angeles,¹ addressed whether the County and District were liable for exceeding pollution levels in the Los Angeles municipal storm sewer system (LA MS4), according to the terms of the NPDES permit under the Clean

¹ *NRDC v. Co. of L.A.*, 725F.3d 1194 (9th Cir. 2013).

Water Act.² The Ninth Circuit held the pollution exceedances created liability as a matter of law according to permit construction.³

II. FACTUAL BACKGROUND

In the County of Los Angeles, stormwater runs through an intricate sewer system called LA MS4, which gathers substantial pollution.⁴ The infrastructure is managed and monitored by the County and the Los Angeles County Flood Control District.⁵ It is undisputed that the San Gabriel and Los Angeles rivers receive untreated stormwater discharges from the outfalls of the system, which drain into Santa Monica Bay and the Pacific Ocean.⁶

The NPDES permit issued for the LA MS4 requires permittees to comply with discharge prohibitions and pollution standards.⁷ The permit also includes the Monitoring and Reporting Program, which requires measurement of the impacts of the LA MS4 discharges for the purpose of “assessing compliance.”⁸ The monitoring requirement enables mass-emissions trend assessment and determination if LA MS4 is contributing to water quality exceedances.⁹ Between 2002 and 2008, the monitoring stations detected 140 separate water quality violations.¹⁰

III. PROCEDURAL BACKGROUND

² *NRDC*, 725 F.3d at *1196.

³ *Id.* at *1197.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at *1198.

⁷ *Id.* at *1199.

⁸ *Id.*

⁹ *NRDC*, 725 F.3d at *1200.

¹⁰ *Id.*

NRDC filed suit March 3, 2008, claiming violations of NPDES permit limits automatically gave rise to liability for the County and District.¹¹ The district court bifurcated the issues of liability and remedy, staying proceedings on remedy until a final determination of liability. In 2010, the district court held plaintiff's claims were unsubstantiated because they lacked evidence of discharges by individual outflows in the District.¹² The court then determined an interlocutory appeal was needed to settle the question of what level of proof is required to establish liability of the Defendants.¹³

The Ninth Circuit held the District liable, despite requesting additional evidence of the individual Defendant discharges constituting permit violations.¹⁴ The United States Supreme Court granted certiorari only to address whether channeling polluted water from one section of a navigable river to another section of the same river constituted a discharge under the CWA.¹⁵ The Supreme Court highlighted that its holding did not address the issue of liability for permit violations and reversed and remanded the case back to the Ninth Circuit Court.¹⁶

IV. ANALYSIS

Upon second hearing at the Ninth Circuit, the district court's holding of summary judgment was reviewed de novo.¹⁷ The Ninth Circuit never issued a mandate based on its initial consideration of the case.¹⁸ A circuit court's holding does not become controlling law until a

¹¹ *Id.* at *1201.

¹² *Id.*

¹³ *Id.* at *1202.

¹⁴ *Id.*

¹⁵ *NRDC*, 725 F.3d at *1203. (Holding that it does not under *Florida Water Management District v. Miccosukee Tribe of Indians*, 541 U.S. 95 (2004).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

mandate is issued.¹⁹ Because the Ninth Circuit’s initial decision was not controlling law, the court had discretion to reconsider the case on its merits.²⁰

A. Permit Plain Language

A permittee violates the Clean Water Act by discharging pollutants in surplus of the limits of the NPDES permit.²¹ To analyze Defendant liability resulting from violation, the court turned to the text of the NPDES permit, interpreting the permit as it would any other contract.²² The County argued the purpose of the monitoring program was not to measure compliance with water quality standards.²³ However, the court found the terms of the permit to hold precisely the opposite, including “stated objectives of both characterizing stormwater discharges and assessing compliance with water quality standards.”²⁴ Under the plain meaning of the text as a whole, the court held the Defendants’ interpretation of the permit unreasonable.²⁵ The court further held that the question of the County’s portioned contribution goes to the remedy of the case, not the liability.²⁶ Each permittee “must take appropriate remedial measures with respect to its own discharges.”²⁷ If pollution levels exceed permit allowances, then “as a matter of permit construction” the Defendants are not in compliance and are liable.²⁸

B. Additional Considerations

¹⁹ *Id.* at **1203-1204.

²⁰ *Id.*

²¹ *NRDC*, 725 F.3d at *1204.

²² *Id.*

²³ *Id.* at *1205.

²⁴ *Id.*

²⁵ *Id.* at *1206.

²⁶ *Id.*

²⁷ *NRDC*, 725 F.3d at *1206.

²⁸ *Id.* at *1207.

The court determined that numerous considerations undermined the foundations of the Defendants' argument.²⁹ The first was the regulation governing NPDES permits.³⁰ Under 40 C.F.R. § 122.26(d)(2)(i)(F), the permit mandated monitoring of discharges to assure compliance with its terms.³¹ Second, the governing body that issued the permit, the Regional Board, rejected the Defendants' interpretation of the permit.³² The permitting agency's intent is an obligatory factor of interpretation.³³ Third, the purposes of the CWA undercut Defendants' assertions as Congress created the "self-monitoring mechanism" of the NPDES program to streamline enforcement of the provisions.³⁴

V. CONCLUSION

In this case, the Ninth Circuit Court held an NPDES permit's plain meaning was sufficient to determine the obligations of permittees and hold them liable under the CWA for contributing to pollution exceedances in the LA MS4 stormwater drainage system. The court further held additional factors undermined the Defendants' arguments, including the "self-monitoring" focus of the CWA, the Regional Board's rejection of the Defendants' permit interpretation, and regulated compliance measures of the NPDES program. This holding sends a message to primary permittees under NPDES permits that they will be held to the standards of the CWA and be liable if they violate it.

²⁹ *Id.*

³⁰ *Id.*

³¹ 40 C.F.R. § 122.26(d)(2)(i)(F) (2013).

³² *NRDC*, 725 F.3d at *1207.

³³ *Id.*

³⁴ *Id.* at *1208.