

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Brad Russi, Deputy City Attorney, Office of the City Attorney  
Dennis Herrera, General Manager, Public Utilities Commission  
Donna Hood, Commission Secretary, Public Utilities Commission

FROM: Monique Crayton, Assistant Clerk, Government Audit and Oversight  
Committee, Board of Supervisors

DATE: September 30, 2024

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Myrna Melgar on September 24, 2024:

**File No. 240940**

**Resolution urging the City Attorney and the San Francisco Public Utilities Commission to immediately resolve its lawsuit regarding the Clean Water Act with the United States Environmental Protection agency.**

If you have any additional comments or reports to be included with the file, please forward them to Monique Crayton at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at [monique.crayton@sfgov.org](mailto:monique.crayton@sfgov.org).

cc:  
Office of Chair Preston  
Office of Supervisor Melgar  
Masood Ordikhani, Public Utilities Commission  
Jeremy Spitz, Public Utilities Commission

1 [Urging to Resolve a San Francisco Public Utilities Commission Lawsuit with the United  
2 States Environmental Protection Agency]

3 **Resolution urging the City Attorney and the San Francisco Public Utilities Commission**  
4 **to immediately resolve its lawsuit regarding the Clean Water Act with the United States**  
5 **Environmental Protection agency.**

6  
7 WHEREAS, The Clean Water Act exists to “restore and maintain the chemical,  
8 physical, and biological integrity of the Nation’s waters;” and

9 WHEREAS, The Clean Water Act prohibits the “discharge of any pollutant by any  
10 person;” and

11 WHEREAS, This prohibition does not apply if a permit issued under the National  
12 Pollutant Discharge Elimination System program authorizes the discharge; and

13 WHEREAS, The City and County of San Francisco challenged the Environmental  
14 Protection Agency’s (EPA) authority under the Clean Water Act in the Ninth Circuit Court of  
15 Appeals in connection with certain wastewater facilities; and

16 WHEREAS, The challenge focused on the inclusion of general narrative prohibitions in  
17 the National Pollutant Discharge Elimination System (NPDES) permit, which governs San  
18 Francisco's combined sewer system and wastewater treatment facility; and

19 WHEREAS, The City and County of San Francisco argued that the EPA’s permit  
20 conditions were overly broad, particularly as they imposed general prohibitions without  
21 establishing specific numeric limits for discharges; and

22 WHEREAS, The Ninth Circuit ruled against San Francisco, determining that the EPA  
23 acted within its legal authority by enforcing general prohibitions in the permit to ensure  
24 compliance with water quality standards; and

25

1           WHEREAS, The court held that such prohibitions are permissible even in the absence  
2 of specific numeric limits, as they are necessary to protect water quality; and

3           WHEREAS, Narrative permits such as those at issue in the litigation are extremely  
4 common across the country, such that a ruling that invalidates or undermines them could  
5 greatly harm water quality nationwide - and provide new grounds for polluters to challenge  
6 water quality standards; and

7           WHEREAS, Particularly since the advent of a 6-3 conservative Supermajority on the  
8 Supreme Court, the Court has reduced the regulatory and enforcement powers of the EPA,  
9 include decisions blocking critically important climate protections; overturning longstanding  
10 precedents supporting environmental regulatory authority, and overturned fundamental Clean  
11 Water Act protections that have been in place for decades, thereby potentially stripping over  
12 half of the wetlands in the entire country without federal protection; and

13           WHEREAS, These actions have already gravely harmed the EPA's ability to enforce  
14 environmental laws and protect public health; and

15           WHEREAS, The lawsuit has the potential to seriously destabilize Clean Water Act  
16 protections at a time when environmental protections are already under serious threat; and

17           WHEREAS, The litigation has placed San Francisco in the position of championing the  
18 views and interests of the National Mining Association, American Gas Association, American  
19 Petroleum Institute, American Chemistry Council (all of whom have filed briefs supporting the  
20 City) and other representatives of the nation's biggest polluters; and

21           WHEREAS, The City and County of San Francisco is being represented in the  
22 Supreme Court by private counsel from a corporate law firm that regularly represents  
23 companies that seek less stringent regulation of their discharges into waters of the United  
24 States, and that is currently urging the Court to block EPA regulations limiting emissions and  
25 mercury and other toxic air pollutants emitted by coal-burning power plants; and

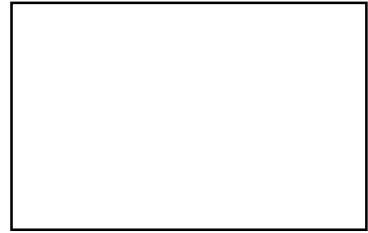
1           WHEREAS, The State of California, the State of Washington, the Commonwealth of  
2 Massachusetts, along with the states of Connecticut, Illinois, Maine, Maryland, Michigan,  
3 Minnesota, New Jersey, Oregon, Wisconsin, the Commonwealth of Pennsylvania, and the  
4 District of Columbia have filed amicus curiae briefs of the Environmental Protection Agency;  
5 now, therefore, be it

6           RESOLVED, That the San Francisco Board of Supervisors of the City and County of  
7 San Francisco urges the General Manager of the San Francisco Public Utilities Commission,  
8 the Commission of the San Francisco Public Utilities Commission, and the City Attorney's  
9 Office of the City and County of San Francisco to resolve the litigation promptly without  
10 provoking a decision from the Supreme Court.

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## Introduction Form

*(by a Member of the Board of Supervisors or the Mayor)*



I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)  
*(Routine, non-controversial and/or commendatory matters only)*
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor  inquires..."
- 5. City Attorney Request
- 6. Call File No.  from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the Board on

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission       Youth Commission       Ethics Commission
- Planning Commission       Building Inspection Commission       Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes                       No

*(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)*

Sponsor(s):

Subject:

Long Title or text listed:

Signature of Sponsoring Supervisor: