

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

MEMORANDUM

LAND USE AND TRANSPORTATION COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Myrna Melgar, Chair
Land Use and Transportation Committee

FROM: John Carroll, Assistant Clerk

DATE: October 7, 2024

SUBJECT **COMMITTEE REPORT, BOARD MEETING**
Tuesday, October 8, 2024

The following file should be presented as COMMITTEE REPORT during Board meeting on Tuesday, October 8, 2024. This resolution was acted upon during the Land Use and Transportation Committee meeting on Monday, October 7, 2024, at 1:30 p.m., by the votes indicated.

BOS Item No. 22

File No. 240940

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

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.

RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

Vote: Supervisor Myrna Melgar – Aye
Supervisor Dean Preston – Aye
Supervisor Aaron Peskin – Aye

Cc: Board of Supervisors
Angela Calvillo, Clerk of the Board
Alisa Somera, Legislative Deputy
Brad Russi, Deputy City Attorney

File No. 240940

Committee Item No. 4

Board Item No. 22

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation

Date: October 7, 2024

Board of Supervisors Meeting:

Date: October 8, 2024

Cmte Board

- | | | |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution - VERSION 2 |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract / DRAFT Mills Act Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Public Correspondence |

OTHER

- | | | |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>City Attorney Memo – October 4, 2024</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Chair's Committee Report Request Memo – October 2, 2024</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Transfer Memo – October 1, 2024</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>FYI Referral – September 30, 2024</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Prepared by: John Carroll

Date: October 4, 2024

Prepared by: John Carroll

Date: October 7, 2024

Prepared by: _____

Date: _____

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

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 on behalf of the Environmental Protection
5 Agency; 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.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



DAVID CHIU
City Attorney

MEMORANDUM

TO: Honorable Mayor London N. Breed
Honorable Members, San Francisco Board of Supervisors

FROM: David Chiu, City Attorney

DATE: October 4, 2024

RE: *City and County of San Francisco v. United States Environmental Protection Agency*
United States Supreme Court Case No. 23-753

On September 24, Supervisors Melgar and Peskin introduced a proposed resolution concerning the case *San Francisco v. EPA* that is set for argument before the United States Supreme Court on October 16, 2024. The case involves the narrow question of whether Environmental Protection Agency (“EPA”) can impose “Generic Prohibitions” on the City’s Oceanside stormwater and sewage system permit. Constituting a few sentences within extensive discharge permits, Generic Prohibitions make the permitholder broadly responsible for the quality of the water in a receiving body of water, rather than the quality of the permitholder’s discharge into the water body. The City is not challenging the Clean Water Act (“CWA”), any EPA regulation or rule, or the extent of EPA’s jurisdiction over water or air quality. Rather, the City argues that Generic Prohibitions contravene the letter and spirit of the CWA and EPA’s own regulations.

There has been a significant amount of incorrect information and misguided speculation about this case. The proposed resolution incorporates recitals that are factually false, misleading, and missing vital context, and it does not accurately represent what this lawsuit is actually about. Unfortunately, it does so even though deputies from my Office, the General Manager and Deputy General Manager of the San Francisco Public Utilities Commission (“SFPUC”), and I spent nearly three hours immediately before introduction in a closed session advising the Board about the case. To set the public record straight, here we summarize the underlying facts, litigation, settlement posture, and what’s at stake for the City and its ratepayers.

SUMMARY

In a split decision, the Ninth Circuit upheld EPA’s ability to use “Generic Prohibitions” in San Francisco’s stormwater and sewage system discharge permit. If that decision were to stand, the ramifications would be significant – San Francisco would be legally responsible for the quality of the Pacific Ocean and Bay as a whole, despite not having control over the other sources of pollutants to these waterbodies. To even attempt to meet this standard, the City would need to spend over \$10 billion more on the Bayside alone to modify its stormwater and sewage infrastructure—even though those modifications would have a negligible impact on improving Bay water quality and would result in San Francisco ratepayers paying nearly \$9,000 per

MEMORANDUM

TO: Mayor London Breed, Members of the Board of Supervisors
DATE: October 4, 2024
PAGE: 2

RE: *City and County of San Francisco v. United States Environmental Protection Agency*
United States Supreme Court Case No. 23-753

household annually in wastewater utility rates over the next 15 years—an average 10-fold increase of current rates.

As City Attorney, I have a duty to protect San Franciscans from such needlessly high utility rates that could drive many into poverty, as well as to make sure San Francisco complies with its obligations to protect the environment. Contrary to the inaccurate assertion in the proposed resolution, this lawsuit is not seeking any changes to the CWA. Rather, it simply asks the United States Supreme Court to ensure EPA follows the CWA in one discrete respect, as we describe below, and gives permit holders defined standards that actually prevent pollution before it happens.

To be clear, San Francisco's commitment to being a leader in protecting the environment and the CWA remains strong and unwavering. The City has already invested about \$2 billion and will invest more than \$3 billion more over the next 15 years in capital projects to reduce occasional discharges from large storms (which are authorized under the City's discharge permit) and upgrade its sewer treatment system. The City will continue to comply with the CWA and the City's discharge permits, and the City does not contest EPA oversight or regulation. The problem in this case is two discrete unlawful permit provisions memorialized in just three sentences. These provisions are referred to as the "Generic Prohibitions" that EPA has insisted be included in the City's discharge permits. The Generic Prohibitions comprise only three sentences in a 150-plus page permit. And those few sentences effectively say the City must not contribute to excess pollution in the Bay or Pacific Ocean, without making any effort to define what constitutes excess or which pollutants the City needs to control.

San Francisco has tried for years to work with EPA to clarify what standards the City must meet, to no avail. As a result, San Francisco, along with thousands of cities, counties, and clean water public agencies across the country, face an impossible situation. The City seeks to remove the Generic Prohibitions, and have EPA replace them with any necessary discharge requirements so that the City can continue to comply with those in addition to the permit's already extensive and detailed numeric, narrative, and operational discharge requirements, without facing the constant looming threat of enforcement action for conditions it has no control over – the overall water quality of the San Francisco Bay or the Pacific Ocean.

If the City were to accept these two discrete Generic Prohibitions, then it could be subject not only to continuous enforcement proceedings by EPA but also to litigation by private parties, based on the overall water quality of the Bay or Ocean, even if the City's discharges are negligible. Those proceedings could result in billions of dollars in liability to the City, from fines and injunctive relief requiring unplanned capital projects. According to the SFPUC, the City's ratepayers could be liable for more than \$10 billion just for Bayside capital projects, plus billions more dollars in outlays for the Oceanside. Those capital projects would be not only expensive but also disruptive to City residents and businesses because of the extensive sewer

MEMORANDUM

TO: Mayor London Breed, Members of the Board of Supervisors
DATE: October 4, 2024
PAGE: 3

RE: *City and County of San Francisco v. United States Environmental Protection Agency*
United States Supreme Court Case No. 23-753

system work that the City would have to perform. Indeed, the City could comply with the detailed requirements of its discharge permits and make extraordinary expenditures on its sewer system *and still* be held liable for violating the two unlawful permit provisions. And, what is worse, those major capital outlays at ratepayer expense will likely not result in measurably improved water quality because San Francisco is just one entity occasionally discharging into the Bay or Ocean. There are many other dischargers and other factors that affect overall water quality.

For these reasons, as we explain more fully below, and contrary to statements in the proposed resolution, the City's posture in the pending litigation does not seek to undermine the CWA or to curtail its scope or reach, or undercut EPA's administrative jurisdiction to protect the water and the air across this country. The City does not contest any of the provisions in the 150-page plus EPA permits beyond the three sentences that comprise the Generic Prohibitions. What San Francisco seeks is narrow – removal only of the Generic Prohibitions, and replacement by EPA with clear guidelines about discharge requirements, so that the City can continue to comply with the CWA and EPA regulations. We wish we were not at this point. We have been trying unsuccessfully to resolve this case for years, and the appeal before the Supreme Court is regrettably a last resort.

DISCUSSION**I. BACKGROUND**

San Francisco has a combined stormwater and sewage system. Unlike other municipalities that maintain separate sewer and stormwater systems, San Francisco treats both wastewater and stormwater before discharge, which benefits overall water quality. San Francisco has two treatment plants that operate 365 days a year and a third “wet-weather facility” that only operates during rain events. The City also owns and operates about 1,000 miles of sewer mains to convey flows to these plants, which function as two distinct systems. The first is the Oceanside system which serves the western portion of San Francisco and conveys flows to the Oceanside Water Pollution Control Plant (the “Oceanside Plant”) for treatment before discharge. The second is the Bayside system which serves the eastern part of San Francisco, conveying flows to the Southeast Water Pollution Control Plant (the “Southeast Plant”) for treatment before discharge. The Oceanside and Southeast Plants each have their own discharge permits that authorize their discharges of treated effluent and combined sewer discharges (“CSDs”) – discharges that occur in large storms - into the Ocean and the Bay, respectively.

Through multi-decade, multi-billion dollar investments in improving its system, the City, acting through the SFPUC, has demonstrated its abiding commitment to compliance with the CWA and environmental stewardship. San Francisco has invested in major improvements to its combined sewer system over the last four decades and has dramatically reduced its CSDs.

MEMORANDUM

TO: Mayor London Breed, Members of the Board of Supervisors
DATE: October 4, 2024
PAGE: 4

RE: *City and County of San Francisco v. United States Environmental Protection Agency*
United States Supreme Court Case No. 23-753

Between 1976 and 1997, San Francisco performed a major \$2 billion upgrade of its systems and reduced CSDs citywide by 80%, to 10 or fewer per year. These CSDs occur during unusually intense rain storms that exceed the capacity of the City's system. Currently, San Francisco is undertaking a major overhaul of its Southeast Plant, including new facilities for biosolids and headworks (the first stage of sewage treatment) and performing other significant public work projects to address flooding in low-lying areas of the City, at a total cost of over \$3 billion. Further, the SFPUC has been working with EPA and the California Regional Water Quality Control Board (the "RWQB") on other areas of its system and has offered to implement another \$2 billion in additional capital projects and programs.

Generally, discharges of stormwater and sewage are governed by federal and state laws and policies as well as related permits. San Francisco is challenging in this case two discrete provisions in its National Pollutant Discharge Elimination System ("NPDES") permit governing our Pacific Ocean water discharges (the "Oceanside Permit"). These particular conditions are generic, lacking any clarity about how the City can possibly comply; again, we refer to these as the Generic Prohibitions. They are set forth in the following three sentences which are distinct from the narrative and other provisions of the 150-plus page Oceanside and Bayside Permits. The City is not challenging the narrative and other provisions. The two discrete conditions are memorialized in the following three sentences:

- "Discharge shall not cause or contribute to a violation of any applicable water quality standard (with the exception set forth in State Water Board No. WQ 79-16) for receiving waters adopted by the Regional Water Board, State Water Resources Control Board (State Water Board), or U.S. EPA as required by the CWA and regulations adopted thereunder." [Oceanside Permit]
- "Neither the treatment nor the discharge of pollutants shall create pollution, contamination, or nuisance as defined by California Water Code Section 13050." [Oceanside and Bayside Permits]
- "The discharge shall not cause a violation of any water quality standard for receiving waters adopted by the Regional Water Board or State Water Board as required by the CWA and regulations adopted thereunder (including the *Combined Sewer Overflow (CSO) Control Policy*) outside near-field mixing zones (i.e. where mixing is not controlled by effluent discharge momentum and buoyancy)." [Bayside Permit]

As illustrated above, the Generic Prohibitions require the City to avoid any discharge that causes or contributes to violating water quality standards for the *receiving water* – in the case at issue, the Pacific Ocean. What that means in practice is the City can be held liable for contamination in the Ocean that others – not the City – have caused or are causing. That's not how the law is supposed to work.

MEMORANDUM

TO: Mayor London Breed, Members of the Board of Supervisors
DATE: October 4, 2024
PAGE: 5

RE: *City and County of San Francisco v. United States Environmental Protection Agency*
United States Supreme Court Case No. 23-753

The CWA itself and EPA's own regulations and guidance require that permit provisions relate to *points of discharge*. This difference between quality of discharge and the quality of the receiving water is crucial. Making San Francisco liable for the water quality in the Pacific Ocean rather than focusing on the City's particular discharges not only contradicts the CWA's plain meaning and intent but also it creates an obligation that is impossible for the City to comply with. San Francisco does not control the water quality of the Pacific Ocean off its shores, much less every source that might discharge into those waters. And without clear requirements for compliance for its own discharges, San Francisco risks violating the CWA, being dragged into an enforcement proceeding and facing huge liability for acts outside of its control. By analogy, consider holding San Francisco residents accountable for the costs to address impacts to air quality by wildfire smoke from outside the region causing orange skies or by emissions from airplanes flying overhead – that would be patently unfair.

Still, while the risk of enforcement flies in the face of common sense, this risk is not theoretical. Just a few months ago, EPA, the RWQCB acting under authority from EPA, and Baykeeper, a nonprofit environmental group, sued San Francisco in federal district court to enforce the Generic Prohibitions. With this new action, the severe consequences of the Generic Prohibitions come into stark relief, bringing potentially devastating consequences to both San Francisco and its ratepayers. As described above, the City has made and continues to make significant investments to improve its sewer system infrastructure. Again, it is worth emphasizing that if EPA uses its Generic Prohibitions to demand additional capital projects, then San Francisco ratepayers would bear the crushing consequences of funding untold capital projects, that San Francisco estimates would include well over \$10 billion for the costs of those projects just for the Bayside. With currently planned investments, the average annual sewer bill will go from approximately \$851 today to an estimated \$3,500 in 15 years; on top of that, the additional \$10-plus billion would result in an average annual sewer bill of nearly \$9,000. That would compound the City's cost of living crisis that is already burdening many ratepayers and would disproportionately harm economically disadvantaged residents, who may no longer be able to afford their homes. According to an analysis commissioned by the SFPUC, between 8,100 and 10,600 more San Franciscans would be forced into poverty. All for the possibility of a negligible increase in water quality.

II. SAN FRANCISCO'S LAWSUIT ON THE OCEANSIDE PERMIT

San Francisco has been voicing its concerns about the Generic Prohibitions since 2013 when EPA included them in the Bayside permit over San Francisco's objections. In 2017, under the Trump Administration, EPA threatened enforcement action on the Bayside CSDs. In 2019, two weeks after former President Trump tweeted about San Francisco pollution and threatened to put San Francisco on notice, EPA issued a Notice of Violation alleging, "failure to comply with water quality standards" and specifically citing the Generic Prohibitions in the Bayside permit. Later that year, when San Francisco, EPA, and the RWQCB were negotiating renewal of the

MEMORANDUM

TO: Mayor London Breed, Members of the Board of Supervisors
DATE: October 4, 2024
PAGE: 6

RE: *City and County of San Francisco v. United States Environmental Protection Agency*
United States Supreme Court Case No. 23-753

Oceanside permit, San Francisco again objected to the inclusion of the Generic Prohibitions. EPA and RWQCB overruled San Francisco's objections and included the Generic Prohibitions in the 2019 Oceanside permit. San Francisco pursued an administrative appeal to the Environmental Appeals Board (the "EAB"). Former President Trump's EAB upheld the permit. San Francisco then sought review by the Ninth Circuit Court of Appeals. The Ninth Circuit heard the case in 2022 and issued a divided opinion in 2023, narrowly ruling in EPA's favor.

The Ninth Circuit opinion left San Francisco with the unenviable choice of either (1) accepting the Generic Prohibitions, exposing the City and its ratepayers to enforcement for unspecified, unknown, and unknowable receiving water quality at a huge potential cost or (2) appealing the decision. San Francisco chose the latter and then appealed to the United States Supreme Court. Seeking Supreme Court review was critical to protect San Francisco's ratepayers and also to resolve the legality of the Generic Prohibitions for San Francisco and other discharge permit holders.

Importantly, the Ninth Circuit opinion in this case created a split with the Second Circuit Court of Appeals (*National Resources Defense Council v. EPA*, 808 F.3d 556 (2nd Cir. 2015)). In the Second Circuit, environmental organizations, led by the Natural Resources Defense Council, brought a lawsuit against EPA, challenging discharge permit conditions similar to the Generic Prohibitions. The Second Circuit unanimously found such permit terms fail to protect the environment, because they "add nothing" to instruct permit holders on how to prevent pollution, instead only imposing liability after water quality violations have occurred, and "[t]he point of a permit is to prevent discharges that violate water quality standards *before* they happen" (emphasis in original, at p. 579).

Notably, over the last 10 years the United States Supreme Court has granted review in approximately 14 environmental cases. In the vast majority of those cases, the Supreme Court adhered to the questions presented. Specifically, of the 21 questions presented in the 14 cases, the Supreme Court answered 20 of the 21 as presented, more narrowly, or ruled in EPA's favor, and did not use the opportunity to reach for a broader statement or principle.

San Francisco framed its case at the Supreme Court narrowly. Once more, the City did not challenge the CWA, any EPA policy or rule, or the extent of EPA's administrative jurisdiction over water or air quality. San Francisco contested only the Generic Prohibitions – a few lines in a 150-plus page permit. The precise question presented to the Supreme Court is simply this: "Whether the Clean Water Act allows EPA (or an authorized state) to impose generic prohibitions in [discharge] permits that subject permit holders to enforcement for exceedances of water quality standards without identifying specific limits to which their discharges must conform."

The Supreme Court agreed to hear the case and has scheduled oral argument for October 16, 2024. The matter is fully briefed by the City and EPA. Numerous *amicus curiae*

MEMORANDUM

TO: Mayor London Breed, Members of the Board of Supervisors
DATE: October 4, 2024
PAGE: 7

RE: *City and County of San Francisco v. United States Environmental Protection Agency*
United States Supreme Court Case No. 23-753

(friend of the court) briefs have been filed in support of the City's position, as municipal sewer utilities around the country are similarly addressing the implications of the generic prohibitions in their discharge permits. The City has been joined by more than 60 amici, including the 400 cities represented by the California League of Cities, the 2,800 members of the National League of Cities, over 2,300 members of the National Association of Counties, and the National Association of Clean Water Agencies. And the breadth of this support is not surprising. From Washington State to Washington D.C., and from Massachusetts to California, more than two dozen public water agency amici grapple with similar provisions in their discharge permits and understand how important this issue is. The economic stakes for residents and ratepayers in our collective communities are high.

Again, we wish we were not at this point, and it is regrettably a last resort. San Francisco has been and remains eager to cooperate with EPA. And in fact, the City attempted for years to no avail to discuss with EPA the very real concerns with the Generic Prohibitions. In 2021, San Francisco tried to resolve its concerns through mediation but those efforts were unsuccessful. Because EPA refused to comply with the law and its own regulations as to the narrow issue of the Generic Provisions and rebuffed San Francisco's attempts to address its permitting concerns, San Francisco was left with no choice but to seek clarity from the Supreme Court on that narrow issue. Also, if San Francisco declined to appeal the Generic Prohibitions, there are many others similarly affected who might seek Supreme Court review and frame the issues in the case for the Court to decide much more broadly.

III. OUTCOME

If San Francisco succeeds in this case, the Supreme Court could conclude that EPA cannot impose Generic Prohibitions tied to water quality of receiving waters and instead must fashion clear, individualized point-of-discharge requirements, consistent with the language and intent of the statute. And indeed, San Francisco's discharge permits without the Generic Prohibitions already do just that through detailed numeric and narrative limitations and operational requirements. Moreover, a successful outcome at the Supreme Court would end the existing and ongoing arbitrary enforcement actions from regulators and private plaintiffs leveraging the Generic Prohibitions to allege that permit holders are 'violating' unspecified, unknown, and unknowable requirements. But the City would still have to comply with the extensive water quality discharge requirements in its permits and environmental laws and regulations, as well as make capital improvements to its system. In sum, the City seeks merely to have discharge permits say what they mean and mean what they say.

CONCLUSION

The City has arrived at this point despite exhaustive efforts over many years to try to resolve the dispute that began with the Trump Administration, and to cooperate with EPA. But the City was compelled to appeal this case to the Supreme Court as a last resort. The City in

MEMORANDUM

TO: Mayor London Breed, Members of the Board of Supervisors
DATE: October 4, 2024
PAGE: 8

RE: *City and County of San Francisco v. United States Environmental Protection Agency*
United States Supreme Court Case No. 23-753

this litigation is far from alone, joined by many other cities, counties, and water districts across the country, including from liberal jurisdictions, that face a similar impossible situation. As stated above, what the City seeks in court is narrow – the City is not challenging the CWA, any EPA regulation or rule, or the extent of EPA’s jurisdiction over water or air quality. Instead, the City is challenging just a few vague sentences in a 150-plus page permit. Those words contravene the letter and spirit of the CWA and EPA’s own regulations. San Francisco just wants clarity on what it needs to do to protect water quality, which it does have in the bulk of the permit, but for those three impermissible sentences. And what’s at stake for San Francisco ratepayers is shouldering potentially extraordinary increases which would translate to nearly \$9,000 per household annually in wastewater utility rates over the next 15 years—an average 10-fold increase over current rates, with negligible impact on improving the water quality in the Ocean.

Finally, I wish to make one thing clear about our Office’s role. While we always appreciate and consider the perspective of others throughout the City, and are open to policy concerns from the Board of Supervisors about this case or any ongoing litigation, the City Attorney is charged under Section 6.102 of the City Charter with representing the City in legal proceedings. San Francisco spent the better part of a decade trying to resolve these issues with EPA. Regardless of the outcome at the Board of Supervisors on the proposed resolution, it is too late now to resolve this case before the October 16, 2024 Supreme Court argument.

D.C.



MYRNA MELGAR

DATE: October 2, 2024

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Supervisor Myrna Melgar, Chair, Land Use and Transportation Committee *mm*

RE: Land Use and Transportation Committee
COMMITTEE REPORTS

Pursuant to Board Rule 4.20, as Chair of the Land Use and Transportation Committee, I have deemed the following matters are of an urgent nature and request them be considered by the full Board on Tuesday, October 8, 2024.

- | | |
|------------------------|---|
| File No. 240843 | Administrative Code - Entertainment Zones
Sponsors: Mayor; Dorsey |
| File No. 240845 | Building Code - Gas Infrastructure for EPCA Appliances in New Construction
Sponsor: Mandelman |
| File No. 240940 | Urging to Resolve a San Francisco Public Utilities Commission Lawsuit with the United States Environmental Protection Agency
Sponsors: Melgar; Peskin |

These matters will be heard in the Land Use and Transportation Committee at a Regular Meeting on Monday, October 7, 2024.

President, District 3
BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. 554-7450
Fax No. 554-7454
TDD/TTY No. 544-6546

Aaron Peskin

PRESIDENTIAL ACTION

Date: 9/30/24

To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,
Pursuant to Board Rules, I am hereby:

Waiving 30-Day Rule (Board Rule No. 3.23)

File No. _____
(Primary Sponsor)

Title.

Transferring (Board Rule No 3.3)

File No. 240940 Melgar
(Primary Sponsor)

Title. Urging to Resolve a San Francisco Public Utilities Commission Lawsuit
with the United States Environmental Protection Agency

From: Government Audit & Oversight Committee

To: Land Use & Transportation Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor: _____ Replacing Supervisor: _____

For: _____ Meeting
(Date) (Committee)

Start Time: _____ End Time: _____

Temporary Assignment: Partial Full Meeting



Aaron Peskin, President
Board of Supervisors

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

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

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.

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

From: [Board of Supervisors \(BOS\)](#)
To: [BOS-Supervisors](#); [BOS-Legislative Aides](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [De Asis, Edward \(BOS\)](#); [Entezari, Mehran \(BOS\)](#); [Carroll, John \(BOS\)](#)
Subject: FW: STRONGLY SUPPORTING Land Use and Transportation Committee Agenda Item #4 and BOS Agenda Item #22 [Urging to Resolve a San Francisco Public Utilities Commission Lawsuit with the United States Environmental Protection Agency] File #240940
Date: Monday, October 7, 2024 10:19:22 AM

Dear Supervisors,

Please see the below communication from Eileen Boken regarding File No. 240940.

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.

Thank you,

Eileen McHugh
Executive Assistant
Office of the Clerk of the Board
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102-4689
Phone: (415) 554-7703 | Fax: (415) 554-5163
eileen.e.mchugh@sfgov.org www.sfbos.org

From: aeboken <aeboken@gmail.com>
Sent: Sunday, October 6, 2024 8:55 PM
To: BOS-Supervisors <bos-supervisors@sfgov.org>; BOS-Legislative Aides <bos-legislative_aides@sfgov.org>
Subject: STRONGLY SUPPORTING Land Use and Transportation Committee Agenda Item #4 and BOS Agenda Item #22 [Urging to Resolve a San Francisco Public Utilities Commission Lawsuit with the United States Environmental Protection Agency] File #240940

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

TO: Board of Supervisors members

FROM: Eileen Boken, President

Sunset-Parkside Education and Action Committee (SPEAK)

RE: Urging to Resolve a San Francisco Public Utilities Commission Lawsuit with the United States Environmental Protection Agency File #240940

Position: Strongly supporting

This lawsuit threatens to gut the Clean Water Act (CWA) if it comes before the far right US Supreme Court.

The US Supreme Court is now more than willing to use this lawsuit to gut the CWA.

Should this lawsuit come before the US Supreme Court it would do irreparable harm to San Francisco's brand and credibility as an environmental champion.

###

Sent from my Verizon, Samsung Galaxy smartphone

From: [TJ Brown](#)
To: [Carroll, John \(BOS\)](#)
Subject: SF EPA Lawsuit
Date: Monday, October 7, 2024 1:50:37 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi John,

I unfortunately was not able to make it down to City Hall today, but I wanted to reach out to reiterate and echo the sentiment of my fellow SF residents who protested the EPA lawsuit today.

SF is supposed to be an environmental leader in this country, but if Mayor Breed and David Chiu hand the Clean Water Act to the far right Supreme Court on a silver platter, that reputation will be completely compromised -- there's not a single person in the local environmental community who's on board with this lawsuit. The fact that Mayor Breed would even think about aligning herself with the National Mining Association, American Petroleum Institute, and American Chemistry Council, among other groups with such horrific records in terms of pollution and greenhouse gas emissions demonstrates to me that she has zero regard for the sentiment of her local environmental groups.

I urge you and everyone else in the city government to pressure Mayor Breed and David Chiu to drop this lawsuit immediately.

Take care,
TJ

From: [regina.sneed](#)
To: [Carroll, John \(BOS\)](#)
Cc: [Peskin, Aaron \(BOS\)](#); [Preston, Dean \(BOS\)](#); [MelgarStaff \(BOS\)](#); [StefaniStaff \(BOS\)](#)
Subject: BOS file number 240940: Resolution concerning SFPUC Vs, EPA lawsuit: support passage.
Date: Friday, October 4, 2024 7:44:04 AM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors:

I am unable to attend the Land Use Committee to testify in person due to health reasons. I support the resolution to resolve this lawsuit without an appeal to the U.S. Supreme Court for the many reasons offered by the coalition of environmental and community organizations.

Does San Francisco want to risk the strong possibility that an appeal could weaken water quality standards for the nation. Our State Attorney General has filed an amicus brief in support of preserving the clean water laws. This is what our city should be doing in alignment with our values.

I have lived in San Francisco since 1971. This issue is not new. I served on the Board of San Francisco Tomorrow. We urged the city to address this problem for years.

I worked to establish the San Francisco Commission on the Environment and served on the Commission after it was formed. We adopted a set of precautionary principles that say we should do no harm. This appeal to the Supreme Court will do harm.

I urge the Board to adopt this resolution at its October 8, 2024 meeting.

Thank you.

Regina Sneed
District Two resident
Sent from my iPad

From: [Carroll, John \(BOS\)](#)
To: anna.riek22@gmail.com
Cc: [Crayton, Monique \(BOS\)](#); [Melgar, Myrna \(BOS\)](#); [Low, Jen \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Kilgore, Preston \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Horrell, Nate \(BOS\)](#)
Subject: RE: REPEAL Breed and Chiu's Lawsuit against the EPA - BOS File No. 240940
Date: Wednesday, October 2, 2024 10:30:00 AM
Attachments: [image001.png](#)

Thank you for your comment letter.

I am forwarding your comments to the members of the LUT committee, and I will include your comments in the file for this resolution matter.

I invite you to review the entire matter on our [Legislative Research Center](#) by following the link below:

- [Board of Supervisors File No. 240940](#)

John Carroll

Assistant Clerk

Board of Supervisors
San Francisco City Hall, Room 244
San Francisco, CA 94102
(415)554-4445



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form.

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation and archived matters since August 1998.

***Disclosures:** Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.*

From: Crayton, Monique (BOS) <monique.crayton@sfgov.org>
Sent: Wednesday, October 2, 2024 9:37 AM
To: Carroll, John (BOS) <john.carroll@sfgov.org>
Subject: FW: REPEAL Breed and Chiu's Lawsuit against the EPA

Monique C. Crayton (she/her)

Assistant Clerk

Board of Supervisors - Clerk's Office

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco, CA 94102

(415) 554-7750 | Fax: (415) 554-5163

monique.crayton@sfgov.org | www.sfbos.org

(VIRTUAL APPOINTMENTS) To schedule a “virtual” meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

From: Anna Riek <anna.riek22@gmail.com>

Sent: Friday, September 27, 2024 11:31 AM

To: Crayton, Monique (BOS) <monique.crayton@sfgov.org>

Subject: REPEAL Breed and Chiu's Lawsuit against the EPA

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi Monique,

My name is Anna Riek, and I am a resident of San Francisco Supervisorial District 1. I am writing to you to express my discontent with the lawsuit against the EPA over sewage and stormwater treatment. This lawsuit undermines our fundamental rights under the Clean Water Act.

Please pass on to the Board of Supervisors that I strongly condemn releasing sewage into the ocean and siding with polluters to sue the EPA to continue polluting our waters. I don't support this lawsuit and our city shouldn't either.

The Board of Supervisors is supposed to represent us and should be protecting our families from pollution on our beaches and in our water. Please stop the lawsuit and clean up its mess.

Thank you.

Anna Riek

--

Anna Riek

(she/her)

(406) 599-6822 | Seattle, WA | [LinkedIn](#)

Washington University in St. Louis | Olin Business School
B.S.B.A. in Org. and Strat. Mgmt., German | Class of 2023

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: