

California Supreme Court Rules That Municipal Stormwater Permit Requirements May Constitute Unfunded State Mandates

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ATTORNEYS

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The California Supreme Court today held that various requirements of the 2001 Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit could be considered unfunded state mandates subject to reimbursement by the State. The decision specifically applied to mandates that permittees install trash receptacles at transit stops and conduct inspections at certain industrial and commercial facilities. The Supreme Court concluded that these requirements were not mandated by the Clean Water Act "maximum extent practicable" standard for MS4 permits issued by the Regional Water Quality Control Board. Based on the record, the Regional Water Board exercised its discretion under state, rather than federal, law to mandate the trash receptacle and inspection requirements. Permittees' costs for complying with the mandates are therefore potentially subject to reimbursement by the State. Importantly, the Supreme Court noted that the Commission on State Mandates, which had initially found that the requirements were not mandated by federal law, need not defer to the Regional Water Board's determination that a permit requirement is within the scope of the maximum extent practicable standard.

The Supreme Court sent the case back to the trial court for a decision as to whether the mandates must be reimbursed by the State. This litigation will include a determination as to whether permittees can impose a cost recovery fee for the inspection requirements, which, if possible, could result in inspections not being reimbursable by the State.

Today's decision is important for cities that own or operate a stormwater system within their jurisdiction, as regulatory requirements for discharges from those systems have become increasingly onerous and costly. The decision will affect several pending test claims before the Commission on State Mandates that involve MS4 permits, including the 2012 Los Angeles County MS4 Permit.

If you have any questions regarding the Supreme Court's decision or other stormwater issues, please contact Nick Ghirelli in our Public Law Department.