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## Cmtys. for a Better Env't v. State Water Res. Control Bd., 34 Cal. Rptr. 3d 396 (Cal. Ct. App. 2005)

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forth by the SDWA and its implementing regulations, which established the concentration of fluoride in drinking water supplied to the public. The SDWA provides strict compliance and reporting requirements in regulating fluoridating water systems. However, it is not mandatory that water be completely free of contaminants when there are maximum contaminant levels (“MCL’s”) and detection limits. HFSA met the standards of the American National Standard Institute/National Sanitation Foundation Standard 60 and therefore, the statutory and regulatory schemes allow HFSA as a fluoridating agent if it complies with MCL’s and detection limits for the contaminants it contains.

Coshow protested the choice of HFSA as a fluoridating agent. The legislature chooses the fluoridating agent and the court does not have the authority to exercise its independent judgment with respect to the performance of legislative functions. Under the SDWA, the Department has the authority to approve the method of fluoridation. The court held that Coshow should have brought his challenge to the use of HFSA at the administrative level due to the procedures the SDWA establishes to ensure public water systems deliver pure and safe water.

The court determined that Coshow could not state a claim for violation of the right to privacy or bodily integrity. The court found no fundamental constitutional right exists because neither the state nor federal constitution guarantees a right to a healthful or contaminant-free environment. In addition, the court established that using HFSA is not forced medication because Coshow can choose not to ingest HFSA by refusing to drink the water. Finally, the court determined that fluoridation with HFSA satisfies the rational basis test under due process principles. The challenged action is primarily concerned with health and safety, therefore no fundamental right is at stake. The legislature mandates and regulations permit the actions to fluoridate the public drinking water with HFSA. Accordingly, the court affirmed the trial court’s judgment on all accounts.

*Tracy M. Talbot*

**Cmtys. for a Better Env’t v. State Water Res. Control Bd., 34 Cal. Rptr. 3d 396 (Cal. Ct. App. 2005)** (holding that the 2000 permit for the Golden Eagle Refinery is valid because a water quality-based effluent limit does not always have to be numeric, and affirming the trial court’s decision that the environmental groups were not entitled to mandate relief because the standard of review must extend appropriate deference to administrative agencies and their technical expertise in determining that (1) the permit did not violate the antibacksliding provisions of the Clean Water Act and (2) the permit schedule of compliance was valid).

Communities for a Better Environment and San Francisco Bay Keeper (collectively "environmental groups") appealed the decision of the Superior Court of the City and County of San Francisco denying a petition for a writ of mandate challenging the issuance of a National Pollutant Discharge Elimination System ("NPDES") permit to Tesoro Refining and Marketing Company ("Tesoro"). Tesoro owned the Golden Eagle Refinery ("the Refinery") near Avon, California. The Refinery, a gasoline and diesel fuel producer, discharged treated wastewater containing dioxins into the Suisun Bay. In their appeal, the environmental groups raised three issues: (1) the 2000 permit issued to the Refinery violated the Clean Water Act ("CWA") and federal regulations because it failed to set a numeric "water quality based effluent limit" ("WQBEL") for dioxins; (2) the permit violates the anti-backsliding provisions of the CWA because additional permit effluent limits are generally not allowed to "backslide" in comparison to earlier ones; and (3) the permit's schedule of compliance is invalid because it is not authorized by the 1995 basin plan, it violates the CWA, the 10-year schedule of compliance is invalid, and it does not fit the definitions of 'schedule of compliance' as defined in statutes and regulations.

The Superior Court agreed with the environmental groups on the first issue and granted the petition without examining issues two and three. The Court of Appeal of California, First Appellate District, Division One reversed because under the CWA, WQBELs are not always required to be numeric. This is evident by the fact that three administrative agencies properly approved the amended permit without numeric WQBELs. The court remanded the last two issues for the trial court to resolve. The trial court denied the petition for writ of mandate on both issues.

The goal of the CWA is to provide regulations to maintain the integrity of the Nation's water biologically, chemically and physically. Generally, the CWA only allows discharge of pollutants when it complies with a statutory exception, such as an NPDES permit establishing technology-based and water quality-based effluent limitations for a polluter. The CWA's NPDES permit system establishes water quality standards and water quality criteria and a polluter must comply with effluent limitations to meet these standards. The state assigns a total maximum daily load ("TMDL") for each point source once the Regional Water Quality Control Board ("Regional Board") grants an NPDES permit. Here, the NPDES permit governs the Refinery's discharges, which the court reaffirmed with directions to improve the amount of dioxin waste it dumps into the water. The Regional Board found that the Refinery reduced the dioxins in their discharge by 85%, and that even though the Refinery contributes greatly to the high amount of dioxin in the water, the dioxins also enter the water by atmospheric deposition. Because the Refinery created a reasonable po-

tential for causing or contributing to the violation of water quality standards, the State Board concluded that the Regional Board complied with the CWA in assessing that a NPDES permit requires a WQBEL.

The trial court denied the environmental groups' mandate petition on issues two and three noting that three administrative agencies – the Regional Board, the State Board, and the EPA – all reviewed and approved the regulation of dioxins in the Refinery's permit. The legislature charged these agencies with overseeing the NPDES permit program in California and the administrative record supported their findings, analysis, and conclusions. Thus, the permit's compliance schedule did not violate the CWA, the antibacksliding provisions, or the implementing regulations.

The CWA's general prohibition on backsliding disallows a permit containing less stringent effluent limitations than the comparable effluent limitations in the previous permit. Here, the administrative agencies determined the proper effluent limitations were not comparable. Thus, the court found the less stringent guidelines in the subsequent permit do not violate the CWA's guidelines on antibacksliding.

During the TMDL preparation, the Refinery's permit allowed it to discharge waste at current levels, which were not a significant source of the dioxin problem. After the TMDL is determined, the Refinery will be required to comply with the new regulations or reduce the dioxin discharge to zero. The environmental groups argued that this schedule of compliance was invalid for four reasons. First, the trial court could construe the 1995 basin plan to adapt to interpretations of existing standards due to the Whole Effluent Toxicity Control Policy ("WET Policy") and three administrative agencies approved the schedule of compliance. Second, the trial court held that the schedule of compliance does not violate the CWA, as contended by the environmental groups. Again, the trial court determined the WET Policy authorized a schedule of compliance for revisions of an existing water quality standard. Third, the environmental groups argued the 10-year schedule of compliance is invalid, but the trial court concluded that a schedule of compliance can have a life longer than its corresponding permit. Finally, the trial court determined the schedule of compliance is valid because it fits within statutory and regulatory definitions.

The Superior Court affirmed the trial court's evaluation of the two remaining issues. Thus, the court ruled against the environmental groups on all three issues.

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**Commc'ns Relay Corp. v. County of Los Angeles, 30 Cal.Rptr.3d 1 (Cal. Ct. App. 2005)** (holding that a state statute authorized only licensed water well contractors to construct water wells).