2026 Supplement: Modern Environmental Law (2d. ed.)

By James R. May

This supplement updates *Modern Environmental Law* through August 1, 2026. It emphasizes major changes in federal environmental governance, judicial review, and international environmental rights.

For NEPA, the supplement explains the final removal of CEQ's government-wide implementing regulations and the resulting shift toward statutory text, agency-specific procedures, and guidance. It reinforces *Seven County Infrastructure Coalition v. Eagle County* as the governing framework for judicial deference and project-effect scope, while identifying *Department of the Air Force v. Prutehi Guahan* as a pending case to watch.

For the ESA, it addresses the 2026 rescission of the regulatory definition of "harm," reconsidering the significance of habitat modification after *Babbitt v. Sweet Home*. Clean Water Act materials add *City and County of San Francisco v. EPA*. Clean Air Act materials address EPA's 2026 rescission of the greenhouse-gas endangerment finding and resulting administrative-law litigation.

It adds *Monsanto Co. v. Durnell*, explaining FIFRA preemption of certain state failure-to-warn claims. It also addresses PFAS as a cross-statute regulatory problem.

Climate, environmental-rights, and international-law sections integrate current litigation, the ICJ climate advisory opinion, the Inter-American Court's climate-emergency opinion, and Ecuadorian rights-of-Nature developments. Finally, the environmental-justice section explains the rollback of federal executive infrastructure and directs attention to statutory, state, local, and permit-specific protections.

I hope it is helpful. Thank you for reading!

Chapter 4 — National Environmental Policy Act

1. Replace § III, pp. 148–49

Exact placement: Replace the final two paragraphs under **"III. NEPA CEQ Regulations,"** beginning **"No more. NEPA regulations underwent drastic changes in 2025,"** and ending **"Things are unlikely to get any better for NEPA."**

> No more—at least not in the form of a single, binding, government-wide CEQ regulatory code. CEQ's rescission of its NEPA implementing regulations, 40 C.F.R. pts. 1500–1508, became effective April 11, 2025. CEQ finalized that rescission, without change, on January 8, 2026. *Removal of National Environmental Policy Act Implementing Regulations*, 91 Fed. Reg. 618 (Jan. 8, 2026). The familiar CEQ regulations thus no longer govern federal NEPA practice.
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> This does not mean that NEPA has disappeared. NEPA's text, including the 2023 amendments, remains binding. Nor does it mean that agencies are entirely without procedures. Rather, NEPA implementation now depends substantially on the procedures, categorical exclusions, guidance, and organic statutes of the particular federal agency involved. Agencies may also adopt or rely on other agencies' categorical exclusions where statutory conditions permit.
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> The result is a more decentralized NEPA system. A lawyer or student confronting a proposed federal action must begin with the statute, then identify the action agency's current NEPA procedures and applicable guidance, as well as any substantive statutes governing the decision.

2. Replace Question 2, p. 152

Exact placement: In **"A. Categorical Exclusions and Emergencies,"** replace Discussion Question.

3. Insert after *Seven County*, p. 173

Exact placement: Insert immediately after the final paragraph of ***Seven County Infrastructure Coalition v. Eagle County*** and before **"Discussion Questions."**

> **Postscript: NEPA after *Seven County*.** *Seven County* supplies the modern framework for judicial review of an agency's delineation of a project and its effects. An agency must analyze the environmental effects of the project before it. Those effects may extend beyond the project's physical footprint or occur later in time—for example, runoff entering distant waters or emissions traveling downwind. But an agency generally need not analyze effects attributable to a separate project, especially where that project is geographically or temporally distinct, would be undertaken by third parties, or lies outside the agency's regulatory authority. *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. ___, ___ (2025).
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> Foreseeability alone does not transform another project into part of the proposed action. Courts must give substantial deference to an agency's reasonable and manageable line between effects of the project under review and effects of a separate project. *Id.*

4. Add Case-to-Watch Note, p. 173

Exact placement: Insert after Discussion Questions 16 and before **"E. Mitigation and Worst Case Scenario."**

> **Case to Watch:** ***Department of the Air Force v. Prutehi Guahan, No. 25-579 (U.S., set for argument Oct. 7, 2026).*** The Court will consider whether a federal agency's submission of an application to renew a RCRA permit is final agency action immediately reviewable under the APA and whether the government must complete NEPA review before submitting that renewal application, where RCRA itself provides environmental-review procedures. *See* Petition for Writ of Certiorari at i, *Dep't of the Air Force v. Prutehi Guahan*, No. 25-579 (U.S. Mar. 9, 2026) (cert. granted).
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> **Questions:** Does filing a permit-renewal application itself commit the agency to a course of action? When a specialized environmental statute contains its own review procedures, should NEPA independently apply?

5. Insert after § B, p. 183

Exact placement: Insert after **"B. Rescission of NEPA Regulations"** and before **"Discussion Questions."**

> **2026 Update.** The rescission of the CEQ regulations is final. On January 8, 2026, CEQ adopted its 2025 interim final rule without change, confirming the removal of 40 C.F.R. pts. 1500–1508. *Removal of National Environmental Policy Act Implementing Regulations*, 91 Fed. Reg. 618 (Jan. 8, 2026). CEQ subsequently withdrew guidance interpreting or citing the removed regulations. Agencies remain bound by NEPA's statutory commands, but governing procedural detail now derives from the statute, the action agency's procedures, applicable guidance, and the judicially deferential approach reflected in *Seven County*.

Chapter 5 — Conserving Endangered and Threatened Species

Insert after *Babbitt v. Sweet Home*, p. 245

Exact placement: Insert after the Discussion Questions following *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon* and before **"VI. Enforcement."**

> **2026 Update: "Harm" and Habitat Modification.** In 2026, the Fish and Wildlife Service and the National Marine Fisheries Service rescinded the regulatory definition of "harm" used in implementing the Endangered Species Act's prohibition on "take." *Rescinding the Definition of "Harm" Under the Endangered Species Act*, 91 Fed. Reg. 43,300 (July 14, 2026) (removing 50 C.F.R. §§ 17.3, 222.102). The former definition had included significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. *Id.*; *see also* 50 C.F.R. § 17.3 (2025).
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> The change places renewed importance on the distinction between direct killing or injury and habitat-based injury. It also puts *Sweet Home* in a new posture: the case upheld the former regulatory definition as a permissible interpretation, but did not hold that the agencies must retain that definition. *Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or.*, 515 U.S. 687 (1995).

Questions: Does *Sweet Home* permit, require, or merely allow the former definition of "harm"? What consequences follow if habitat modification is no longer independently actionable as a take?

Insert after "VI. Enforcement," p. 249

Note on Threatened Species. Protection for a threatened species may depend on a species-specific rule issued under ESA § 4(d), rather than automatically tracking the take prohibition applicable to endangered species. *See* 16 U.S.C. § 1533(d). Determine whether a species is listed as endangered or threatened, and then identify any applicable § 4(d) rule, before advising whether a proposed action creates take liability.

Chapter 6 — The Clean Water Act

Editorial addition after "II. Permit Requirement," p. 254

Exact placement: Insert after the introductory text under **"II. Permit Requirement"** and before **"A. Addition of a Pollutant."**

Permit Limits and Permit "End-Result" Requirements. In *City and County of San Francisco v. EPA*, 145 S. Ct. 704 (2025), the Supreme Court held that the Clean Water Act does not authorize EPA to include so-called "end-result" provisions in an NPDES permit. The permit at issue broadly prohibited the permittee from causing or contributing to a violation of applicable water-quality standards, without itself identifying the actions the permittee was required to take or the effluent limits with which it had to comply. *Id.*

A permit may contain non-numerical requirements, including narrative requirements, when authorized by the Act. But the agency may not simply impose a general obligation to achieve water-quality results and then leave the permittee to determine what compliance requires. *Id.* The case follows.

City and County of San Francisco v. Environmental Protection Agency

604 U.S. __ (2005)

Justice Alito delivered the opinion of the Court.

Under the Clean Water Act (CWA), 33 U. S. C. §1251 *et seq*., the Environmental Protection Agency (EPA) and authorized state agencies may issue permits that impose requirements on entities that wish to discharge "pollutants" (a broadly defined term) into the waters of the United States. Permits issued by these agencies include what the CWA calls "effluent limitations," that is, provisions that specify the quantities of enumerated pollutants that may be discharged. It is also common for permits to set out other steps that a discharger must take. These may include testing, record-keeping, and reporting requirements, as well as requirements obligating a permittee to follow specified practices designed to reduce pollution. None of these so-called narrative requirements is at issue here.

Instead, this case involves provisions that do not spell out what a permittee must do or refrain from doing; rather, they make a permittee responsible for the quality of the water in the body of water into which the permittee discharges pollutants. When a permit contains such requirements, a permittee that punctiliously follows every specific requirement in its permit may nevertheless face crushing penalties if the quality of the water in its receiving waters falls

below the applicable standards. For convenience, we will call such provisions "end-result" requirements.

The permittee in this case is a wastewater treatment facility owned by San Francisco. For the past five years, the facility's permit has included two end-result requirements, and if those provisions are upheld, the City could be heavily penalized even though it was never put on notice that it was obligated to take any specific step other than those it undertook. San Francisco argues that the end-result provisions in its permit are not authorized by the CWA, and its position is supported by many other similarly situated cities, including New York, the District of Columbia, Boston, and Buffalo, as well as national and state associations whose members collectively "provide wastewater and stormwater services to the majority of [the people in this country whose homes are connected to sewers]."

We hold that the two challenged provisions exceed the EPA's authority. The text and structure of the CWA, as well as the history of federal water pollution legislation, make this clear. And resorting to such requirements is not necessary to protect water quality. The EPA may itself determine what a facility should do to protect water quality, and the Agency has ample tools to obtain whatever information it needs to make that determination. If the EPA does its work, our holding should have no adverse effect on water quality.

I

A

To understand the issue before us, it is helpful to take a brief look back at the history of federal water pollution legislation. For most of the Nation's history, the Federal Government played a secondary role in this field. See *Sackett* v. *EPA*, 598 U.S. 651, 659 (2023). In 1948, however, Congress passed the Federal Water Pollution Control Act (WPCA), ch. 758, 62Stat. 1155, which represented a cautious expansion of federal authority. The WPCA reaffirmed the long-accepted principle that "controlling water pollution" was primarily a state responsibility, but it also declared that the pollution of certain interstate waters had become "a public nuisance" and was "subject to abatement in a suit" brought by the Attorney General on behalf of the United States.

Over the next 24 years, the WPCA was amended numerous times, and the federal role gradually grew, but the basic structure of federal enforcement actions remained the same. The starting point was the identification of a body of water with substandard water quality. After that, federal authorities had to work backward and prove that a particular entity should be held responsible for the problem. Both the original version of the 1948 Act and all amendments enacted before 1972 proved to be ineffective due in part to this backward-looking model.

By 1972, the WPCA's inadequacy was apparent, and Congress made a fresh start. It amended the WPCA by deleting all its provisions and substituting what is now generally known as the Clean Water Act. The CWA jettisoned the WPCA's retrospective approach and aimed directly at the sources of pollution. A critical component of the CWA scheme is the National Pollutant Discharge Elimination System (NPDES), see *id*., at 204–205, which makes it unlawful to discharge pollutants into covered bodies of water unless authorized by permit. Permits issued under this program may contain several different types of provisions.

Some are known as "effluent limitations," which are defined as restrictions on the "quantities, rates, and concentrations of chemical, physical, biological, and other constituents." §1362(11). Section 1311(b)(1), subparagraphs (A) and (B) require compliance with one type of effluent limitations: those that are based on what can be achieved using specified pollution-treatment

technologies. In most cases, these technology-based limitations are sufficient, but when they are not, NPDES permits also include water quality-based effluent limitations (WQBELs). 33 U. S. C. §1311(b)(1)(C). These WQBELs, unlike technology-based effluent limitations, are "set without regard to cost or technology availability." Instead, they permit only those discharges that may be made without unduly impairing water quality.

In addition to these effluent limitations, it is common for permits to include requirements that do not set numerical limitations on allowed discharges. One example, which is apparently common in so-called general permits, is a provision demanding that permittees follow certain "best practices" that aim to limit pollution.

Under the NPDES system, permittees have a very strong incentive to comply with all permit terms. For one thing, the CWA gives the EPA a very big "stick." Permittees that do not comply may be hit with enormous civil penalties and may face criminal prosecution for "knowing" or even "negligent" violations. At the same time, the CWA holds out an enticing "carrot." Under what is known as the "permit shield" provision, an entity that adheres to the terms of its permit is deemed to be compliant with the Act. See 33 U. S. C. §1342(k).

B

The case now before us involves a particular type of public wastewater treatment, one that processes both wastewater (water that has been used in a home) and stormwater (rainwater that does not sink into the ground). Many major cities have such systems, and they present special problems. During periods of heavy precipitation, the combination of wastewater and stormwater may exceed the facility's treatment capacity, and the result may be the discharge of untreated water, including raw sewage. This problematic feature of combined facilities was recognized long ago; installing a new system that handles stormwater and wastewater separately is enormously expensive.

To address the problem of CSOs, the EPA adopted its CSO Control Policy, which requires municipalities with combined systems to take prescribed measures and to develop and implement a Long-Term Control Plan. The CSO Policy provides for a two-phase permitting process. During phase I, permits require municipalities to implement nine minimum controls and to develop a long-term plan. Then, during phase II, that plan must be implemented. *Ibid*. In 2000, Congress amended the CWA and gave the CSO Control Policy the force of a statute. See 33 U. S. C. §1342(q)(1).

C

The city of San Francisco operates two combined treatment facilities: the Bayside facility, which discharges into San Francisco Bay, and the Oceanside facility, which empties into the Pacific Ocean. The permit at issue in this dispute concerns only the Oceanside facility, which treats water from 250 miles of sewers and serves approximately 250,000 residents.

For many years, the Oceanside facility's NPDES permit was renewed without controversy, but in 2019, the two end-result requirements that San Francisco now challenges were added. The first of these prohibits the facility from making any discharge that "contribute[s] to a violation of any applicable water quality standard" for receiving waters. The second provides that the City cannot perform any treatment or make any discharge that "create[s] pollution, contamination, or nuisance as defined by California Water Code section 13050."

The California Regional Water Quality Control Board for the San Francisco Bay Region approved the final Oceanside NPDES permit, and the EPA did the same. San Francisco appealed to the EPA's Environmental Appeals Board (EAB), objecting to, among other things,

the two new provisions just noted. *City and Cty. of San Francisco*, 18 E. A. D. 322, 325 (2020). The EAB rejected San Francisco's challenge, and the City then filed a petition for review in the Ninth Circuit under 33 U. S. C. §1369(b)(1)(F). 75 F. 4th, at 1088. A divided Ninth Circuit panel denied that petition, holding that §1311(b)(1)(C) authorizes the EPA to impose "any" limitations that seek to ensure that applicable water quality standards are satisfied in a receiving body of water. In dissent, Judge Collins argued that the CWA "draws an explicit distinction between the 'limitations' that the agency must devise and impose on a particular permittee's discharges" and the water quality standards themselves. *Id*., at 1102 (Collins, J., dissenting). The majority, he maintained, erred by making the " 'water quality standards' themselves the applicable 'limitation' for an individual discharger."

We granted certiorari to decide whether the EPA can impose requirements like those at issue. 602 U. S. ___ (2024).

II

Contending that the Ninth Circuit misread §1311(b)(1)(C), San Francisco leads with the argument that all "limitations" imposed under §1311 must qualify as effluent limitations. The statutory text dooms this broad argument. "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." We have invoked this canon time and time again. And it is fatal to San Francisco's argument here. Sections 1311(b)(1)(A) and (B) refer to "effluent limitations," but the very next provision, §1311(b)(1)(C), refers instead to "any more stringent limitation." We cannot believe that Congress omitted the term "effluent" from §1311(b)(1)(C) simply because it wanted to save ink or assumed that regulators and interested parties would understand that the omission of the term was inconsequential.

Other provisions of the CWA support this conclusion by describing §1311 as authorizing the EPA to impose effluent *or other* limitations. See §1341(d) (referring to "effluent limitations and other limitations, under section 1311"); §1365(f) (referring to "effluent limitation[s] or other limitation[s] under section 1311"); §1367(d) (same); see also *National Assn. of Mfrs.* v. *Department of Defense*, 583 U.S. 109, 122 (2018) (interpreting the phrase "effluent limitation or other limitation" in the CWA's judicial review provision, §1369, to encompass both "effluent" limitations and limitations such as "non-numerical operational practice[s]" and "equipment specification[s]").

These reasons convince us that San Francisco's argument is wrong, but if more were needed, it is telling that the City's interpretation would lead to either drastic consequences that the City is unwilling to embrace or a very loose interpretation of the term "effluent limitation" that would undermine the City's argument. As noted earlier, it is common for permits to contain "narrative" provisions requiring permittees to do such things as following certain "best practices." These provisions do not directly restrict the "quantities, rates, or concentration" of pollutants that a permittee may discharge, and therefore they do not fit easily within the definition of an "effluent limitation." Nevertheless, the City acknowledges their legitimacy, and if that is correct, it must follow either that (1) §1311(b)(1)(C) authorizes the imposition of limitations other than effluent limitations (which would, of course, defeat the City's argument) or (2) the statutory definition of an effluent limitation should be read very loosely (which raises the question why this broad interpretation would not encompass the provisions at issue here). Under either alternative, the City is on perilous ground.

These problems overwhelm any help that the City can derive from the fact that §1311 is titled "Effluent limitations." The title of a statutory provision can inform its interpretation, but it is not conclusive. And here, the title of §1311 is not enough to win the day for the City. Section 1311 is a lengthy provision, and most of its subsections concern effluent limitations. The title "Effluent limitations" provides a rough description of the provision's general sweep, but it cannot be read as doing more than that.

III

In addition to the broad argument discussed above, San Francisco advances a narrower alternative, namely, that even if §1311(b)(1)(C) is not limited to effluent limitations, it "does not authorize EPA to impose NPDES permit requirements that condition permitholders' compliance on whether receiving waters meet applicable water quality standards." We agree with this argument. As the City maintains, "[t]he text, structure, and pre- and post-enactment context" support this interpretation.

A

We begin with the text of §1311(b)(1)(C), which, as noted, requires a permit to contain, in addition to "effluent limitations," "any more stringent *limitation*" that is "necessary to *meet*" certain "water quality standards" that are imposed under state law "or any other federal law or regulation"; and "any more stringent *limitation*" that is "required to *implement* any applicable water quality standard established pursuant to this chapter." (Emphasis added.) All the italicized terms in the preceding sentence suggest that the most natural reading of §1311(b)(1)(C) is that it authorizes the EPA to set rules that a permittee must follow in order to achieve a desired result, namely, a certain degree of water quality.

We start with the term "limitation." As used in the relevant context, a limitation is a "restriction or restraint imposed *from without* (as by law[])." Webster's Third New International Dictionary 1312 (1976) (emphasis added). A provision that tells a permittee that it must do certain specific things plainly qualifies as a limitation. Such a provision imposes a restriction "from without." But when a provision simply tells a permittee that a particular end result must be achieved and that it is up to the permittee to figure out what it should do, the direct source of restriction or restraint is the plan that the permittee imposes on itself for the purpose of avoiding future liability. In other words, the direct source of the restriction comes from within, not "from without."

We do not dispute that the term "limitation" is sometimes used in a looser sense, but our task is to ascertain what the term means in the specific context in question. And here, our interpretation of the meaning of the term "limitation" in §1311(b)(1)(C) must take into account the way in which the term is used in the two preceding statutory subsections, §§1311(b)(1)(A) and (B). In both those provisions, the "limitations" are imposed directly by the EPA, and it is therefore natural to presume that the term has a similar meaning in §1311(b)(1)(C). So the use of the term "limitation" in §§1311(b)(1)(A) and (B) provides an opening clue that the EPA's interpretation of §1311(b)(1)(C) may be wrong.

The terms "implement" and "meet" point in the same direction. The implementation of an objective generally refers to the taking of actions that are designed "to give practical effect to and ensure of actual fulfillment by concrete measures." Webster's Third New International Dictionary, at 1134. Section 1311(b)(1)(C) tells the EPA to impose requirements to "implement" water quality standards—that is, to "ensure" "by concrete measures" that they are "actual[ly]" "fulfill[ed]." Simply telling a permittee to ensure that the end result is reached is not a

"concrete plan" for achieving the desired result. Such a directive simply states the desired result; it does not implement that result.

Section 1311(b)(1)(C)'s other directive—that the EPA impose limitations that are "necessary to meet" certain water quality standards–is similar. The verb to "meet," in the sense operative here, means "to comply with; fulfill; satisfy" or "to come into conformity with." Random House Unabridged Dictionary 1195 (2d ed. 1987). Thus, a limitation that is "necessary to meet" an objective is most naturally understood to mean a provision that sets out actions that must be taken to achieve the objective.

In assessing what the directives in §1131(b)(1)(C) mean, it is helpful to consider the use of the relevant terms in everyday speech. Suppose a State requires that all schools "meet" certain standards of math proficiency, and suppose the principal of a school calls a faculty meeting and instructs the teachers to "implement" those standards. The principal's obvious expectation would be that the teachers would devise and "implement" a plan to make sure that the desired end is "met." It is unlikely that the principal would be happy if the teachers simply told their students that a state math proficiency test would be administered and that they should make sure they passed. That would not constitute the *implementation* of the desired end, *i.e.*, *meeting* the State's standard of math proficiency.

Attempting to counter this interpretation, the EPA stresses §1311(b)(1)(C)'s use of the term "any" in the phrase "any more stringent limitation," arguing that "any" is a very broad term. That argument misconstrues the term's effect. The adjective "any" is indeed a broad term, but it cannot expand the reach of the noun it modifies. A reference to "any mammal" would capture all mammals, but it would not encompass a bird or fish. Similarly, §1311(b)(1)(C) encompasses any *limitation* that is necessary to meet or implement water quality standards, but not provisions that do not fall within that category.

B

The text of the CWA militates against the Government's interpretation of §1311(b)(1)(C) for yet another reason that stands out when the history of federal water pollution control legislation is kept in mind. Under the Government's reading, a permittee may be held liable if the quality of the water into which it discharges pollutants fails to meet water quality standards. Before 1972, the WPCA contained a provision that did exactly that in no uncertain terms. But when Congress overhauled the WPCA in 1972, it scrapped that provision and did not include in the new version of the Act anything remotely similar. Under these circumstances, the absence of a comparable provision in the CWA is telling.

This glaring void resulted from a deliberate and prominent policy choice. As recounted earlier, before 1972, the basic structure of federal enforcement efforts was a lawsuit seeking to hold a polluter accountable for contributing to what amounted to or was expressly termed a violation of water quality standards. Building on the enforcement model originally adopted in the 1948 Act, the 1965 amendments of the WPCA required the adoption of "water quality standards," and they then provided that "violators" of these standards were subject to suit by the United States. 79Stat. 907–909. That is where matters stood until 1972 when Congress again amended the WPCA by deleting its entire text and substituting what is now popularly called the CWA. This overhaul of the WPCA continued to require the adoption of water standards, 33 U. S. C. §1313, but the revised statutory text conspicuously omitted any provision authorizing either the United States or any other party to bring suit against an entity whose discharges were contributing to a violation of those standards.

This omission cannot be viewed as accidental or inconsequential. The repealed enforcement provision went to the heart of what Congress viewed as a major defect in the old scheme. As we have noted, the 1972 overhaul aimed to facilitate enforcement by "making it unnecessary to work backward from an overpolluted body of water to determine which point sources [were] responsible" and thus subject to suit. Instead, the amended WPCA sought to achieve "acceptable quality standards" by means of "direct restrictions" on polluters. *Ibid.* The Government's interpretation would undo what Congress plainly sought to achieve when it scrapped the WPCA's backward-looking approach.

C

It is a " 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.' " Thus, in construing §1311, we must also take into account the broader statutory scheme, and at least two features of that scheme point in favor of our interpretation.

1

The first is the so-called "permit shield" provision, 33 U. S. C. §1342(k), under which a permittee is deemed to be in compliance with the CWA if it follows all the terms in its permit. This protection is very valuable because violations of the CWA, even if entirely inadvertent, are subject to hefty penalties. The CWA imposes a regime of strict civil liability, and a party that violates a permit term may be fined up to $25,000 per day per violation. §1319(d). As San Francisco explains, it may take months to gather the information necessary to detect a drop below the applicable water quality standards, and after substandard water quality is detected, it may take some time to devise and implement appropriate corrective measures. Indeed, there may be occasions (such as the multiple-discharger situation we discuss below, see *infra* this page and 16), when there is nothing a permittee can do to bring about a prompt correction. For these reasons, the potential civil penalties for noncompliance can mount up and reach enormous sums. In a pending suit against San Francisco regarding the Bayside facility, the penalties sought are $10 billion. In addition to all this, a permittee who is found to have acted "knowingly" or even "negligently" may be criminally prosecuted. §1319(c).

Because of the harsh penalties for violating the terms of a permit, the permit shield is invaluable. Because of it, a discharger that complies with all permit conditions can rest assured that it will not be penalized. But the benefit of this provision would be eviscerated if the EPA could impose a permit provision making the permittee responsible for any drop in water quality below the accepted standard. A permittee could do everything required by all the other permit terms. It could devise a careful plan for protecting water quality, and it could diligently implement that plan. But if, in the end, the quality of the water in its receiving waters dropped below the applicable water quality levels, it would face dire potential consequences. It is therefore exceedingly hard to reconcile the Government's interpretation of §1311(b)(1)(C) with the permit shield. And contrary to the Government's contention, the possibility that a court might ultimately exercise its "broad discretion" to mitigate penalties, is not enough to make up for disarming the shield.

2

One final structural feature cements the case against the EPA's interpretation: the absence of any provision dealing with the problem that arises when more than one permittee discharges into a body of water with substandard water quality. As previously explained, it is hard to believe that the 1972 Congress used §1311(b)(1)(C) to perpetuate (in camouflaged form) the backward-looking enforcement scheme in the prior version of the WPCA. And it is even harder

to accept the proposition that Congress did that without setting out any method for dealing with the multi-discharger problem. "[T]here may be dozens or even hundreds of . . . permitted and unpermitted discharges into the same waterbody." In such situations, the pre-1972 enforcement scheme made it necessary for federal authorities to "unscramble the polluted eggs after the fact." *Wilmington* v. *United States*, 157 Fed. Cl. 705, 710 (2022). By 1972, it was recognized that this was impractical, yet the EPA maintains that Congress retained the backward-looking approach without making any attempt to address the vexing multiple-discharger problem.

The EPA's only response to this argument is to note that in this case the Oceanside facility is the only entity that discharges into the relevant area of the Pacific Ocean. But the multiple-discharger problem goes to the meaning of §1311(b)(1)(C), and that provision cannot mean one thing in a single-discharger case and another when there are multiple dischargers.

IV

Before concluding, we briefly address three additional arguments advanced by the Government.

A

The EPA maintains that the imposition of end-result limitations is the best course of action when "the information necessary to develop additional 'effluent limitations' is unavailable." And it complains that it should not bear the burden of determining what a permittee should do to protect water quality because a permittee is likely to have better access to necessary information and a superior understanding of the operation of its facility and the changes that could be made to provide further protection for water quality.

We are not moved by this argument. For one thing, it appears that the EPA and state permitting authorities have used end-result requirements routinely, not just when a permit holder has failed to provide necessary information. And in any event, the EPA possesses the expertise (which it regularly touts in litigation) and the resources necessary to determine what a permittee should do. It is also armed with ample tools to deal with situations in which a permittee is slow to provide needed information or is otherwise uncooperative. The EPA can set a schedule for the provision of information and can refuse to issue a permit until the permittee complies. If necessary, it can make use of its emergency powers. See 33 U. S. C. §1364.

B

The EPA contends that Congress authorized the use of end-result requirements when it codified the Agency's CSO Policy in 1994, see 33 U. S. C. §1342(q)(1). And in support of that argument, it cites language in the policy that pertains to phase I permits. But the permit in question here is a phase II permit, and the EPA does not claim that its interpretation is supported by any CSO Policy provision relating to such permits.

In any event, the phase I language to which the EPA points does not authorize the imposition of end-result requirements. The policy states that a phase I permit should require a permittee to "[c]omply with applicable [water quality standards] . . . expressed in the form of a narrative *limitation*." Our decision does not rule out "narrative limitations." "Limitations," as we understand the term, are permitted under §1311(b)(1)(C), and limitations may be expressed in both numerical and non-numerical (*i.e.*, "narrative") form.

Attempting to read more into the phase I language, the EPA cites guidance it issued in 1995, but Congress did not codify that guidance, and we are not obligated to accept administrative

guidance that conflicts with the statutory language it purports to implement. See *Loper Bright Enterprises* v. *Raimondo*, 603 U.S. 369 (2024). We also note that other guidance issued by the EPA is arguably inconsistent.

C

Finally, the EPA contends that the rejection of its interpretation of 33 U. S. C. §1311(b)(1)(C) would have disruptive consequences for businesses that rely on "general permits." Such permits are important for certain businesses, such as home builders, other construction companies, and certain agricultural enterprises, but no such company has submitted a brief supporting the EPA's interpretation. On the contrary, a brief filed on behalf of such companies urges us to reject the EPA's position. What is important, these companies tell us, are narrative limitations other than end-result requirements, and they specifically cite provisions demanding compliance with "best-management practices" and "operational requirements and prohibitions." Our decision allows such requirements.

V

In sum, we hold that §1311(b)(1)(C) does not authorize the EPA to include "end-result" provisions in NPDES permits. Determining what steps a permittee must take to ensure that water quality standards are met is the EPA's responsibility, and Congress has given it the tools needed to make that determination. If the EPA does what the CWA demands, water quality will not suffer.

The judgment of the Ninth Circuit is reversed.

It is so ordered.

[Dissenting opinion omitted.]

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> **Questions:** How does *San Francisco* alter the relationship between technology-based limits, water-quality-based limits, and permit enforcement? How might an agency draft a lawful narrative permit condition after *San Francisco*?

Insert after Discussion Questions 30, p. 275

> **Practice Point: Jurisdiction First.** *Sackett* remains the controlling Supreme Court test for whether a wetland is a federally regulated water of the United States. Analyze whether the adjacent body is itself a relatively permanent water connected to traditional interstate navigable waters, and whether the wetland has the continuous surface connection that makes it difficult to determine where the water ends and the wetland begins. Do not substitute ecological importance or a "significant nexus" for those requirements. *Sackett v. EPA*, 598 U.S. 651, 678–80 (2023).

Chapter 7 — The Clean Air Act

Insert after Discussion Questions, p. 300

> **2026 Update: The Endangerment Finding and Vehicle Greenhouse-Gas Standards.** EPA finalized the rescission of the 2009 finding that greenhouse-gas pollution from new motor vehicles causes or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare, and repealed related federal greenhouse-gas standards for motor vehicles. EPA, *Final Rule: Rescission of the*

Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emission Standards Under the Clean Air Act (Feb. 18, 2026).

Massachusetts remains a central statutory-interpretation and standing decision. It held that greenhouse gases fit the Clean Air Act's definition of "air pollutant" and that EPA was required to make the statutory endangerment judgment rather than decline to act for policy reasons. *Massachusetts v. EPA*, 549 U.S. 497, 528–35 (2007). The present litigation poses a different question: when, and on what explanation and evidentiary basis, may an agency reverse an earlier endangerment judgment?

Questions: Under *State Farm* and *Loper Bright*, what must EPA adequately explain when reversing the endangerment finding? Does *Massachusetts* constrain EPA's substantive conclusion, its process, or both?

Chapter 8 — Hazardous and Toxic Wastes and Substances

Insert after "III. Contaminants in Public Drinking Water Systems," p. 365

Update: PFAS and Statutory Fragmentation. Per- and polyfluoroalkyl substances (PFAS) illustrate the limits of organizing contamination problems by a single statute. The same substances may implicate SDWA drinking-water standards, CERCLA cleanup liability, RCRA corrective action, TSCA reporting and chemical review, and Clean Water Act discharge controls. *See generally* 42 U.S.C. §§ 300f–300j-27, 9601–9675, 6901–6992k, 2601–2697.

EPA has retained federal drinking-water limits for PFOA and PFOS while pursuing changes to other portions of the 2024 PFAS drinking-water rule, including its compliance timetable. EPA, *PFAS Drinking Water Regulations* (updated 2026). The agency has also continued to consider RCRA and TSCA actions concerning PFAS.

Questions: Why might a drinking-water standard, a CERCLA hazardous-substance designation, and a RCRA corrective-action requirement produce materially different consequences for the same chemical release?

Add new subsection after "IV. Toxic Substances," p. 368

V. Pesticides, Federal Labeling, and State Tort Law

Monsanto Co. v. Durnell, 609 U.S. ___ (2026)

Note. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) generally requires EPA registration and labeling of pesticides and expressly bars States from imposing labeling or packaging requirements that are additional to or different from federal requirements. 7 U.S.C. §§ 136a, 136v(b).

In *Monsanto Co. v. Durnell*, the Supreme Court held that FIFRA expressly preempted a state-law failure-to-warn claim that would have required a cancer warning on EPA-approved glyphosate pesticide labeling. *Monsanto Co. v. Durnell*, 609 U.S. ___, (2026). A state tort claim requiring an additional warning imposes a labeling requirement "in addition to or different from" the federal requirement prohibited by 7 U.S.C. § 136v(b). *Id.* The case follows.

Monsanto Co. v. Durnell

609 U.S. ___ (2026)[June 25, 2026]

Justice Kavanaugh delivered the opinion of the Court.

Under authority granted by the Federal Insecticide, Fungicide, and Rodenticide Act, the Environmental Protection Agency regulates pesticides, including pesticide labels. As relevant here, EPA regulates Roundup, a glyphosate-based pesticide manufactured by Monsanto. Because EPA has repeatedly concluded that glyphosate is not likely to cause cancer, the agency has not required a cancer warning on Roundup's label. Importantly, EPA's regulations require a pesticide manufacturer such as Monsanto to use the EPA-approved pesticide label—here, the Roundup label without a cancer warning—unless and until EPA approves or requires a different label. Moreover, to ensure "[u]niformity" in labeling, FIFRA's preemption clause prohibits States from imposing any pesticide labeling requirements that are "in addition to or different from" the federal labeling requirements "under" FIFRA.

John Durnell brought a failure-to-warn tort suit in Missouri state court against Monsanto for not including a cancer warning on Roundup's label. Durnell alleged that Monsanto failed to warn him of Roundup's cancer risks and that he developed non-Hodgkin's lymphoma as a result.

But Durnell's state tort claim would require Monsanto to add a cancer warning to Roundup's label even though federal law requires Monsanto to use the EPA-approved label without a cancer warning. Because Durnell's state tort claim would impose a pesticide labeling requirement "in addition to or different from" the label required by EPA, FIFRA expressly preempts Durnell's claim.

I

A

In 1947, Congress passed and President Truman signed the Federal Insecticide, Fungicide, and Rodenticide Act. 61 Stat. 163, as amended, 7 U. S. C. §136 *et seq*. The 1947 Act required that pesticides be registered with the Secretary of Agriculture. But the Act assigned the Secretary a relatively passive role; the Secretary could not refuse to register a pesticide.

In 1972, Congress passed and President Nixon signed the Federal Environmental Pesticide Control Act. That Act "transformed" FIFRA "into a comprehensive regulatory statute" and placed the newly created Environmental Protection Agency in charge of pesticide registration and labeling. *Bates* v. *Dow Agrosciences LLC*, 544 U.S. 431, 437 (2005) (quotation marks omitted). In doing so, Congress "significantly strengthened FIFRA's registration and labeling standards" and granted "increased enforcement authority" to EPA.

Under that revamped regulatory regime, which still governs today, pesticides must be registered with EPA. Before registering a pesticide, EPA undertakes an extensive review of the pesticide and its proposed labeling. Pesticide manufacturers must submit information about the pesticides' formulas, potential adverse effects, and testing. Manufacturers must also propose a label for their products, which must include any necessary precautionary statements.

EPA must then review all of that information and data. To register a pesticide, EPA must conclude that the pesticide "will not generally cause unreasonable adverse effects" on human health and the environment, and that its labeling "compl[ies] with the requirements" of FIFRA.

As to the label, FIFRA requires that a pesticide not be "misbranded." A pesticide is misbranded if its label contains "any statement" that is "false or misleading" or if the label does not contain "a warning or caution statement which may be necessary and . . . adequate to protect health and the environment." FIFRA defines "protect health and the environment" to mean "protection against any unreasonable adverse effects on the environment," including "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide."

FIFRA authorizes EPA to issue regulations to "carry out the provisions of " FIFRA. Under that statutory authority, EPA has promulgated extensive regulations fleshing out what it means for a pesticide to be misbranded and dictating what must appear on a pesticide's label. As relevant here, those regulations specify the required content and placement of precautionary statements such as cancer warnings.

Putting all of that together, before registering a pesticide, EPA must evaluate a pesticide and its proposed label—and must determine that the proposed label includes all warnings necessary and adequate to protect human health and the environment, and is not false or misleading. EPA's registration of the pesticide and approval of the pesticide's label embodies the agency's considered judgment that a pesticide is not misbranded—that is, that the label is not false or misleading and does not omit a necessary warning.

Importantly, after EPA has registered the pesticide and approved the label, the manufacturer is required to use that label. Subject to narrow exceptions not relevant here, the manufacturer may not change the label unless EPA subsequently approves a manufacturer's proposed change or EPA itself requires a change to the label. If a manufacturer does not use the EPA-approved label, it may be subject to civil and criminal penalties. In particular, EPA may bring enforcement actions against a manufacturer for violating FIFRA's misbranding provisions—which could happen, for example, if a manufacturer sells its pesticide with a different label than the one EPA approved. If EPA determines that a given warning is necessary for a pesticide's label and the manufacturer then proceeds to sell the pesticide *without* that warning, the manufacturer might face liability for misbranding.

EPA's comprehensive regulatory role does not end with the pesticide's initial registration and label approval. If the manufacturer wants to modify the label, it typically must go through an amended registration process. FIFRA provides that if "the labeling . . . for a pesticide is changed, the registration shall be amended to reflect such change if the [EPA] Administrator determines that the change will not violate" EPA regulations further provide that "any modification" to the "labeling" of a "registered product must be submitted with an application for amended registration."

EPA also possesses a slew of tools to monitor the pesticide market and scientific developments, and thereby ensure that pesticide labels contain appropriate warnings in light of changed circumstances or new information. After the initial registration and approval of a label, manufacturers must continue to inform EPA of "additional factual information regarding unreasonable adverse effects" of their pesticides. That obligation is enforced through civil and criminal penalties. See §136*l*. EPA may also "determin[e] that additional data are required to maintain in effect an existing registration of a pesticide," and therefore request more information from the manufacturers. In that circumstance, manufacturers must take appropriate steps to disclose that new evidence or face suspension of their pesticides' registration. In light of new information or analysis by EPA, the agency at any time may

require "additional labeling language" to "mitigate" "identified hazard(s)." EPA also must formally review a pesticide's registration every 15 years.

In addition, EPA may cancel a pesticide's registration, and thereby prohibit its continued sale, if "it appears to the Administrator that a pesticide or its labeling . . . does not comply with" EPA may also immediately suspend a pesticide's registration if "necessary to prevent an imminent hazard" while a cancellation is pending.

On top of EPA's own authority to monitor a pesticide's continued safety and order appropriate changes such as a new label, any person can petition EPA to modify, suspend, or cancel a pesticide's registration based on, for example, new evidence about the dangers of the pesticide. If EPA refuses to do so, a party may seek judicial review of EPA's decision.

Finally, and crucially for this case, FIFRA includes a preemption clause that further underscores EPA's comprehensive and exclusive authority in registering pesticides and approving labels. In a provision entitled "Uniformity"—a title that was added in a public law enacted by Congress in 1988, not by the codifiers—FIFRA prohibits States from imposing "any requirements for labeling or packaging in addition to or different from those required under" FIFRA.

B

Monsanto Company is a subsidiary of Bayer AG. Monsanto manufactures and distributes Roundup, a glyphosate-based herbicide designed to control weeds.

In 1974, EPA first registered glyphosate-based pesticides and approved Roundup's label without a cancer warning. In 1991 and for the more than three decades since, EPA has repeatedly re-evaluated glyphosate and has repeatedly concluded that glyphosate is not likely to cause cancer. For example, in 1991, EPA classified glyphosate as unlikely to cause cancer in humans. In 1993, EPA reiterated that conclusion and re-registered glyphosate products without a cancer warning.

In 2017 and 2019, after the International Agency for Research on Cancer classified glyphosate as a probable carcinogen, EPA re-examined the issue but still adhered to its longstanding position on glyphosate.

EPA's assessment of glyphosate is shared by many other regulatory bodies around the world that have likewise concluded that glyphosate is not carcinogenic, including regulators in Canada, Australia, Japan, and the European Union.

All told, in accordance with EPA's view that glyphosate is not likely to cause cancer in humans, EPA has not required glyphosate-based pesticides like Roundup to include a cancer warning on their labels. Therefore, as a matter of federal law, Monsanto legally must use a label without a cancer warning unless and until EPA approves or requires a change.

C

In 2019, John Durnell sued Monsanto in Missouri state court. Durnell alleged that he had used Monsanto's Roundup products for about 20 years and that they had caused his non-Hodgkin's lymphoma, a form of cancer. As relevant here, Durnell brought a failure-to-warn tort claim, claiming that Monsanto should have included a cancer warning on Roundup's label. A jury agreed and awarded Durnell more than $1 million on the failure-to-warn theory.

In Missouri trial court, Monsanto moved on preemption grounds for judgment notwithstanding the verdict. Monsanto argued that FIFRA expressly preempted Durnell's failure-to-warn claim because FIFRA prohibits States from imposing labeling requirements that are "in addition to

or different from" those imposed under FIFRA. Monsanto explained that EPA approved its labels without a cancer warning at registration and that it was therefore able to (indeed, required to) keep using that label.

The Missouri trial court rejected Monsanto's preemption argument. The Missouri Court of Appeals affirmed. The Court of Appeals reasoned that Missouri failure-to-warn claims are "fully consistent with" FIFRA's misbranding provisions because "both require a pesticide manufacturer to adequately warn users of the potential dangers of using its product."

The federal Courts of Appeals and state courts have divided over whether FIFRA preempts a state tort claim based on Roundup's lack of a cancer warning.

To resolve that split, this Court granted certiorari. 607 U.S. 1148 (2026).

II

FIFRA's preemption clause is entitled "Uniformity" and provides that a "State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter." FIFRA therefore preempts a state-law labeling requirement that differs from the federal labeling requirements imposed under FIFRA. "Uniformity" in labeling—the textually stated objective of FIFRA's preemption clause—would otherwise be impossible to achieve.

A

To start, as this Court's precedents make clear and as the parties agree, state tort duties constitute state labeling requirements. Failure-to-warn claims, like Durnell's claim here, "are premised on common-law rules that qualify" as labeling requirements because those "rules set a standard for a product's labeling."

That makes good sense. After all, the heart of Durnell's failure-to-warn claim under Missouri tort law is that Monsanto should have included a cancer warning on its Roundup labels.

The question, then, is whether the Missouri failure-to-warn claim—which would require a cancer warning on the Roundup label—would impose a labeling requirement that is "in addition to or different from" federal labeling requirements imposed "under" FIFRA. The answer is yes.

As described at length above, to register a pesticide, EPA must approve the pesticide's label. And to approve the label, EPA must determine that the label contains all warnings "necessary and . . . adequate to protect health and the environment" and that a label does not include any "false or misleading" statements.

After EPA approves a pesticide's label at registration, manufacturers are legally *required* to use that label—unless and until EPA approves or requires a label change and amends the pesticide's registration. If a manufacturer does not use the EPA-approved label, it may be subject to civil and criminal penalties.

It is true that EPA may subsequently change course in light of new information or new analysis, and require an amended label and amended registration. As described above, FIFRA and EPA's regulations set forth an extensive process for doing so. But absent such an EPA-approved or EPA-required label change, the pesticide manufacturers may—and indeed legally must—use the pesticide label approved by EPA at registration.

In sum, federal law requires Monsanto to sell Roundup with the label that EPA approved at the initial registration and that EPA has subsequently re-approved on multiple occasions—that is, the label without a cancer warning. Durnell's state tort claim, by contrast, would require Monsanto to add a cancer warning to its labels. That Missouri-law requirement is "in addition to" and "different from" Monsanto's federal-law labeling obligations.

B

This Court's precedents reinforce that textual conclusion. In *Bates*, the Court explained that the relevant labeling "requirements" under FIFRA included FIFRA's misbranding provision and "any relevant EPA regulations that give content to FIFRA's misbranding standards."

And the *Bates* Court gave a telling example of how FIFRA's preemption clause operates. If an EPA regulation required a "CAUTION" designation for a pesticide and if a state failure-to-warn claim targeted the pesticide's label for including the "CAUTION" designation instead of a "DANGER" warning, that failure-to-warn claim would be preempted.

Here, just like an EPA regulation providing that a pesticide need not include a "DANGER" warning on its label, EPA's registration determination that Roundup's label need not include a cancer warning constitutes a federal labeling requirement that cannot be altered by state law, including state tort suits. That is because those registration determinations, just like EPA's regulations, "give content to FIFRA's misbranding standards."

To be sure, in *Bates*, the state failure-to-warn claims at issue targeted a pesticide label's efficacy claims. Those state tort claims were not preempted. *Bates* distinguished between efficacy claims on the one hand—which EPA did not review as a part of registration—and safety claims on the other hand, which EPA does thoroughly review at registration and are therefore preempted. See *id.*, at 440 ("EPA's approval of a pesticide label does not reflect any determination on the part of EPA that the pesticide will be efficacious") (quotation marks omitted).

This case of course concerns safety claims. And when it comes to safety claims, EPA's registration determinations do reflect EPA's considered judgment that a pesticide's label is not false or misleading and contains all necessary warnings. So safety claims that would impose labeling requirements "in addition to" or "different from" those required under FIFRA are preempted.

The Court's more recent decision in *Riegel* further confirms that Durnell's failure-to-warn claim is expressly preempted. In *Riegel*, the Court addressed the preemption clause in the Medical Device Amendments of 1976, which is nearly identical to FIFRA's preemption clause. The Medical Device Amendments direct the Food and Drug Administration to approve medical devices for sale after analyzing their safety, just as EPA does for pesticides.

As part of the premarket approval process, FDA is required to review the device's label and to determine that the label is neither false nor misleading, as EPA does for pesticide labels. *Ibid.* And after FDA approves a device, the manufacturer is required to use that label and is prohibited from making any changes to the device or label without additional FDA approval, as is the case with pesticide labels and EPA.

The *Riegel* Court concluded that FDA's premarket approval of devices imposed " 'requirements' under" the Act's preemption clause, and therefore that FDA's premarket approval of a medical device preempted state-law claims premised on additional or contrary safety requirements.

Riegel is dispositive here. If FDA's premarket approval of medical devices preempted additional state-law requirements, so too must EPA's registration of pesticides and approval of pesticide labels.

As *Riegel* indicates, allowing Durnell's state tort claim to overcome preemption would affect more than FIFRA. The Medical Device Amendments and several other federal statutes across a range of industries contain similar or identical labeling preemption provisions. Those similar labeling preemption clauses reflect Congress's judgment that the ability to sell a product throughout the country with a single label can be important to maintaining an efficient nationwide market.

In short, under federal law, Monsanto was required (i) to obtain EPA's approval for its Roundup label at registration; and (ii) to use the EPA-approved Roundup label unless, in the future, EPA approved or required changes to the label. Those are the relevant federal labeling requirements "under" FIFRA. Durnell's failure-to-warn claim, meanwhile, would require Monsanto to place a cancer warning on Roundup's label. That state labeling requirement is "in addition to or different from" EPA's labeling determinations that do not mandate a cancer warning. Durnell's failure-to-warn claim is expressly preempted.

III

Durnell counters with four overlapping arguments, none of which is persuasive. *First*, Durnell (echoed by the dissent) contends that a Missouri failure-to-warn claim, like FIFRA itself, simply requires manufacturers to include adequate warnings to protect human health, and not to include false or misleading statements. But that argument operates at far too high a level of generality and disregards the central and comprehensive role that EPA performs in making labeling determinations under FIFRA's registration provisions. Looking at only FIFRA's general standard for misbranding rather than the specific requirements imposed under federal law would nullify FIFRA's preemption clause and the uniformity that Congress sought for safety warnings on pesticide labels.

Durnell's argument implausibly maintains that EPA's registration and labeling determinations do not have preemptive force. But by its text, FIFRA affords preemptive force to federal requirements imposed "under" FIFRA, not merely those imposed "by" the actual statute itself. And FIFRA authorizes EPA to "prescribe regulations to carry out the provisions of [FIFRA]," and requires EPA to make registration and labeling determinations. EPA's regulations require manufacturers to use the label approved by EPA, or face potential civil or criminal penalties. So EPA's registration determinations as to the appropriate level of warning on a pesticide's label impose "requirements" "under" FIFRA.

***

Second, Durnell claims that EPA's regulations—and its procedures for registering pesticides and approving pesticide labels—exceed or contravene EPA's statutory authority under FIFRA. See Brief for Respondent 21–25, 39–40 (citing *Loper Bright Enterprises* v. *Raimondo*, 603 U.S. 369 (2024)). Durnell is incorrect. Again, FIFRA empowers EPA to "prescribe regulations to carry out the provisions of [FIFRA]." And FIFRA expressly directs EPA to register pesticides and "determin[e]" that the pesticide's "labeling" complies with FIFRA's many specific requirements. During that extensive registration process, EPA critically evaluates the pesticide's label to ensure that the label contains all warnings necessary to protect human health. After EPA makes a determination about the appropriate warnings for a pesticide's label, a manufacturer is legally required to use that label unless and until EPA subsequently

approves or requires a new label. Under FIFRA's preemption provision, those federal labeling requirements displace any additional or different state-law requirements.

Third, Durnell (also echoed by the dissent) seizes on one of FIFRA's self-described "[m]iscellaneous" provisions, which provides that "[i]n no event shall registration . . . be construed as a defense for the commission of any offense under this subchapter," but that registration is "prima facie" evidence of compliance with the registration provisions. Durnell argues that the fact of "registration" of a pesticide like Roundup could not serve as a defense to an EPA enforcement action for misbranding and therefore cannot serve as a defense in a state tort suit that parallels a federal misbranding action.

That argument would effectively erase FIFRA's express preemption clause. And the argument fails for multiple independent reasons.

To begin, by its text, does not apply to state tort suits. That provision simply clarifies that registration does not bar EPA enforcement actions against manufacturers for violating FIFRA.

Moreover, the premise of Durnell's argument is flawed. It is highly doubtful that EPA would bring an enforcement action for misbranding against a manufacturer for using the EPA-approved and EPA-required label. Rather, a manufacturer's label might constitute a misbranding violation if the label (i) included information that was not on the EPA-approved label, or (ii) omitted information that was on the EPA-approved label. Under those circumstances, the mere fact of registration obviously may not serve as a complete defense to an EPA enforcement action, [FIFRA] indicates. In that context, [FIFRA] makes complete sense.

But Durnell's failure-to-warn claim does not fault Monsanto for *using* a label different from the EPA-approved labeling. Durnell instead faults Monsanto for *not using* a label different from the EPA-approved label. But FIFRA's preemption clause expressly preempts any state tort claim that would require a pesticide manufacturer to use a label "in addition to" or "different from" federal requirements imposed under FIFRA, which, as explained above, include the EPA-approved label.

And even more problematic for Durnell, EPA regulations promulgated under FIFRA *require* a manufacturer to use the EPA-approved label and prohibit the manufacturer from unilaterally changing the label without EPA's approval. Indeed, if the manufacturer unilaterally changed the label, as Durnell says Monsanto should have done, the manufacturer would be flouting EPA's regulations and exposing itself to potentially severe federal penalties. So Durnell's argument also triggers potential retroactivity and estoppel questions. The law is not ordinarily read to retroactively penalize persons for doing what the Government had required them to do.

Not surprisingly, therefore, the United States explicitly represented at oral argument that EPA does not bring a misbranding action when the manufacturer was using an EPA-approved label. See Tr. of Oral Arg. 44 ("EPA doesn't go after people for . . . not changing your label even though EPA doesn't let you We don't bring that kind of enforcement action"). Instead, as described at length above, if new safety information comes to light, EPA may gather more information from the manufacturer; ask the manufacturer to change its label; pursue registration cancellation, suspension, or modification proceedings; or seek civil or criminal penalties if a manufacturer failed to inform EPA of important new safety-related information. Tr. of Oral Arg. 51–52 (United States: "if EPA also thought that there was some sort of misbranding risk," "as a practical matter, what happens is EPA gets information and might ask the manufacturer can you please try to amend your registration and change it?").

But suppose (contrary to the United States' express representation to this Court) that EPA someday did charge a manufacturer with misbranding for using the EPA-approved and EPA-required label. Even in that unlikely scenario, Durnell's argument would falter in light of the statutory text and context. To reiterate, [FIFRA's] proviso that registration is not a defense is limited to EPA enforcement actions for "any offense under this subchapter." And it would be rather bizarre to read a provision entitled "[m]iscellaneous" and dealing only with a defense to an EPA enforcement action to upend FIFRA's carefully calibrated and EPA-centric regulatory scheme. Make no mistake: Durnell's [FIFRA's] argument would negate FIFRA's express preemption clause, expose manufacturers to potentially massive tort liability for doing what EPA required them to do, and eviscerate the "uniformity" of EPA's labeling determinations.

In addition, Durnell's [FIFRA] argument does not work for yet another reason. Monsanto is not invoking the mere fact of "registration" as a complete defense to state tort suits. Rather, Monsanto is relying on EPA's specific determination that cancer warnings are not required for glyphosate-based pesticide labels. So even by its own terms, §136a(f)(2) would not apply here.

Last, Durnell's §136a(f)(2) argument contravenes this Court's decision in *Riegel*. In that case, FDA was statutorily authorized to withdraw premarket approval for a medical device based on "newly reported data or existing information." And FDA was obligated to withdraw approval if it "determine[d] that a device is unsafe or ineffective." But the possibility that FDA could withdraw its premarket approval based on new evidence or new analysis did not preclude this Court from concluding that FDA's premarket approval imposed "requirements" on manufacturers that preempted state tort suits under the Medical Device Amendments' materially identical preemption clause.

So too here. The theoretical possibility that EPA could (despite its representation otherwise) try to bring a misbranding enforcement action against a pesticide manufacturer on the theory that the EPA-approved and EPA-required label had in essence become misbranded over time due to new evidence does not deprive EPA's registration decisions of their preemptive force.

Fourth, and relatedly, Durnell raises concerns about the scenario in which new safety information arises after EPA's initial registration determination and labeling approval.

As described at length above, however, Durnell's policy concern about regulatory lag is amply addressed by the extensive processes that FIFRA and EPA's implementing regulations have established to respond to new or evolving safety information. For example, manufacturers must apprise EPA of new information "regarding unreasonable adverse effects" of their pesticides. §136d(a)(2). That obligation is backed by civil and criminal penalties.

EPA, meanwhile, also has many ways of ensuring a pesticide's continued compliance with FIFRA. EPA does not sit in an information-free silo. It keeps abreast of new safety developments. EPA may request additional information from manufacturers whenever the Agency "determines that additional data are required to maintain" a pesticide's registration. And EPA possesses ample resources to evaluate that information. EPA may solicit "comments, evaluations, and recommendations" to "improve the effectiveness and quality" of EPA's "scientific analyses" from scientific advisory panels.

For example, in the aftermath of the International Agency for Research on Cancer's classification of glyphosate as probably carcinogenic, EPA commissioned multiple reports about glyphosate's potential carcinogenicity from its Cancer Assessment Review Committee and Office of Pesticide Programs.

Moreover, if third parties (like Durnell) want to bring new information to EPA's attention or if they believe that EPA has failed to consider relevant information, those third parties are free to petition EPA to modify, suspend, or cancel a pesticide's registration. And EPA's decision in response to such a petition is subject to judicial review.

As demonstrated by that comprehensive regulatory regime, EPA possesses a variety of tools to learn of and address new safety information. And as a matter of law, state tort law may not impose labeling requirements "in addition to" or "different from" federal requirements imposed under FIFRA.

* * *

With respect to pesticide labels, FIFRA demands "[u]niformity" and expressly preempts state labeling requirements that are "in addition to" or "different from" federal labeling requirements. Durnell's state-law failure-to-warn claim would require a cancer warning on Roundup's label—a requirement "in addition to" and "different from" the label required by EPA under FIFRA. FIFRA therefore expressly preempts Durnell's claim. We reverse the judgment of the Missouri Court of Appeals and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

[Concurring and dissenting opinions omitted.]

***

> **Questions:** Why is *Durnell* an express-preemption case rather than a decision about the adequacy of glyphosate warnings? What claims, if any, remain available when an EPA-approved label is alleged to be inadequate?

Chapter 9 — Climate Change and the Anthropocene

Insert after Discussion Questions, p. 400

> **2026 Update: Regulatory Climate Litigation.** Federal climate litigation is no longer confined to constitutional claims seeking system-wide judicial remedies. The 2026 rescission of EPA's motor-vehicle greenhouse-gas endangerment finding has generated administrative-law litigation over the Clean Air Act, the evidentiary basis for agency reversal, and the requirements of reasoned decisionmaking. EPA, *Final Rule: Rescission of the Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emission Standards Under the Clean Air Act* (Feb. 18, 2026).
>
> That litigation supplies a more conventional vehicle for climate claims than *Juliana*: it challenges a discrete agency action under a specific statute rather than seeking broad constitutional relief. *See Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020).
>
> **Questions:** Compare the remedy sought in *Juliana* with the remedy ordinarily available in an APA challenge to an EPA rule. Why might statutory and administrative-law claims be more judicially manageable?

Add Case-to-Watch Note at the end of "V. Climate Change in State Courts," p. 401

Case to Watch: *Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, No. 25-170 (U.S. 2026).* The Supreme Court granted review on February 23, 2026. The case concerns whether federal law preempts state-law tort claims seeking damages for alleged climate-related harms caused by fossil-fuel producers. *See* Brief for Respondents at 1–2, *Suncor Energy (U.S.A.) Inc. v. Bd. of Cnty. Comm'rs of Boulder Cnty.*, No. 25-170 (U.S. May 14, 2026).

Chapter 10 — Environmental Rights

Insert after "III. Rights of Nature," p. 455

2025–26 Update: Rights of Nature in International Environmental Law. In Advisory Opinion OC-32/25, the Inter-American Court of Human Rights recognized Nature and its components as subjects of rights. *Advisory Opinion OC-32/25, Climate Emergency and Human Rights*, Inter-Am. Ct. H.R. (ser. A) No. 32 (July 3, 2025). In 2026, Ecuador's Constitutional Court reinforced the immediate enforceability of constitutional rights of Nature. *See* Ecuador Constitutional Court, Judgment No. 27-21-JC/25 (Feb. 2026).

These developments do not create a federal U.S. right of Nature. They demonstrate that the concept has moved beyond local ordinances and academic theory into regional human-rights law and constitutional adjudication.

Questions: What is gained by treating Nature as a rights-holder rather than solely as an object of human environmental rights? Who should have standing to represent Nature?

Chapter 11 — International Environmental Law

Insert after the chapter's opening questions, p. 471

Update: Climate Obligations after the ICJ Advisory Opinion. The International Court of Justice's 2025 advisory opinion on states' obligations regarding climate change is best understood as an account of legal sources, not as a new climate treaty. The Court reasoned that relevant obligations may arise from climate treaties, customary international law, the law of state responsibility, and human-rights law. *Advisory Opinion on the Obligations of States in Respect of Climate Change*, 2025 I.C.J. Rep. (July 23).

The opinion does not itself impose damages or directly bind domestic courts as a judgment between parties. Its importance lies in its articulation of due-diligence obligations, prevention of significant harm, cooperation, and the possible legal consequences of breach. *Id.*

Questions: What legal sources does the ICJ use to identify climate obligations? What is the difference between an advisory opinion's legal authority and its practical influence?

Chapter 12 — Environmental Justice

Insert after the ABA excerpt, p. 482

2025–26 Update: Retreat in Federal Environmental-Justice Infrastructure. The federal executive orders that had supplied the principal framework for environmental-justice policy—including Executive Order 12898 and later Biden-era orders—have been revoked. *See* Exec. Order No. 14,151, 90 Fed. Reg. 8337 (Jan. 20, 2025). The federal government also eliminated or sharply curtailed major environmental-justice offices, advisory bodies, screening tools, grants, and enforcement initiatives.

This shift does not repeal environmental statutes, civil-rights statutes, or state environmental-justice laws. But it changes the institutional setting in which claims of disproportionate environmental burden are identified, investigated, and remedied. Environmental justice increasingly may depend on state and local legislation, permit-specific public-participation rights, common-law and constitutional claims, and the remaining protections of federal civil-rights law.

Questions: Which environmental-justice protections are statutory, which are regulatory, and which were principally executive policy? What legal tools remain after the revocation of executive orders?

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