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S.D. Warren Co. v. Me. Bd. Of Env'tl. Prot., 126 S.Ct. 1843 (2006)

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COURT REPORTS

FEDERAL COURTS

UNITED STATES SUPREME COURT

S.D. Warren Co. v. Me. Bd. of Env'tl. Prot., 126 S.Ct. 1843 (2006)
(holding that the operation of a dam has the potential to result in a “discharge” as defined under section 401 of the Clean Water Act and therefore, the applicable state must certify a dam does not violate its water laws before a federal operating license may be issued).

S. D. Warren Company (“Warren”) operated hydroelectric dams along the Presumpscot River in Maine. Warren’s dams captured water, passed it through turbines, and then released it back into the river. To renew its operating licenses, Warren applied for state certification from the Maine Department of Environmental Protection (“MDEP”) in accordance with section 401 (“§ 401”) of the Clean Water Act (“CWA”). However, Warren applied under protest claiming its operations did not trigger § 401 because it did not “discharge” anything into the river. The MDEP issued the state certifications subject to stipulations that required Warren to maintain minimum stream flow levels and to allow for the passage of fish and eels. After an unsuccessful appeal to the administrative tribunal, Warren filed suit against MDEP in the Cumberland County Superior Court of Maine. The trial court rejected Warren’s argument and, on appeal, the Supreme Judicial Court of Maine affirmed. The United States Supreme Court also affirmed, holding that a dam does result in a “discharge” under § 401.

Warren claimed that Congress intended the meaning of “discharge” to include the requirement of an addition. Warren first argued that the theory of *noscitur a sociis* should be applied when interpreting “discharge” under § 401. Under this theory, a broad term paired with a narrower term is restricted within the confines of the narrow term. The Court opined this was not the general way to use language and that the interpretive canon was not applicable here. Next, Warren asserted that *South Florida Water Management District v. Miccosukee Tribe* controlled. The Court held that the case was not on point, because *Miccosukee* dealt with section 402 of the CWA and the two sections were not interchangeable. Finally, Warren claimed that the CWA’s legislative history indicated that Congress left the word “includes” in § 401 as an oversight because of the lengthy amendment debates. Warren argued that removing “includes” from § 401 necessitates reading “discharge” as requiring an addition. The Court found

that this illustration instead reinforced the notion that Congress makes textual decisions deliberately and with great care.

The Court determined which meaning Congress intended to attach to "discharge" as it appears in § 401. The Court began its analysis by looking at its own interpretation of "discharge" in past water cases. The Court found that it had uniformly read the word according to its plain meaning. The Court specifically pointed out that in *PUD No. 1 v. Washington Department of Ecology*, its only other case that dealt specifically with § 401, all the parties and the court applied the plain meaning to "discharge" without comment or objection. The Court also examined the use of "discharge" under § 401 in the administrative context and found that regulatory agencies regularly applied the plain meaning as well.

The Court bolstered its reasoning for adopting the plain meaning of "discharge" by discussing the CWA's overarching goal of achieving and sustaining certain water quality levels. The Court opined from amici briefs and admissions made by Warren that the alteration of a natural watercourse did impact water quality. The Court concluded that the CWA is the vehicle through which Congress has empowered states to set water quality standards and that they specifically created § 401's certification process so that states could accomplish this task. The Court, therefore, held that applying the plain meaning to "discharge" was the best way to properly delegate this authority to the states.

The Court rejected all three of Warren's arguments as to why the Court should interpret "discharge" in § 401 to require an addition be made to the water. The Court applied the plain meaning because that was the interpretation the Court and administrative agencies had used in the past. The Court also held that this reading better aligned with the goals of the CWA and its delegation to the states of ensuring water quality within their boundaries. The Court then examined Warren's operating procedures and held that the process of removing and replacing water constituted a "discharge" under the plain meaning of the word. The Court applied § 401 and concluded that the operation of a dam is an activity which "may result in a discharge," thereby affirming the judgment of both the trial court and the Supreme Judicial Court of Maine. The Court concluded that because dams may create a discharge, the state must certify a dam before the Federal Energy Regulatory Commission can issue a federal operating license.

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