

11-347 GEORGIA-PACIFIC WEST, ET AL. V. NORTHWEST ENVTL. DEFENSE CENTER

DECISION BELOW: 640 F3d 1063

LOWER COURT CASE NUMBER: 07-35266

QUESTION PRESENTED:

Since passage of the Clean Water Act, the Environmental Protection Agency has considered runoff of rain from forest roads--whether channeled or not--to fall outside the scope of its National Pollutant Discharge Elimination System ("NPDES") and thus not to require a permit as a point source discharge of pollutants. Under a rule first promulgated in 1976, EPA consistently has defined as *nonpoint* source activities forest road construction and maintenance from which natural runoff results. And in regulating stormwater discharges under 1987 amendments to the Act, EPA again expressly excluded runoff from forest roads. In consequence, forest road runoff long has been regulated as a nonpoint source using best management practices, like those imposed by the State of Oregon on the roads at issue here. EPA's consistent interpretation of more than 35 years has survived proposed regulatory revision and legal challenge, and repeatedly has been endorsed by the United States in briefs and agency publications.

The Ninth Circuit--in conflict with other circuits, contrary to the position of the United States as amicus, and with no deference to EPA--rejected EPA's longstanding interpretation. Instead, it directed EPA to regulate channeled forest road runoff under a statutory category of stormwater discharges "associated with industrial activity," for which a permit is required. The question presented is:

Whether the Ninth Circuit should have deferred to EPA's longstanding position that channeled runoff from forest roads does not require a permit, and erred when it mandated that EPA regulate such runoff as industrial stormwater subject to NPDES.

CONSOLIDATED WITH 11-338 FOR ONE HOUR ORAL ARGUMENT. JUSTICE BREYER TOOK NO PART.

CERT. GRANTED 6/25/2012