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California v. USEPA—District court abused its discretion in denying Rule 60(b)(5) motion to vacate injunction requiring EPA to promulgate Clean Air Act landfill emission plan by November 2019 in light of amended regulation extending deadline for such plan to August 2021

Under a final rule issued in 2016 under the Clean Air Act, the Environmental Protection Agency required States to submit landfill emission plans for agency review. Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 81 Fed. Reg. 59,276 (Aug. 29, 2016). For States that did not submxit plans, EPA was obligated to promulgate a federal plan by November 2017. When the agency did not comply with that deadline, eight compliant States sued and secured an injunction requiring issuance of the federal plan by November 2019. However, prior to that judicially imposed deadline, EPA amended its rules to set a deadline for States to submit their plans by August 2019 and to extend the federal deadline for promulgation of a federal plan in noncompliant States for August 2021. *See* 40 C.F.R. §§ 60.27a(c), 60.30f. In view of the rule change, the agency moved for relief under Fed. R. Civ. P. 60(b)(5) on the ground that the amended rule "[c]onstitute[d] 'a significant change in facts or law' that warrants the revision of the Court's Order." *California v. U.S. Envtl. Protection Agency*, No. 18-cv-03237-HSG, 2019 WL 5722571 (N.D. Cal. Nov. 5, 2019). The district court denied the motion, reasoning that "the situation presented here, where EPA undisputedly violated the Old Rule, received an unfavorable judgment, and then issued the New Rule only to reset its non-discretionary deadline (rather than to remedy its violation), does not render the judgment inequitable."

The Ninth Circuit reversed. *California v. U.S. Envtl. Protection Agency*, No. 19-17480, 2020 WL 6193497 (9th Cir. Oct. 22, 2020). Under Rule 60(b)(5), the panel began, "a court 'may' modify an injunction when 'applying it prospectively is no longer equitable.'" It then established a bright-line rule that "the district court's refusal to modify the injunction here, when a change in law dissolved the legal basis for its order, is an abuse of discretion." In reaching that holding, the panel reviewed United States Supreme Court precedent standing for the principle that "it is an abuse of discretion to deny a modification of an injunction after the law underlying the order changes to permit what was previously forbidden." *See Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. 421 (1855); *Sys. Fed'n No. 91, Ry. Emp. Dep't v. Wright*, 364 U.S. 642 (1961); *Agostini v. Felton*, 521 U.S. 203 (1997). It rejected the States' contention that "the equities support their view since the injunction here 'remedied a single, long-past legal violation by requiring one discrete task'—the issuance of the federal plan" because "it is the prospective effect (rather than the continuing or ongoing nature) of an injunction that matters, and which renders the injunction amenable to modification based on new law." No more persuasive was their invocation of the separation-of-powers doctrine, given that "it is only *final* judgments, not injunctive relief, that

cannot be disturbed without offending the separation of powers" (citing in part *Miller v. French*, 530 U.S. 327 (2000)). The panel added:

> Respect for the separation of powers also makes it irrelevant that the change in regulations in this case was brought about by EPA itself. EPA's dual role as rulemaker and defendant here is a natural consequence of a lawsuit based solely on EPA's own regulations. EPA is undisputedly the "competent authority" to modify the law at issue. ... As such, we see no reason why a coequal branch should be prejudiced when moving for Rule 60(b)(5) relief simply because it has the authority to amend its regulations. ... [¶] Ultimately, we see a greater threat to the separation of powers by allowing courts to pick and choose what law governs the executive branch's ongoing duties. ... Permitting a court to make an equitable determination about which law an executive agency should follow going forward, without any other legal basis, risks undue expansions of the judicial role.

In sum, "[i]t is only '[t]he *interpretation* of the laws'—not the selection of which laws should apply going forward—that 'is the proper and peculiar province of the courts.'"

Decision link: https://cdn.ca9.uscourts.gov/datastore/opinions/2020/10/22/19-17480.pdf