On April 23, 2020 the Supreme Court ruled in the case of County of Maui v. Hawaii Wildlife Fund that the Clean Water Act applies to some pollutants that reach the sea and other protected waters indirectly through groundwater. The case concerned a wastewater treatment plant on Maui, Hawaii, that used injection wells to dispose of some four million gallons of treated sewage each day by pumping it into groundwater. Some of the waste reached the ocean.

Environmental groups sued, suggesting that it was illegal to allow discharges into groundwater to avoid getting a permit that would be required for discharges to rivers, lakes, or the ocean. USEPA filed a brief supporting Maui County, which operates the treatment plant, saying that the law does not apply to discharges that travel through groundwater before reaching protected waters.

However, the Supreme Court rejected what it called extreme positions from both sides of the issue, returning the case to a lower appeals court for reconsideration. However, the fact that the case focused on discharges to ground water makes it a case worth following for our AMCA members.

The Clean Water Act requires National Pollutant Discharge Elimination System (“NPDES”) permits for any “discharge” of a “pollutant” from a “point source” into a “water of the US”. Failure to do so can result in fines of more than $35,000 a day.

This case focused on whether indirect discharges from the injection wells were considered a discharge as defined by NPDES permits.

The Court rejected arguments from both sides of this case as too extreme. The County of Maui and USEPA argued that discharges into groundwater were never covered, while the Hawaii Wildlife Fund argued the law applied to discharges that “actually and foreseeably reach navigable surface waters.”

The United States Court of Appeals for the Ninth Circuit had previously ruled for ruled for Hawaii Wildlife Fund saying the law applied because pollution in the ocean was “fairly traceable” to the wells.

The Supreme Court disagreed with that position. Justice Breyer wrote in the majority opinion that “virtually all water, polluted or not, eventually makes it to navigable water”. The real question before the courts should be whether or not “the addition of the pollutants through groundwater is the functional equivalent of a direct discharge from the point source into navigable water

The USEPA position, however, would allow polluters to avoid getting NPDES permits. Justice Breyer wrote, “Why could not the pipe’s owner, seeking to avoid the permit requirements, simply move the pipe back, perhaps only a few yards, so that the pollution must travel though at least some groundwater before reaching the sea?”

The case has been remanded back to the Ninth Circuit Court of Appeals for reconsideration and clarification of these two extreme positions.

This case could have ramifications for farming interests and potentially vector control. In 1977, Congress amended the CWA to exempt return flows from agriculture as a point source pollutant. This could have impacts on mosquito control measures on those same return flows if the exemption is revoked. For more information contact the AMCA Technical Advisor.