

Supreme Court to Decide Groundwater Clean Water Act Case

If a state or local government discharges a pollutant from a point source to a navigable water it must obtain a permit under the Clean Water Act (CWA). But what if that pollutant is conveyed in something—say groundwater—between the point source and the navigable water? Must the state or local government still obtain a permit? That is the question the Supreme Court will decide next term in [*County of Maui, Hawaii v. Hawaii Wildlife Fund*](#).

Maui County injects treated wastewater from wells into the groundwater. Some of the treated wastewater reaches the Pacific Ocean. The Hawaii Wildlife Fund sued the County arguing it was required to obtain a permit under the CWA for these discharges.

A party must obtain a CWA permit if it discharges a pollutant from a point source to a navigable water. Wells are point sources and the Pacific Ocean is a navigable water. But the treated wastewater in this case doesn't go directly from the well to the ocean. It is conveyed through groundwater. The Ninth Circuit assumed without deciding groundwater isn't a point source or navigable waters.

The Ninth Circuit held that the CWA requires Maui to get a permit in this case. It concluded that the discharges in this case are point source discharges because “nonpoint source pollution” excludes, for example, roadway runoff that isn't “collected, channeled, and discharged through a point source.” Here the pollutants are collected in wells. According to the lower court, they are also “fairly traceable” from the point source to the navigable water and reach the navigable water at “more than de minimis levels.”

A certiorari stage [*amicus brief*](#) joined by the National Association of Counties, the National League of Cities, the International Municipal Lawyers Association, and others, argues that if the Supreme Court adopts the Ninth Circuit's approach in this case numerous wastewater, stormwater, and water supply infrastructure nationwide will be required to obtain CWA permits, which will be difficult and expensive.

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In [*County of Maui, Hawaii v. Hawaii Wildlife Fund*](#) the Supreme Court will decide whether the Clean Water Act (CWA) requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source, such as groundwater. Maui County injects treated wastewater from wells into the groundwater. Some of the treated wastewater reaches the Pacific Ocean. The Hawaii Wildlife Fund sued the County arguing it was required to obtain a permit under the CWA for these discharges. A party must obtain a CWA permit if it discharges a pollutant from a point source to a navigable water. Wells are point sources and the Pacific Ocean is a navigable water. The Ninth Circuit assumed without deciding groundwater isn't a point source or navigable waters. The Ninth Circuit held that the CWA requires Maui to get a permit in this case. It concluded that the discharges in this case are point source discharges because “nonpoint source pollution” excludes, for example, roadway runoff that isn't “collected, channeled, and discharged through a point source.” Here the pollutants are collected in wells.

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