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U.S. Supreme Court Expands Permit Requirements for Groundwater Discharge

Environmental

A recent decision by the U.S. Supreme Court held that, in certain circumstances, discharges from “point sources” (e.g. wells, containers, pipes, ditches, channels, tunnels, conduits, etc.) into groundwater may require a permit from the Environmental Protection Agency (EPA).

Discharges of pollutants directly into U.S. water from “point sources” (e.g., industrial waste discharges from a pipe into a river) have always required permits under the federal Clean Water Act. However, if the discharge from the point source travels through groundwater, it, too, may now be regulated if the discharge into the groundwater is the “functional equivalent” of a direct discharge.

In the case of *County of Maui, Hawaii v. Hawaii Wildlife Fund et al.*, No 18-260, 590 U.S. (2020), a water reclamation facility on the island of Maui was sued by an environmental group for discharging pollutants into the ocean without a permit. The facility pumped partially treated wastewater into underground wells which then allowed the water to flow through the groundwater, eventually into the ocean.

The EPA had published guidance in 2019 stating it does not regulate discharges of pollutants into groundwater. But in *Maui*, the U.S. Supreme Court said that view was too restrictive. Instead, the discharge can be regulated if, when considering time, distance, dilution and a number of other factors, it is “functionally equivalent” to a direct discharge. If it is, a federal National Pollutant Discharge Elimination (NPDES) Permit will be required.

For the regulated community, this decision will likely result in more regulation and more litigation over the meaning of “functional discharge” in any specific situation.