

Groups Seeking to Expand Reach of Clean Water Act

“In April 2020, the Supreme Court issued its opinion in *County of Maui v. Hawaii Wildlife Fund* ... vacating the Ninth Circuit’s decision. The appeals court had affirmed a district court’s finding of Clean Water Act (‘CWA’) liability for the County’s alleged failure to obtain a discharge permit for subsurface releases of pollutants into groundwater that conveys pollutants to navigable waters. In vacating the judgment below, the Supreme Court rejected the Ninth Circuit’s ‘fairly traceable’ test and set forth a new standard for determining when a source needs an NPDES permit: ‘the statute requires a permit when there is a direct discharge from a point source into navigable waters or when there is the functional equivalent of a direct discharge.’ In other words, ‘an addition falls within the statutory requirement that it be ‘from any point source’ when a point source directly deposits pollutants into navigable waters, or when the discharge reaches the same result through roughly similar means,’” posted Brent A. Rosser of Hunton Andrews Kurth in *The National Law Review*.

“Recognizing that this approach ‘does not ... clearly explain how to deal with middle instances,’ the Court set forth ‘some of the factors that may prove relevant’ in any given case:”

Read the article.