
***County of Maui v. Hawaii Wildlife Fund*, No. 18-260**

Today, the Supreme Court reined in the Ninth Circuit’s broad standard requiring a permit under the Clean Water Act (“CWA”) for all discharges to navigable water that are fairly traceable to a point source. The Court instead held that a permit is required only for discharges from a point source directly into navigable water or the functional equivalent.

Background: Environmental groups filed a CWA suit against the County of Maui, claiming that Maui violated the CWA in the course of operating a wastewater reclamation facility by discharging wastewater without a permit. The facility discharges treated water through wells, and the water then travels half a mile or so through groundwater, before ultimately reaching the Pacific Ocean. The district court held that Maui’s practice functionally qualified as a discharge into a navigable water. The Ninth Circuit affirmed, holding that a permit is required when pollutants are fairly traceable from a point source to a navigable water and leaving open the question of when—if ever—a connection between a point source and a navigable water may be too tenuous. The Supreme Court vacated the Ninth Circuit’s judgment and remanded the case for further proceedings.

Issue: Whether the CWA requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source.

Court’s Holding: In an opinion authored by Justice Breyer, and joined by Chief Justice Roberts and Justices Ginsburg, Sotomayor, Kagan, and Kavanaugh, the Supreme Court’s answer was “sometimes.” The Court rejected the Ninth Circuit’s “fairly traceable” standard, because that standard could sweep in pollutants that travel into a navigable water only in highly diluted forms years after their release. It also recognized that Congress intended to leave substantial responsibility and autonomy to the States as to groundwater pollution and non-point-source pollution. Instead, the Supreme Court determined that a permit is required when there is a discharge from a point source directly into navigable waters or when there is the functional equivalent of a direct discharge. The Supreme Court recognized that it was not adopting a bright-line standard, but explained that many factors, particularly time and distance, may be relevant to determining whether a particular discharge qualifies.

Justice Thomas, joined by Justice Gorsuch, dissented. Justice Thomas disagreed with the majority that the CWA requires a permit for the functional equivalent of a direct discharge. He would hold that a permit is required *only* when a point source discharges pollutants directly into a navigable water. Justice Alito authored a separate dissent. He agreed with Justice Thomas that a permit is required only when a pollutant is discharged directly from a point source to a navigable water, but would find a permit required for a discharge from multiple, linked point sources.