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Mines and Maui: So Much for Regulatory Certainty



The Supreme Court's decision in *County of Maui* disrupted long-settled understandings of the scope of the Clean Water Act and has created uncertainty for the mining industry and others. The Court's ruling not only expands the discharge pathways subject to NPDES permitting, but also suggests that federal permits might be required for surface discharges dozens of miles and decades away from a traditional navigable water.

Courts and stakeholders have famously struggled to define which surface waters are regulated under the Act. Although the statutory synonym for a "water of the United States" (WOTUS) is "navigable water," courts have long agreed that Congress intended to regulate more than waters that are navigable-in-fact. At the same time, it has long been understood that discharges to groundwater unconnected to surface waters were not subject to federal regulation. So, despite uncertainty about when discharges to wetlands or intermittent streams require a CWA permit, it has been understood that subsurface injections and discharges to groundwater generally did not.

Authors

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