





RECENT GROUNDWATER RULINGS





Federal courts have taken divergent approaches in many recent cases involving the Clean Water Act's application to pollution that migrates through groundwater.

SUPREME COURT PETITIONS

COUNTY OF MAUI V. HAWAII WILDLIFE FUND





-  **ISSUE:** Water pollution linked to wastewater facility in Maui
-  **ORIGINATING COURT:** 9th U.S. Circuit Court of Appeals
-  **RULING:** The 9th Circuit found the Clean Water Act applies to pollutants that move through groundwater when they have a "fairly traceable" connection to a point source.
-  **STATUS:** The county asked the Supreme Court to review the 9th Circuit's ruling.

KINDER MORGAN ENERGY PARTNERS LP V. UPSTATE FOREVER





-  **ISSUE:** Water pollution linked to ruptured gasoline pipeline in South Carolina
-  **ORIGINATING COURT:** 4th U.S. Circuit Court of Appeals
-  **RULING:** The 4th Circuit found the Clean Water Act applies to pollutants that move through groundwater, as long as they ultimately reach a federal water body via a "direct hydrological connection."
-  **STATUS:** Kinder Morgan asked the Supreme Court to review the 4th Circuit's ruling.

APPELLATE COURT DECISIONS





KENTUCKY WATERWAYS ALLIANCE V. KENTUCKY UTILITIES CO.

-  **ISSUE:** Water pollution linked to coal ash disposal
-  **COURT:** 6th U.S. Circuit Court of Appeals
-  **RULING:** The 6th Circuit found the Clean Water Act does not cover pollutants that allegedly moved from coal ash disposal sites through groundwater and into a nearby lake.
-  **STATUS:** Lower-court action on separate Resource Conservation and Recovery Act claims is ongoing.

TENNESSEE CLEAN WATER NETWORK V. TENNESSEE VALLEY AUTHORITY





-  **ISSUE:** Water pollution linked to coal ash disposal
-  **COURT:** 6th U.S. Circuit Court of Appeals
-  **RULING:** The 6th Circuit found the Clean Water Act does not cover coal ash pollution that allegedly made its way through groundwater to the Cumberland River.
-  **STATUS:** The appeals court is considering a rehearing request.

SIERRA CLUB V. VIRGINIA ELECTRIC & POWER CO.





-  **ISSUE:** Water pollution linked to coal ash disposal
-  **COURT:** 4th U.S. Circuit Court of Appeals
-  **RULING:** The 4th Circuit found the Clean Water Act does not cover coal ash pollution that reached local streams via groundwater.
-  **STATUS:** The court denied rehearing requests.

DISTRICT COURT DECISIONS





PRAIRIE RIVERS NETWORK V. DYNEGY MIDWEST GENERATION LLC

-  **ISSUE:** Water pollution linked to coal ash disposal
-  **COURT:** U.S. District Court for the Central District of Illinois
-  **RULING:** The district court found the Clean Water Act does not cover coal ash pollution that allegedly moved through groundwater to surface water.
-  **STATUS:** No action since the Nov. 14 decision.

TOXICS ACTION CENTER INC. V. CASELLA WASTE SYSTEMS INC.

-  **ISSUE:** Water pollution linked to landfill
-  **COURT:** U.S. District Court for the District of Massachusetts
-  **RULING:** The district court rejected arguments that the Clean Water Act covers pollutants that allegedly seeped from a town landfill into groundwater and ultimately contaminated wetlands and drinking water.
-  **STATUS:** The parties are wrangling with the district court over whether they can challenge its decision to the 1st U.S. Circuit Court of Appeals while separate claims are still pending.

26 CROWN STREET ASSOCIATES LLC V. GREATER NEW HAVEN REGIONAL WATER POLLUTION CONTROL AUTHORITY

-  **ISSUE:** Water pollution linked to municipal sewer system
-  **COURT:** U.S. District Court for the District of Connecticut
-  **RULING:** The district court dismissed the case and rejected the argument that the Clean Water Act covers sewer overflows that seeped into groundwater and allegedly reached the Long Island Sound.
-  **STATUS:** The case was appealed to the 2nd U.S. Circuit Court of Appeals but is on hold while the parties consider settlement options.