



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2020-0673; FRL-10018-43-OW]

Applying the Supreme Court's *County of Maui v. Hawaii Wildlife Fund* Decision in the Clean Water Act Section 402 National Pollutant Discharge Elimination System Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft guidance and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a draft memorandum to provide guidance to the regulated community and permitting authorities on applying the recent decision of the United States Supreme Court in *County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020), in the Clean Water Act Section 402 National Pollutant Discharge Elimination System (NPDES) permit program for point source discharges that travel through groundwater before reaching waters of the United States. Consistent with *EPA Guidance; Administrative Procedures for Issuance and Public Petitions*, published in the Federal Register on October 19, 2020, EPA is soliciting public comments on the draft memorandum for thirty days. The Agency may pursue a future rulemaking action to provide greater regulatory certainty concerning discharges subject to the NPDES permit program. This draft guidance document does not have the force and effect of law and it does not bind the public in any way. By issuing this draft guidance memorandum, the Agency intends only to provide clarity to the public regarding existing requirements under the law or Agency policies.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit comments, identified by Docket ID No. EPA-HQ-OW-2020-0673, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [regulations.gov](https://www.regulations.gov). EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia

submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epadockets>.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email and telephone. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Scott Wilson, Office of Wastewater Management, Water Permits Division (MC4203M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-6087; email address: wilson.js@epa.gov.

A. How Can I Get Copies of This Document and Other Related Information?

You may access this document electronically at <https://www.epa.gov/npdes/releases-point-source-groundwater> or at <https://www.federalregister.gov>. EPA has established an official public docket for receiving comments under Docket ID No. EPA-HQ-OW-2020-0673 which is accessible electronically at <http://www.regulations.gov> that will also contain copies of this Federal Register notice. The public docket does not include CBI or other information whose disclosure is restricted by statute. The telephone number for the Water Docket is (202) 566-2426.

Dated: December 4, 2020.

David P. Ross,

Assistant Administrator, Office of Water.