



FOR IMMEDIATE RELEASE

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WLF Calls on EPA to Reaffirm the Clean Water Act's Jurisdictional Limits

(In re Clean Water Act Coverage of Discharge Pollutants)

“Because only Congress can rewrite the Clean Water Act, EPA’s previous attempt to expand its jurisdictional reach to include purely groundwater discharges far exceeded the scope of the agency’s statutory authority. To comport with the rule of law, any expansion of federal-permitting jurisdiction must come from Congress, not EPA.”

—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC— Today, the Washington Legal Foundation (WLF) filed formal comments with the Environmental Protection Agency (EPA), urging the agency to faithfully adhere to the proper limits of federal-permitting jurisdiction under the Clean Water Act. In response to EPA’s published request for concerned stakeholders to weigh in on whether pollutant discharges from point sources that reach navigable waters through groundwater are subject to CWA regulation, WLF’s comments advance two main points.

First, because groundwater is neither a “navigable water” nor a “source point” under the CWA, EPA has no regulatory jurisdiction over groundwater pollutants. As a result, EPA’s previous attempt to expand its jurisdictional reach to include purely groundwater discharges improperly exceeded the scope of the agency’s statutory authority. WLF encourages EPA to explicitly clarify that the CWA’s statutory language cannot be construed in a way that eviscerates those important jurisdictional limits.

Second, WLF reminds the EPA that States already exercise regulatory jurisdiction over groundwater. Recognizing that the States bear the primary responsibilities and rights to manage land and water resources, the CWA establishes a scheme of cooperative federalism with States having original jurisdiction over nonpoint sources of pollution (including groundwater). As WLF demonstrates, state and local authorities are best equipped to decide how to allocate the burdens and responsibilities of mitigating groundwater pollution among the various stakeholders. EPA’s strict adherence to its own CWA jurisdiction would avoid improperly preempting state groundwater regulations.

Celebrating its 41st year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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