

News & Insights

Denver Environmental Attorney Joel Johnston - Washington Examiner

Washington Examiner

<https://www.washingtonexaminer.com/policy/energy/supreme-court-says-trump-view-of-key-clean-water-act-provision-would-create-obvious-loophole>

The Supreme Court rejected the Trump administration's view of when entities must obtain permits under the Clean Water Act to release pollutants into water bodies as too narrow, opting instead to create new guidelines that will have to be fleshed out by the courts and agencies.

Nonetheless, other attorneys say the Supreme Court's new "functional equivalent" test likely creates a headache for industry.

"I'm not sure that this provides much certainty to anyone as to what discharges into groundwater require permits and what discharges do not," said Joel Johnston, an attorney for the law firm Hall Estill, in a statement. Johnston noted that decisions about whether specific discharges into groundwater are functionally equivalent to direct discharges are complicated and depend on a lot of different factors, including the type of soil, what chemical is discharged, and the chemistry of the water.

And in a "rather unusual" instance, the Supreme Court even acknowledged in its opinion that it isn't providing "any clear rule," Johnston said.

Attorneys

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