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California Land Use & Development Law Report

## **Water Pollution From Utility Poles Doesn't Violate Federal Pollution Control Laws, According to Ninth Circuit Court of Appeals**

Is rain water washing over utility poles and carrying wood preservatives into waterways the kind of pollution that violates the Clean Water Act or the Resource Conservation and Recovery Act?

No, according to a recent decision by the federal Ninth Circuit Court of Appeals:

There is no Clean Water Act violation because the pollution discharge is not from a "point source" as that term is used in the Clean Water Act; a utility pole is not a "discernible, confined and discrete conveyance" of pollution. It's also not a discharge "associated with industrial activity" subject to the Act. There is no RCRA violation either, according to the court, because wood preservatives that escape from utility poles are not "solid waste."

[\*Ecological Rights Foundation v. Pacific Gas and Electric Co.\*](#) (9th Cir. No. 11-16042, Apr. 3, 2013). See our [recent update](#) on the case for further details.

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