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# **The Clean Water Act**

## **Regulatory Framework Basics**

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# Clean Water Act Basics

**WHO?**

**WHAT?**

**WHEN?**

**WHERE?**

**WHY?**

**HOW?**

# 50 Years of the Clean Water Act

## The “WHEN”



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# Clean Water Act Basics – The “WHY”

- Statutory Purpose
  - Maintain chemical, physical, and biological integrity of the Nation’s waters
- Two Primary Goals
  - Eliminate discharge of pollutants to surface waters
  - “Fishable / Swimmable” where attainable
    - Protection and propagation of fish, shellfish, and wildlife
    - Recreation in and on the water

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# The “WHY”

- Five statutory policies to implement “fishable/swimmable” goal:
  - No discharge of toxics in toxic amounts
  - Financial assistance for POTW construction
  - Area-wide treatment management planning
  - Treatment technology R&D “eliminate”
  - Nonpoint source pollution control programs

# The “WHO”

Clean Water Act is implemented through a cooperative federalism model:



EPA Sets Standards



Who Enforces?



States Implement

- States have primary enforcement authority
- EPA may participate/overfile
- Citizens may also file suite where EPA and the state fail to diligently prosecute

# The “WHAT”

- Prohibits discharges of pollutants to navigable waters without a permit

*“Discharge of a pollutant” means “(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.*

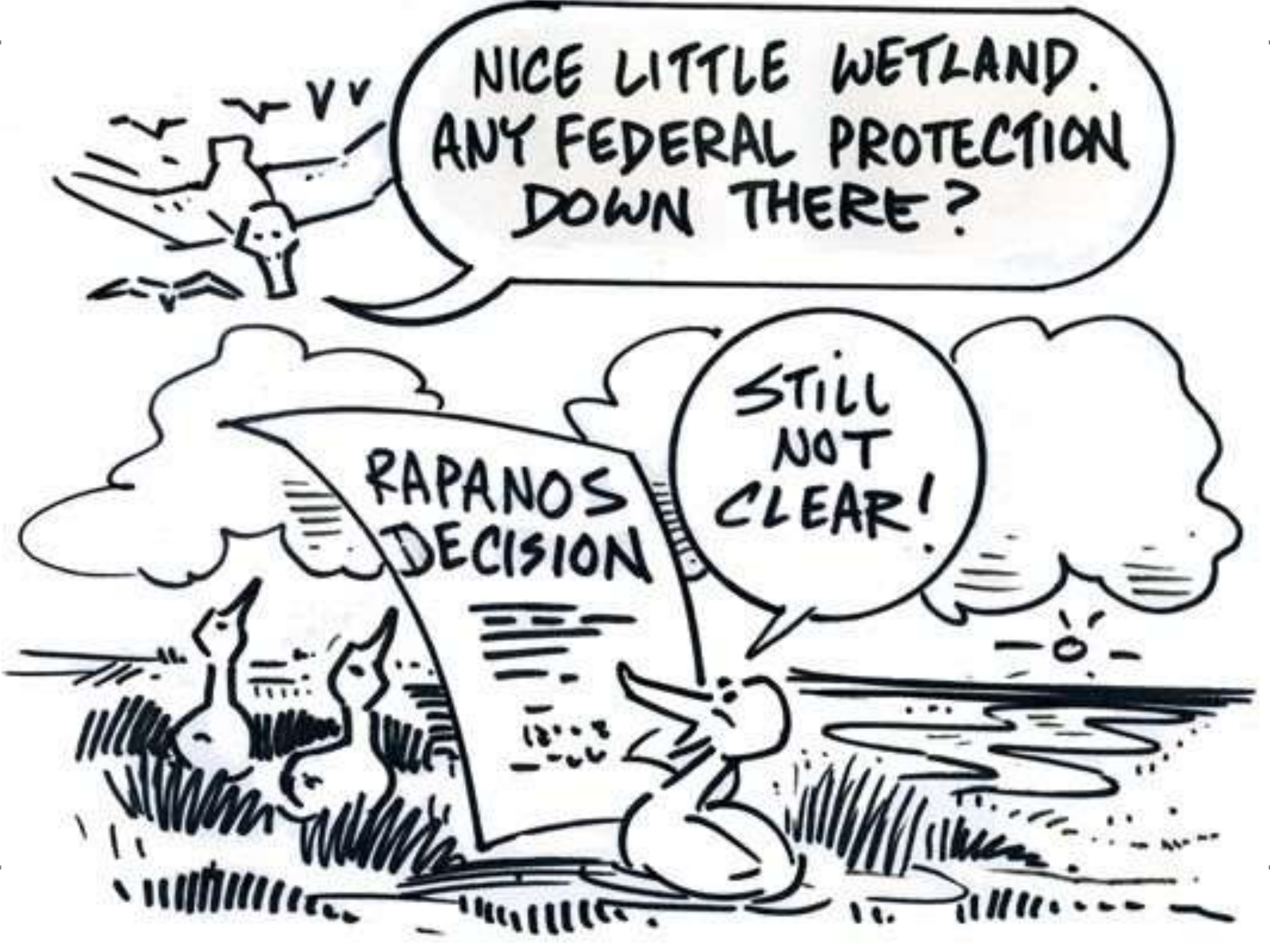
*“Point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation...*

# Clean Water Act Jurisdiction

## The “WHERE”

- *Solid Waste Agency of Northern Cook County (SWANCC) v. Army Corps of Engineers*, 531 U.S. 159 (2001)
  - Migratory bird rule could not be used to extend CWA jurisdiction to “isolated wetlands”
- *Rapanos v. United States*, 547 U.S. 715 (2006)
  - Scalia plurality (joined by Roberts, Thomas, Alito):
    - “Relatively permanent flow” and “continuous surface connection”
  - Kennedy concurrence:
    - “Significant nexus” test.
  - Stevens dissent (joined by Souter, Ginsburg, Breyer)

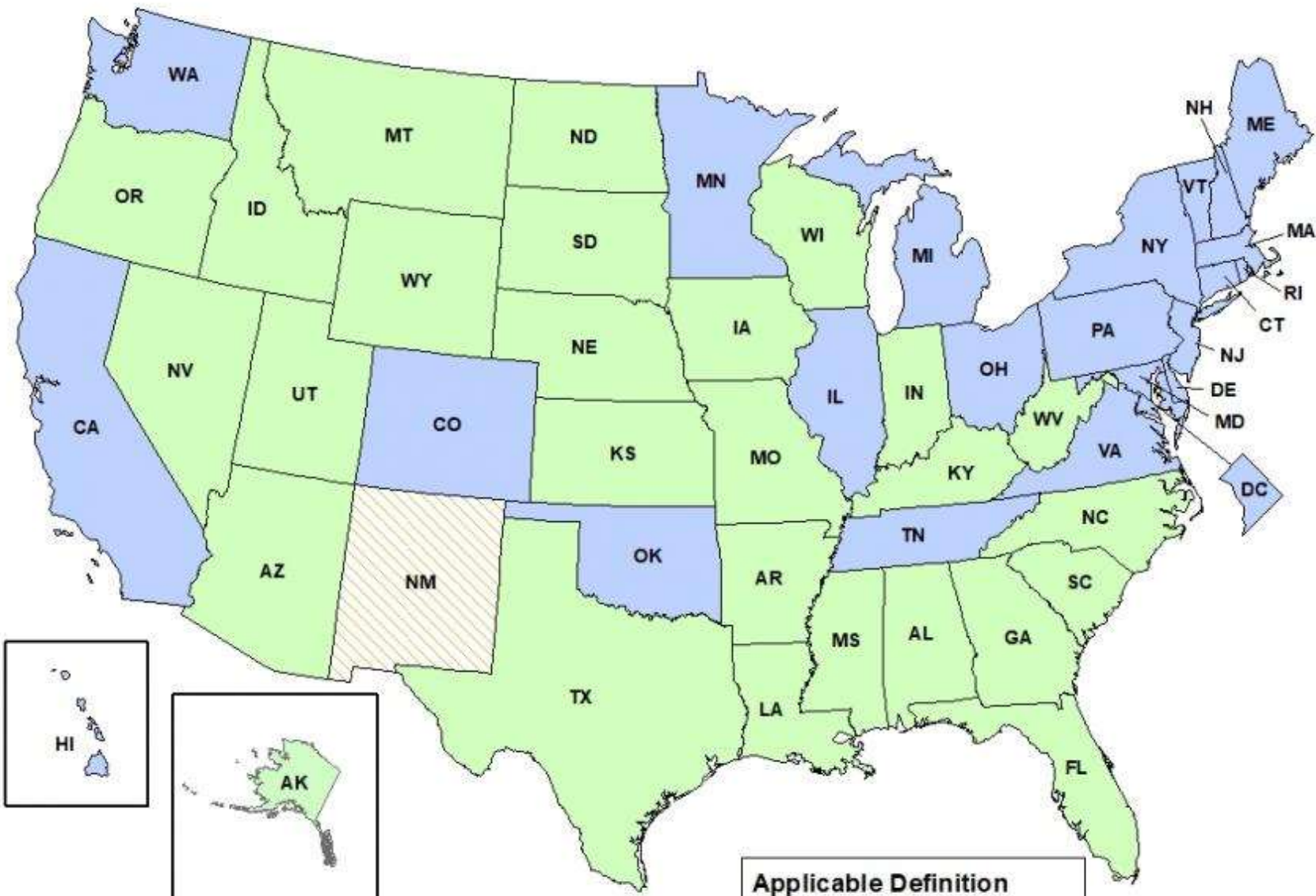




NICE LITTLE WETLAND.  
ANY FEDERAL PROTECTION  
DOWN THERE?

RAPANOS  
DECISION

STILL  
NOT  
CLEAR!



**Applicable Definition**

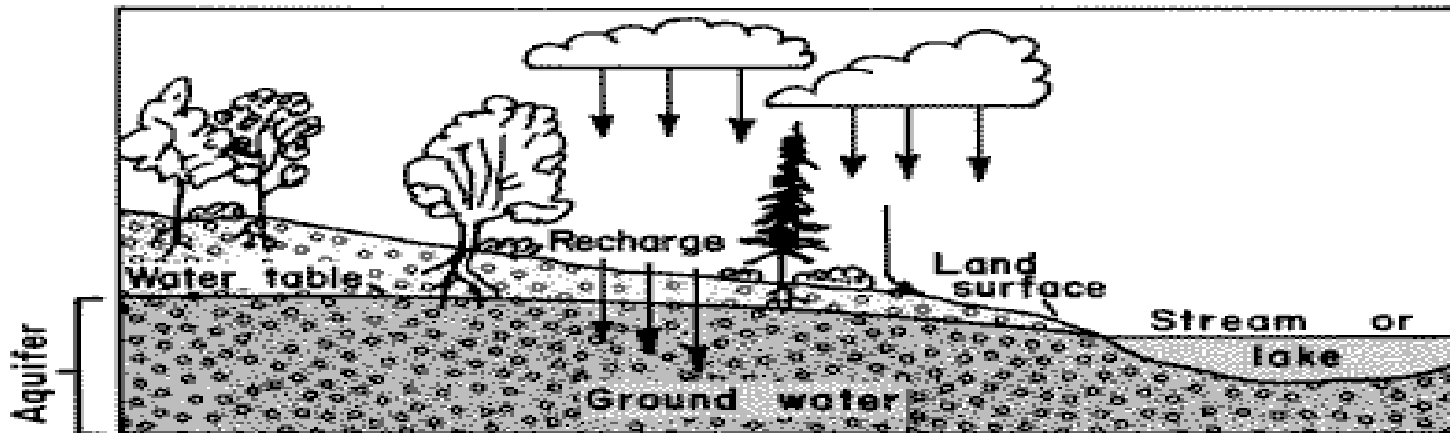
- 2015 Clean Water Rule\*
- Pre-2015 Regulations and Guidance
- Under Federal Court Consideration

\*Also applicable in the U.S. territories

The EPA is providing this map for informational purposes only, and it cannot be relied on for specific determinations or other legal purposes. As the litigation continues, the EPA will update the map, when possible, to reflect the most current information that is made available to the EPA and the Army. For specific requests, please contact the Army Corps of Engineers or EPA. This map was updated on July 24, 2019.

# What about discharges to **groundwater**?

- Regulated by other federal statutes (SDWA, RCRA, etc.)
  - States may also regulate under CWA type programs
- *County of Maui v. Hawaii Wildlife Fund*
  - SCOTUS argument set for November 6, 2019



# Clean Water Act Permit Programs

## The “HOW”

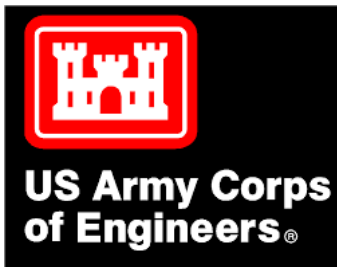
- National Pollutant Discharge Elimination System (“NPDES”)
  - Direct Discharges from
    - Publicly Owned Treatment Works (POTWs)
    - Other wastewater treatment plants
    - CAFOs
    - Stormwater Discharges
      - Industrial stormwater
      - Municipal Stormwater
  - Indirect Discharges
    - Industrial Pretreatment → POTWs



# Clean Water Act Permit Programs

## The “HOW”

- Section 404 Dredge & Fill Permits
  - Implemented by the Army Corps of Engineers
  - **Another “WHO”**
  - Two states also have delegated authority
  - Permits may be national or individual
  - States may implement isolated wetlands permit programs for waters outside CWA jurisdiction



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# Questions?

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