
The Clean Water Act

Regulatory Framework

Erica M. Spitzig
Attorney

Taft, Stettinius & Hollister LLP

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Clean Water Act Basics

- 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
- Three Tiered System
 - Federal Regulations
 - State & local implementation

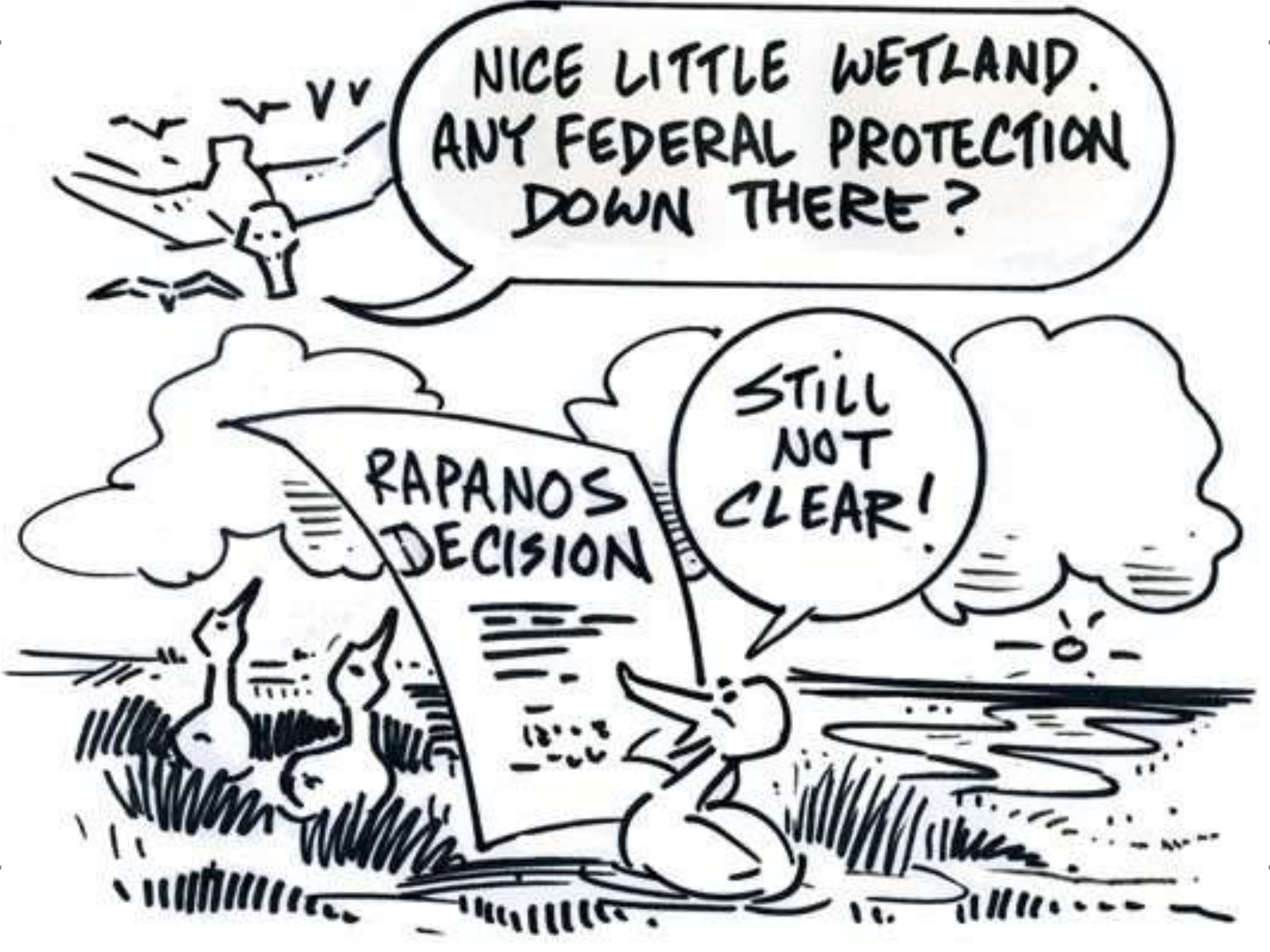
Statutory Policies

- 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

Clean Water Act Jurisdiction

AKA What is a “navigable water”??????

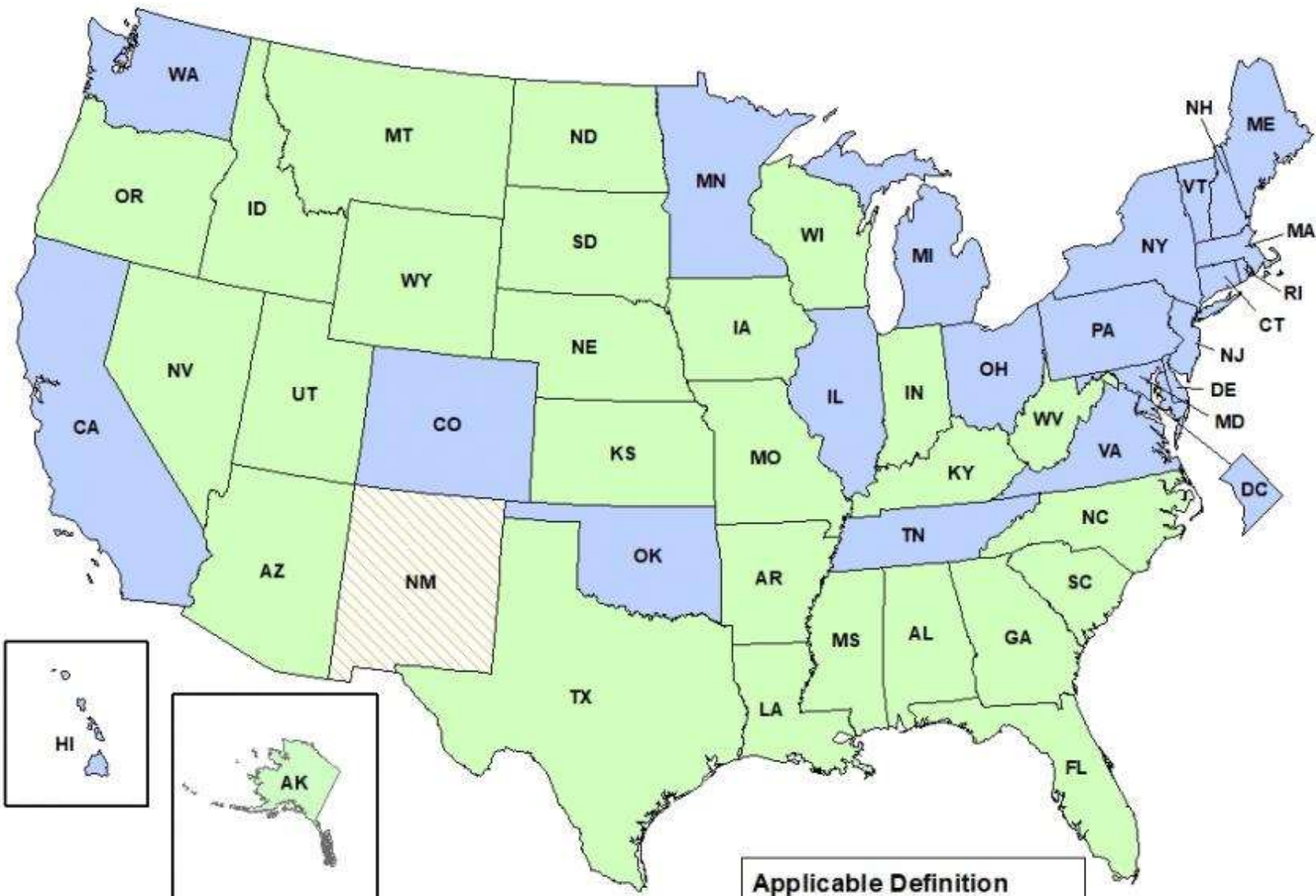
- *Solid Waste Agency of Northern Cook County (SWANCC) v. Army Corps of Engineers*, 531 U.S. 159 (2001)
 - Migratory bird rule could not be used to extend CWA jurisdiction to “isolated wetlands”
- *Rapanos v. United States*, 547 U.S. 715 (2006)
 - Scalia plurality (joined by Roberts, Thomas, Alito):
 - “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

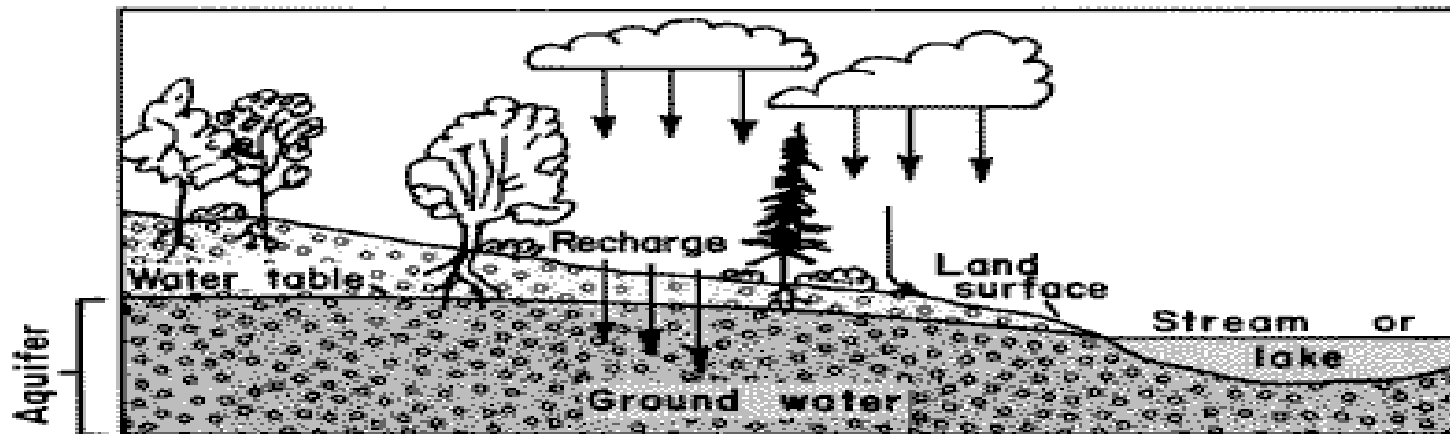
- 2015 Clean Water Rule*
- Pre-2015 Regulations and Guidance
- Under Federal Court Consideration

*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



NPDES Permit Program

National Pollutant Discharge Elimination System ("NPDES")

- Permits required for the discharges of pollutants from point sources into surface waters.

"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.

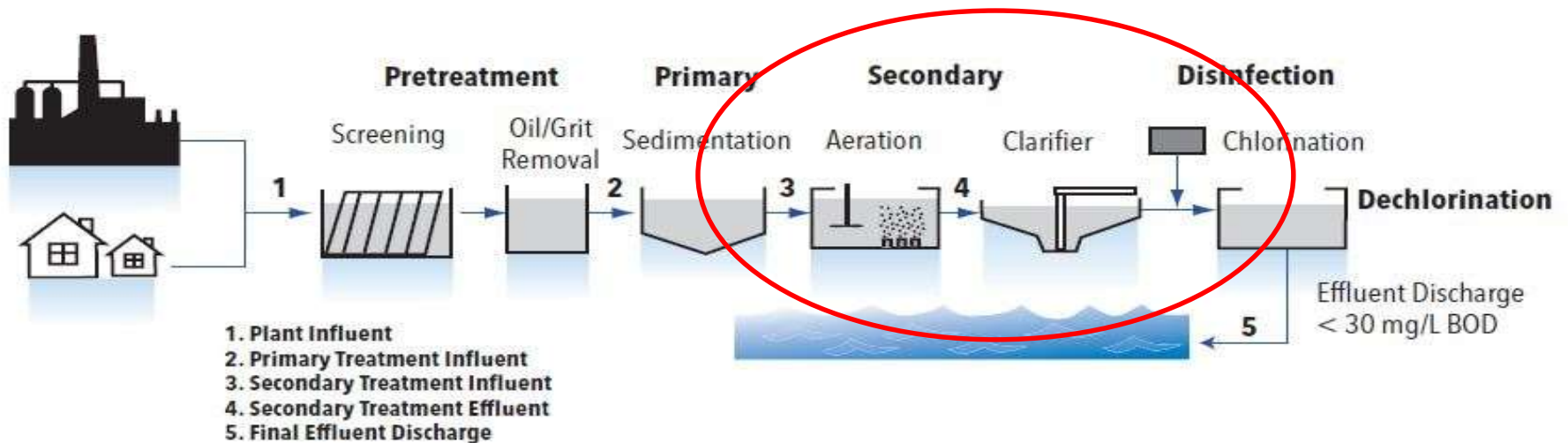
"Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation...

NPDES Permit Program

- Direct Dischargers
 - Publicly Owned Treatment Works (POTWs)
 - Other wastewater treatment plants
 - CAFOs
 - Stormwater Discharges
 - Industrial stormwater
 - Municipal Stormwater
- Indirect Discharges
 - Industrial Pretreatment → POTWs

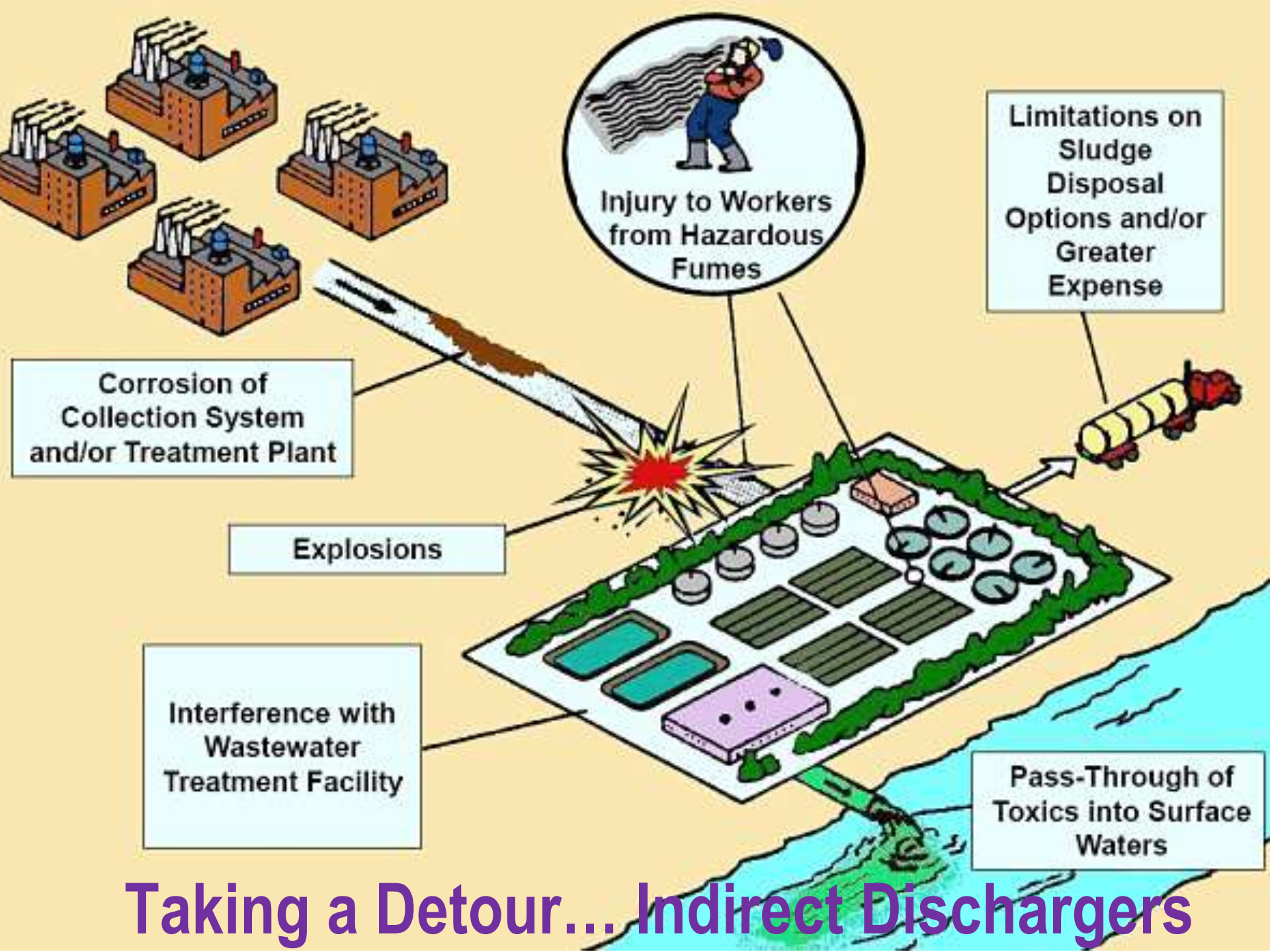
Direct Dischargers

- Technology Based Effluent Limitations
 - Industry Based
 - POTWs = secondary treatment



Direct Dischargers

- Water Quality Based Effluent Limitations (“WQBELs”)
 - Numeric limits on specific pollutants based on water quality standards
- TMDLs
 - Impaired waters → 303(d) list
 - Pollution budget for impaired water

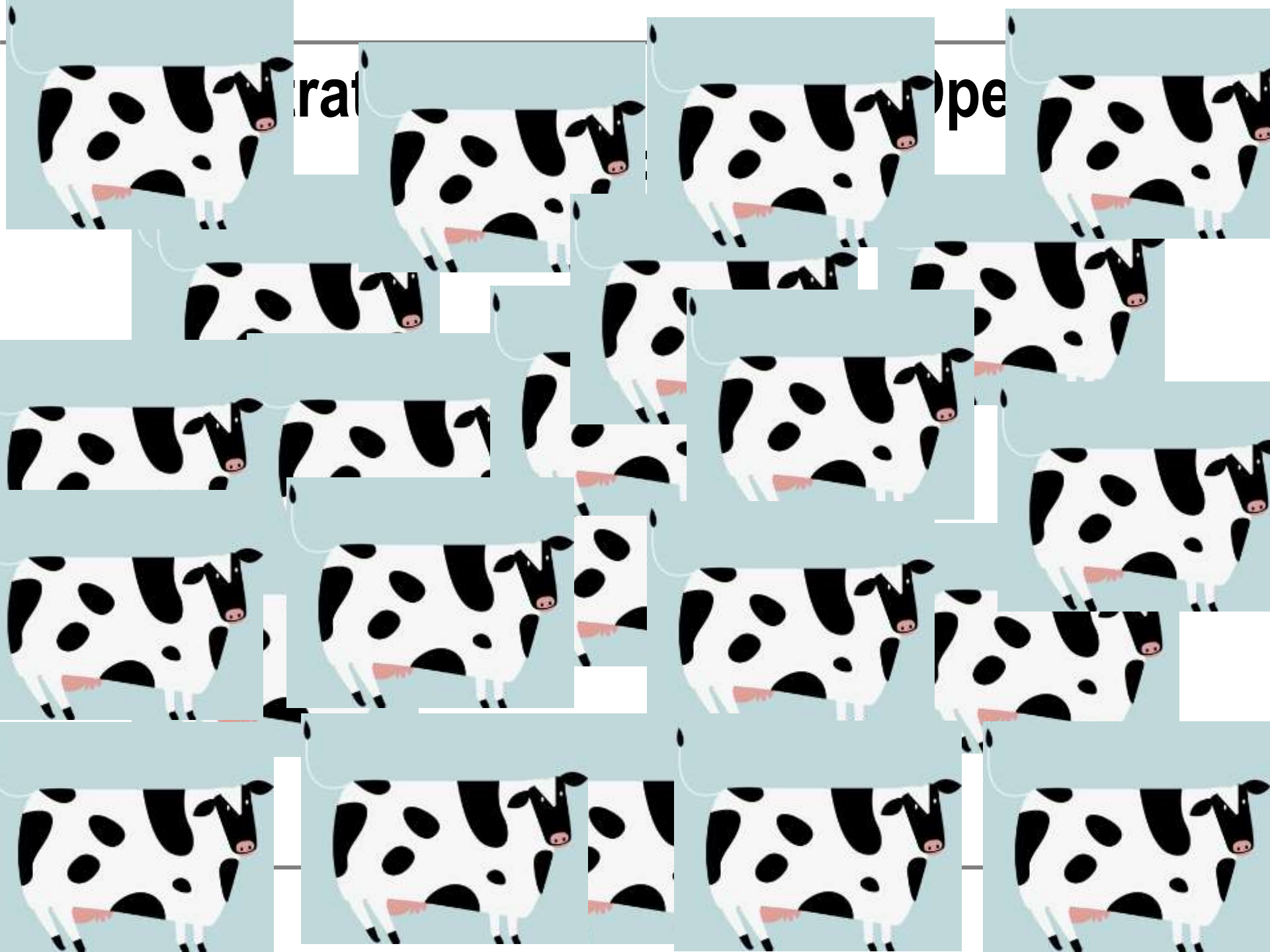


Taking a Detour... Indirect Dischargers

Stormwater Permitting

A photograph of a residential stormwater bio-retention pond. The pond is a shallow, irregularly shaped basin with a dark mulch border. It is filled with water and surrounded by various green plants, including tall grasses and yellow flowers. In the background, there are trees and two white Adirondack chairs on a lawn.

- **Municipal**
 - **Population Based**
 - **“Maximum Extent Practicable”**
- **Industrial**
 - **Sector Based**
- **SWPPP**



rat

pe

Nonpoint Source Discharges



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Section 404 – Dredge & Fill Permits

- Required for discharge of dredge & fill material to navigable waters and tributaries, including wetlands
- Permits may be national or individual
- States may implement isolated wetlands permit programs for waters outside CWA jurisdiction



Enforcement

- Ci
- Ac
- Cr
- Ci



Municipal Enforcement

- 1994 CSO Policy
 - Long term control plan development
 - Presumption or Demonstration Approach

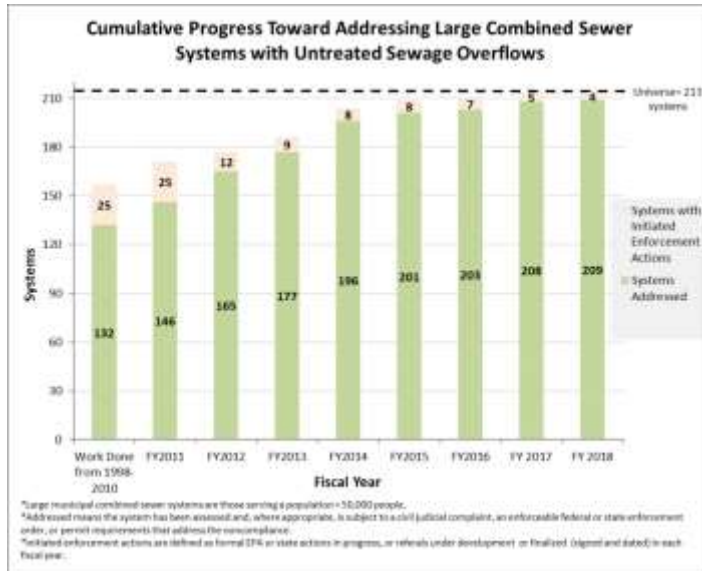
National Compliance Initiative: Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters

Problem

Raw sewage overflows and inadequately controlled stormwater discharges from municipal sewer systems introduce a variety of harmful pollutants, including disease causing organisms, metals and nutrients that threaten our communities' water quality and can contribute to disease outbreaks, beach and shellfish bed closings, fishing advisories and basement backups of sewage.



Boom captures litter and other debris carried by stormwater.



FY2019 Update

Since this NCI began in 2000, the EPA, in conjunction with state co-plaintiffs, has taken enforcement actions at the largest municipal sewer systems with CWA violations to reduce pollution and to reduce unlawful discharges of raw sewage that degrade water quality in communities. Under this initiative, EPA has taken actions at 97 percent of large combined sewer systems, 92 percent of large sanitary sewer systems and 79 percent of Phase 1 municipal separate stormwater systems. Accordingly, the Agency believes that this NCI no longer presents a significant opportunity to correct water quality impairment nationwide. The EPA has proposed to return work in this area to the core program in FY2020.

Flexibility + Innovation = Water as a Resource



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Before...



After...



Taft/

Questions?

Erica M. Spitzig
Taft Stettinius & Hollister LLP
(513) 357-9310
espitzig@taftlaw.com