



May 21, 2018

Office of Water - Docket
U.S. Environmental Protection Agency
1200 N. Pennsylvania Avenue, N.W.
Washington, D.C. 20460

**Re: Comments on Clean Water Act Coverage of “Discharges of Pollutants”
via a Direct Hydrologic Connection to Surface Water, Docket ID No. EPA-
HQ-OW-2018-0063**

Dear Sir or Madam:

The National Association of Clean Water Agencies (NACWA), the WaterReuse Association, the National League of Cities (NLC), National Association of Counties (NACo), the California Association of Sanitation Agencies (CASA), and the Central Valley Clean Water Association (CVCWA) appreciate the opportunity to file comments on the U.S Environmental Protection Agency’s (EPA or Agency) consideration of its previous statements regarding whether pollutant discharges from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a Direct Hydrologic Connection (DHC) to jurisdictional surface waters may be subject to regulation under the Clean Water Act (CWA) (hereinafter referred to as the DHC theory). EPA published its notice requesting comments in the Federal Register on February 20, 2018: “Clean Water Act Coverage of ‘Discharges of Pollutants’ via a DHC to Surface Water.” 83 Fed. Reg. 7126 (Feb. 20, 2018). We submit these comments in response to EPA’s request.

As detailed in our comments below, our respective members have serious concerns with this DHC theory. We have a vested interest in this issue, as reflected in the ongoing CWA citizen suit litigation against our members based on this DHC theory and the potential for related future liability and permitting obligations. Critically, this DHC theory is contrary to the text, structure and legislative history of the CWA. EPA should take immediate action to provide certainty to our members and then conduct rulemaking to provide an opportunity for the public to weigh-in and to establish long-term clarity and certainty.

It is important to make clear that from our perspective the issue is not *whether* releases of pollutants into groundwater with a connection to surface waters should be addressed, the issue is *how* they should be addressed. Put another way, it is not our position that releases of pollutants into groundwater should be allowed to contaminate natural resources. Our organizations and members are committed to protection of public health and the environment regardless of specific statutory language. Even so, this does not mean the CWA and a National Pollutant Discharge Elimination System (NPDES) permit is the appropriate solution.

The federal NPDES permitting program is not the appropriate tool. In addition to the lack of any legal basis in the CWA to impose the NPDES program in such circumstances, this DHC theory adds

a duplicative and conflicting overlay of regulations on top of other federal and state programs that are more appropriately designed to address these circumstances. If the EPA and state regulators administer and enforce these other laws and regulations appropriately, there will not be a “loophole” in the protection of public health, the environment, and water quality. The DHC theory will also create disincentives for important public infrastructure projects that are environmentally beneficial and protective of public health.

Our members are focused on providing services and maintaining public infrastructure that is essential to protecting public health, the environment, and water quality. However, our members need regulatory certainty to allow for the effective and sustainable planning and investment of finite public resources. It is critical that EPA act to reject the DHC theory as outside the scope of the CWA and to provide certainty moving forward.

Our Respective Members Have an Interest in the Correct Interpretation of the CWA

The undersigned entities have a direct interest in the rejection of this DHC theory and associated EPA statements. Our members have been targets of CWA citizen suits based on this DHC theory. *See, e.g., Haw. Wildlife Fund v. Cnty. of Maui*, 886 F.3d 737 (9th Cir. 2018); *26 Crown Assocs., LLC v. Greater New Haven Reg'l Water Pollution Control Auth.*, No. 3:15-cv-1439, 2017 WL 2960506 (D. Conn. July 11, 2017), *appeal docketed*, No. 17-2426 (2d Cir. Aug. 4, 2017). The undersigned entities all participated as *amici* in *26 Crown*; several participated as *amici* in *Cnty. of Maui* and in other litigation where the DHC theory is at issue. *E.g., Upstate Forever v. Kinder Morgan Energy Partners, L.P.*, 887 F.3d 637 (4th Cir. 2018). Each undersigned entity is described below in more detail.

- NACWA is a not-for-profit trade association that represents the interests of over 300 public clean water utilities nationwide who share a common objective and responsibility to protect the environment and public health by providing wastewater and stormwater treatment services for their communities in compliance with the CWA.
- The WaterReuse Association is a not-for-profit trade association representing over 500 municipal water utilities, businesses, and institutions that undertake or support water reuse.
- NLC is the country's largest and oldest organization serving municipal governments and represents more than 19,000 U.S. cities and towns, representing over 80 million Americans. Many of NLC's members provide water, stormwater, wastewater and other public services.
- NACo is the only national association that represents county governments in the United States. NACo serves as an advocate for county government and works to ensure that counties have the resources, skills and support needed to successfully lead their communities. NACo's members provide water, wastewater and flood control services to residents of the nation's 3,069 counties.

- CASA is a nonprofit mutual benefit corporation organized and existing under the laws of the State of California. CASA is comprised of more than 110 local public agencies throughout California, including cities, sanitation districts, sanitary districts, community services districts, sewer districts, county water districts, water districts, and municipal utility districts. CASA's member agencies provide wastewater collection, treatment, water recycling, renewable energy, and biosolids management services to millions of California residents, businesses, industries, and institutions.
- CVCWA is a non-profit association of public agencies located within the Central Valley region of California that provide wastewater collection, treatment, and water recycling services to millions of Central Valley residents and businesses. CVCWA is currently comprised of over 50 public wastewater collection and treatment member agencies, representing over 7 million people in California's Central Valley. CVCWA's members are public and private organizations charged with the responsibility for collecting, treating, recycling, and disposing of wastewater in a safe, responsible, and economical manner.

1. The DHC Theory is Contrary to the Text, Structure, and Legislative History of the CWA

This DHC theory is contrary to the text, structure, and legislative history of the CWA. The way EPA has framed the issue in the February notice (e.g., "review and revise" the DHC theory) makes it appear that EPA believes the statute gives EPA a choice. In other words, it appears the Agency believes that it could simply review and revise the DHC theory based on policy or technical reasons. This reading of the CWA is contrary to the text, structure, and history of the statute.

Contrary to the DHC theory, the CWA forecloses mandating NPDES permits for the release of pollutants into groundwater that subsequently migrates through the subsurface, eventually entering surface waters. The CWA prohibits "the discharge of any pollutant" unless authorized by an NPDES permit, 33 U.S.C. §1311(a). The term "discharge of pollutants" is defined and limited to the addition of pollutants to navigable waters from a point source, 33 U.S.C. §1362(12); a "point source" is further defined as "any discernible, confined and discrete conveyance." 33 U.S.C. §1362(14). The Supreme Court has recognized the importance of the requirement for a discernible, confined, discrete conveyance. In *S. Florida Miccosukee Water Mgmt. Dist. v. Miccosukee Tribe of Indians*, 541 U.S. 95, 105 (2004), the Supreme Court emphasized the word "conveyance" in explaining that the statute "makes plain" that a point source "need[s] [to] convey the pollutant to 'navigable waters.'"

Thus, consistent with the language and intent of the CWA, when our members add pollutants into surface waters from point sources, including infrastructure that conveys and treats wastewater and stormwater, providing vital protection to public health and the environment, they operate pursuant to the CWA's NPDES permitting program. The NPDES program is designed to be an "end-of-pipe" program under which pollutants can be effectively controlled, monitored, and reported to permitting authorities.

The legislative history supports this interpretation of the CWA. *See* Senate Consideration of the Report of the Conference Committee, Oct. 4, 1972, Vol. 1, p. 178 (“The term ‘discharge’ is a word of art in the legislation. It refers to the actual discharge from a point source into the navigable waters....”). Notably, when the CWA was enacted, EPA asked Congress for authority over groundwater, in part, because EPA knew pollutants in groundwater can enter surface waters. Despite being aware that pollutants in groundwater may enter navigable waters, the Senate and the House rejected proposals to extend the CWA’s reach. *See e.g.*, S. Rep. No. 92-414, at 73 (1971), *reprinted in* 1972 U.S.C.C.A.N. 3668, 3739 (“Several bills pending before the [Senate] Committee provided authority to establish Federally approved standards for groundwaters. ... Because the jurisdiction regarding groundwaters is so complex and varied from State to State, the Committee did not adopt this recommendation.”)

A more complete discussion of the reasons why this DHC theory is inconsistent with the text, structure, and legislative history of the CWA is included in the briefs we filed as *amici* in *26 Crown, Cnty. of Maui*, and *Kinder Morgan*, which are attached as appendices A, B, and C, respectively, and we incorporate the points made in our briefs in these comments.

2. Essential Water Infrastructure Systems and Projects Could be Unintentionally Impacted

Application of the DHC theory will lead to a substantial expansion of the number and types of sources that are independently treated as “point sources” and thus individually subject to the requirements of the CWA and the NPDES program. The result is the potential to trigger the regulation of an indeterminable array of diffuse and indistinct sources and blurring the distinction between whole systems that can be coherently managed and regulated, on the one hand, and components of such systems that would be subject to separate and piecemeal regulation. These diffuse sources could include public water distribution and sewer collection systems (or even individual leaks in such systems), retention ponds, municipal green infrastructure projects designed specifically to infiltrate stormwater into the ground and groundwater, and water recycling projects where recycled water is injected or seeps into groundwater.

Regulatory agencies might provide assurances that they will not view this type of infrastructure as a target for permitting or enforcement, but this does not provide sufficient certainty that our members will not be targeted. Even if that assurance was ironclad, any releases into groundwater would be subject to citizen suit enforcement, including civil penalties, injunctive relief, and attorneys’ fees awards, potentially diverting limited public resources from projects and programs that do far more to improve water quality and protect human health. The reality is that a strict application of this DHC theory will expose—and is in fact already exposing—local governments and public water utilities throughout the country to unnecessary liability for facilities and infrastructure that EPA and state regulators had never previously considered subject to the NPDES program.

As noted above, our members have been targets of CWA citizen suits based on this DHC theory. For example, *Haw. Wildlife Fund v. Cnty. of Maui*, 886 F.3d 737 (9th Cir. 2018), involved an

underground injection well permitted under the Safe Drinking Water Act (SDWA), which both the state and EPA had found did not require an NPDES permit. In spite of the existing regulation under the SDWA, historical regulatory position, and impracticality of imposing NPDES permit requirements on diffuse, subsurface sources, both the district court and the U.S. Court of Appeals for the Ninth Circuit found that the wells are subject to NPDES permitting requirements. In *26 Crown Assocs., LLC v. Greater New Haven Reg'l Water Pollution Control Auth.*, No. 3:15-cv-1439, 2017 WL 2960506 (D. Conn. July 11, 2017), *appeal docketed*, No. 17-2426 (2d Cir. Aug. 4, 2017), the plaintiffs allege that an NPDES permit is required for all basement backups from which pollutants seep into groundwater and enter navigable waters. If the *26 Crown* plaintiffs succeed, the potential implications are extreme—taken to its logical conclusion, such an application of the DHC theory would require an NPDES permit for millions of basements across the country.

As outlined more fully below, the DHC theory also threatens to impact various types of environmentally beneficial infrastructure, much of which is specifically designed or intended to address other regulatory obligations. For example, green infrastructure may be used to help address urban runoff as part of a municipal separate storm sewer (MS4) NPDES permit compliance. Under the DHC theory, this green infrastructure designed as part of a permit compliance program, would potentially be subject to a separate NPDES permit. EPA must act to avoid this illogical and unworkable application of the NPDES permit program, and to ensure that local governments and public water utilities are not subjected to citizen suits for a myriad of infrastructure that was never intended to be subject to the NPDES permit program in this way.

Wastewater and Stormwater Conveyance Systems

Public clean water utilities provide services that are essential to protecting public health and the environment. Working closely with state and federal regulators, public utilities have collectively achieved an astonishing level of pollution reduction under the CWA, both at their own facilities and at thousands of industrial facilities regulated by utilities under the federal pretreatment program.

These public utilities own, operate, and manage the nation's most critical infrastructure systems for protecting public health and the environment, including publicly owned sewage treatment works (POTWs) that are subject to stringent NPDES permit requirements for discharges to surface waters. These permits include limits on the pollutants in those discharges to meet water quality standards in the receiving waters.

Clean water utilities also operate collection systems that convey wastewater to the POTWs, ranging in size from a few hundred miles to several thousands of miles of buried pipe throughout their communities. NPDES permits generally require utilities to properly operate and maintain these collection systems, and utilities implement a number of methods to locate and address issues, including collection system inspection using CCTV on a regular schedule and rehabilitation and repair of any leaks. Some states, such as California, also have separate requirements for collection systems that are specifically designed to ensure proper system maintenance and repair, but that are not part of the NPDES permit program.

Regardless of diligent and rigorous maintenance and repair, these facilities and systems—many of which may be more than 100 years old—can leak. Such leaks could fall within the scope of this DHC theory. While clean water utilities work to prevent any leak into the environment, leaks can and do happen because they are difficult to predict and locate, and impossible to eliminate altogether. Under the DHC theory, each leak would potentially be regulated as a distinct discharge under the CWA, which would be logistically challenging and create unnecessary duplication with existing rules and requirements. And—particularly in light of the potential for citizen suits—this could undermine the ability of utilities to plan and prioritize investments to maximize overall benefits to the environment.

Green Infrastructure

The DHC theory could also put green infrastructure—intended to treat stormwater to further the water quality protection goals of the CWA—at risk of being regulated as point sources of pollutants subject to CWA jurisdiction. Specifically, every instance where stormwater runoff drains into green infrastructure—for the very purpose of preventing the pollutants carried in such runoff from entering surface waters—could be viewed as a discharge to groundwater that might have a “direct hydrological connection” to surface water. This type of approach is inconsistent with how States have categorized stormwater and the infiltration of stormwater. *See, e.g.*, Oyster Pond Embayment System TMDL at 4, 14 (Feb. 7, 2008) (Massachusetts assigned load allocations to stormwater runoff as nonpoint source pollution, knowing that “the vast majority of storm water percolates into the ground and aquifer and proceeds into the embayment systems *through groundwater migration.*”) (emphasis added).

Clean water utilities are increasingly relying on green infrastructure to retain, percolate and infiltrate stormwater into the ground to reduce discharges of municipal stormwater and combined sewer overflows to surface water, as well as to recharge depleted drinking water aquifers.

Use of green infrastructure can be better for water quality than traditional approaches to managing these sources of pollutants. Green infrastructure is recognized as one of the most effective solutions to the water quantity and quality problems associated with polluted stormwater runoff. EPA has determined that green infrastructure provides a “cost-effective, resilient approach to managing wet weather impacts that provides many community benefits.”¹

This DHC theory could subject these green infrastructure installations to CWA regulation, including a requirement to obtain NPDES permit authorization, serving as a strong disincentive to greater adoption.

Water Reuse Projects

The DHC theory could also affect beneficial water reuse projects. Water reuse is the process of treating wastewater to meet water quality standards for designated beneficial purposes such as

¹ U.S. Environmental Protection Agency, What Is Green Infrastructure?, <https://www.epa.gov/green-infrastructure/what-green-infrastructure> (last visited May 17, 2018).

industrial processes, irrigation, surface or ground water replenishment, watershed restoration, and agricultural or irrigation use.

Communities across the country are incorporating water reuse into their water management strategies as a proven method for ensuring a safe, reliable, locally controlled water supply—essential for livable communities with healthy environments, robust economies and a high quality of life. By 2027, the volume of recycled water produced in the United States is projected to increase 37% from 4.8 billion gallons per day to 6.6 billion gallons per day.²

If water reuse projects or recycled water uses are subject to CWA regulation, municipalities will face additional hurdles that may inhibit the implementation of water reuse projects.

The DHC theory could impede the implementation of these beneficial reuse projects by requiring NPDES permits in cases where the recycled water may be connected to jurisdictional surface waters via groundwater. Transport of recycled water to groundwater with a DHC to surface waters could occur in groundwater recharge or injection, seepage from recycled water storage ponds and recharge ponds, use of recycled water for irrigation, and more.

Even though water reuse projects are permitted according to state reuse regulations that account for environmental impacts, projects could face additional regulatory requirements under this federal theory of liability that would result in additional time and resource intensive burdens. Furthermore, the demand for recycled water by end users may also decrease as customers have expressed concern regarding the potential regulatory costs and legal exposure they may face if using or impounding recycled water. This DHC interpretation could cause a significant setback to water reuse policies and public support, which have gained important momentum in recent years.

EPA has never required NPDES permits for these types of activities; the Agency recognizes water reuse as “play[ing] a critical role in helping states, tribes, and communities meet their future drinking water needs.”³ Even if federal agencies do not target reuse projects, the uncertainty surrounding whether an NPDES permit may be needed and the potential for citizen suits could be a barrier to further implementation of reuse projects.

3. Practical Challenges and Policy Concerns with the DHC Theory

There are considerable practical and policy reasons to avoid extending the CWA prohibition to pollutants entering groundwater.

² Bluefield Research, U.S. Municipal Water Reuse: Opportunities, Outlook, & Competitive Landscape 2017–2027 (2017).

³ U.S. Environmental Protection Agencies, 2017 Potable Reuse Compendium (2017).

Technical Challenges to Implementation

By EPA's own admission, this theory would require a fact-specific determination for any potential source of pollutants to know whether there is a DHC and therefore the potential for the need to seek to obtain NPDES permit authorization. Indeed, this very reason is why current regulation of discharges to groundwater under other federal and state environmental statutes regulates the discharges to groundwater themselves, rather than some possibly connected surface water.

The DHC determination would depend on topography, hydrology, and geology as well as climate, distance to a surface water, and travel time, among other factors that EPA has never identified through rulemaking. EPA has provided no clarity on how long and how far pollutants can travel for a connection to be considered "direct."

Complicating things further is the fact some courts have created their own standard, different from this DHC theory. *See, e.g., Ass'n Concerned Over Res. & Nature, Inc. v. Tenn. Aluminum Processors, Inc.*, No. 1:10-00084, 2011 WL 1357690, at *17 (M.D. Tenn. Apr. 11, 2011) ("[G]roundwater is subject to the CWA provided an *impact* on federal waters.") (emphasis added); *Ohio Valley Envtl. Coal. Inc. v. Pocahontas Land Corp.*, No. 3:14-1133, 2015 WL 2144905, at *8 (S.D.W. Va. May 7, 2015) (explaining that a "[d]efendant may be required to seek an NPDES permit even if groundwater is *somehow* hydrologically connected ... to surface waters") (emphasis added); *Tenn. Clean Water Network v. TVA*, No. 3:15-cv-424, 2017 WL 3476069, at *44 (M.D. Tenn. Aug. 4, 2017) (holding that discharges to groundwater subject to CWA regulation "if the hydrologic connection between the source of the pollutants and navigable waters is *direct, immediate, and can generally be traced*") (emphasis added). The Ninth Circuit's *Cnty. of Maui* decision rejected the DHC theory, finding it inconsistent with the text of the CWA, but then suggested another new test, asserting the CWA applies when pollutants are "fairly traceable" from a point source to a navigable water and the "pollutant levels reaching navigable water are more than *de minimis*." *Cnty. of Maui*, 881 F. 3d at 765.

The practical challenges of applying the CWA to this general fact pattern is further illustrated by the Ninth Circuit's inability to provide any guidance. As the court stated: "We leave for another day the task of determining when, if ever, the connection between a point source and a navigable water is too tenuous to support liability under the CWA." 881 F. 3d at 765. The CWA is a strict liability statute. Our members cannot wait "for another day" to know whether millions of dollars of investment should be made, and whether complicated and resource intensive regulatory compliance-related actions must be taken based on the DHC theory or some other test created by the courts. EPA, as the implementing Agency of the CWA, must step up and clearly articulate the meaning of the CWA.

Practically, the costs to determine whether groundwater beneath a source has a DHC to a navigable water will depend on the nature of the facility, its geographic location, and availability of trained hydrogeologists, among other factors. The real significance of the cost arises from the countless number of facilities upon which liability could be imposed, for example, the thousands of miles of sewer collection system owned and operated by even a single clean water utility, as

well as virtually every city and county in the country. EPA has never considered these costs or their impact on the public.

Regulatory Challenges to Implementation

Critically, even if public utilities err on the side of caution and apply for a permit, there is no certainty a permit can be obtained. As previously mentioned, the NPDES permitting regulations have been crafted to address the “end-of-pipe” discharges. To permit diffuse discharges of pollutants from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow, EPA would need to develop (and delegated states would have to implement) an entirely new regulatory program that attempts to regulate indistinct, not “end of pipe” sources, through a point source permitting system. EPA would need to establish a regulatory scheme for determining how and where to monitor the “discharges” to groundwater, how to determine compliance with effluent limits, how to apply a mixing zone, and how to consider dilution and attenuation within the soil and groundwater in determining the appropriate discharge limits. This scenario is the very definition of a “round peg in a square hole;” a traditional point source permitting scheme simply does not make sense.

Determinations necessary to issue a permit—such as whether “reasonable potential” exists—would often be impossible in the context of groundwater. Yet, if a permit cannot be obtained, the addition of pollutants may not occur (or must cease, in the case of an existing discharge), or a discharger would be subject to federal enforcement and citizen suit challenges. As noted above, the CWA is a strict liability statute and just one CWA violation can result in a civil penalty of \$52,414 per day, in addition to injunctive relief and legal fees.

The DHC Theory is Duplicative and Unnecessary

Contrary to assertions that have been made by third parties, there will not be a “loophole” in the protection of public health, the environment, and water quality if the EPA and state regulators administer and enforce the CWA and other laws appropriately. There are other authorities—including provisions of the CWA other than the NPDES program, as well as other federal and state laws—that are better designed to address pollution resulting from discharges to groundwater.

In addition to the NPDES program, which, as demonstrated above, is not applicable or suited to discharges to groundwater, the CWA provides for total maximum daily loads (TMDLs), grants, planning, and nonpoint source management programs under CWA Section 319. All of these programs can be effectively used to address nonpoint source pollution.

Other federal environmental laws address, either directly or indirectly, the potential for contamination that has been asserted as a policy rationale for the DHC theory. For instance, the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 *et seq.*, regulates disposal of solid waste and is the appropriate federal framework for addressing many of the sources of contamination that have been challenged using the DHC theory. *See, e.g., Sierra Club v. Va. Elec. & Power Co.*, 247 F. Supp. 3d 753 (E.D. Va. 2017); *Tennessee Clean Water Network v. Tennessee Valley Authority*, appeal pending, No. 17-6155 (6th Cir.). The SDWA, 42 U.S.C. § 300 *et seq.*, establishes a program for regulating underground injection wells, for the precise

purpose of protecting groundwater resources from contamination. Finally, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, addresses hazardous wastes.

Most importantly, the CWA, a cooperative federalism statute, supports States' decisions to adopt more stringent requirements to protect their own water resources, *see* 33 U.S.C. §1370 (preserves states' ability to adopt any requirement to control pollution). All 50 states have adopted laws and regulations that prohibit or regulate the release of pollutants into groundwater (see Attachment A). Since the release of pollutants into groundwater is already prohibited and/or regulated in *every state*, there is no practical reason for this DHC theory—it is not necessary to stretch the CWA beyond what Congress intended.

4. EPA Should Immediately Reject the DHC Theory and Conduct Rulemaking to Make its Position Clear

Our members are currently being harmed by the application of the DHC theory. The DHC theory and the associated EPA statements are being used by third parties in CWA citizen suits against our members. As discussed above, the DHC theory has no basis in the statute, it is duplicative and potentially conflicts with other federal and state authority, and it will have practical and significant consequences. Given these serious implications and the ongoing uncertainty, EPA should take the following actions:

- Immediately issue guidance (in some form) to the public that makes it clear that the DHC theory is no longer EPA's position. The guidance should make it clear that the DHC theory was based on an incomplete analysis of the relevant statutory text, structure and legislative history and, in fact, the text, structure, policies, and legislative history, all provide clear evidence to the contrary. *See, e.g., Ky. Waterways Alliance v. Ky. Utils. Co.*, 2017 WL 6628917 (E.D. Ky. Dec. 28, 2017), appeal docketed (6th Cir. Feb. 1, 2018). The short-term guidance should also make clear that the *amicus* brief filed by the United States in *Cnty. of Maui* no longer reflects the EPA's position.
- The short-term guidance should make it clear how the EPA will implement and enforce the CWA until it completes notice and comment rulemaking. The short-term guidance should make it clear that the addition of pollutants into navigable waters via groundwater is nonpoint source pollution and not a prohibited "discharge of a pollutant" under CWA section 301(a).
- Notwithstanding that the CWA is unambiguous on this issue, following the release of short-term guidance, EPA should conduct an expedited notice and comment rulemaking so that our members, other regulated entities, environmental activist organizations, the States, and other federal agencies can comment and then EPA can take final action through rulemaking on its position and how the CWA should be implemented and enforced. In part, what is so frustrating about this issue is that the public has never been able to weigh-in nor has EPA been able to hear from public entities on how this issue impacts them and the impossibility of using the NPDES permitting program to address these factual circumstances.

Public utilities have a compelling public interest in ensuring that the NPDES permitting program, and attendant CWA liability, remains predictable and lawfully within the scope of the Act. The undersigned organizations have a vested interest in protecting the Nation's water quality. It is a part of our core mission and we are dedicated to ensuring our activities are protective of human health and the environment.

We fully support a strong regulatory framework to protect water resources. But such regulations must be grounded in statute and consistent with congressional intent under the CWA. The DHC interpretation fails to meet this standard and threatens to hamper public clean water agencies in carrying out their critical public missions. Regulatory certainty is necessary to allow utilities to plan prudently for the expenditure and investment of public funds to protect public health and the environment, while operating responsibly under the law.

While the factual circumstances in certain cases may suggest a need to strengthen the regulation of discharges to groundwater, the CWA NPDES permitting program does not contemplate, and cannot logically accommodate, the regulation of sources through a DHC theory. Moreover, using the ill-suited NPDES permitting program to regulate discharges that are better addressed by other federal regulatory programs or state law will impede our and EPA's shared water quality goals. The DHC theory is duplicative, unnecessary, may cause more harm than good, and could have a ripple effect of hindering programs, projects, and investments that may have greater environmental benefits.

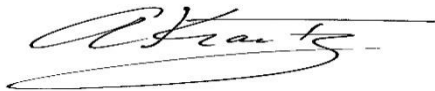
We appreciate the opportunity to submit these comments. Please feel free to call (202-530-2758) or e-mail [Amanda Waters](mailto:awaters@nacwa.org) (awaters@nacwa.org), General Counsel, NACWA, if have any questions, or if you would like additional information concerning the issues raised in these comments.



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Debbie Webster
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Attachment A

State	Standard	Enforcement Authorities	Other Relevant State Authority
Alabama	"Every person, prior to discharging any new or increased pollution into any waters of this state, shall apply to the commission in writing for a permit and must obtain such permit before discharging such pollution." Ala. Code § 22-22-9(1)(3).	Available enforcement includes administrative orders, injunctive relief, authority to initiate civil actions, and civil and criminal penalties. Ala. Code §§ 22-22-9(1)-(n), 22-22A-5(17)-(19), 22-22-14.	<p>"Discharge" is defined as "The addition, introduction, leaking, spilling or emitting of any sewage, industrial waste, pollutant or other wastes into waters of the state." Ala. Code § 22-22-1.</p> <p>"Waters" is defined to mean "All waters of any river, stream, watercourse, pond, lake, coastal, ground or surface water, wholly or partially within the state, natural or artificial. This does not include waters which are entirely confined and retained completely upon the property of a single individual, partnership or corporation unless such waters are used in interstate commerce." Ala. Code § 22-22-1.</p> <p>All pollution is declared to be a public nuisance. Ala. Code § 22-22-9.</p>
Alaska	"A person may not pollute or add to the pollution of the air, land, subsurface land, or water of the state." Alaska Stat. Ann. § 46.03.710.	Enforcement of this section is permitted through administrative penalties, injunctions, and compliance orders. Alaska Stat. Ann. § 46.03.761, 46.03.850, 46.03.765.	<p>"Pollution" is defined to mean "the contamination or altering of waters, land, or subsurface land of the state in a manner which creates a nuisance or makes waters, land, or subsurface land unclean, or noxious, or impure, or unfit so that they are actually or potentially harmful or detrimental or injurious to public health, safety, or welfare, to domestic, commercial, industrial, or recreational use, or to livestock, wild animals, bird, fish, or other aquatic life." Alaska Stat. Ann. § 46.03.900.</p> <p>"Waters" is defined to include "lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea, and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state." Alaska Stat. Ann. § 46.03.900.</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
Arizona	<p>"It is unlawful to . . . Discharge without a permit or appropriate authority under this chapter . . . Fail to . . . report discharges as required by a permit . . . Violate a discharge limitation specified in a permit . . . [or] Violate a water quality standard." Ariz. Rev. Stat. Ann. § 49-263.</p> <p>". . . any person who discharges or who owns or operates a facility that discharges shall obtain an aquifer protection permit from the director." (i.e., the Arizona Aquifer Protection Permit program). Ariz. Rev. Stat. Ann. § 49-241.</p> <p>"water quality standards for all navigable waters and for all waters in all aquifers to preserve and protect the quality of those waters for all present and reasonably foreseeable future uses" and in setting these standards the state considers "[t]he provisions and requirements of the clean water act and safe drinking water act and the regulations adopted pursuant to those acts; and [t]he degree to which standards for one category of waters could cause violations of standards for other, hydrologically connected, water categories." Ariz. Rev. Stat. Ann. § 49-221(A), (C).</p>	<p>Enforcement is available through compliance orders, preliminary and permanent injunctions, and civil penalties of up to \$25,000 per day per violation. Ariz. Rev. Stat. Ann. §§ 49-261, 262.</p> <p>The statute also provides for misdemeanor and felony prosecutions and citizen suits. Ariz. Rev. Stat. Ann. §§ 49-263, 264.</p>	<p>"Discharge' means the direct or indirect addition of any pollutant to the waters of the state from a facility. For purposes of the aquifer protection permit program prescribed by article 3 of this chapter, discharge means the addition of a pollutant from a facility either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will reach an aquifer." Ariz. Rev. Stat. Ann. § 49-201.</p> <p>"Waters of the state' means all waters within the jurisdiction of this state including all perennial or intermittent streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, aquifers, springs, irrigation systems, drainage systems and other bodies or accumulations of surface, underground, natural, artificial, public or private water situated wholly or partly in or bordering on the state." Ariz. Rev. Stat. Ann. § 49-201.</p>
Arkansas	<p>"It shall be unlawful for any person to . . . Cause pollution, as defined in § 8-4-102, of any of the waters of this state." Ark. Code Ann. § 8-4-217.</p>	<p>Arkansas Department of Environmental Quality may issue administrative enforcement orders and impose civil penalties of up to \$10,000 per day per violation. Ark. Code Ann. §§ 8-4-103, 208. The statute also provides for criminal prosecutions of misdemeanor and felony violations of the chapter or related permit. Id.</p>	<p>"Pollution' means such contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous, or solid substance in any waters of the state as will, or is likely to, render the waters harmful, detrimental, or injurious to public health, safety, or welfare; to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wild animals, birds, fish, or other aquatic life." Ark. Code Ann. § 8-4-102(6).</p> <p>"Waters of the state' means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state." Ark. Code Ann. § 8-4-102(10).</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
California	<p>A "report of discharge" is required for any "person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system." Cal. Water Code § 13260(1)(a).</p> <p>"A person who . . . has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall, upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action . . ." Cal. Water Code § 13304(a).</p>	<p>Enforcement is available by order, injunction, or remedial action with cost recovery. Cal. Water Code § 13304(a).</p> <p>Other sections of the law provide for civil penalties, injunctions, misdemeanor prosecutions, and administrative orders. Cal. Water Code §§ 13261, 13265, 13268, 13301, 13304, 13305, 13308, 13323, 13331, 13399.</p> <p>The state may order the person to "cleanup the waste or abate the effects of the waste, or in the case of threatened pollution or nuisance, take another necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts" Cal. Water Code § 13304(a).</p>	<p>"Waters of the state" means any surface water or groundwater, including saline waters, within the boundaries of the state." Cal. Water Code § 13050(e).</p>
Colorado	<p>"No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge . . ." 5 Colo. Code Regs. § 1002-61:61.3.</p>	<p>The Department of Public health and Environment may enforce the prohibitions in this title through cease and desist orders, clean-up orders, restraining orders, injunctions, and criminal and civil penalties. Colo. Rev. Stat. Ann. §§ 25-8-605, 606, 607, 608, 609.</p> <p>Civil penalties may range as high as \$10,000 per day per violation, and criminal penalties may be as high as \$25,000. §§ 25-8-608, 609.</p>	<p>"Discharge of pollutants" means the introduction or addition of a pollutant into state waters." Colo. Rev. Stat. Ann. § 25-8-103.</p> <p>"State waters" means any and all surface and subsurface waters which are contained in or flow in or through this state . . ." Colo. Rev. Stat. Ann. § 25-8-103.</p>
Connecticut	<p>"No person or municipality shall initiate, create, originate or maintain any discharge of water, substance or material into the waters of the state without a permit for such discharge issued by the commissioner." Conn. Gen. Stat. Ann. § 22a-430.</p> <p>"No person or municipality shall cause pollution of any of the waters of the state or maintain a discharge of any treated or untreated wastes in violation of any provision of this chapter." Conn. Gen. Stat. Ann. § 22a-427.</p>	<p>Enforcement includes administrative orders for sources "which reasonably can be expected to create a source of pollution to the waters of the state," injunctive relief, civil penalties up to \$25,000 for each violation, each day constituting a separate violation, and criminal penalties. Conn. Gen. Stat. Ann. §§ 22a-432, 435, 438.</p> <p>Orders may also be issued against landowners if different from the discharger. Conn. Gen. Stat. Ann. § 22a-433.</p>	<p>Discharge "means the emission of any water, substance or material into the waters of the state, whether or not such substance causes pollution." Conn. Gen. Stat. Ann. § 22a-423.</p> <p>Waters "means all tidal waters, harbors, estuaries, rivers, brooks, watercourses, waterways, wells, springs, lakes, ponds, marshes, drainage systems and all other surface or underground streams, bodies or accumulations of water, natural or artificial, public or private, which are contained within, flow through or border upon this state or any portion thereof." Conn. Gen. Stat. Ann. § 22a-423.</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
Delaware	"No person shall, without first having obtained a permit from the Secretary, undertake any activity . . . which may cause or contribute to discharge of a pollutant into any surface or ground water . . ." Del Code Ann. tit. 7, § 6003(a).	Enforcement of this chapter is permitted through temporary restraining orders, permanent injunctions, or monetary penalties, up to \$10,000 per day for each completed violation. Penalties may be tripled for chronic violators. Del Code Ann. tit. 7, § 6005.	<p>"Discharge Of A Pollutant' means any addition of any pollutant, or combination of pollutants, to state waters or the contiguous zone, or the ocean, from any source or activity . . ." Code Del. Regs. 7 7000 7201.</p> <p>"State Waters' Or 'Waters Of The State' means all water, on the surface and under the ground, wholly or partially within, or bordering the State, or within its jurisdiction." Code Del. Regs. 7 7000 7201.</p>
District of Columbia	"Except as provided in § 8-103.06, no person shall discharge a pollutant to the waters of the District." D.C. Code Ann. § 8-103.02.	Available enforcement mechanisms include administrative orders, civil penalties, injunctive relief, and criminal prosecution for willful or negligent violations. D.C. Code Ann. §§ 8-103.16, 103.17, 103.18. District of Columbia Code also provides for a private right of action against any person in violation of the Water Pollution Control subchapter. D.C. Code Ann. § 8-103.19.	<p>"Discharge' means the spilling, leaking, releasing, pumping, pouring, emitting, emptying, or dumping of any pollutant or hazardous substance, including a discharge from a storm sewer, into or so that it may enter District of Columbia waters." D.C. Code Ann. § 8-103.01(6).</p> <p>"Waters of the District' or 'District waters' means flowing and still bodies of water, whether artificial or natural, whether underground or on land, so long as in the District of Columbia, but excludes water on private property prevented from reaching underground or land watercourses, and also excludes water in closed collection or distribution systems." D.C. Code Ann. § 8-103.01(25).</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
Florida	<p>“It shall be a violation of this chapter, and it shall be prohibited for any person . . . [t]o cause pollution, except as otherwise provided in this chapter, so as to harm or injure human health or welfare, animal, plant, or aquatic life or property . . . or [t]o fail to obtain any permit required by this chapter or by rule or regulation” Fla. Stat. Ann. § 403.161(1).</p> <p>“Without the written authorization of the department, a person may not discharge any waste into the waters of the state which, by itself or in combination with the wastes of other sources, reduces the quality of the receiving waters below the classification established for such waters.” Fla. Stat. Ann. § 403.088(1).</p> <p>“[n]o installation shall directly or indirectly discharge into groundwater any contaminant that causes a violation of the water quality standards or minimum criteria in the receiving groundwater as established in this Chapter....” F.A.C.§ 62-520.310(7).</p> <p>“discharge to groundwater shall not impair the designated use of contiguous surface waters.” F.A.C.§ 62-520.310(2).</p> <p>FDEP’s practice is to “incorporate groundwater discharge considerations into other [FDEP] permits, as appropriate, and not to require a separate permit for discharges to groundwater.” F.A.C.§ 62-520.310(12).</p>	<p>Violators are subject to enforcement orders, injunctive relief, and criminal penalties. Fla. Stat. Ann. §§ 403.061, 403.131, 161. Private citizens may also initiate civil actions against violators or compel the government to enforce its laws, rules, or regulations relating to the protection of water and other natural resources. Fla. Stat. Ann. § 403.412.</p>	<p>“‘Pollution’ is the presence in the . . . waters of the state of any substances, contaminants, noise, or manmade or human-induced impairment of air or waters or alteration of the chemical, physical, biological, or radiological integrity of air or water in quantities or at levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation unless authorized by applicable law.” Fla. Stat. Ann. § 403.031 (7).</p> <p>“‘Waters’ include, but are not limited to, rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters. Waters owned entirely by one person other than the state are included only in regard to possible discharge on other property or water. Underground waters include, but are not limited to, all underground waters passing through pores of rock or soils or flowing through in channels, whether manmade or natural” Fla. Stat. Ann. § 403.031 (13).</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
Georgia	<p>“Any person who owns or operates a facility of any type or who desires to erect, modify, alter, or commence operation of a facility of any type which results or will result in the discharge of pollutants from a point source into the waters of the state shall obtain from the director a permit to make such discharge.” Ga. Code Ann. § 12-5-30(a).</p> <p>“Any person desiring to erect or modify facilities or commence or alter an operation of any type which will result in the discharge of pollutants from a nonpoint source into the waters of the state, which will render or is likely to render such waters harmful to the public health, safety, or welfare, or harmful or substantially less useful for domestic, municipal, industrial, agricultural, recreational, or other lawful uses, or for animals, birds, or aquatic life, shall obtain a permit from the director to make such discharge.” Ga. Code Ann. § 12-5-30(b).</p>	Enforcement of these prohibitions may be accomplished through enforcement orders, civil actions for permanent or temporary injunctions, civil actions for damages, and civil and criminal penalties. Ga. Code Ann. §§ 12-5-23, 48, 51, 52, 53.	“‘Waters’ or ‘waters of the state’ means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and all other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.” Ga. Code Ann. § 12-5-22.
Hawaii	“No person, including any public body, shall discharge any water pollutant into state waters, or cause or allow any water pollutant to enter state waters except in compliance with this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the director.” Haw. Rev. Stat. Ann. § 342D-50.	The director of the Department of Health may enforce the title through administrative orders, injunctive relief in an environmental court, civil penalties of up to \$25,000 per day per violation, and criminal penalties or imprisonment for negligent or knowing violations. Haw. Rev. Stat. Ann. §§ 342D-9, 342D-30, 342D-31, 342D-32, 342D-11.	<p>“‘State waters’ means all waters, fresh, brackish, or salt, around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as a part of a water pollution control system are excluded.” Haw. Rev. Stat. Ann. § 342D-1.</p> <p>“Water pollution” means . . . [s]uch contamination or other alteration of the physical, chemical, or biological properties of any state waters . . . or is likely to create a nuisance or render such waters unreasonably harmful, detrimental, or injurious to public health, safety, or welfare, including harm, detriment, or injury to public water supplies, fish and aquatic life and wildlife, recreational purposes and agricultural and industrial research and scientific uses of such waters or as will or is likely to violate any water quality standards, effluent standards, treatment and pretreatment standards, or standards of performance for new sources adopted by the department.” Haw. Rev. Stat. Ann. § 342D-1.</p> <p>Hawaii also administers a nonpoint source pollution management and control program to enforce and carry out all laws, rules, and programs relating to nonpoint source pollution in the state. Haw. Rev. Stat. Ann. § 342E-2.</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
Idaho	<p>Unless prior agency approval has been obtained, “[n]o person shall conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of an outstanding resource water, except for short-term or temporary nonpoint source activities which do not alter the essential character or special uses of a segment, issuance of water rights permits or licenses, allocation of water rights, or operation of water diversions or impoundments.” Idaho Code Ann. §§ 39-3618, 39-3620.</p> <p>The Idaho Department of Environmental Quality has also promulgated rules to establish and protect ground water quality standards, which provide that “[n]o person shall cause or allow the release, spilling, leaking, emission, discharge, escape, leaching, or disposal of a contaminant into the environment in a manner that . . . [c]auses a ground water quality standard to be exceeded . . . [i]njures a beneficial use of ground water; or . . . [i]s not in accordance with a permit, consent order or applicable best management practice, best available method or best practical method.” Idaho Admin. Code r. 58.01.11.400.</p>	<p>The director of the department may issue compliance orders, initiate administrative or civil enforcement actions against violators, issue monetary penalties up to \$10,000 per violation or \$1,000 for each day the violation continues (whichever is greater). Idaho Code Ann. §§ 39-108, 39-116; Idaho Admin. Code r. 58.01.11.400. The statute also provides for criminal prosecutions. Idaho Code Ann. § 39-109.</p>	<p>“All state agencies shall incorporate the adopted ground water quality protection plan in the administration of their programs and shall have such additional authority to promulgate rules to protect ground water quality as necessary to administer such programs which shall be in conformity with the ground water quality protection plan.” Idaho Code Ann. § 39-126.</p> <p>“‘Waters’ means all accumulations of water, surface and underground, natural and artificial, public and private or parts thereof which are wholly or partially within, flow through or border upon this state except for private waters as defined in section 42-212, Idaho Code.” Idaho Code Ann. § 39-103(18).</p>
Illinois	<p>"No person shall . . . Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act." 415 Ill. Comp. Stat. Ann. 5/12.</p>	<p>The prohibitions in the Illinois code are enforced through administrative citations and orders, injunctive relief, civil penalties (\$50,000 for each violation and \$10,000 for each day the violation continues), and criminal penalties. 415 Ill. Comp. Stat. Ann. 5/31.1, 5/33, 5/42-5/45.</p>	<p>"The Agency shall establish a Statewide groundwater monitoring network. Such network shall include a sufficient number of testing wells to assess the current levels of contamination in the groundwaters of the State and to detect any future degradation of groundwater resources." 415 Ill. Comp. Stat. Ann. 5/13.1.</p> <p>"‘Waters’ means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon the State of Illinois, except that sewers and treatment works are not included except as specially mentioned" Ill. Admin. Code tit. 35, § 301.440.</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
Indiana	"[A] person may not: (1) throw, run, drain, or otherwise dispose; or (2) cause, permit, or suffer to be thrown, run, drained, allowed to seep, or otherwise disposed [] into any of the streams or waters of Indiana any organic or inorganic matter that causes or contributes to a polluted condition of any of the streams or waters of Indiana, as determined by a rule of the board . . ." Ind. Code Ann. § 13-18-4-5.	The Department of Environmental Management may enforce the statute through administrative compliance orders and civil actions seeking injunctive relief. Ind. Code Ann. §§ 13-18-4-6, § 13-14-2-6, 13-14-2-7, 13-30-4-1. Civil penalties of up to \$25,000 per day of any violation are authorized, as well as criminal penalties. Ind. Code Ann. §§ 13-30-4-1, 13-30-10-1.5.	"'Waters', for purposes of water pollution control laws and environmental management laws, means: (1) the accumulations of water, surface and underground, natural and artificial, public and private; or (2) a part of the accumulations of water[,] that are wholly or partially within, flow through, or border upon Indiana." Ind. Code Ann. § 13-11-2-265.
Iowa	"A pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state, except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste in accordance with rules adopted by the commission." Iowa Code Ann. § 455B.186.	Enforcement mechanisms include cease and desist orders, civil penalties up to \$5,000 per day for each violation, a range of criminal penalties, and temporary and permanent injunctions. Iowa Code Ann. §§ 455B.175, 455B.191.	Iowa's Groundwater Protection Act supplements Iowa's water quality laws to further promote its goal of "prevent[ing] contamination of groundwater from point and nonpoint sources of contamination to the maximum extent practical . . ." Iowa Code Ann. § 455E.4. "'Water of the state' means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof." Iowa Code Ann. § 455B.171(39).
Kansas	"No person, company, corporation, institution or municipality shall place or permit to be placed or discharge or permit to flow into any of the waters of the state any sewage . . ." Kan. Stat. Ann. § 65-164.	Enforcement of the statute is permitted through cease and desist orders, civil penalties, and criminal penalties. Kan. Stat. Ann. §§ 65-164 (d), 65-170d, 65-167.	"'[S]ewage' means any substance that contains any of the waste products or excrementitious or other discharges from the bodies of human beings or animals, or chemical or other wastes from domestic, manufacturing or other forms of industry." Kan. Stat. Ann. § 65-164. "'Waters of the state' means all streams and springs, and all bodies of surface and subsurface waters within the boundaries of the state . . ." Kan. Stat. Ann. § 65-161(a). "'[D]ischarge' means when used without qualification, the causing or permitting of sewage to enter, either directly or indirectly, into waters of the state . . ." Kan. Stat. Ann. § 65-161(b).

State	Standard	Enforcement Authorities	Other Relevant State Authority
Kentucky	<p>“No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter.” Ky. Rev. Stat. Ann. § 224.70-110.</p>	<p>Enforcement mechanisms include civil penalties, up to \$25,000 per day as long as violation continues, Civil actions for injunctive relief and to recover penalties or damages for injury to fish or wildlife, criminal penalties and/or imprisonment. Ky. Rev. Stat. Ann. §§ 224.99-010 , 224.99-020, 224.1-070.</p>	<p>“‘Pollutant’ means and includes dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, chemical, biological or radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, industrial, municipal or agricultural waste, and any substance resulting from the development, processing, or recovery of any natural resource which may be discharged into water.” Ky. Rev. Stat. Ann. § 224.1-010(34).</p> <p>“‘Water pollution’ means the alteration of the physical, thermal, chemical, biological, or radioactive properties of the waters of the Commonwealth in such a manner, condition, or quantity that will be detrimental to the public health or welfare, to animal or aquatic life or marine life, to the use of such waters as present or future sources of public water supply or to the use of such waters for recreational, commercial, industrial, agricultural, or other legitimate purposes.” Ky. Rev. Stat. Ann. § 224.1-010(33).</p> <p>“Water” or “waters of the Commonwealth” are defined to mean and include “any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes, and all other bodies of surface or underground water, natural or artificial, situated wholly or partly within or bordering upon the Commonwealth or within its jurisdiction.” Ky. Rev. Stat. Ann. § 224.1-010 (32).</p>
Louisiana	<p>“No person shall conduct any activity which results in the discharge of any substance into the waters of the state without the appropriate permit, variance, or license required under the regulations of the department adopted pursuant to this Chapter.” La. Stat. Ann. § 30:2075.</p> <p>“No person shall discharge or allow to be discharged into any waters of the state: (a) Any waste or any other substance of any kind that will tend to cause water pollution in violation of any rule, order, or regulation; or (b) Any substance, the discharge of which violates any term, condition, or limit imposed by a permit.” La. Stat. Ann. § 30:2076.</p>	<p>Available enforcement includes compliance orders, civil actions for permanent or temporary injunctions and/or damages against violators, civil penalties of up to \$32,500 for each day of a violation, and criminal penalties. La. Stat. Ann. §§ 30:2025, 30:2050.2, 30:2076.1.</p>	<p>“‘Discharge’ means the placing, releasing, spilling, percolating, draining, pumping, leaking, seeping, emitting, or other escaping of pollutants into the air, waters, subsurface water, or ground as the result of a prior act or omission; or the placing of pollutants into pits, drums, barrels, or similar containers under conditions and circumstances that leaking, seeping, draining, or escaping of the pollutants can be reasonably anticipated.” La. Stat. Ann. § 30:2004(10).</p> <p>“‘Waters of the state’ means both the surface and underground waters within the state of Louisiana including all rivers, streams, lakes, groundwaters, and all other water courses and waters within the confines of the state, and all bordering waters and the Gulf of Mexico. . . .” La. Stat. Ann. § 30:2073(7).</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
Maine	<p>“No person may directly or indirectly discharge or cause to be discharged any pollutant without first obtaining a license therefor from the department.” Me. Rev. Stat. tit. 38, § 413.</p>	<p>Enforcement of these provisions is permitted through administrative orders and consent agreements, civil actions, civil penalties amounting to not more than \$10,000 per day for each violation, or \$25,000 if the violation relates to hazardous waste, criminal penalties between \$2,500 and \$25,000 for each day of the violation, and debarment from department contracts for repeated violations. Me. Rev. Stat. tit. 38, § 347-A, 348, 349, 349-B.</p>	<p>“‘Discharge’ means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of any pollutant to water of the State. Me. Rev. Stat. tit. 38, § 361-A(1).</p> <p>“‘Waters of the State’ means any and all surface and subsurface waters that are contained within, flow through, or under or border upon this State or any portion of the State . . .” Me. Rev. Stat. tit. 38, § 361-A(7).</p>
Maryland	<p>“[A] person may not discharge any pollutant into the waters of this State.” Md. Code Ann., Envir. § 9-322.</p>	<p>Enforcement of these provisions is by administrative corrective action orders, injunctions, civil penalties not exceeding \$10,000 per day (judicially) or \$1,000 per day (administratively), or criminal prosecution. Md. Code Ann., Envir. §§ 9-334, 9-335, 9-338, 9-339, 9-342, 9-343.</p>	<p>“Discharge” is defined to mean “the addition, introduction, leaking, spilling, or emitting of a pollutant into the waters of this State” or “the placing of a pollutant in a location where the pollutant is likely to pollute.” § 9-101(b).</p> <p>“Waters of this State” includes, in relevant part, “[b]oth surface and underground waters within the boundaries of this State subject to its jurisdiction. . . .” § 9-101(l)(1).</p>
Massachusetts	<p>“Any person who, directly or indirectly, throws, drains, runs, discharges or allows the discharge of any pollutant into waters of the commonwealth, except in conformity with a permit” shall be subject to the enforcement provisions. Mass. Gen. Laws Ann. ch. 21, § 42.</p> <p>“[n]o person shall engage in any other activity that may reasonably be expected to result, directly or indirectly, in discharge of pollutants into waters of the commonwealth.” Mass. Gen. Laws Ann. ch. 21, § 43(2).</p>	<p>Violations of the standards shall punished by a fine, imprisonment, or shall be subject to a civil penalty not to exceed \$25,000 per day of such violation. Enforcement mechanisms, in addition to civil penalties, include orders and injunctive relief. Mass. Gen. Laws Ann. ch. 21, §§ 44, 46.</p>	<p>“‘Waters’ and ‘waters of the commonwealth,’ all waters within the jurisdiction of the commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, coastal waters and groundwaters.” Mass. Gen. Laws Ann. ch. 21, § 26A.</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
Michigan	<p>"A person shall not directly or indirectly discharge into the waters of the state a substance that is or may become injurious to any of the following: (a) To the public health, safety, or welfare . . . domestic, commercial, industrial, agricultural, recreational, or other uses that are being made or may be made of such water . . . [t]o the value or utility of riparian lands . . ."</p> <p>Mich. Comp. Laws Ann. § 324.3109(1).</p> <p>"A person shall not discharge without an authorization" under Part 22 Rules (Groundwater Quality), which establishes specific criteria for the "discharge," which is defined to mean "any direct or indirect discharge . . . into the groundwater or on the ground." R §§ 323.2204, 323.2201(i).</p>	<p>Enforcement of these provisions is permitted through abatement orders, civil actions, civil fines of up to \$25,000 per day per violation, criminal penalties and imprisonment.</p> <p>Mich. Comp. Laws Ann. §§ 324.1601, 324.3112, 324.3115.</p>	<p>"Waters of the state" means groundwaters, lakes, rivers, and streams and all other watercourses and waters, including the Great Lakes, within the jurisdiction of this state." Mich. Comp. Laws Ann. § 324.3101(aa).</p>
Minnesota	<p>"[I]t is the duty of every person to notify the agency immediately of the discharge, accidental or otherwise, of any substance or material under its control which, if not recovered, may cause pollution of waters of the state" Minn. Stat. Ann. § 115.061.</p> <p>"No sewage, industrial waste, or other wastes shall be discharged from either a point or a nonpoint source into the waters of the state in such quantity or in such manner alone or in combination with other substances as to cause pollution as defined by law." Minn. R. 7050.0210.</p>	<p>Minnesota's Water Pollution Control Act may be enforced through civil actions, civil penalties, criminal penalties, and administrative orders. Minn. Stat. Ann. § 115.071.</p>	<p>"Discharge" means "the addition of any pollutant to the waters of the state or to any disposal system." Minn. Stat. Ann. § 115.01.(4).</p> <p>"Waters of the state" is defined to mean "all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state . . ."</p> <p>Minn. Stat. Ann. § 115.01(22).</p>
Mississippi	<p>"[I]t is unlawful for any person to cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state. It is also unlawful to discharge any wastes into any waters of the state which reduce the quality of those waters below the water quality standards established by the commission; or to violate any applicable pretreatment standards or limitations, technology-based effluent limitations, toxic standards or any other limitations established by the commission. Any such action is declared to be a public nuisance." Miss. Code. Ann. § 49-17-29(2)(a).</p>	<p>Available enforcement includes administrative orders, civil actions, civil penalties, and misdemeanor prosecution.</p> <p>Miss. Code. Ann. §§ 49-17-31, 49-17-43.</p>	<p>"Waters of the state" is defined to mean "all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, situated wholly or partly within or bordering upon the state . . ."</p> <p>Miss. Code. Ann. § 49-17-5(1)(f).</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
Missouri	<p>“It is unlawful for any person . . . [t]o cause pollution of any waters of the state or to place or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state; [or] discharge any water contaminants into any waters of the state which reduce the quality of such waters below the water quality standards” Mo. Ann. Stat. § 644.051.</p>	<p>Enforcement includes administrative orders, civil actions, administrative penalties and civil penalties. Mo. Ann. Stat. §§ 644.079, 644.076.</p>	<p>“Pollution” is defined to mean “such contamination or other alteration of the physical, chemical or biological properties of any waters of the state . . . or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is reasonably certain to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, industrial, agricultural, recreational, or other legitimate beneficial uses, or to wild animals, birds, fish or other aquatic life” Mo. Ann. Stat. § 644.016(17).</p> <p>“Discharge” is defined to mean “the causing or permitting of one or more water contaminants to enter the waters of the state.” Mo. Ann. Stat. § 644.016(6).</p> <p>“Waters of the state” means “all waters within the jurisdiction of this state, including all rivers, streams, lakes and other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state” Mo. Ann. Stat. § 644.016(27).</p>
Montana	<p>It is unlawful to “cause pollution . . . of any state waters or to place or cause to be placed any wastes where they will cause pollution of any state waters.” Mont. Code Ann. § 75-5-605.</p>	<p>The department may enforce these provisions through administrative orders for abatement, compliance, or cleanup, administrative penalties, civil actions for injunctive relief, civil penalties, criminal penalties and/or imprisonment. Mont. Code Ann. §§ 75-5-611 to 75-5-614, 75-5-631, 75-5-632.</p>	<p>“Pollution” means “contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards,” or “the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.” Mont. Code Ann. § 75-5-103 (30)(a).</p> <p>“State waters” is defined to mean “a body of water, irrigation system, or drainage system, either surface or underground.” Mont. Code Ann. § 75-5-103(34)(a).</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
Nebraska	<p>“It shall be unlawful for any person” to “cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state” or “discharge or emit any wastes into any air, waters, or land of the state which reduce the quality of such air, waters, or land below the air, water, or land quality standards established therefor by the council. Any such action is hereby declared to be a public nuisance.” Neb. Rev. Stat. Ann. § 81-1506.</p>	<p>Enforcement is permitted through administrative corrective action orders, injunctions, civil penalties, felony and misdemeanor prosecution. Neb. Rev. Stat. Ann. §§ 81-1508, 81-1508.01, 81-1508.02.</p>	<p>“Water pollution shall mean the manmade or man-induced alteration of the chemical, physical, biological, or radiological integrity of water . . .” Neb. Rev. Stat. Ann. § 81-1502(20).</p> <p>“Waters of the state shall mean all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial . . .” Neb. Rev. Stat. Ann. § 81-1502(21).</p> <p>Nebraska also manages groundwater through the “Nebraska Ground Water Management and Protection Act.” Neb. Rev. Stat. Ann. § 46-701 et seq.</p>
Nevada	<p>“[A] person shall not discharge a pollutant from a point source into any waters of the State without obtaining a permit from the Department.” Nev. Admin. Code 445A.228.</p> <p>The Nevada Department of Conservation and Natural Resources possesses the authority to prescribe pollution controls for “diffuse sources”, or delegate such authority to local municipalities. Nev. Rev. Stat. Ann. § 445A.570; Nev. Admin. Code 445A.314.</p>	<p>Persons who violate the statute or regulations are subject to administrative compliance orders, civil actions for injunctive relief, civil penalties, and criminal penalties. Nev. Rev. Stat. Ann. §§ 445A.675, 445A.690, 445A.695 445A.700.</p> <p>If the violation relates to a rule or regulation concerning diffuse sources, no civil or criminal penalties may be imposed for failing to obey an administrative order. Nev. Rev. Stat. Ann. § 445A.680.</p>	<p>“‘Diffuse source’ means any source of water pollution which is diffused to the extent that it is not readily discernible and cannot be confined to a discrete conveyance. This term is intended to be equivalent to the term “nonpoint source” as used in federal statutes and regulations.” Nev. Rev. Stat. Ann. § 445A.335.</p> <p>“‘Discharge’ means any addition of a pollutant or pollutants to water.” Nev. Rev. Stat. Ann. § 445A.345.</p> <p>“Waters of the State” is defined to mean “all waters situated wholly or partly within or bordering upon this State, including but not limited to . . . [a]ll streams, lakes, ponds, impounding reservoirs, marshes, water courses, waterways, wells, springs, irrigation systems and drainage systems; and [] [a]ll bodies or accumulations of water, surface and underground, natural or artificial.” Nev. Rev. Stat. Ann. § 445A.415.</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
New Hampshire	<p>“It shall be unlawful for any person or persons to discharge or dispose of any sewage or waste to the surface water or groundwater of the state without first obtaining a written permit from the department of environmental services.” N.H. Rev. Stat. Ann. § 485-A:13.</p> <p>“After adoption of a given classification for a stream, lake, pond, tidal water or section of such water . . . it shall be unlawful for any person or persons to dispose of any sewage, industrial, or other wastes, either alone or in conjunction with any other person or persons, in such a manner as will lower the quality of the waters . . . below the minimum requirements of the adopted classification.” N.H. Rev. Stat. Ann. § 485-A:12.</p>	<p>Available enforcement includes administrative cease and desist orders, civil actions for injunctive relief, administrative penalties, civil penalties, and criminal penalties or imprisonment. N.H. Rev. Stat. Ann. §§ 485-A:22, 485-A:22-a.</p>	<p>“Waste” means “industrial waste and other wastes.” N.H. Rev. Stat. Ann. § 485-A:2. XVI.</p> <p>“Other wastes” is defined to mean “garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, ashes, offal, oil, tar, chemicals and other substances other than sewage or industrial wastes, and any other substance harmful to human, animal, fish or aquatic life.” N.H. Rev. Stat. Ann. § 485-A:2.VIII.</p> <p>“Sewage” means “the water-carried waste products from buildings, public or private, together with such groundwater infiltration and surface water as may be present.” N.H. Rev. Stat. Ann. § 485-A:2. X.</p>
New Jersey	<p>“It shall be unlawful for any person to discharge any pollutant, except as provided pursuant to [this section], or when the discharge conforms with a valid [state or federal discharge permit, e.g. a NPDES permit].” N.J. Stat. Ann. § 58:10A-6.</p>	<p>The commissioner of the New Jersey Department of Environmental Protection may enforce the state’s water pollution statute through compliance orders, administrative penalties, civil action for injunctive relief, civil penalties, and criminal fines. N.J. Stat. Ann. §§ 58:10A-10, 58:10A-24.6.</p>	<p>“Discharge” means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of the State, onto land or into wells from which it might flow or drain into said waters or into waters or onto lands outside the jurisdiction of the State, which pollutant enters the waters of the State.” N.J. Stat. Ann. § 58:10A-3(e).</p> <p>“Waters of the State” is defined to mean “the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State.” N.J. Stat. Ann. § 58:10A-3(t).</p> <p>The state also has a program to designate areawide waste treatment management planning areas that would include the establishment of regulations to, among other things, provide control mechanisms for nonpoint source pollution. N.J. Stat. Ann. § 58:11A-4.</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
New Mexico	<p>Under the state’s water quality control commission’s authority to promulgate rules to prevent or abate water pollution and develop water quality standards for surface and ground waters, New Mexico code provides that “[a]ny person intending to make a new water contaminant discharge or to alter the character or location of an existing water contaminant discharge . . . shall file a notice with the ground water quality bureau of the department for discharges that may affect ground water, and/ or the surface water quality bureau of the department for discharges that may affect surface water.” N.M. Stat. Ann. § 74-6-4 ; N.M. Admin. Code 20.6.2.1201.</p> <p>The regulations further provide that, “[u]nless otherwise provided by this Part, no person shall cause or allow effluent or leachate to discharge so that it may move directly or indirectly into ground water unless he is discharging pursuant to a discharge permit issued by the secretary.” N.M. Admin. Code 20.6.2.3104.</p>	<p>Enforcement is available through administrative compliance orders and penalties, civil penalties, and criminal penalties for knowing violations. N.M. Stat. Ann. §§ 74-6-10, 74-6-10.1,74-6-10.2.</p>	<p>“Water contaminant” is defined to mean “any substance that could alter, if discharged or spilled, the physical, chemical, biological or radiological qualities of water.” N.M. Stat. Ann. § 74-6-2(B).</p> <p>“Water” is defines to mean “all water, including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water.” N.M. Stat. Ann. § 74-6-2(H).</p>
New York	<p>“It shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the department . . .” N.Y. Env’tl. Conserv. Law § 17-0501.</p>	<p>Available enforcement mechanisms include administrative compliance orders, civil actions for injunctive relief or the recovery of penalties, civil penalties, criminal fines and/or imprisonment. N.Y. Env’tl. Conserv. Law §§ 71-1707, 71-1711, 71-2727, 71-1929, 71-1931, 71-1933.</p>	<p>“Waters” or “waters of the state” are defined to include “lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic ocean within the territorial limits of the state of New York and all other bodies of surface or underground water . . . which are wholly or partially within or bordering the state or within its jurisdiction.” N.Y. Env’tl. Conserv. Law § 17-0105(2).</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
North Carolina	Unless a person has received a permit and complied with all conditions set forth in the permit, "no person shall . . . [c]ause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument . . ." N.C. Gen. Stat. Ann. § 143-215.1(a)(6).	<p>The North Carolina Environmental Management Commission may issue special orders "to any person whom it finds responsible for causing or contributing to any pollution of the waters of the State within the area for which standards have been established." N.C. Gen. Stat. Ann. § 143-215.2.</p> <p>The Commission may also enforce state water pollution laws through injunctive relief and civil and criminal penalties. N.C. Gen. Stat. Ann. §§ 143-215.6A, 143-215.6B, 143-215.6C.</p>	<p>The term "water pollution" is defined to mean "the man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of the waters of the State, including, but specifically not limited to, alterations resulting from the concentration or increase of natural pollutants caused by man-related activities." N.C. Gen. Stat. Ann. § 143-213(19).</p> <p>Reference to "discharge" or "discharge of waste" is interpreted to include "discharge, spillage, leakage, pumping, placement, emptying, or dumping into waters of the State . . ." N.C. Gen. Stat. Ann. § 143-213(9).</p> <p>"Waters" means any stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway, or other body or accumulation of water, whether surface or underground, public or private, or natural or artificial, that is contained in, flows through, or borders upon any portion of this State, including any portion of the Atlantic Ocean over which the State has jurisdiction." N.C. Gen. Stat. Ann. § 143-212(6).</p>
North Dakota	"It shall be unlawful for any person" to "cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state," and "[t]o discharge any wastes into any waters of the state or to otherwise cause pollution, which reduces the quality of such waters below the water quality standards established therefor by the department." N.D. Cent. Code Ann. § 61-28-06.	The Department of Health may enforce the state's water pollution laws through orders for compliance or abatement, injunctive relief against threatened or continuing violations, civil and criminal penalties, and/or imprisonment. N.D. Cent. Code Ann. §§ 61-28-04, 61-28-07, 61-28-08.	<p>"Pollution" is defined to mean "the manmade or man-induced alteration of the physical, chemical, biological, or radiological integrity of any waters of the state." N.D. Cent. Code Ann. § 61-28-02(7).</p> <p>"Waters of the state" means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, and all other bodies or accumulations of water on or under the surface of the earth, natural or artificial, public or private, situated wholly or partly within or bordering upon the state . . ." N.D. Cent. Code Ann. § 61-28-02(15).</p>
Ohio	Unless holding a valid permit, "[n]o person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state," and "[s]uch an action . . . is hereby declared to be a public nuisance." Ohio Rev. Code Ann. § 6111.04.	Enforcement mechanisms include administrative orders, injunctions, civil penalties of up to \$10,000 per day, criminal penalties, and/or imprisonment. Ohio Rev. Code Ann. §§ 6111.06, 6111.07, 6111.08, 6111.99.	<p>"Pollution" means the placing of any sewage, sludge, sludge materials, industrial waste, or other wastes in any waters of the state." Ohio Rev. Code Ann. § 6111.01(A).</p> <p>"Waters of the state" is defined to mean "all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, that are situated wholly or partly within, or border upon, this state . . ." Ohio Rev. Code Ann. § 6111.01(H).</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
Oklahoma	<p>“It shall be unlawful for any person to cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, land or waters of the state. Any such action is hereby declared to be a public nuisance.” Okla. Stat. Ann. tit. 27A, § 2-6-105.</p>	<p>Available enforcement includes cease and desist orders, civil penalties, injunctive relief, criminal penalties and/or imprisonment in county jail. Okla. Stat. Ann. tit. 27A, §§ 2-6-105, 2-6-901.</p>	<p>“‘Pollution’ means the presence in the environment of any substance, contaminant or pollutant, or any other alteration of the physical, chemical or biological properties of the environment or the release of any liquid, gaseous or solid substance into the environment in quantities which are or will likely create a nuisance or which render or will likely render the environment harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, or to property.” Okla. Stat. Ann. tit. 27A, § 2-1-102(12).</p> <p>“Waters of the state” is defined to mean “all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof . . .” Okla. Stat. Ann. tit. 27A, § 2-1-102(15).</p>
Oregon	<p>“[N]o person shall . . . [c]ause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means” or “[d]ischarge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the Environmental Quality Commission.” Or. Rev. Stat. Ann. § 468B.025(1); see § 468B.050. Violations of this section are considered a public nuisance. Or. Rev. Stat. Ann. § 468B.025(3).</p>	<p>Enforcement of the Oregon’s water pollution control laws is permitted through compliance and abatement orders, civil action, and civil penalties of up to \$25,000 per day for each violation. Or. Rev. Stat. Ann. §§ 468B.032, 468.090, 468.100, 468.140.</p>	<p>“Pollution” or “water pollution” are defined to mean “such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to . . . render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses . . .” Or. Rev. Stat. Ann. § 468B.005(5).</p> <p>“Water” or “the waters of the state” is defined to include “lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters . . . wholly or partially within or bordering the state or within its jurisdiction.” Or. Rev. Stat. Ann. § 468B.005(10).</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
Pennsylvania	<p>“It shall be unlawful for any person or municipality to put or place into any of the waters of the Commonwealth, or allow or permit to be discharged from property owned or occupied by such person or municipality into any of the waters of the Commonwealth, any substance of any kind or character resulting in pollution as herein defined. Any such discharge is hereby declared to be a nuisance.” 35 Pa. Stat. Ann. § 691.401.</p> <p>“The waters of this Commonwealth may not contain toxic substances attributable to point or nonpoint source waste discharges in concentrations or amounts that are inimical to the water uses to be protected.” 25 Pa. Code § 93.8a(a).</p>	Enforcement mechanisms include abatement orders, injunctions, civil penalties up to \$10,000 for each separate offense (each day constituting a new offense), criminal penalties, and imprisonment. 35 Pa. Stat. Ann. §§ 691.601, 691.610, § 691.605, 691.602.	<p>“Pollution” is defined to mean “contamination of any waters of the Commonwealth such as will create or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life” 35 Pa. Stat. Ann. § 691.1.</p> <p>“‘Waters of the Commonwealth’ shall be construed to include any and all rivers, streams, creeks, rivulets, impoundments, ditches, water courses, storm sewers, lakes, dammed water, ponds, springs and all other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.” 35 Pa. Stat. Ann. § 691.1.</p>
Rhode Island	<p>“It shall be unlawful for any person to discharge any pollutant into the waters except as in compliance with the provisions of this chapter and any rules and regulations promulgated hereunder and pursuant to the terms and conditions of a permit.” 46 R.I. Gen. Laws Ann. § 46-12-5(b)</p> <p>“It shall be unlawful for any person to place any pollutant in a location where it is likely to enter the waters or to place or cause to be placed any solid waste materials, junk, or debris of any kind whatsoever, organic or non organic, in any waters.” 46 R.I. Gen. Laws Ann. § 46-12-5(a).</p>	Enforcement of the Rhode Island water pollution laws may be achieved through compliance orders, injunctive relief, civil penalties of up to \$25,000 per day, criminal penalties, and/or imprisonment. 46 R.I. Gen. Laws Ann. §§ 46-12-9, 46-12-13, 46-12-14, 46-12-16.	<p>“Pollutant” is defined to mean “any material or effluent which may alter the chemical, physical, biological, or radiological characteristics and/or integrity of water, including but not limited to, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, [or] biological materials” 46 R.I. Gen. Laws Ann. § 46-12-1(15).</p> <p>“‘Waters’ includes all surface waters including all waters of the territorial sea, tidewaters, all inland waters of any river, stream, brook, pond, or lake, and wetlands, as well as all groundwaters.” 46 R.I. Gen. Laws Ann. § 46-12-1 (23).</p>
South Carolina	“It is unlawful for a person, directly or indirectly, to throw, drain, run, allow to seep, or otherwise discharge into the environment of the State organic or inorganic matter, including sewage, industrial wastes, and other wastes, except in compliance with a permit issued by the department.” S.C. Code Ann. § 48-1-90(A)(1).	Enforcement mechanisms include administrative orders for compliance or abatement, civil actions for injunctive relief or damages where appropriate, civil penalties, criminal penalties up to \$25,000 per day for each violation, and/or up to two years imprisonment. S.C. Code Ann. §§ 48-1-50, 48-1-220, 48-1-320.	<p>“‘Environment’ means the waters, ambient air, soil and/or land” S.C. Code Ann. § 48-1-10 (20).</p> <p>“‘Waters’ is defined to mean “lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction.” S.C. Code Ann. § 48-1-10(2).</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
South Dakota	<p>“No person may discharge any wastes into any waters of the state which reduce the quality of such waters below the water quality level existing on March 27, 1973” and “[n]o person may cause pollution of any waters of the state, or place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state.” S.D. Codified Laws §§ 34A-2-22, 34A-2-21.</p>	<p>Enforcement mechanisms include emergency abatement orders, civil actions for injunctive relief and recovery of penalties, civil penalties, and criminal fines and/or prosecution. S.D. Codified Laws §§ 34A-2-53, 34A-2-68, 34A-2-73 to 34A-2-75.</p> <p>Violations may also be abated as a public nuisance. S.D. Codified Laws §§ 34A-2-22, 34A-2-21.</p>	<p>“Waters of the state,” is defined to mean “all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground . . . within or bordering upon the state . . .” S.D. Codified Laws § 34A-2-2(12).</p> <p>“Pollutant,” is defined to mean “any dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, munitions, chemical waste, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, cellar dirt or any industrial, municipal or agricultural waste discharged into waters of the state.” S.D. Codified Laws § 34A-2-2(5).</p>
Tennessee	<p>“It is unlawful for any person . . . to carry out any of the following activities, except in accordance with the conditions of a valid permit: [] The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state . . . [] The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters [or] . . . the underground placement of fluids and other substances that do or may affect the waters of the state.” Tenn. Code Ann. § 69-3-108(b).</p>	<p>The state’s Department of Environment and Conservation may enforce provisions of the statute through orders for corrective action, emergency orders (without prior notice), civil penalties up to \$10,000 per day for each day the violation continues, criminal penalties and prosecution. Tenn. Code Ann. §§ 69-3-109, 69-3-112, 69-3-113, 69-3-115, 69-3-116.</p>	<p>“Pollutant” means “sewage, industrial wastes, or other wastes.” Tenn. Code Ann. § 69-3-103(27).</p> <p>“Industrial wastes” are “any liquid, solid, or gaseous substance, or combination thereof, or form of energy including heat, resulting from any process of industry, manufacture, trade, or business . . .” Tenn. Code Ann. § 69-3-103 ((15))</p> <p>“Other wastes” is defined to mean “any and all other substances or forms of energy, with the exception of sewage and industrial wastes, including, but not limited to, decayed wood, sand, garbage, silt, municipal refuse, sawdust, shavings, bark, lime, ashes, offal, oil, hazardous materials, tar, sludge, or other petroleum byproduct . . .” Tenn. Code Ann. § 69-3-103 (23).</p> <p>“Sewage” means “water-carried waste or discharges from human beings or animals, from residences, public or private buildings, or industrial establishments . . .” Tenn. Code Ann. § 69-3-103(34).</p> <p>“Waters” is defined to mean “any and all water, public or private, on or beneath the surface of the ground, that are contained within, flow through, or border upon Tennessee or any portion thereof, except those bodies of water confined to and retained within the limits of private property in single ownership that do not combine or effect a junction with natural surface or underground waters.” Tenn. Code Ann. § 69-3-103(44).</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
Texas	<p>“[N]o person may: (1) discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state; (2) discharge other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state . . .” Tex. Water Code Ann. § 26.121(a).</p>	<p>The Texas Natural Resource Conservation Commission or its executive director may enforce state water code provisions through the initiation of civil actions for injunctive relief, issuance of compliance orders, administrative and civil penalties (both) up to \$25,000 per day for each violation, attorney’s fees if the state prevails, criminal penalties for unauthorized, intentional, or knowing discharges, and/or confinement. Tex. Water Code Ann. §§ 7.001, 7.002, 7.032, 7.051, 7.052, 7.101, 7.102, 7.105, 7.108, 7.152, 7.187.</p>	<p>“Waste” is defined to mean “sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, as defined in this section.” Tex. Water Code Ann. § 26.001(6)</p> <p>“Pollution” is defined to mean “the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.” Tex. Water Code Ann. § 26.001(14).</p> <p>“Water” or “water in the state” is defined to mean “groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.” Tex. Water Code Ann. § 26.001(5).</p>
Utah	<p>“[I]t is unlawful for any person to discharge a pollutant into waters of the state or to cause pollution which constitutes a menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water, or to place or cause to be placed any wastes in a location where there is probable cause to believe it will cause pollution.” Utah Code Ann. § 19-5-107(1)(a).</p> <p>“[A]ny violation of this subsection is a public nuisance.” Utah Code Ann. § 19-5-107(1)(b).</p>	<p>Available enforcement includes cease and desist orders, civil actions for injunctive relief, civil penalties up to \$10,000 per day of violation, and criminal prosecution and penalties. Utah Code Ann. §§ 19-5-111, 19-5-115.</p>	<p>“Pollution’ means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state . . .” Utah Code Ann. § 19-5-102(13).</p> <p>“Discharge’ means the addition of any pollutant to any waters of the state.” Utah Code Ann. § 19-5-102(7).</p> <p>“Waters of the state” is defined to mean “all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground . . . which are contained within, flow through, or border upon this state or any portion of the state . . .” Utah Code Ann. § 19-5-102(23).</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
Vermont	<p>“No person shall discharge any waste, substance, or material into waters of the State, nor shall any person discharge any waste, substance, or material into an injection well or discharge into a publicly owned treatment works any waste which interferes with, passes through without treatment, or is otherwise incompatible with those works or would have a substantial adverse effect on those works or on water quality, without first obtaining a permit for that discharge from the Secretary.” Vt. Stat. Ann. tit. 10, § 1259.</p>	<p>Enforcement of Vermont’s water pollution laws is permitted through administrative orders and penalties, civil actions for injunctive relief, civil penalties of not more than \$100,000 for each continuing violation, and criminal penalties or imprisonment. Vt. Stat. Ann. tit. 10, §§ 1274, 1275, 8001-8018.</p>	<p>“Discharge’ means the placing, depositing, or emission of any wastes, directly or indirectly, into an injection well or into the waters of the State.” Vt. Stat. Ann. tit. 10, § 1251(3).</p> <p>“Waters’ includes all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border upon the State or any portion of it.” Vt. Stat. Ann. tit. 10, § 1251(13).</p> <p>“Waste” is defined to mean “effluent, sewage or any substance or material, liquid, gaseous, solid or radioactive, including heated liquids, whether or not harmful or deleterious to waters . . .” Vt. Stat. Ann. tit. 10, § 1251(12).</p>
Virginia	<p>Except in compliance with a certificate or permit . . . it shall be unlawful for any person to . . . [d]ischarge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances . . .” Va. Code Ann. § 62.1-44.5(A).</p> <p>“Except as otherwise permitted by law, it shall be unlawful for any person to dump, place or put, or cause to be dumped, placed or put into, upon the banks of or into the channels of any state waters any object or substance, noxious or otherwise, which may reasonably be expected to endanger, obstruct, impede, contaminate or substantially impair the lawful use or enjoyment of such waters and their environs by others.” Va. Code Ann. § 62.1-194.1.</p>	<p>Enforcement of these provisions is by special order, civil actions for injunctive relief, civil and criminal penalties, and criminal prosecution. Va. Code Ann. § 62.1-44.32, 62.1-44.15:1.1, 62.1-44.15.</p>	<p>“Other wastes’ means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar, oil, chemicals, and all other substances except industrial wastes and sewage which may cause pollution in any state waters.” Va. Code Ann. § 62.1-44.3.</p> <p>“Pollution” is defined to mean “such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life . . .” Va. Code Ann. § 62.1-44.3.</p> <p>“State waters’ means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.” Va. Code Ann. § 62.1-44.3.</p>
Washington	<p>“It shall be unlawful for any person to throw, drain, run, or otherwise discharge into any of the waters of this state, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharged into such waters any organic or inorganic matter that shall cause or tend to cause pollution of such waters . . .” Wash. Rev. Code 90.48.080.</p> <p>For the “disposal of solid or liquid waste material into the waters of the state,” the person “shall procure a permit from . . . the [Department of Ecology].” Wash. Rev. Code 90.48.160</p>	<p>The Department of Ecology is authorized “to bring any appropriate action at law or in equity, including action for injunctive relief” to enforce the Code, including “with the assistance of the attorney general.” Wash. Rev. Code 90.48.037.</p> <p>The Department of Ecology may also issue an order to abate “polluting content of waste discharged or to be discharged into any waters of the state.” Wash. Rev. Code 90.48.120.</p>	<p>“[W]aters of the state’ shall be construed to include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington.” Wash. Rev. Code 90.48.020.</p>

State	Standard	Enforcement Authorities	Other Relevant State Authority
West Virginia	<p>“It is unlawful for any person, unless the person holds a permit therefor from the department, which is in full force and effect, to . . . [a]llow sewage, industrial wastes or other wastes, or the effluent therefrom, produced by or emanating from any point source, to flow into the waters of this state,” “[m]ake, cause or permit to be made any outlet, or substantially enlarge or add to the load of any existing outlet, for the discharge of sewage, industrial wastes or other wastes, or the effluent therefrom, into the waters of this state,” [or] “[a]cquire, construct, install, modify or operate a disposal system or part thereof for the direct or indirect discharge or deposit of treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, into the waters of this state . . .” W. Va. Code Ann. § 22-11-8.</p>	<p>The state water pollution control act may be enforced through administrative orders for compliance or abatement, injunctive relief, administrative penalties, civil penalties, and criminal fines. W. Va. Code Ann. § 22-11-12, 22-11-16, 22-11-15, 22-11-22, 22-11-24.</p>	<p>“Water resources”, “water” or “waters” are defined to mean “any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and includes, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells, watercourses and wetlands . . .” W. Va. Code Ann. § 22-11-3(23).</p>
Wisconsin	<p>Wisconsin’s Department of Natural Resources is authorized to “issue general orders, and adopt rules applicable throughout the state for the construction, installation, use and operation of practicable and available systems, methods and means for preventing and abating pollution of the waters of the state.” Wis. Stat. Ann. § 281.19 (1).</p> <p>The Department may also “[o]rder or cause the abatement of pollution which the department . . . has determined to be significant and caused by a nonpoint source . . .” Wis. Stat. Ann. § 281.20(1)(a).</p>	<p>Enforcement of the department’s orders are permitted through emergency orders, civil penalties, and civil action by the state attorney general. Wis. Stat. Ann. §§ 281.19, 281.20, 281.98.</p>	<p>“Pollution’ includes contaminating or rendering unclean or impure the waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.” Wis. Stat. Ann. § 281.01(10).</p> <p>“‘Waters of the state’ includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.” Wis. Stat. Ann. § 281.01(18).</p>
Wyoming	<p>“No person, except when authorized by a permit issued pursuant to the provisions of this act, shall . . . Cause, threaten or allow the discharge of any pollution or wastes into the waters of the state,” or “[a]lter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state . . .” Wyo. Stat. Ann. § 35-11-301.</p>	<p>Enforcement mechanisms include administrative cease and desist orders, civil penalties, criminal penalties or imprisonment, and injunctive relief. Wyo. Stat. Ann. §§ 35-11-701, 35-11-901, 35-11-903.</p> <p>Citizen suits are also permitted. Wyo. Stat. Ann. § 35-11-904.</p>	<p>“Pollution’ means contamination or other alteration of the physical, chemical or biological properties of any waters of the state . . .” Wyo. Stat. Ann. § 35-11-103(i).</p> <p>“Waters of the state” is defined to mean “all surface and groundwater, including waters associated with wetlands, within Wyoming.” Wyo. Stat. Ann. § 35-11-103(vi).</p>