

CLEAN WATER ACT PERMITTING

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Permit Elements of CWA

Prohibition of discharges
(Section 301)

Permit program to
authorize and regulate
certain discharges
(Section 402)

System for determining
the limitations to be
imposed on regulated
discharges (Sections
301, 306, 307)

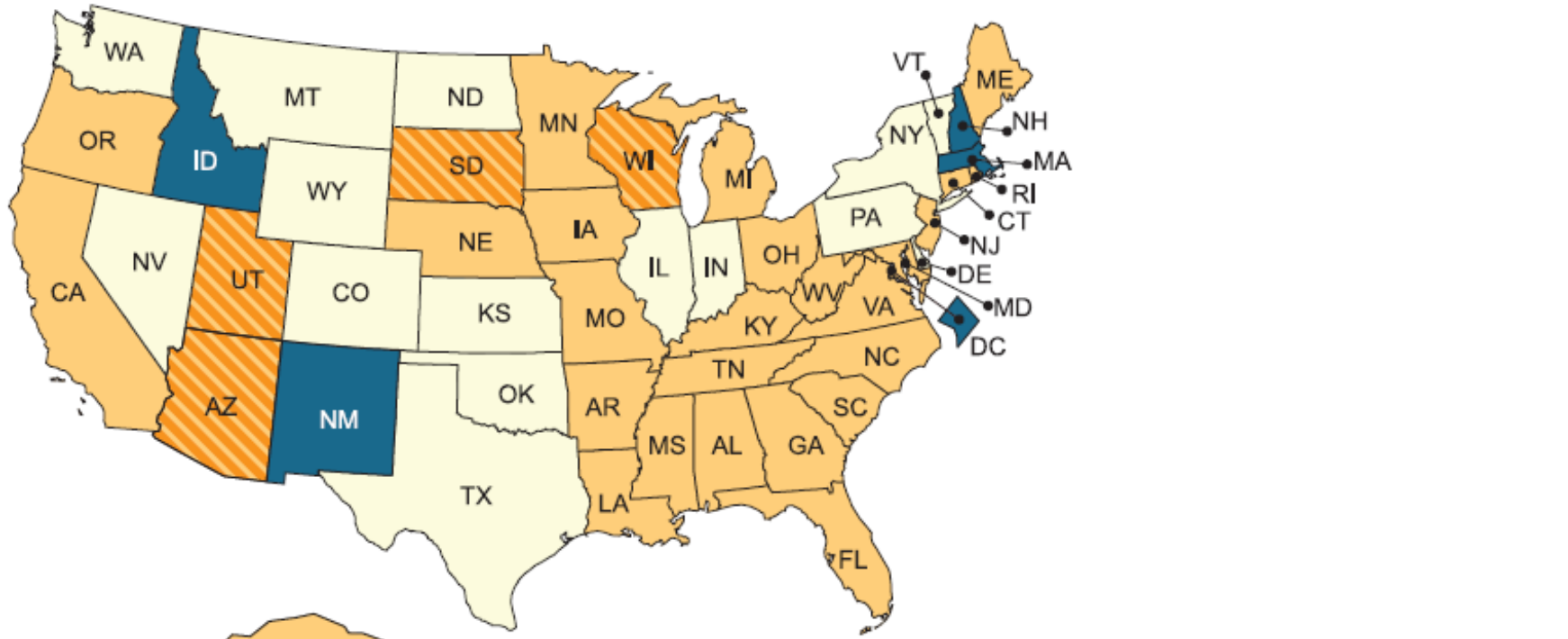
Process for cooperative
federal/state
implementation
(Sections 401, 402)

Permit program
governing the discharge
or placement of dredged
or fill material into the
nation's waters (Section
404)





CWA 402 National Pollutant Discharge Elimination System (NPDES) Permitting Program

- ▶ Congress prohibited any “discharge of any pollutant” to “navigable waters” unless in compliance with CWA’s permit requirements, effluent limitations
- ▶ Discharge of pollutant
 - ▶ any addition of
 - ▶ any pollutant
 - ▶ to waters of the US
 - ▶ from any point source
- ▶ NPDES program regulates discharge of pollutants from point sources to navigable waters
 - ▶ Technology Based Limits (TBELs)
 - ▶ Water Quality Based Limits (WQBELs)
- ▶ Who implements/administers program - EPA and/or States?







State NPDES Program Authority



State NPDES Program Status

-  Fully authorized
-  Fully authorized, including an approved biosolids program
-  Partially authorized ([click here for details](#))
-  Unauthorized

U.S. Territories

-  American Samoa
-  Guam
-  Johnston Atoll
-  Midway/Wake Islands
-  Northern Mariana Islands
-  Puerto Rico
-  Virgin Islands

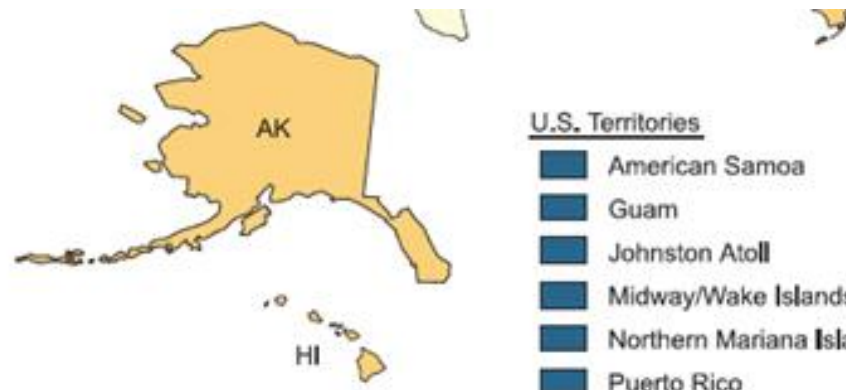
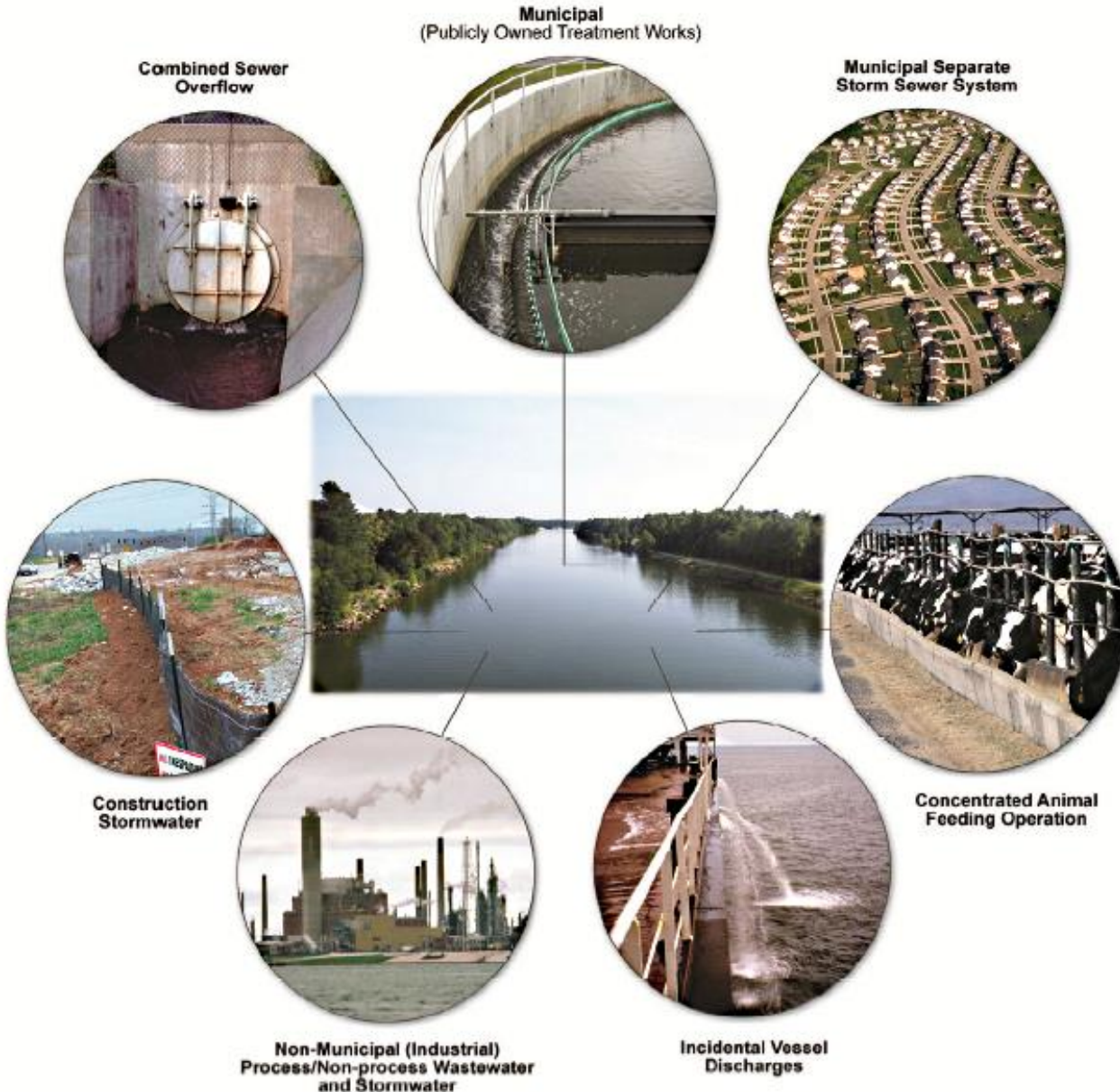


Exhibit 1-2 Common point source discharges of pollutants to waters of the United States

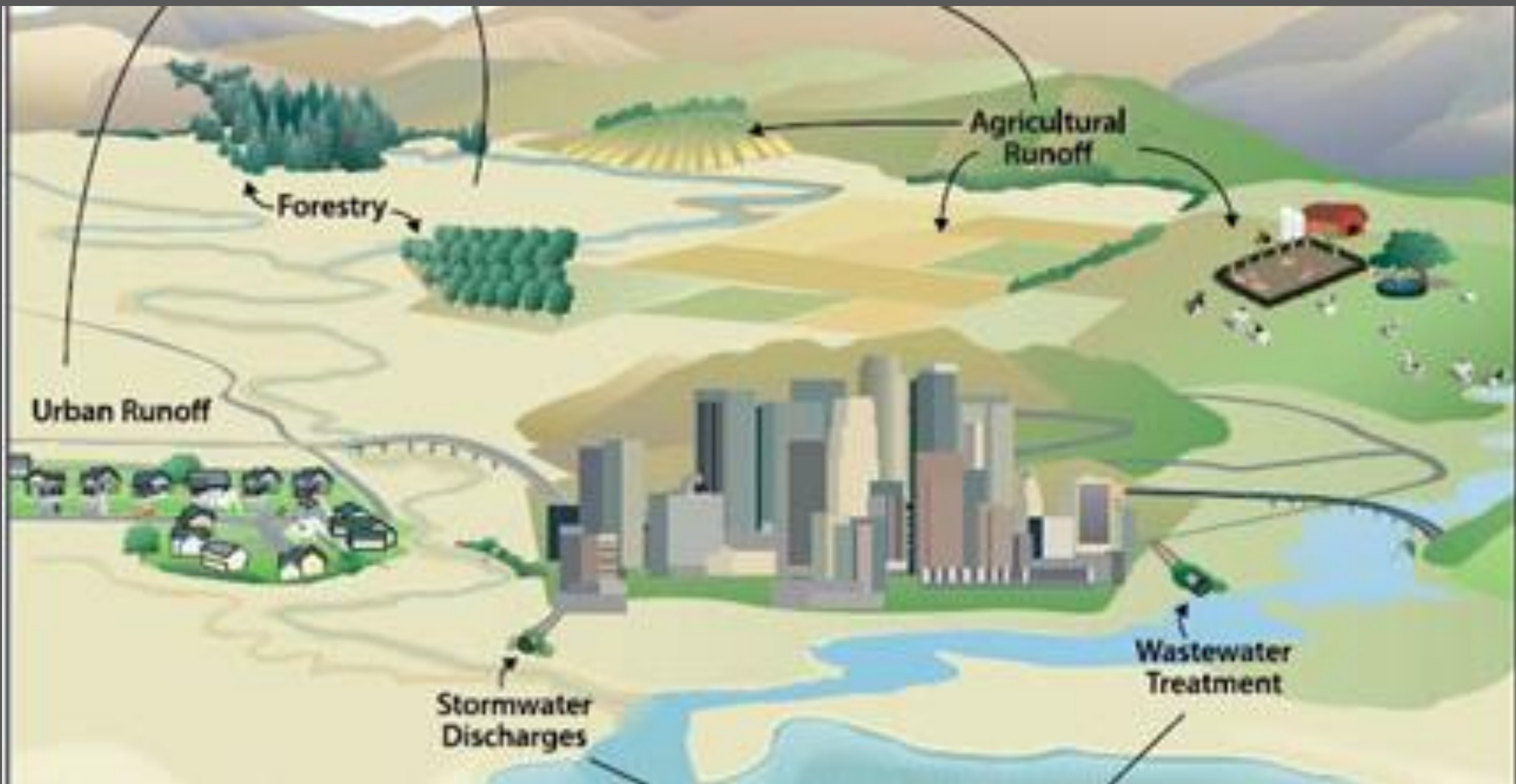


Point Sources

Any discernible, confined, and discrete conveyance



Point Sources?



Discharges

Storm water discharges

- Defined as “storm water runoff, snow melt runoff, and surface runoff and drainage”

Indirect discharges

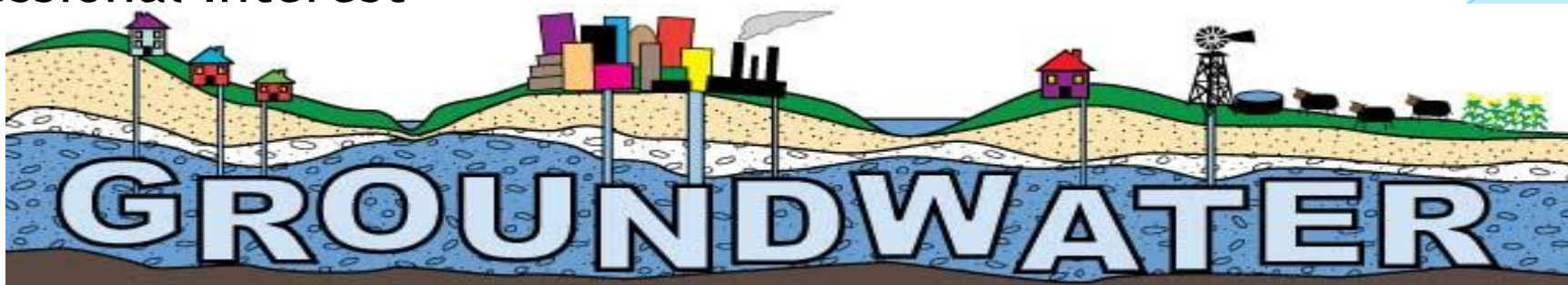
- A source introducing pollutants into a POTW
- Pretreatment program
- Recent 9th Circuit Decision (Maui)

Nonpoint source discharges

- Cooperative Federalism: state implementation
- Requires assessment of waters
- State management programs

CWA JURISDICTION OVER GROUNDWATER CONVEYANCE OF DISCHARGES / DIRECT HYDROLOGIC CONNECTION

- Release of a pollutant that reaches groundwater & thereafter enters a CWA jurisdictional surface water
 - Is this a “point source” discharge triggering the requirement for a NPDES permit?
- Groundwater/Direct Hydrologic Connection Litigation
 - *Upstate Forever v. Kinder Morgan Energy Partners*, No. 17-1640, 887 F.3d 637, 48 ELR 20061 (4th Cir. April 12, 2018)
 - *Hawai’i Wildlife Fund v. County of Maui*, No. 15-17447, 881 F.3d 754, 48 ELR 20016 (9th Cir. Feb. 1, 2018, amended op. March 30, 2018)
 - Cases Pending in other circuits
- EPA Request for Comments 83 *Fed. Reg.* 7126 (Feb. 20, 2018)
- Congressional Interest



NPDES Permitting

Individual permits
& general permits

Permit term not to
exceed 5 years

For EPA-issued
permits, State
water quality
certification
required

Determining Limitations

- ▶ Technology Based (TBELs)
- ▶ Water Quality Based (WQBELs)
- ▶ TMDLs
 - ▶ Maximum amount of pollution that a waterbody can receive without violating water quality standards
 - ▶ Based on a priority ranking for waterbodies

Effluent Limits - TBELs

- ▶ Effluent Limitation Guidelines (ELGs) for industrial categories and classes
- ▶ Apply to Categorical Industrial Users (CIUs)
- ▶ POTWs: Secondary Treatment Standards
 - ▶ pH 6-9
 - ▶ BOD₅ and SS 45 mg/L and 30 mg/L
 - ▶ 85% removal of BOD₅ and SS
- ▶ Backsliding prohibited

Effluent Limits - WQBELs

Applicable when TBELs not sufficient to protect the designation use



Water Quality Standards

Designated uses

Water quality criteria

- Numeric
- Narrative

Antidegradation policy

Effluent Limits - WQBELs: TMDLs

TBELs are not sufficient to maintain water quality criteria established to support designated uses → impaired waters

States evaluate and list impaired waters

Develop TMDLs to address impairments

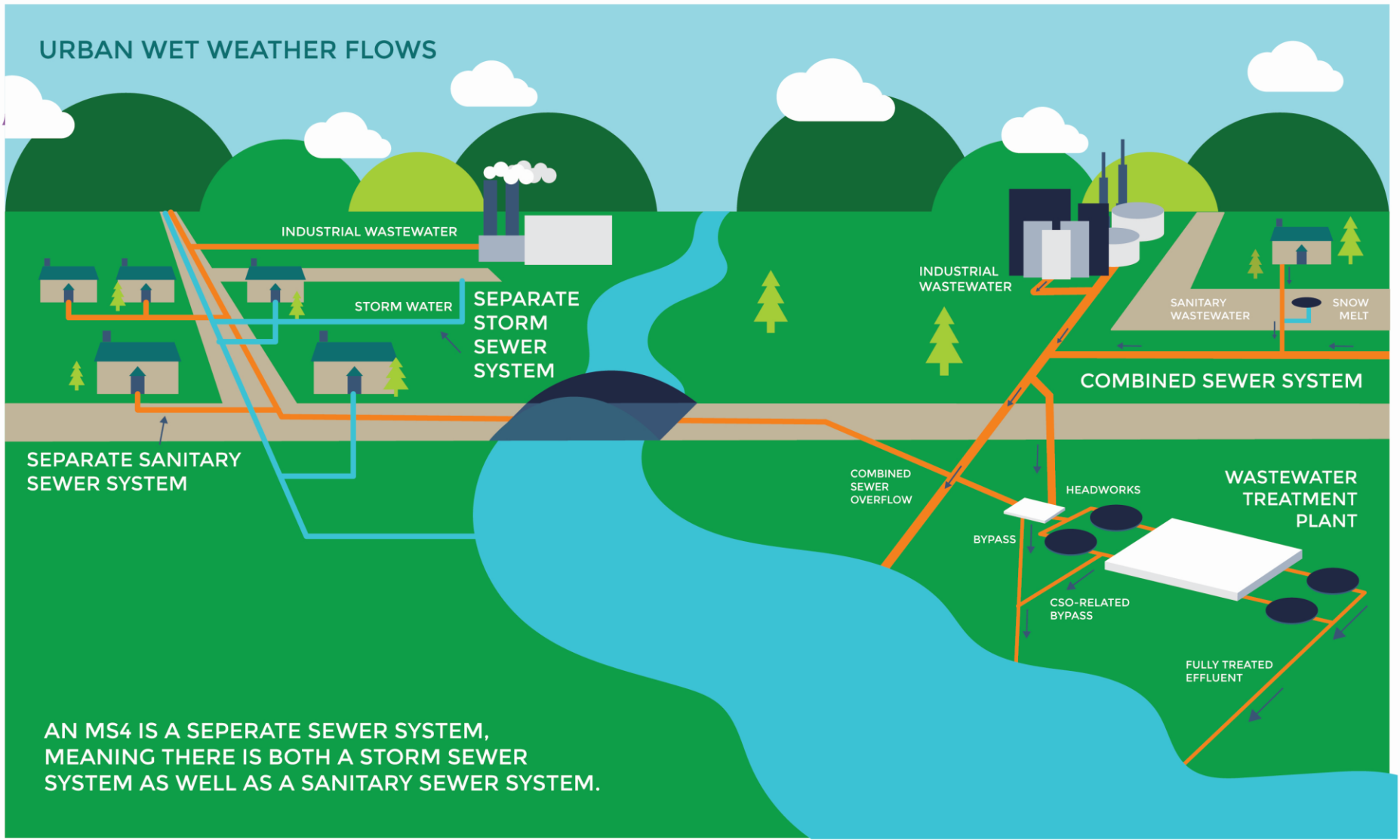
Implement TMDLs in permits

Monitoring/Reporting

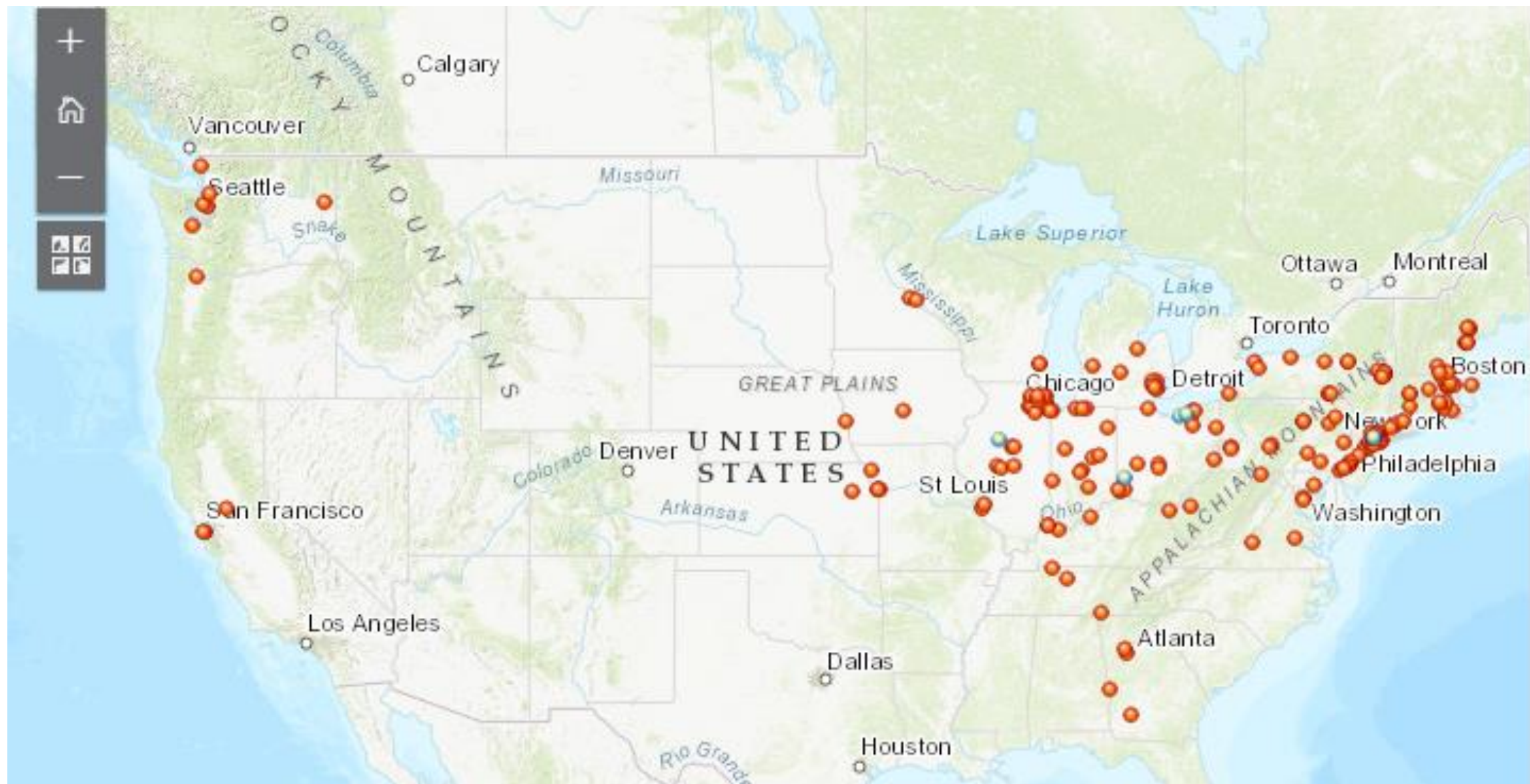
Honor System

Federal regulations establish monitoring & reporting requirements

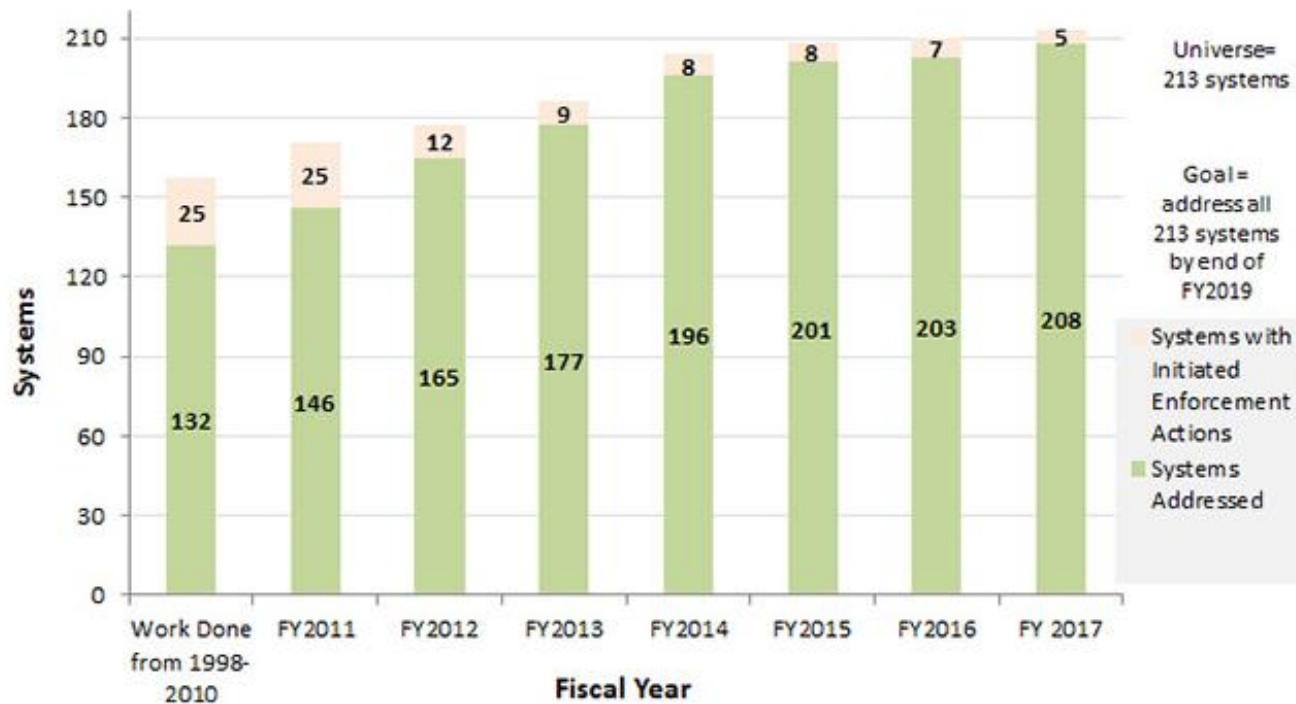
Collect representative samples



Wet Weather Permitting



Cumulative Progress Toward Addressing Large Combined Sewer Systems with Untreated Sewage Overflows



*Large municipal combined sewer systems are those serving a population > 50,000 people.

*Addressed means the system has been assessed and, where appropriate, is subject to a civil judicial complaint, an enforceable federal or state enforcement order, or permit requirements that address the noncompliance.

*Initiated enforcement actions are defined as formal EPA or state actions in progress, or referrals under development or finalized (signed and dated) in each fiscal year.

*Assumes NYC addressed

CWA 402(p) - Phase I Rule Covering Industry & Large/Med MS4s

(p) Municipal and industrial stormwater discharges

(1) General

Prior to October 1, 1994, the Administrator or the State ...shall not require a permit under this section for discharges composed entirely of stormwater.

(2) Exceptions

Paragraph (1) shall not apply with respect to the following stormwater discharges: ...

(B) A discharge associated with industrial activity.

(C) A discharge from a [MS4] serving a pop. of 250,000 or more.

(D) A discharge from a [MS4] serving a pop. of 100,000 [to] 250,000....



CWA 402(p) – Basis for Phase 2 Small MS4s & Small Construction

(p) Municipal and industrial stormwater discharges

(5) Studies

[EPA required to identify more classes of discharges not regulated under (1) and (2), determine nature / extent of pollutants, and issue a report by 10/88]

(6) Regulations

[EPA shall issue regs, based on study results, designating more stormwater discharges to be regulated “to protect water quality” and EPA “shall establish a comprehensive program to regulate” such designated sources]



CWA 402(p)- Industrial & MS4-Specific Compliance Standards

(3) Permit requirements

(A) Industrial discharges

Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 1311 of this title.

(B) Municipal discharge

Permits for discharges from municipal storm sewers—

(i) may be issued on a system- or jurisdiction-wide basis;

(ii) shall ... effectively prohibit non-[SW] discharges into [MS4]; and

(iii) shall require controls to reduce the discharge of pollutants to the **maximum extent practicable**, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants....

Exempt Activities - 402(l)

▶ Oil, Gas & Mining Operations

- ▶ Stormwater must be uncontaminated by overburden, byproducts, etc.
- ▶ Exempt activities may include:
 - ▶ Active mines
 - ▶ Oil & gas drilling & production well sites
 - ▶ Oil & gas pipelines
 - ▶ Scope of exclusion uncertain

▶ Silviculture Activities

- ▶ Covered activities include reforestation, forest thinning, prescribed burning, timber harvesting, & access road construction
- ▶ Exemption (§402(l)(3)) added to CWA in 2014

Clean Water Act Section 404: Dredged/Fill Material

- ▶ Administered jointly by EPA and the U.S. Army Corps of Engineers except
 - ▶ Michigan
 - ▶ New Jersey
- ▶ US Army Corps of Engineers must issue permit for discharge of dredged or fill material into navigable waters
 - ▶ Individual/General Permits
 - ▶ Jurisdictional Determinations
- ▶ EPA retains ultimate control over jurisdictional determinations via veto power

Clean Water Act Section 401

- ▶ Applicant for a federal license or permit
 - ▶ obtain from state/tribe
 - ▶ certification that any discharges from the facility will comply with the act, including state-established water quality standard requirements
- ▶ Downstream States
- ▶ 401 Certifications Applies
 - ▶ U.S. Army Corps issued 404 permits
 - ▶ EPA issued 402 NPDES Permits
 - ▶ Federal Energy Regulatory Commission - private hydropower dams



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Management & Governance for a Sustainable Clean Water Future

Join us as we focus on helping utilities innovate solutions in the midst of emerging governance issues; striking the right balance among public, private and peer-to-peer solutions to meet utility needs, as well as the needs of the entire clean water sector.

REGISTER NOW!

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