

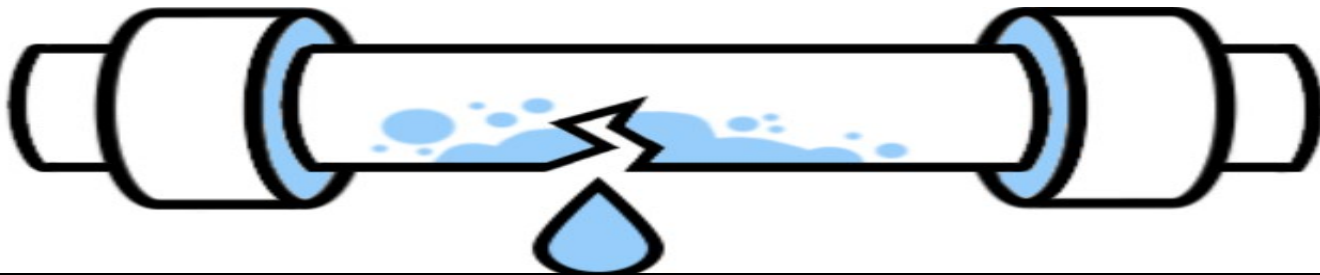
# Legal Considerations related to **Exfiltration**

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# Regulation of Exfiltration

- No Waste Discharge Requirements specifically cover exfiltration
- Arguably, SSS WDR covers all issues related to collection systems
- Exfiltration raised in Clean Water Act citizen suit context both for sewer systems and, more recently, for septics





# Draft San Diego Order

- First regulatory order to specifically call out exfiltration
- Justified based on water contact recreation, but:
  - Not a direct discharge and only a small contributor
  - EPA Recreation standards being met
  - Provided comments that regulation was unreasonable and unnecessary given absence of problematic illness rate or nexus to same

# Problem:

MAN GIVEN TICKET FOR PLOWING



arter School [GOVERNMENT.COM](#) Hope Lutheran School [GOVERNMENT.COM](#) White Pine 10:03 9°

FB POLICE THE POLICE ACP

HIS NEIGHBORHOOD STREET FOR FREE

No good deed goes unpunished

# Problem, cont'd

- Once data shows exfiltration and connection to surface waters, you have CWA liability in the 9<sup>th</sup> Circuit
- Recent County of Maui case – fairly traceable => NPDES permit  
Hoping for US Supreme Court to overrule this 9<sup>th</sup> Circuit precedent
- Until then, better to have ignorant bliss...



# Liability

- Citizen suits under CWA and RCRA may not be successful, but another avenue to extract money and waste resources
- Always the underlying civil and criminal liability for unpermitted discharges to federal waters.



# Questions?

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