

Citizen Suits: Legal Framework

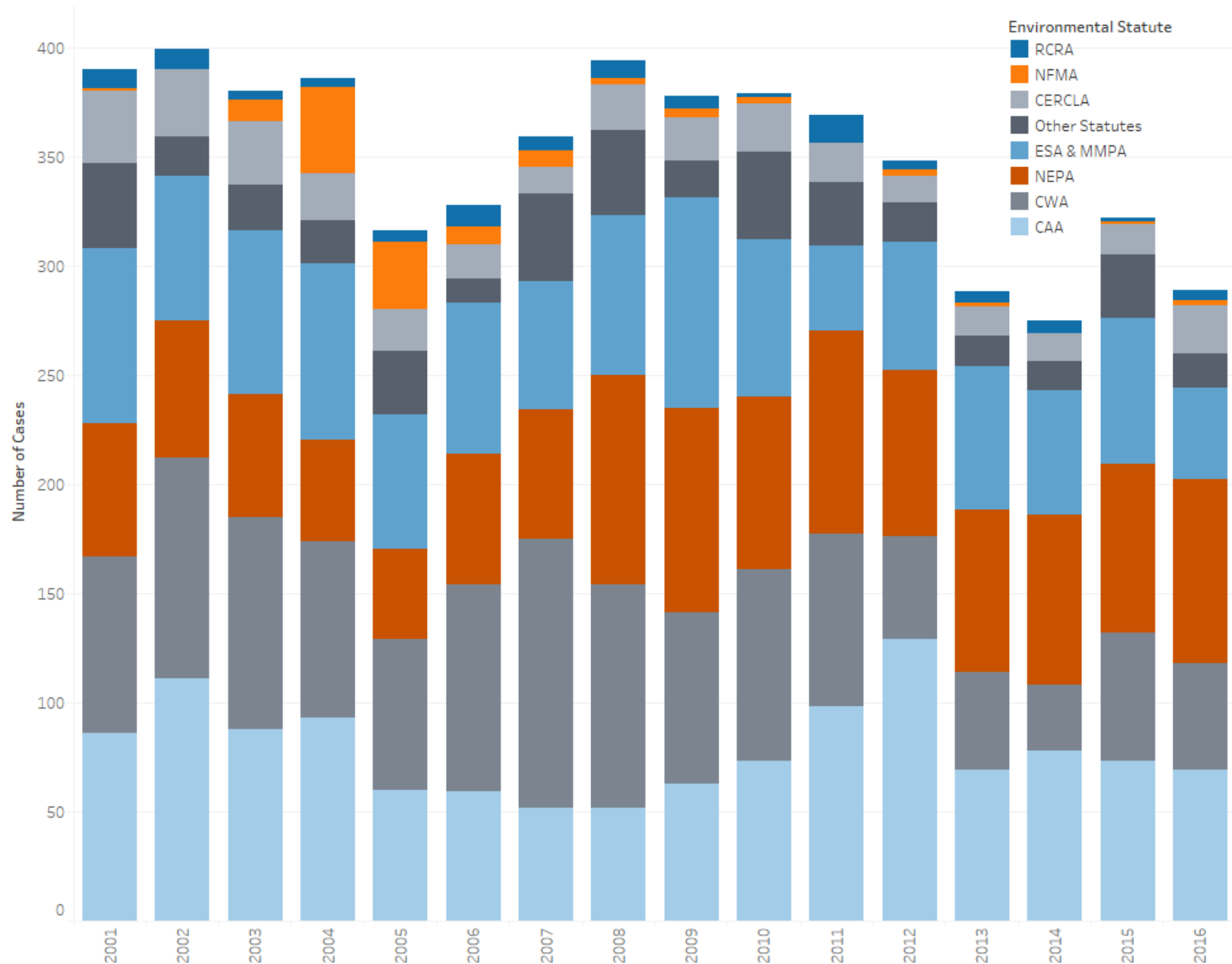
- 33 U.S.C. § 1365 (CWA § 505): Any person whose interest(s) may be adversely affected may bring a civil action to:
 - Enforce the CWA against anyone (including the United States and state governments/agencies); or
 - Require the Administrator to take action (when the action is nondiscretionary).

Citizen Suits: Logistics

- The plaintiff must provide 60 days' *notice* to the EPA, the State where the violation occurred, and the U.S. Attorney General
- If the United States has already commenced an action (civil or criminal), any person with an interest may intervene in that litigation
- At any time, either the State or the United States can intervene in a citizen suit

Citizen Suits: Why do they matter?

- Play a critical role in environmental protection
- Fill gaps in regulators' ability to enforce water pollution laws
 - **Resource gaps** (lack of funding or staffing)
 - **Political gaps** (prosecutorial discretion and State inaction)
- Nudge regulators to prioritize rulemaking / permitting
- Penalties provide some incentive for polluter to come into compliance



Source: David E. Adelman & Jori Reilly-Diakun, *Environmental Citizen Suits and the Inequities of Races to the Top*, 92 Colo. L. Rev. 377 (2021).

Revolving Funds

- Two major revolving funds:

- Clean Water State Revolving Fund (33 U.S.C. § 1383) [est. 1987]
- Drinking Water State Revolving Fund (42 U.S.C. § 300j-12) [est. 1996]

- The CWSRF funds:

- Treatment works
- Nonpoint source pollution management
- National estuary programs
- Decentralized wastewater treatment
- Security for publicly owned treatment
- Stormwater drainage and reuse
- Water conservation/efficiency
- Watershed pilot projects
- Energy efficiency for publicly owned treatment
- Water reuse
- Technical assistance

Revolving Funds: Types of Aid

- Low- and no-interest loans
- Debt purchase or refinancing
- Guarantees or insurance
- Grants
- Principal forgiveness

How the CWSRF Works:

- Feds provide initial capital to the fund
 - ↳ States match 20% of the fund
 - ↳ States adopt an *intended use plan* each year
- States then issue low-interest loans, grants, and other aid to local governments, schools, utilities, and nonprofits
 - ↳ Groups that receive loans *repay* the CWSRF
 - ↳ States use repaid loan funds (and interest) to issue new loans

Environmental Justice: Lowndes County, AL



Environmental Justice: McDowell County, WV



Source: Lorelei Goff (2024).

Environmental Justice: Queens, New York



Source: Sarah Miller (2019).

Environmental Justice: Navajo Nation



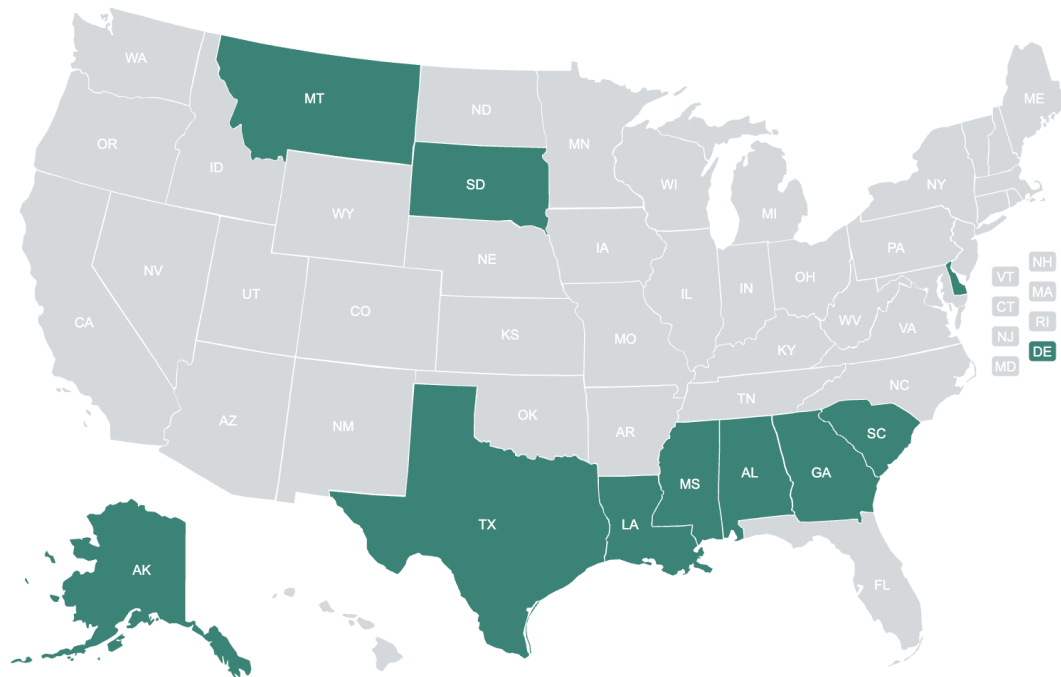
Source: Navajo Tribal Utility Authority (2024).

Current Issues: Wetlands Protection

States with the most wetlands and highest proportion of wetlands to land, but least protective laws

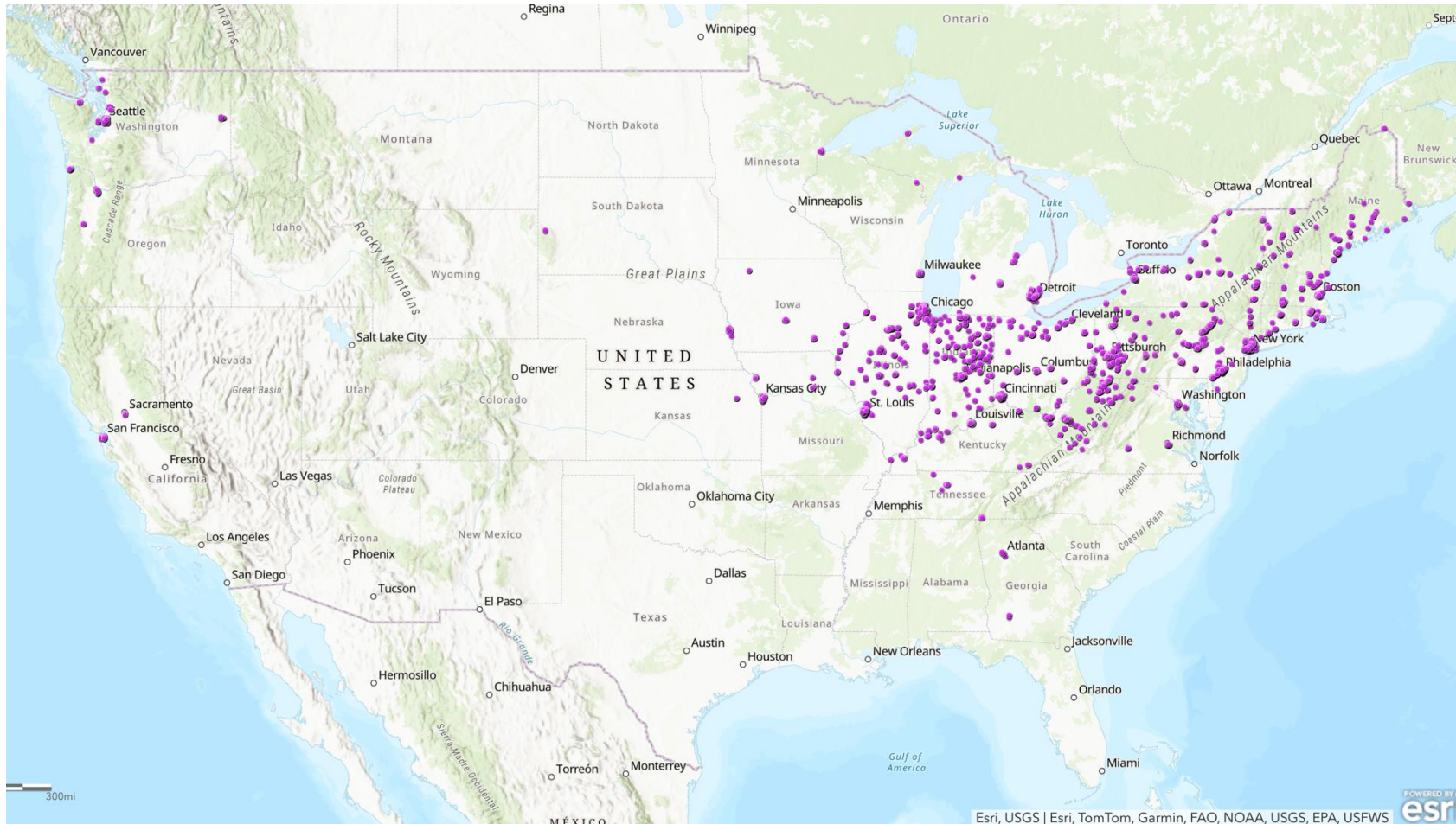
Includes states with more than 3 million acres of wetlands and/or more than 4% of the state are wetlands

Alabama, Alaska, Delaware, Georgia, Louisiana, Mississippi, Montana,
South Carolina, South Dakota, Texas



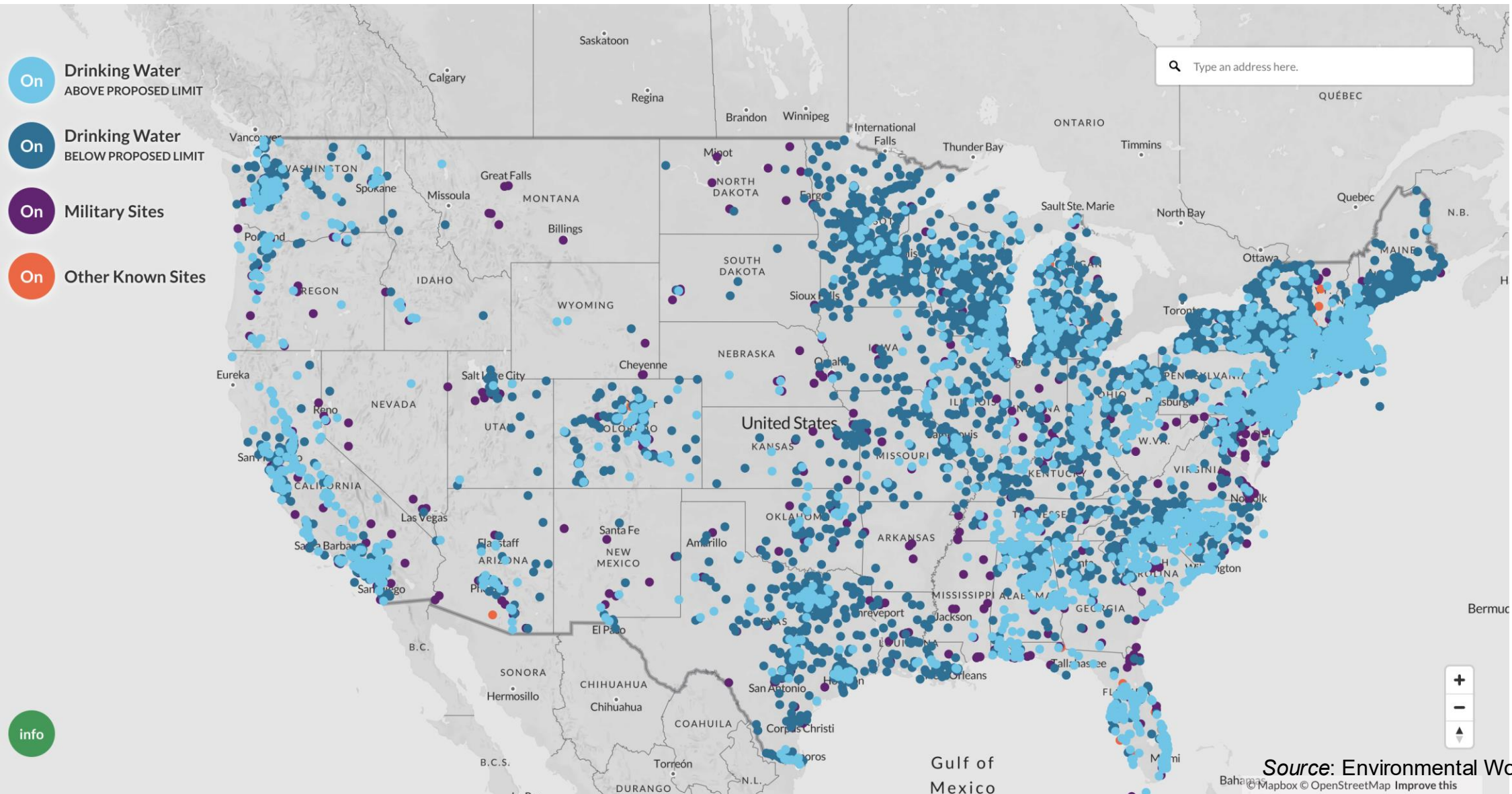
- *Sackett v. U.S. EPA*, 598 U.S. 651 (2023) (“*Sackett II*”).

Current Issues: Poop in the Water



- *San Francisco v. U.S. EPA, 604 U.S. ___, No. 23-753 (Mar. 4, 2025).*

Current Issues: PFAS

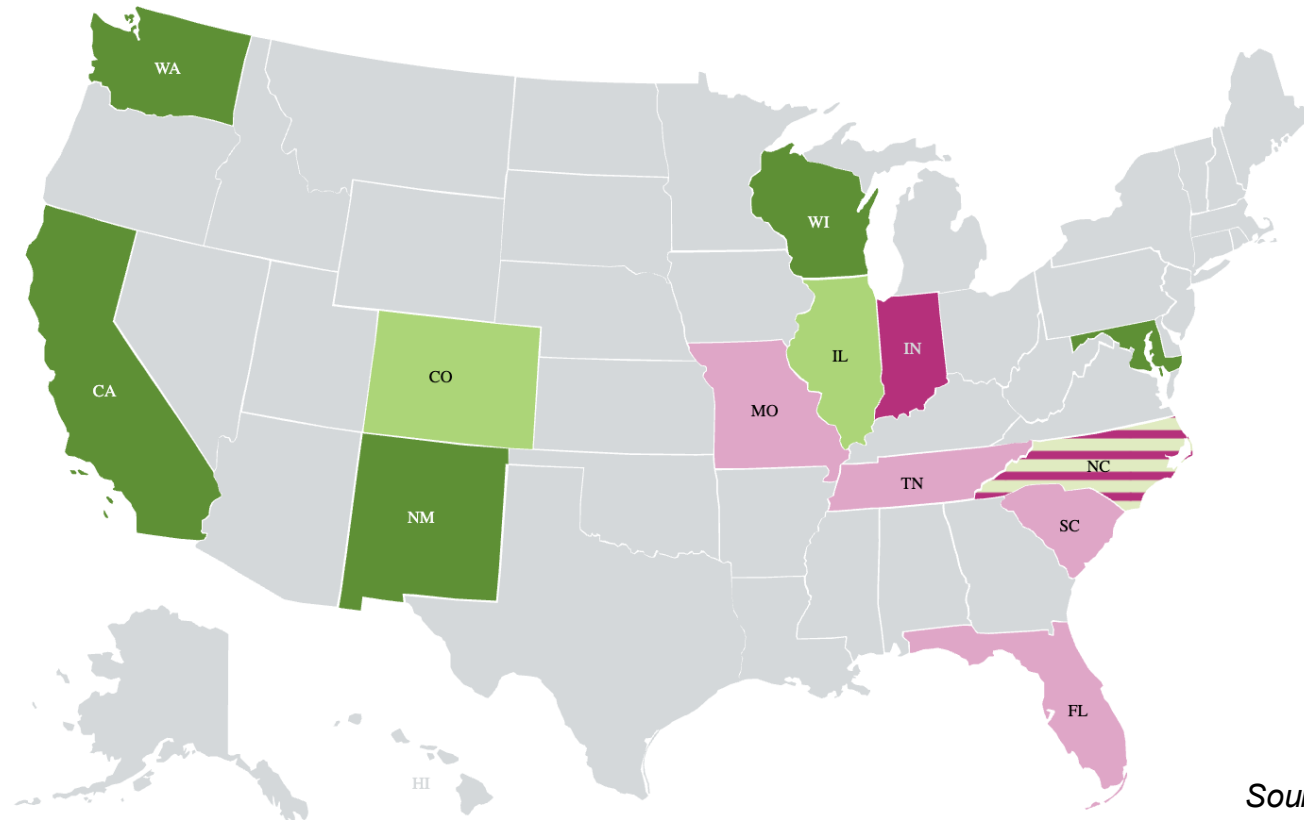


Source: Environmental Working Group (2025).

Current Issues: The Role of States

Where states are strengthening and weakening protections for wetlands and streams

- Good legislation:**
California, Maryland, New Mexico, Washington, Wisconsin
- Creating wetlands programs:** Colorado, Illinois
- Executive action to protect wetlands:**
North Carolina
- Passed rollbacks in 2023–2024:** Indiana, North Carolina
- Introduced rollbacks that failed to pass:** Florida, Missouri, Tennessee, South Carolina



Source: EarthJustice (2024).