

No. 18-260

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IN THE  
**Supreme Court of the United States**

COUNTY OF MAUI,

*Petitioner,*

v.

HAWAII WILDLIFE FUND; SIERRA CLUB-MAUI GROUP;  
SURFRIDER FOUNDATION; WEST MAUI PRESERVATION  
ASSOCIATION,

*Respondents.*

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On Writ of Certiorari to the United States Court of  
Appeals for the Ninth Circuit

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**BRIEF OF *AMICI CURIAE* CRAFT BREWERS IN  
SUPPORT OF RESPONDENTS**

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## INTEREST OF AMICI CURIAE<sup>1</sup>

*Amici curiae* Craft Brewers are a coalition of craft breweries from across the United States.<sup>2</sup> The Craft Brewers operate businesses dependent on consistent sources of clean water and rely upon the Clean Water Act (33 U.S.C. §§ 1251, *et seq.*) (the “Act”) to protect their water supply and their business operations.

The Craft Brewers are directly affected by decisions that could undermine the Act’s existing protections and make it trivially easy to evade. The Brewers have a vital interest in preserving the longstanding interpretation of the Act, an interpretation affirmed by the Ninth Circuit and described below.

## INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Clean Water Act requires permits for “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. §§ 1362(12), 1342.

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<sup>1</sup> Pursuant to Supreme Court Rule 37.3, counsel for *amici curiae* certify that all parties have consented to the filing of this brief. Pursuant to Supreme Court Rule 37.6, counsel for *amici curiae* certify that no counsel for a party authored this brief, in whole or in part, and that no person or entity, other than *amici curiae* and their counsel, made a monetary contribution to its preparation or submission.

<sup>2</sup> The Appendix lists the individual breweries that form the coalition of Craft Brewers.

Here, the County of Maui and its *amici* assert that pollution which (a) indisputably comes from a point source and (b) indisputably flows from that point source into navigable waters does not require permitting under the Act, so long as (c) the pollution flows through groundwater (in any way, and for any length of time) before it enters navigable waters. Put differently, on the County and its *amici*'s theory of the Clean Water Act, a factory whose pipe sends pollutants flowing into a river can avoid regulation by moving its pipe twenty feet back and spilling pollutants into a gravel pit, such that groundwater carries precisely the same pollutants into precisely the same river.

That makes little sense. The Clean Water Act (“CWA” or the “Act”), by express statutory definition, controls pollution that clearly and obviously flows from “well[s],” and “container[s],” and other “discernable, confined, and discrete conveyances”—the statutory definition of point sources—into navigable waters. 33 U.S.C. § 1362(12), (14). That is clear and express statutory language. And, as a plurality opinion by Justice Scalia explicitly held twelve years ago, there is no statutory requirement that the pollution from a point source like a well flow “directly” into navigable waters, or that it must somehow avoid transmission through “intervening conduits” in order to be “from” the point source. *Rapanos v. United States*, 547 U.S. 715, 743-44 (2008).

Nothing in the statute suggests that a point source must actually be the final means of delivery

into navigable waters in order to be regulated by the CWA. In fact, the specific inclusion of “well[s]” and “container[s]” in the statutory definition of “point source[s]” demonstrates the opposite. Pollution from a CWA-regulated point source can be (and, under decades of precedent, often is) delivered from a point source into a navigable waterway by a natural process like rainfall, snowfall, gravity, or groundwater. For example, a pipe (a statutorily-defined point source) might end at the top of a hill, dispersing pollutants onto the hill and allowing the pollution to flow down the hill into a lake. The weight of authority has long held that such an intervening conduit does not categorically remove a point source from CWA regulation. Otherwise, the CWA would be trivially easy to evade.

Nonetheless, the County contends here that, in order for point-source pollution to be regulated by the CWA, the pollution must not only be “from” the point source, but a point source must be the “means of delivery” of pollution into navigable waters. That is a radical proposition, without support in the statutory language or decades of statutory interpretation.

The EPA, recognizing the extremity of the County’s position, has rejected it. U.S. Br. 7-8. The EPA concedes that the CWA regulates indirect discharge of pollutants in general. *Id.* However, in direct contradiction to its own long-standing interpretation of the CWA (as well as its prior litigation position in this very case before this Court’s grant of *certiorari*), the EPA now asserts that

the CWA categorically does not regulate pollution that is transmitted, for any portion of its journey into navigable waters, through groundwater. The EPA's proposed groundwater-specific exemption has no support in the statutory language, at all (even though the CWA does expressly exempt certain other processes from CWA regulation). The EPA's rule, like the County's, would make the CWA's permitting requirements trivially easy for polluters to evade. All a polluter need do is park pollution in an enclosure that drains through groundwater directly into a navigable waterway, like a pit on a riverbank, and the polluter could avoid CWA permitting entirely.

Respondents clearly and accurately explain the fatal problems with the County's and the EPA's (reformulated) interpretation of the Act. The purpose of this brief is to amplify a related point. It explains the threat posed by the County and the EPA's interpretation of the Clean Water Act to the current regulatory and judicial *status quo*.

Most outrageously, the County, the EPA, and several *amici* claim that the Court *must* adopt their position in order to avoid transforming the nation's clean water regulatory regime. The County and the EPA contend that if the Court does not interpret the Act according to their unnatural formulation—*i.e.*, that contact with groundwater makes pollution otherwise from a point source not “from” a point source—the Court will substantially transform national clean water policy, by requiring a host of currently unpermitted facilities to become permitted.

Pet. Br. 45-48. The County and its amici even argue that the supposed magnitude of this supposed “change” should invoke a “clear statement” rule of statutory interpretation. *Id.* at 52.

To put it simply, “not so.” It is the County’s position—not the position of Respondents—that would dramatically transform clean water regulation in the United States. *Amici* submit this brief to explain why.

*Amici* are a coalition of craft brewers who, like many other businesses in a range of important industries, rely upon clean water for their livelihood. Quality beer cannot be brewed without clean water, and so brewers (like many other industries) rely upon the Clean Water Act to protect their water supply and their business operations. They have a vital interest in maintaining the current regulatory regime.

The current regulatory regime will be severely threatened if the Court adopts the County’s position. As Justice Scalia carefully explained, courts and regulators have long, and nearly unanimously, concluded that pollution conveyed indirectly from a point source to navigable waters through “intervening conduits”—including pollution conveyed through natural conduits, like rain or snow overflow, gravity, or groundwater—is subject to the Act’s permitting regime. *Rapanos*, 547 U.S. at 744. The common-sense notion that an intervening natural conduit does not prevent CWA regulation has long been conventional judicial wisdom. Indeed, it has been settled law for at least forty years. *See, e.g.*,

*Sierra Club v. Abston Const. Co., Inc.*, 620 F.2d 41, 45 (5th Cir. 1980) (pollution from sediment basins in mine subject to CWA permitting, even though pollution from basins carried to navigable waters only “by gravity flow of rainwater”); *United States v. Earth Sciences, Inc.*, 599 F.2d 368, 370-71, 374 (10th Cir. 1979) (pollution from reserve sump in mine subject to regulation under CWA, even though pollutants only reached navigable waters due to excess rainfall and snow melt).

There has also been a longstanding rule concerning transmission through groundwater. It has long been both law and practice that transmission through groundwater does not categorically remove a point source from regulation under the CWA—so long as, importantly, there is a genuine evidentiary showing that actual, traceable pollution *in fact* flows from a specific point source through groundwater to navigable waters. As shown below, point sources like mining operations, wastewater treatment plants, and animal feeding operations have long been required to obtain permits under the CWA, even when the final conduit for that pollution from those point sources into navigable waters is groundwater. A wide range of judicial decisions have so recognized.

To be sure, the CWA does not regulate pollution of groundwater, a proposition that no party before the Court disputes. Groundwater is not “navigable water.” Nor does the CWA (under longstanding interpretation, shared by the EPA and the courts) regulate pollution into groundwater

merely on the basis of a “generalized assertion” that, conceivably, pollution into the groundwater “may” be conveyed to navigable surface water, or where the only evidence is that the groundwater pollution has an “only indirect, remote, and attenuated connection with an identifiable body of ‘navigable water.’” *Rice v. Harken Expl. Co.*, 250 F.3d 264, 272 (5th Cir. 2001). But the bulk of regulatory and judicial opinion *has* long held that where there *is* clear evidence of a “close, direct and proximate link between . . . discharges . . . and any resulting, actual . . . contamination of a particular body of natural surface water that satisfied the jurisdictional requirements” of the Act, the CWA may apply. *Id.* Put differently, the Act is not somehow categorically *forbidden* from applying simply because groundwater is involved as a medium of transmission. *Id.* (holding when a plaintiff can make a showing of close, direct, and proximate pollution from a point source through groundwater to navigable waters, the CWA may apply).

This common-sense rule emphatically does not subject all pollution into all groundwater to CWA regulation. It merely means that when there is otherwise a clear causal showing that the other statutory elements of liability under the Act have been met (*i.e.*, there is identifiable pollution from an identified point source into an identified navigable water), liability under the CWA is not precluded merely because there has been some transmission through groundwater.

In some cases involving transmission through groundwater, there may be a legitimate issue over exactly what evidence suffices to show the direct causal connection between the point source's pollution and the pollution that enters navigable waters. But, in this case, the quantum of evidence for such a causal showing is not the issue before the Court. The County and the EPA (albeit with inconsistent reasoning) have opted to take the extreme position that *any* contact with groundwater, at all, *categorically* removes a point source from CWA's regulatory and permitting regime. According to the County and the EPA, the CWA does not apply even if, say, a specific plume of gasoline from an identified pipe seeps through a few feet of groundwater on its way into a waterway, *see Upstate Forever v. Kinder Morgan Energy Partners, L.P.*, 887 F.3d 637, 644 (4th Cir. 2018) (discussing similar facts), or even when, as here, the defendant *concedes* (and a "tracer" study conclusively finds) specific, identifiable pollution emanating from wells over decades traveled through groundwater before entering the ocean at a specific point. In these kinds of "easy" cases, it has long been clear that the CWA applies, because every element of a CWA violation is clearly present—a pollutant has, in fact, based on any ordinary reading of the statute's language, been added to navigable waters from a point source. 33 U.S.C. §§ 1362(12), 1342.

The County and its *amici* offer, as a parade of horrors, a range of facilities that (they claim) would supposedly be subject to permitting if this Court does not adopt their novel and extra-statutory means-of-



delivery rule. *E.g.*, Pet. Br. 45-49. But the County's assertion on that point is simply false. It is not enough (as the County does) to simply add up the Class V wells, septic systems, sewage collection systems, or water delivery systems in the United States, note that these systems could have some contact with groundwater, and then conclude that these systems will be required to obtain CWA permits if the Court does not adopt the County's novel "means of delivery" interpretation of the Act. Pet. Br. at 45-49.

The County and its *amici* make a simple error. Again, for a CWA permit to be required, it is not enough for there to merely be contact between a point source and groundwater. No party claims that the mere discharge into groundwater, by itself, suffices to invoke the CWA. Rather, as the Second, Fourth, Fifth, Seventh and Ninth Circuits, supported by the vast majority of the District Courts to consider the issue, have found, there is an additional step for CWA liability—a showing that identifiable pollution from a specific point source is, in fact, entering navigable waters, whether via groundwater, or otherwise. And it is this step that refutes the County's policy argument.<sup>3</sup> The requirement of

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<sup>3</sup> The language used to describe this step has varied. But whether the step is described, as per the Fourth Circuit and a longstanding position of the EPA, as a requirement that there be a "direct hydrological connection" between the point source and the navigable water, or, as per the Ninth Circuit, a requirement that the pollution into navigable waters be "fairly traceable" to the point source, the longstanding rule requiring a

tracing pollution from a specific point source to pollution that enters navigable waters (which is inherent in the statutory requirement that there *in fact* be a showing of an “addition” of a “pollutant to navigable waters” from a “point source”) will exclude the bulk of facilities that have incidental contact with groundwater from CWA permitting.

The very evidence cited by the County on this point in its brief to this Court demonstrates that it is the County’s position, not Respondents’, that would upset the *status quo*. The County is right to note that large numbers of groundwater-touching facilities like wells and septic systems have not been required to obtain CWA permits. But the reason why large numbers of wells, septic systems, and other facilities have not been permitted under the CWA is not because courts or regulators have somehow implicitly adopted the County’s novel “means of delivery” interpretation of the CWA. As shown below, courts and regulators emphatically have *not* done so—for the most part, they have categorically rejected that interpretation. Instead, regulators and courts have not required certain wells, septic systems, and other systems to obtain CWA permits because mere contact with groundwater is not sufficient for a point source to fall within the CWA’s permitting regime. But that does not mean that, in the relatively rare case where—as here—a plaintiff or regulator *can* demonstrate a

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showing of direct causal link between point-source pollution and pollution into a navigable waterway is similar.

clear connection between pollution from a point source and navigable waters through the “intervening conduit[]” of groundwater—*e.g.*, a septic system by a riverbank directly fouling a river via transmission that enters the river through groundwater—the CWA somehow categorically does not apply.

Equally important, the County’s policy argument simply ignores the other side of the ledger—what polluters will be able to do if this Court ignores the plain text of the statute and adopts the County’s novel statutory interpretation. If the Court holds that a point source must also be the “means of delivery” of a pollutant to navigable waters in order to invoke the CWA’s regulatory scheme, the ability of a polluter to avoid the CWA will be limited primarily by a polluter’s imagination.

For example, instead of piping a pollutant directly into a stream, a polluter could pipe its pollution onto the slope of a hill and have the pollution be carried by rainwater into the same stream. Or (to cite a scheme that Justice Scalia’s plurality opinion in *Rapanos* explicitly suggested should be subject to CWA permitting) a polluter could dump the pollutant into an “intermittent” watercourse like a confined pool that then, with the addition of naturally occurring rainwater, flows directly into a navigable waterway. *Rapanos*, 517 U.S. at 744; *Sierra Club*, 620 F.2d at 45-56 (holding that pollutants from pool carried by rainwater subject to CWA permitting). The range of methods by which a polluter could avoid statutory liability by

devising an “indirect” means of pollution are nearly limitless.

The EPA’s position takes a different approach to exempting point source pollution than the County’s. But, as shown below, the EPA’s interpretation would also make it staggeringly simple to evade the CWA’s permitting requirement. As one District Court noted, “It would hardly make sense for the CWA to encompass a polluter who discharges pollutants via a pipe running from the factory directly to the riverbank, but not a polluter who dumps the same pollutants into a man-made settling basin some distance short of the river and then allows the pollutants to seep into the river via the groundwater.” *N. Cal. River Watch v. Mercer Fraser Co.*, 2005 WL 2122052, at \*2-3 (N.D. Cal. Sept. 1, 2005). Redirecting pipes from a river into a pit near a river is a trivial undertaking for many enterprises. Allowing such an evasion of the CWA’s permit requirement is directly contrary to a host of judicial and regulatory decisions. It, too, would represent a severe upending of the *status quo*.

Businesses like *amici* have built their operations on the assumption that the Clean Water Act will not be trivially easy to evade. Yet making the Act trivially easy to evade is precisely what the County and the EPA urge the Court to do. The Court should reject the County and the EPA’s strained construction. It should affirm the decision below.

**ARGUMENT****A. Businesses, like Craft Breweries, that Depend on Clean Water Rely on the CWA's Regulatory *Status Quo***

The craft brewing industry contributes about \$76.2 billion to the U.S. economy each year, along with more than 500,000 jobs.<sup>4</sup> It cannot exist without a reliable clean water supply.

Beer is mostly water. Thus, the quality of source water significantly affects the finished product, and compounds present in brewing water can affect pH, color, aroma, and taste. For example, sulfates make hops taste astringent, while chlorine can create a medicinal off-flavor. The presence of bacteria can spoil a batch of beer. Even small chemical disruptions in a brewer's water supply can influence factors like shelf life and foam pattern.

It is critical to the industry not only that water be clean but that it reliably be so under consistent standards. Unexpected changes in water quality—due to pollution in source water, or a change in the treatment process at a local water treatment plant—will threaten the brewing process, consistency, and the craft brewers' bottom line.

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<sup>4</sup> Brewers Association, *Economic Impact*, <https://www.brewersassociation.org/statistics-and-data/economic-impact-data/> (last visited July 10, 2019).

Thus, the craft brewing industry has a direct stake in preserving the current clean water *status quo*. Indeed, the craft brewing industry largely grew up with the Clean Water Act. In 1972, when the Act (and Sections 1342 and 1362 of the Act) was enacted, the craft brewing business was in its infancy. It has since grown at an extraordinary rate—in part because American craft brewers can rely upon a clean water supply.

A threat of transforming clean water regulation, therefore, is no trivial matter to the craft brewing industry. The industry depends on the preservation of the current clean-water *status quo*. A shift in rules that would make the Clean Water Act a simple matter to evade would be a severe problem for the craft brewing industry (as it would be for many other industries, and for every individual who relies on clean water for drinking or recreation).

**B. Regulators and Courts Have Generally Agreed on the CWA's Application to Groundwater: When There Is Clear Evidence of a CWA Violation, Transmission Through Groundwater Does Not Provide an Immunity, Even Though the CWA Does Not Generally Regulate Pollution into Groundwater**

The County, the EPA, and the County's other *amici* ignore that their proposed interpretation of the Act contradicts longstanding regulatory practice and judicial interpretation. Requiring permits for

pollution that enters navigable waters through groundwater has long been standard in many areas for many years. In fact, prior to 2018, courts and regulators had generally agreed on the appropriate treatment for groundwater emissions under the CWA. While individual statements of the rule varied in detail, almost all courts and regulators to address the issue came to the same general conclusion: While the CWA does not regulate pollution into groundwater in general (*i.e.*, the mere fact that there is a conceivable, hypothetical connection between groundwater and surface water is insufficient to require a point-source polluter into groundwater to be permitted under the Act), CWA permitting is required when there is clear evidence that a defined stream of pollution from a defined point source is entering navigable waters through the groundwater.

That basic principle has for many decades—and without significant controversy—guided water policy in the United States. It is a basic principle upon which craft brewers, and many other businesses, have relied. And it is that basic principle that the County seeks to upend here.

***General Regulatory Statements.*** The EPA, for at least twenty-nine years and until the Court granted certiorari in this very case, consistently held to a single position—while the CWA does not generally regulate discharges into groundwater, when there is proof of a direct connection through groundwater of pollution from a specific point source, CWA permitting is required.

The numbers of such statements are legion. See Preamble, NPDES Permit Application Regulations for Storm Water Discharges, EPA Final Rule, 55 Fed. Reg. 47,990, 47,997 (Nov. 16, 1990) (“[T]his rulemaking only addresses discharges to waters of the United States, consequently discharges to ground waters are not covered by this rulemaking (***unless there is a hydrological connection between the ground water and a nearby surface water body.***”) (emphasis added); Amendments to the Water Quality Standards Regulations that Pertain to Standards on Indian Reservations, Final Rule, 56 Fed. Reg. 64,876, 64,892 (Dec. 12, 1991) (“Notwithstanding the strong language in the legislative history of the Clean Water Act to the effect that the Act does not grant EPA authority to regulate pollution of groundwaters, ***EPA and most courts addressing the issue have recognized . . . the Act requires NPDES permits for discharges to groundwater where there is a direct hydrological connection between groundwaters and surface waters. In these situations, the affected groundwaters are not considered ‘waters of the United States’ but discharges to them are regulated because such discharges are effectively discharges to the directly connected surface waters.***”) (emphasis added); EPA, Response to Comments – Topic 10 Legal Analysis, at 386 (June 30, 2015) (“***EPA agrees that the agency has a longstanding and consistent interpretation that the Clean Water Act may cover discharges of pollutants from point sources to surface water that occur via ground water that has a direct hydrologic connection to the surface water.***”)



Nothing in this rule changes or affects that longstanding interpretation, including the exclusion of groundwater from the definition of ‘waters of the United States.’”) (emphasis added); NPDES Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations, 66 Fed. Reg. 2960, 3017 (Jan. 12, 2001) (“As a legal and factual matter, EPA has made a determination that, in general, ***collected or channeled pollutants conveyed to surface waters via ground water can constitute a discharge subject to the Clean Water Act.***”) (emphasis added); Final General NPDES Permit for Concentrated Animal Feeding Operations (CAFO) in Idaho ID-G-01-0000, 62 Fed. Reg. 20,177, 20,178 (Apr. 25, 1997) (“The only situation in which groundwater may be affected by the NPDES program ***is when a discharge of pollutants to surface waters can be proven to be via groundwater. . . .*** [T]he EPA agrees that the Clean Water Act does not give EPA the authority to regulate groundwater quality through NPDES permits. However, ***the permit requirements . . . are not intended to regulate groundwater. Rather, they are intended to protect surface waters which are contaminated via a groundwater (subsurface) connection.***”) (emphasis added); Proposed Gen. NPDES Permit for Concentrated Animal Feeding Operations (CAFO) in Idaho, 60 Fed. Reg. 44,489, 44,493 (Aug. 28, 1995) (in promulgating proposed draft concentrated animal feeding operation permit, EPA stated: “[D]ischarges that enter surface waters indirectly through groundwater are prohibited”).

***NPDES Permits In Different Industries And Areas.*** Consistent with the EPA’s “longstanding and consistent interpretation” that CWA permitting may be required when there is a direct showing that pollution from a point source flows in significant quantities through groundwater into navigable waters, CWA permits for discharges through groundwater have been standard in a number of different areas. These areas are united by a single principle—they are discrete, contained point sources from which pollutants clearly flow into navigable waters through groundwater.

*Mining operations.* The EPA has required mines to obtain CWA permits, when mining activity threatened a navigable waterway, even when the discharge occurred through groundwater. For example, the Questa mine in New Mexico deposited toxic slurry in ponds that leached through the groundwater into the Red River. The EPA required CWA permitting, prohibiting discharges through groundwater “to the Red River of pollutants traceable to point source mine operations except in trace amounts.” EPA Region 6, Questa Mine Final Permit Decision, Part II.D (May 31, 2016), *available at* <https://www.env.nm.gov/swqb/NPDES/Permits/NM0022306-Chevron-Questa.pdf>.

*Wastewater treatment plants.* Like mining operations, wastewater treatment plants have been subject to permitting requirements when pollution from treatment basins into navigable waters can be directly traced through groundwater. *E.g.*, EPA

Region 10, Taholah Village Wastewater Treatment Plant, No. WA0023434 (June 4, 2015) (wastewater treatment basins discharging to Quinault River through groundwater), *available at* <https://www.epa.gov/sites/production/files/2017-09/documents/r10-npdes-taholah-wa0023434-final-permit-2015.pdf>; EPA Region 5, NPDES Permit No. WI-0073059-2 (Sept. 22, 2016) (permit for discharge from Neopit wastewater facility's seepage cells through groundwater to creek), *available at* [https://www.epa.gov/sites/production/files/2017-02/documents/wi0073059fnlprmt09\\_22\\_2016\\_0.pdf](https://www.epa.gov/sites/production/files/2017-02/documents/wi0073059fnlprmt09_22_2016_0.pdf).

*Concentrated Animal Feeding Operations* (“CAFOs”). As noted, above, the EPA’s standard permits for Concentrated Animal Feeding Operations (“CAFOs”) regulate discharges “to surface waters of the United States through groundwater with a direct hydrologic connection to surface waters.”<sup>5</sup> These significant sources of water pollution have long been regulated through the CWA, even when they discharge pollutants into navigable waters from groundwater. See *Waterkeeper All., Inc. v. U.S. E.P.A.*, 399 F.3d 486, 515 (2d Cir. 2005) (discussing EPA’s decision to

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<sup>5</sup> EPA Region 6, NPDES General Permit for CAFOs in New Mexico, Part III.D.1 (Sept. 1, 2016), *available at* [https://19january2017snapshot.epa.gov/sites/production/files/2016-07/documents/nmg010000\\_final\\_permit\\_nm\\_cafo-signed.pdf](https://19january2017snapshot.epa.gov/sites/production/files/2016-07/documents/nmg010000_final_permit_nm_cafo-signed.pdf); EPA Region 10, NPDES Permit for CAFOs in Idaho, No. IDG010000 at 30 (Mar. 29, 2012), *available at* <https://www.epa.gov/sites/production/files/2017-12/documents/r10-npdes-idaho-cafo-gp-id010000-final-permit-2012.pdf>.

regulate pollution via groundwater into navigable waters from CAFOs on a case-by-case basis). EPA-authorized state NPDES programs have also long regulated discharge of pollutants from CAFOs, even when such pollution runs through groundwater. *E.g.*, Texas General Permit, No. TXG920000 at 33-34 (July 9, 2009), *available at* <https://www.tceq.texas.gov/assets/public/permitting/wastewater/general/txg920000.pdf>.

*Underground septic systems in rare instances where septic waste flows through the ground into navigable waters.* Finally, in a few discrete cases where pollution from a septic system flows directly and identifiably through the ground into navigable waters, permitting is required. *E.g.*, EPA, Response to Congress on Use of Decentralized Wastewater Treatment Sys. at 5 (Apr. 1997) (although septic systems generally discharge underground into ground water without discharging into surface water, the rare septic systems “which discharge to a surface water must, and can,” meet requirements of NPDES permitting program); *accord United States v. Lucas*, 516 F.3d 316, 332 (5th Cir. 2008) (underground septic systems discharging to jurisdictional wetlands require NPDES permits).

***Judicial decisions supporting CWA regulation of pollutant discharge from point sources through groundwater to navigable waters.*** Likewise, the overwhelming majority of courts to consider the issue have had little difficulty concluding that pollution that comes from a point source and ends up in navigable waters is not

categorically excluded from CWA permitting simply because the pollution flowed through groundwater along the way. This near-consensus, along with EPA practice, has set the law of the land for decades. It is that consensus on which craft brewers, and many others, have relied.

*Circuit Court decisions.* The Second, Fourth, Fifth, Seventh, Ninth, and Tenth Circuits have all held (in many cases for decades) that pollution from a point source is not categorically excluded from CWA permitting simply because groundwater served as a conduit for the pollution into navigable waters.

As early as 1977, the Seventh Circuit concluded the EPA has authority under the Act to regulate discharges of acid wastes into a deep well where “the regulation is undertaken in conjunction with limitations on the permittee’s discharges into surface waters.” *U.S. Steel Corp. v. Train*, 556 F.2d 822, 852 (7th Cir. 1977), *overruled on other grounds by City of W. Chi. v. U.S. Nuclear Regulatory Comm’n*, 701 F.2d 632, 644 (7th Cir. 1983). The Seventh Circuit explicitly noted that the expectation was that emissions from the wells would leach into groundwater. *Id.*

In 1985, the Tenth Circuit held that the CWA applies to the discharge of pollutants from uranium mining facilities into arroyos, the waters of which “soak into the earth’s surface, become part of the underground aquifers,” and were eventually discharged into a particular spring and river. *Quivira Mining Co. v. EPA*, 765 F.2d 126, 129-30 (10th Cir. 1985). Again, the Tenth Circuit clearly

understood that transmission through groundwater did not categorically remove point source pollution from CWA regulation.

In 2001, the Fifth Circuit faced a case in which there was a “generalized” allegation, without more, that discharge into groundwater (which was undisputed) would eventually pollute a navigable waterway, in that case the Canadian River. *Rice*, 250 F.3d at 272. In that case, the Fifth Circuit found insufficient evidence of a violation of the Oil Protection Act (which, on this issue, the Circuit analogized to and interpreted identically with the CWA).

The Fifth Circuit relied on prior circuit precedent, *Exxon Corp. v. Train*, 554 F.2d 1310, 1322 (5th Cir. 1977), that had found that (as no party here disputes) the CWA was not intended to directly regulate all discharges into groundwater. Consistent with the long-standing EPA guidance and understanding of the CWA described above, the Fifth Circuit concluded that this precluded CWA liability when there was no actual evidence of pollution from the point source into navigable waters, and the only evidence of a connection between groundwater and navigable water was a “general” “hydrological” assertion that a navigable waterway was “down gradient” from the site at which groundwater was being polluted. *Rice*, 250 F.3d at 272.

Notably, however—and also consistent with the EPA guidance described above—the Fifth Circuit held that a plaintiff *could* prove a CWA violation when there was evidence of a “close, direct and

proximate link” between discharge into groundwater and “resulting actual, identifiable ... contamination” of surface water. *Id.* Put differently, the Fifth Circuit adopted the same common-sense rule that had long since guided interpretation of the CWA—mere pollution into groundwater and a generalized claim that groundwater pollution could affect another body of water is insufficient, but CWA liability may be found when there is specific evidence of actual transmission of pollution from a point source to a navigable waterway through groundwater.

In 2005, the Second Circuit similarly concluded the Act may apply on a case-by-case basis to the process of spreading wastewaters on a CAFO, when pollutants leach into groundwater and from there travel into surface waters as a result of a direct hydrological connection between the groundwater and surface waters. *Waterkeeper All.*, 399 F.3d 486. The Second Circuit reasoned that if courts required both the cause of the pollution and any intervening land to qualify as point sources, such an interpretation would, in practice, “impose a requirement not contemplated by the Act: that pollutants be channelized not once but twice before the EPA can regulate them.” *Id.* at 510-11.

Finally, in 2018, roughly simultaneously with the Ninth Circuit’s decision below, the Fourth Circuit adopted a rule consistent with the EPA’s long-standing interpretation of the Act’s application to groundwater pollution. It held, on the facts of that case, that the CWA applied to the discharge of

gasoline from a ruptured pipeline through groundwater to navigable waters. *Upstate Forever*, 887 F.3d 637. In so ruling, the court reasoned that the plain language of the statute does not “require that any discharge of a pollutant cognizable under the CWA be seamlessly channeled by point sources until the moment the pollutant enters navigable waters.” *Id.* at 650. The Fourth Circuit noted that, on the facts before it, the direct connection between the point source pollution and the same pollution entering navigable waters was clear—the pollutants traveled 1000 feet or less from the pipeline, were not diluted, were not diverted from their natural course, and were traceable to the ruptured pipeline. *Id.* at 651-52.

Thus, through August 2018, every federal Court of Appeals to consider the issue had clustered around a common interpretation of the Act’s applicability to groundwater pollution. All circuits had held that the CWA does not generally regulate groundwater pollution, but regulation of pollution into groundwater could be appropriate in a specific case where there is a direct showing of pollution transmitted from a point source to navigable waters through groundwater.

The lone outlier is the Sixth Circuit, which in September, 2018 in *Kentucky Waterways All. v. Kentucky Utils. Co.*, 905 F.3d 925 (6th Cir. 2018) adopted, in essence, the County’s argument. *Id.* at 933. The Sixth Circuit held that any point-source pollution that is (for any length of its journey) “conveyed” to water by any method that is not a



“point source” (including not only groundwater, but, by extension, natural washing through rainfall, snowfall, gravity, or some other method) is categorically excluded from CWA regulation. *Id.*

Notably, the Sixth Circuit did not rely, for that conclusion, on caselaw or regulatory interpretation. Indeed, it conceded that its view was contrary to that of other courts, including circuit courts. *Id.* at 935-36. Rather, it relied on its own unsupported belief that pollution could (somehow) not be “from” a point source unless a point source is in fact the final means of delivery of the pollution into navigable waters. *Id.* As Respondents’ Brief argues, the Sixth Circuit’s statutory interpretation (like the County’s) is based on an bizarrely idiosyncratic concept of the English word “from”—on the County and the Sixth Circuit’s understanding, water poured from a glass through a coffee filter into a pot would not be “from” the glass simply because it passed through the medium of the coffee filter along the way. That is not a common understanding of the word “from.”

For purposes of this brief, however, it is most important to note not just the Sixth Circuit’s error, but its extreme status as an outlier. Courts and regulators have for years concluded that pollution does not cease to be “from” a point source simply because it passes through some kind of non-point-source medium on the way to navigable waters. In addition to the cases cited above concerning groundwater specifically, there is the legion of well-established cases making clear that pollution can be

“from” a point source even though it is finally conveyed into a waterway by some non-point-source means, like rainfall. *Sierra Club*, 620 F.2d at 45 (pollution from mine pit that naturally flowed via gravity to a navigable waterway was a “point source” subject to regulation under the CWA; holding that “[g]ravity flow, resulting in a discharge into a navigable body of water, may be part of a point source discharge if the miner at least initially collected or channeled the water and other materials”); *Peconic Baykeeper, Inc. v. Suffolk Cty.*, 600 F.3d 180, 188-89 (2d Cir. 2010) (holding that trucks and helicopters that spray pesticides through the air into surface waters are subject to the CWA, and specifically rejecting the argument that the intervening air between the sprayers and surface waters precluded CWA regulation); *League of Wilderness Defs. v. Forsgren*, 309 F.3d 1181, 1185 (9th Cir. 2002) (pollution sprayed from an airplane that reaches navigable waters is subject to CWA regulation because “an airplane fitted with tanks and mechanical spraying apparatus is a ‘discrete conveyance,’” insecticides are pollutants under the Act, and the affected surface waters are covered by the Act); *Concerned Area Residents for the Env’t v. Southview Farm*, 34 F.3d 114, 119 (2d Cir. 1994) (the CWA applies to vehicles that spread liquid manure onto fields, when that liquid manure subsequently flows through a ditch, to a stream, and ultimately into navigable waters).

Put simply, aside from the Sixth Circuit’s highly idiosyncratic recent decision, there had long been consensus amongst the Courts of Appeals on a

rule similar to the long-standing interpretation of the EPA: namely, that transmission through groundwater would not categorically bar liability under the CWA, when there was a genuine evidentiary showing of specific, traceable pollution from a specific point source that travels through groundwater into a specific navigable waterway.

*District Court decisions.* That same consensus is also reflected in the opinion of the overwhelming bulk of District Courts to consider the issue. Once again, these District Court opinions reflect the consensus upon which businesses and many others have relied for many years, and which the County and the EPA's interpretations would upend.

Many courts have applied the CWA in circumstances where point-source pollution flowed through a minimal amount of groundwater to reach a navigable waterway—pointing out the severe consequences of adopting the rule urged by the County and the EPA. For example, in *Northwest Environmental Defense Center. v. Grabhorn, Inc.*, 2009 WL 3672895, at \*5, 11 (D. Or. Oct. 30, 2009), the District Court considered the discharge of pollutants into a manmade irrigation pond a few hundred feet away from a river, from which the pollutants entered the river through directly hydrologically connected groundwater. It easily held that the CWA applied to such pollution. *Id.* In *Yadkin Riverkeeper, Inc. v. Duke Energy Carolinas, LLC*, 141 F. Supp. 3d 428, 436, 444-45 (M.D.N.C. 2015), the District Court applied the CWA to the unpermitted disposal of coal ash wastewater into

unlined lagoons on a river bank, from which pollutants travelled to the river through the short stretch of groundwater beneath the dam separating the unlined lagoon and the river. And, in *San Francisco Herring Ass'n v. Pacific Gas & Electric Co.*, 81 F. Supp. 3d 847, 853, 863 (N.D. Cal. 2015), the District Court considered the burial of toxic waste at manufactured gas plants “either abutting the San Francisco Bay shoreline or within a few hundred feet of it,” from which the waste entered the Bay through groundwater. In all of these cases, the District Courts applied the common-sense rule that mere transmission through groundwater at some point in the process of delivering pollution into a waterway is not sufficient for a polluter to avoid regulation under the CWA’s permitting regime, when a CWA violation can otherwise be easily shown.

Beyond those cases, an enormous, and consistent, set of District Courts opinions adopt the consensus rule about point-source pollution that flows through groundwater to navigable waters under the CWA, as described above. *E.g.*, *Flint Riverkeeper, Inc. v. S. Mills, Inc.*, 276 F. Supp. 3d 1359, 1367 (M.D. Ga. 2017), *aff'd*, 261 F. Supp. 3d 1345 (M.D. Ga. 2017) (plaintiff stated a CWA claim by alleging defendant discharged industrial wastewater into oversaturated spray fields without a permit, causing pollutants to travel through groundwater with a direct hydrological connection to surface water into a river’s tributaries); *Ohio Valley Envtl. Coal. Inc. v. Pocahontas Land Corp.*, 2015 WL 2144905, at \*8 (S.D.W. Va. May 7, 2015) (“valley fills” that collect coal mine waste water and convey

pollutants to surface waters from hydrologically connected groundwater require NPDES permit); *Raritan Baykeeper, Inc. v. NL Indus., Inc.*, 2013 WL 103880, at \*15 (D.N.J. Jan. 8, 2013) (polluted water discharged into a ditch and lagoon system that percolated into groundwater and reached a river falls within the CWA's regulations); *Tenn. Riverkeeper, Inc. v. Hensley-Graves Holdings, LLC*, 2013 WL 12304022, at \*6 (N.D. Ala. Aug. 20, 2013) (contaminants that seeped from a landfill to groundwater and then flowed from a spring to a creek are covered by the CWA if the plaintiff can prove a substantial nexus between the groundwater and surface water); *Ass'n Concerned Over Res. & Nature, Inc. v. Tenn. Aluminum Processors, Inc.*, 2011 WL 1357690, at \*17-18 (M.D. Tenn. April 11, 2011) (CWA jurisdiction applies to disposal of waste into stockpile that leached pollutants into groundwater with a direct hydrologic connection to surface waters); *Greater Yellowstone Coal. v. Larson*, 641 F. Supp. 2d 1120, 1138 (D. Idaho 2009) (NPDES permit required for seepage that "moved down the bedrock to the groundwater aquifer" and then to surface streams); *Hernandez v. Esso Std. Oil Co.*, 599 F. Supp. 2d 175, 181 (D.P.R. 2009) (finding the CWA applies to gasoline spilled from underground storage tanks into groundwater that thereby traveled into river, reasoning "the decision not to comprehensively regulate groundwater as part of the CWA does not require the conclusion that Congress intended to exempt groundwater from all regulation, particularly when the introduction of pollutants into the groundwater adversely affects adjoining river surface water").

Accordingly, there is no real doubt that the longstanding regulatory and judicial approach to the CWA has been that transmission through groundwater does not categorically exclude a polluter from liability under the Act. The consensus rule has long been clear. Nonetheless, the County and the EPA now seek to change that *status quo*.

**C. The County and EPA Vastly Overstate the Consequences of the Court Failing to Adopt Their Statutory Interpretation, While Vastly Understating the Negative Consequences of the Interpretation They Urge**

Thus, the current regulatory regime has long been clear—a facility’s mere emission of some form of pollution into groundwater, or a general allegation of a potential connection between the pollution and navigable waters through groundwater, is not sufficient to require permitting under the CWA, but the CWA’s permitting regime does apply (assuming the other elements of a CWA violation are in fact shown) when the facts reliably demonstrate that pollution from a point source has reached navigable waters after passing through groundwater.

Once the current regime is clearly understood, it is equally clear that the County’s invocation of a specter of thousands of groundwater-touching facilities supposedly being required to obtain individual CWA permits if the Court fails to adopt the County’s novel interpretation of the CWA is baseless. If the Court abides by the plain language

of the statute and upholds the decision below, facilities that pollute from point sources into groundwater will be required to obtain permits under the CWA if, but only if, there is in fact a showing of clear and traceable evidence of pollution from those facilities into navigable waters—just as is the case today, and has been true for decades. There is no basis for asserting that maintaining a *status quo* interpretation that the EPA and almost all interpreting courts have applied for decades would somehow lead to a massive expansion of permitting.

For example, it is simply erroneous to assert that failing to adopt the County's rule would require an NPDES permit for all 650,000 Class V wells in the country. Pet. Br. at 46. Most such wells do not transmit their contents through groundwater to navigable waters at all in traceable, distinguishable amounts. In the case below, the County designed its facility to discharge through injection wells to the Pacific Ocean, concedes it is doing so, and a Tracer Dye Study conclusively established that 64 percent of the wells' pollutants reached the Pacific Ocean through specific, identifiable entry points. *Cty. of Maui v. Hawai'i Wildlife Fund*, 886 F.3d 737, 742-43, 749. Decades of experience have shown that significant numbers of additional facilities are not discharging in this manner—because if they were they would, under current law and regulatory

interpretation, have already been subject to permitting.<sup>6</sup>

Likewise, the County's contention that the Court's maintenance of the *status quo* would greatly expand the number of permits required because it would encompass all septic systems is entirely unfounded. Pet. Br. at 47-48. Indeed, septic systems only release pollutants into groundwater if they are defective; a functional septic system releases wastewater into a leach field, which filters and decomposes pollutants. See, e.g., *Friends of Sakonnet v. Dutra*, 738 F. Supp. 623, 627 (D.R.I. 1990). And "failed" septic systems that do cause pollutants to flow into navigable waters have long been held to violate the CWA, with good reason. *Lucas*, 516 F.3d at 332 ("[T]he [failed] septic systems at issue in this case are point sources that discharged pollutants into waters of the United States and required NPDES permits"); *Friends of Sakonnet*, 738 F. Supp. at 630 ("There is no question in this Court's mind that the owners of the failed septic system are liable under 33 U.S.C. § 1311 for the noxious flow that has poured freely into the Sakonnet River for the last twenty-one years.").

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<sup>6</sup> Beyond that, as Respondents argue in their brief, the EPA and states administering NPDES permit programs could issue general permits for activities conducted in accordance with practices specified in the permits, making the regulatory cost of imposing such permits relatively minimal. Resp'ts Br. at 55-56.



The County's argument that "[w]idespread methods of stormwater and runoff management," "reclaimed irrigation water on golf courses and farm fields," and "storm water detention basins" (Pet. Br. 46-47) would somehow be subject to permitting if the Court affirms suffers from the same defect: The County has offered no reason to believe that these activities discharge pollutants into groundwater, or that, from groundwater, the pollutant levels reaching navigable water are directly traceable and more than *de minimis*. *Cty. of Maui*, 886 F.3d at 749. In any event, if these methods were (in general) a significant and directly-traceable source of point-source pollution in navigable waters, they *already* would likely have been required to obtain CWA permits, since the widespread interpretation of courts and regulators would already have compelled permitting.

Finally, the County's suggestion that (absent the Court agreeing with its position) permits would now be necessary for the "limitless ways pollutants could end up on or in the ground and be transported to navigable waters by rainfall, snowmelt, or percolation to groundwater" (Pet. Br. at 48) is particularly misguided. No party suggests (nor would the statute permit) changing the statutory requirement that pollutants be discharged from a "point source" to navigable waters in order for the Act to apply. A pollutant that merely "falls on the ground" from a non-traceable source, e.g., waste strewn on the ground, is not a point source. Thus, the County's argument that permitting would be required for "vehicles dripping oil on roads," (Pet. Br.

at 46), for example, is simply without basis. In fact, in the decision below, the Ninth Circuit specifically cited this example as a type of activity that could *not* constitute point source pollution, reasoning, “[t]he most common example of nonpoint source pollution is the residue left on roadways by automobiles which rainwater wash[es] off . . . the streets and . . . carri[e]s along by runoff in a polluted soup [to] creeks, rivers, bays, and the ocean.” *Cty. of Maui*, 886 F.3d at 744-45 (internal quotation marks and citation omitted). Similarly, the County’s examples of gas that leaks onto the ground from nozzles at a gas station, and “rain that percolates through municipal road salt storage yards,” (Pet. Br. at 48) would almost certainly fail either the requirement that the pollution came from a “point source,” or that the pollution be clearly and directly traced to a navigable waterway. There is no reason to believe that CWA permitting of such activity would be generally required if the Court fails to adopt the County’s rule—just as it is not required today.

At the same time the County overstates the costs of rejecting the novel statutory interpretation it urges, it understates the costs of accepting the County’s position. As noted above, if the Court adopts the County’s “means of delivery” interpretation of the CWA, it would be child’s play for almost any polluter to avoid the CWA’s permitting requirement—all that is needed is to avoid having pollution carried by an artificial contained point source, like a pipe, on the last mile of the pollution’s journey into a waterway. Of course,

polluters would respond to such an incentive to avoid the CWA. Nor does the EPA's focus on groundwater alleviate the problem. It would hardly be difficult, for example, for many polluters who now pollute directly into a stream to pollute instead into a confined pond near the stream, and have the stream fed with pollutants by seepage through groundwater. *See Nw. Env'tl. Def. Ctr.*, 2009 WL 3672895, at \*6 (D. Or. Oct. 30, 2009) (describing pollutants into river via pond near river and former pipe between pond and river). The potential cost of allowing widespread and simple evasion of the CWA's permitting requirements will likely be devastating. That is another reason why this Court should maintain the current regulatory *status quo*.

**D. The “Clear Statement” Rule Invoked by the County Does Not Apply**

Finally, because it is Respondents, not the County, that seek to maintain the *status quo*, the “clear statement rule” of statutory construction invoked by the County simply does not apply. *See, e.g.*, Pet. Br. 44-52. This Court has imposed a “clear statement” rule of statutory interpretation when an interpretation would cause “an enormous and transformative expansion” of regulatory authority or would “radically readjust[] the balance of state and national authority.” *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 324 (2014); *Bfp v. Resolution Tr. Corp.*, 511 U.S. 531, 544 (1994) (quoting Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 539-40 (1947)).

As shown above, affirming the decision below would be the opposite of a “transformative expansion” of regulatory or national authority—it would simply uphold the current, relatively well-understood, and decades-long interpretation of the scope of the CWA. This Court has consistently refused to apply a “clear statement” rule where “a longstanding statutory construction” is at issue. *Hilton v. S.C. Pub. Rys. Comm’n*, 502 U.S. 197, 206 (1991) (rejecting respondent’s assertion that clear statement rule applies to statutory interpretation relied on by Court for nearly three decades); *see also Gonzales v. Oregon*, 546 U.S. 243, 292 (2006) (Scalia, J., dissenting) (“[N]o clear statement is required on the ground that the Directive [prohibiting physician assisted suicide] intrudes upon an area traditionally reserved exclusively to the States because the Federal Government has pervasively regulated the dispensation of drugs for over 100 years.”) (internal citations omitted).

So too, here. Like in *Hilton*, as shown above, courts and the EPA have long interpreted the CWA to govern point source discharges that reach navigable waters through an intervening pathway. Because the Ninth Circuit’s interpretation preserves the longstanding *status quo*, the clear statement rule is clearly inapplicable.

Nor would upholding the long-standing consensus view “radically readjust” the balance of state and national authority. *See Bfp*, 511 U.S. at 544. Notably, the County’s argument on this point relies entirely on a straw-man characterization. The

County (and several of its *amici*) claim that the opinion below, or Respondents in general, interpret the CWA to regulate groundwater *per se*, thereby “displac[ing] States’ primary role in regulating groundwater.” *See, e.g.*, Amici Br. of Washington Legal Foundation and Allied Educational Foundation 20-24. As shown above, that is simply not true. No party claims that the CWA gives the EPA a general right to regulate groundwater pollution, *per se*, at all. Rather, the only issue is whether, in those relatively rare instances when there is clear evidence that traceable pollution from a point source through groundwater *also* indisputably meets all other elements for CWA regulation, CWA regulation may apply. Far from upending the states’ control of groundwater regulation, as shown above this rule does no more than prevent the CWA from being trivially easy for polluters to evade.

Accordingly, there is no basis for imposing a “clear statement” rule of statutory construction here.

### CONCLUSION

For the foregoing reasons, the judgment of the lower court should be affirmed.

Respectfully submitted,

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**APPENDIX**

**Craft Brewers**

Allagash Brewing Co. – Portland, ME  
Alliance Brewing Co. – Knoxville, TN  
Angry Troll Brewing – Elkin, NC  
Armored Cow Brewing Co. – Charlotte, NC  
Bear Republic Brewing Co. – Cloverdale, CA  
Big Ash Brewing – Cincinnati, OH  
Birdsong Brewing Co. – Charlotte, NC  
BrewDog Brewing Co., LLC – Canal Winchester, OH  
Brewery 85 – Greenville, SC  
Brewery Techne – Philadelphia, PA  
Brewery Vivant – Grand Rapids, MI  
Bull City Burger and Brewery – Durham, NC  
Cabarrus Brewing Co. – Concord, NC  
Durdy Bull Brewing Co. – Durham, NC  
Earth – Bread + Brewery – Philadelphia, PA  
Fiddlin’ Fish Brewing Co. – Winston-Salem, NC  
Flying Fish Brewing Co. – Somerdale, NJ  
Fremont Brewing – Seattle, WA  
Fullsteam Brewery – Durham, NC  
The Glass Jug Beer Lab – Durham, NC  
Greenstar Brewing – Chicago, IL  
Half Acre Beer Co. – Chicago, IL  
Hillman Beer – Asheville, NC  
Hi-Wire Brewing – Asheville, NC  
Horse & Dragon Brewing Co. – Fort Collins, CO  
Lakefront Brewery – Milwaukee, WI  
Land-Grant Brewing Co. – Columbus, OH  
Legion Brewing Co. – Charlotte, NC  
Lenny Boy Brewing Co. – Charlotte, NC  
Little Brother Brewing – Greensboro, NC

Long Trail Brewing Co. – Bridgewater Corners, VT  
Mash House Brewing Co. – Fayetteville, NC  
Naked River Brewing Co. – Chattanooga, TN  
New Belgium Brewing Co. – Fort Collins, CO  
Old Bust Head Brewing Co. – Warrenton, VA  
One World Brewing – Asheville, NC  
Otter Creek Brewing – Middlebury, VT  
Percent Tap House – Harrisburg, NC  
Pharr Mill Brewing – Harrisburg, NC  
Pilot Brewing Co. – Charlotte, NC  
Resident Culture Brewing Co. – Charlotte, NC  
Revolution Brewing – Chicago, IL  
Rising Tide Brewing Co. – Portland, ME  
Saltwater Brewery – Delray Beach, FL  
Sanctuary Brewing Co. – Hendersonville, NC  
Sea Dog Brewing Co. – Portland, ME  
Shipyard Brewing Co. – Portland, ME  
Sierra Nevada Brewing Co. – Chico, CA  
Sugar Creek Brewing Co. – Charlotte, NC  
Temperance Beer Co. – Evanston, IL  
Texas Brewshed Alliance – Wimberley, TX  
The Common Beer Co. – Mason, OH  
Thirsty Nomad Brewing Co. – Charlotte, NC  
Trophy Brewing Co. – Raleigh, NC  
Twin Leaf Brewery – Asheville, NC  
UpCountry Brewing Co. – Asheville, NC  
Vista Brewing – Driftwood, TX  
Wedge Brewing Co. – Asheville, NC  
Wooden Robot Brewery – Charlotte, NC  
Zed's Beer/Bado Brewing – Marlton, NJ