

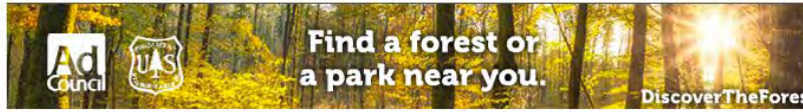


Controlling PFAS at the Source

Legal Obligations and Liability

Geoff Gisler
Senior Attorney





Health & S

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Toxic and unregulated; PFAS foam threatens environment

Bill Cummings | July 28, 2019



1 of 5



A recent photo of West Branch Farmington River, Connecticut.

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Researcher
compounds
government



October 24, 2019

Tammy Coop
Washington

By Brady L

Jan. 2, 2019



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not a federally regulated chemical and that the company is therefore not bound by law to prohibit its release.

DEQ, Greensboro won't identify industry that contaminated downstream drinking water

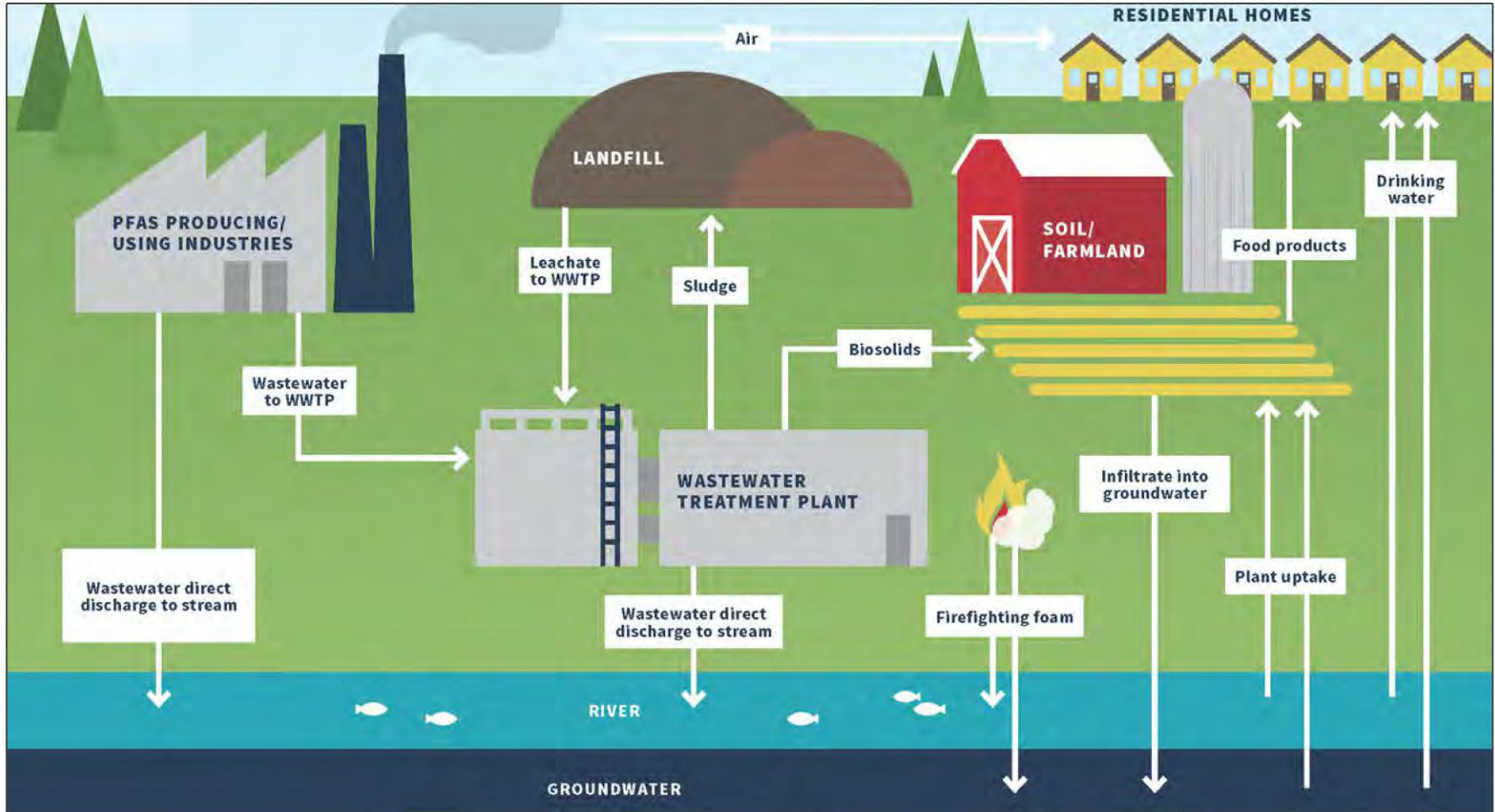
Photo credit: Wikimedia Creative Commons

Unregulated:

- not controlled, esp. by laws, police, or a government department.

- dictionary.cambridge.org

PFAS Cycle



Credit: Michigan Dept. of Environment, Great Lakes, and Energy

Applicable Laws

- Clean Water Act
 - NPDES permits
 - Non-discharge permits
- North Carolina groundwater standards
- Common law

Clean Water Act: Prohibition

“Except as in compliance with [the act], the discharge of any pollutant by any person shall be unlawful.”

33 U.S.C. § 1311(a)

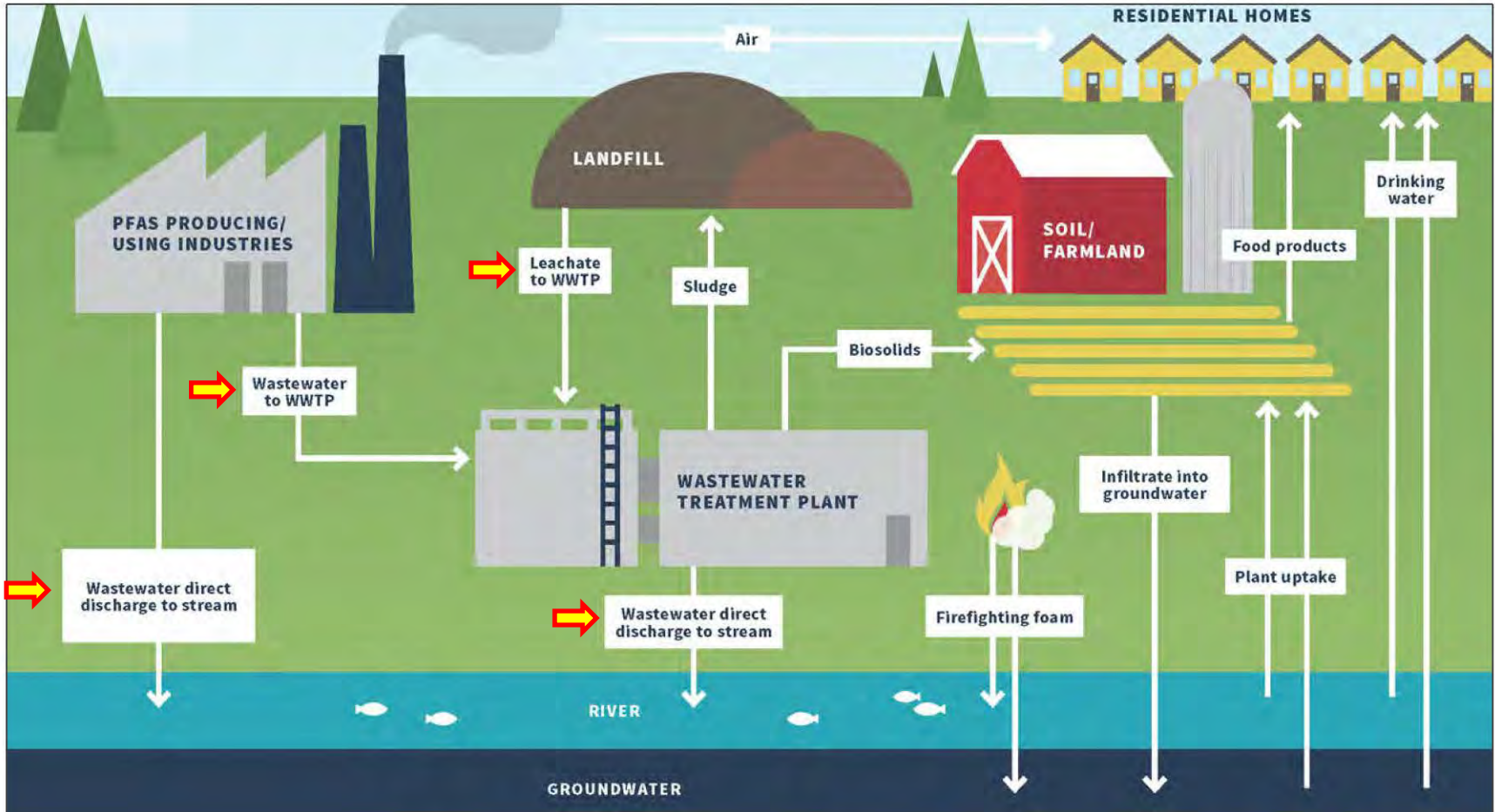
Clean Water Act: NPDES

Permit shield applies if:

- (1) “the permit holder complies . . . the Clean Water Act's disclosure requirements” and
- (2) “the permit holder does not make a discharge of pollutants that was not within the reasonable contemplation of the permitting authority at the time the permit was issued.”

Southern Appalachian Mountain Stewards v. A&G Coal Corp., 758 F.3d 560, 565 (4th Cir. 2014)

PFAS Cycle



Credit: Michigan Dept. of Environment, Great Lakes, and Energy

Clean Water Act: Biosolids

- “The subject residuals management program shall be effectively maintained at all times so there is no discharge to surface waters”
- “This permit shall not relieve the Permittee of responsibility for damages to groundwater or surface water resulting from the operation of this residuals management program.”

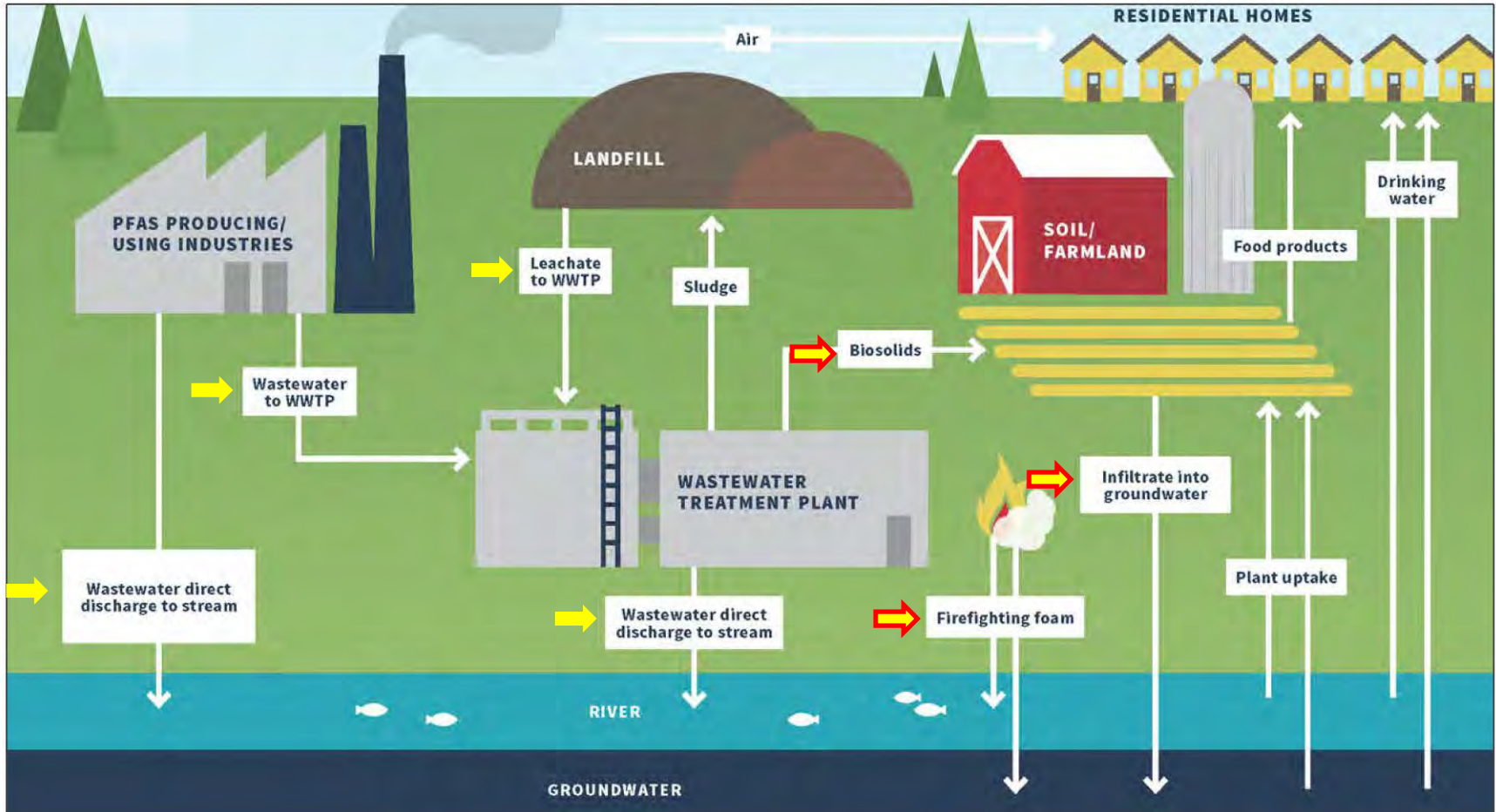
DEQ Standard Conditions, Land Application of Class B Residuals Permit

N.C. Groundwater Rules

“Except for tracers . . . substances which are not naturally occurring and for which no standard is specified shall not be permitted in concentrations at or above the practical quantitation limit.”

15A N.C. Admin. Code 02L.0202(c)

PFAS Cycle



Credit: Michigan Dept. of Environment, Great Lakes, and Energy

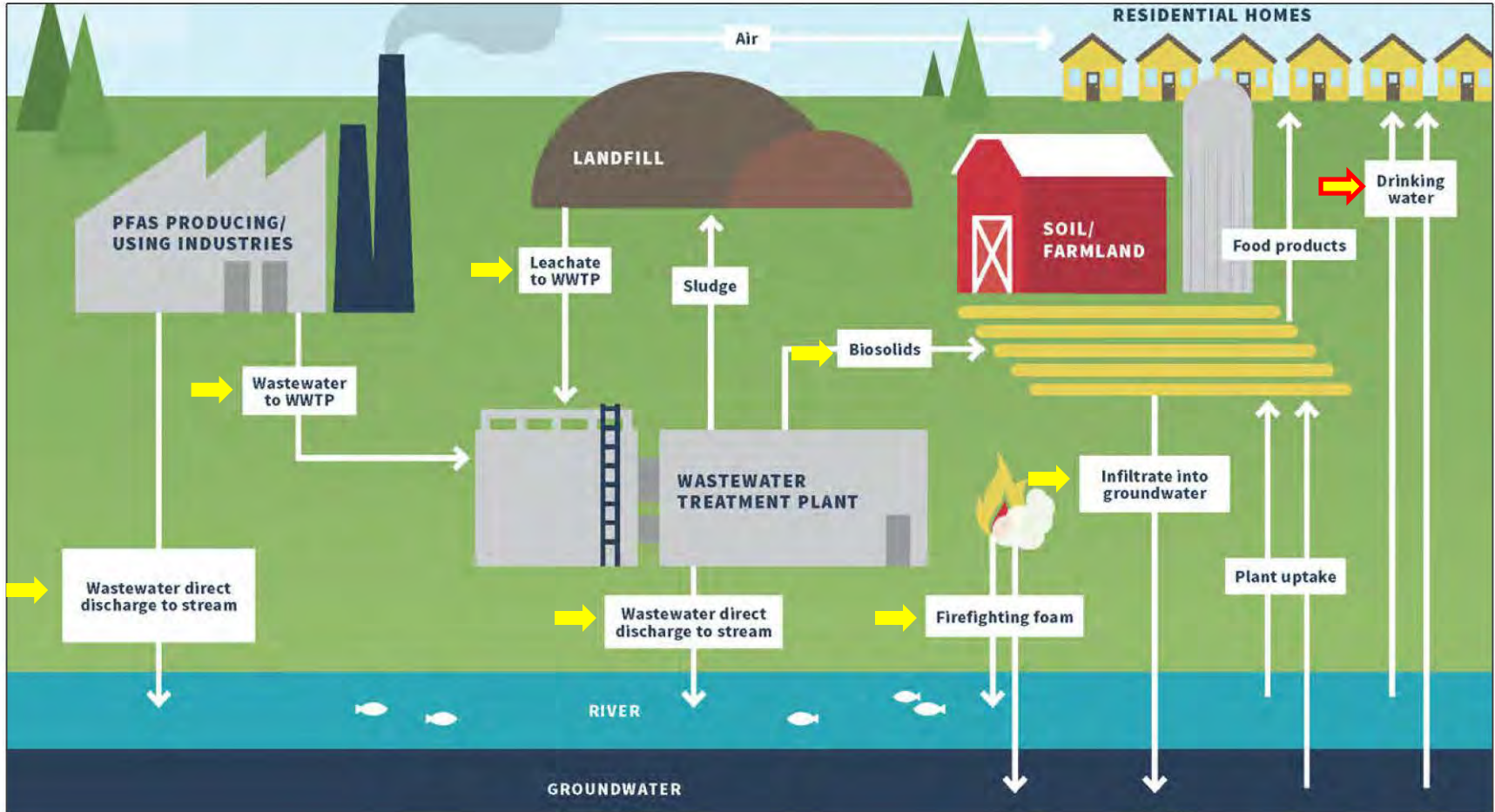
Common Law: Public Utilities

- Plaintiffs: CFPUA, Brunswick County, Lower Cape Fear Water & Sewer Authority, Town of Wrightsville Beach
- Defendants: Chemours, DuPont
- Claims:
 - Private nuisance
 - Trespass to real property
 - Negligence
- Relief:
 - Injunctive relief
 - Compensatory damages
 - Punitive damages

Common Law: Property Owners

- Plaintiffs: Property owners and everyone exposed to GenX
- Claims:
 - Negligence
 - Gross negligence
 - Private nuisance
 - Trespass
- Relief:
 - Injunctive relief
 - Compensatory damages
 - Punitive damages

PFAS Cycle



Credit: Michigan Dept. of Environment, Great Lakes, and Energy

Source Control

- Prevents public health threat
- Allows consideration of alternatives
- Less costly treatment
- Treatment costs borne by responsible entity
- Avoids liability

Geoff Gisler
Senior Attorney
(919) 967-1450
ggisler@selcnc.org
www.southernenvironment.org

