**EPA’s Recent Request for Comments Could Result in a “Clean Water Polluter Loophole”**

*EPA is currently considering weakening how pollution discharges to groundwater that contaminates surface waters will be regulated. For decades, polluters discharging to surface waters through groundwater needed to get pollution control permits under the Clean Water Act.* ***To exclude these discharges from the Clean Water Act would open a gaping loophole to benefit polluters at the expense of public health and water quality****.*

***What is EPA doing?***

On February 20, EPA posted a request for comments in the Federal Register with little warning and no public outreach to stakeholders that we are aware of. EPA says it is seeking input regarding its interpretation of the Act’s applicability to pollution of surface water via a “hydrological connection to groundwater.” The plain language of the Clean Water Act requires a discharger to have a National Pollutant Discharge Elimination System (NPDES) permit for ANY discharge into protected waters, whether that discharge is direct or travels via groundwater before reaching a surface water. Defying this would create a gaping loophole in the Clean Water Act that could cause irreparable harm to public health and water quality.

***What are some examples?***

Here are a few examples of dangerous contaminants from a variety of industry reaching surface waters via a hydrological connection to groundwater.

Coal ash — what’s left after a power plant burns coal — has been dumped into pits at approximately 1,400 sites around the country and poses threats to drinking water, neighborhoods, and air quality. There have been a number of court cases that have shown the link between coal ash and heavy metals flowing via groundwater into rivers via a hydrological connection. For example, in Tennessee and Virginia, District Courts have found that energy companies have violated the Clean Water Act by allowing coal ash to seep into groundwater which then flows into nearby rivers.

Illegal sewage discharges - For decades, Maui County, Hawai'i has been violating the Clean Water Act by allowing a wastewater reclamation facility to inject three to five million gallons of treated sewage into groundwater each day. An EPA-funded study traced the sewage to the Pacific Ocean where it has been linked to harmful algal blooms that smothered coral reefs and has caused serious harm to the marine ecosystem. Just last month, the 9th Circuit Court of Appeals reaffirmed that such discharges to navigable waters via hydrologically connected groundwater require NPDES permit coverage. As the panel in this case stated, “At bottom, this case is about preventing the County from doing indirectly that which it cannot do directly.”

***Why Now?***

This issue is being litigated across the country – and the polluters are losing. EPA is attempting to provide cover to polluting industries whose arguments are not standing up in court by creating a loophole that defies the intent of the Clean Water Act and the goal of the agency—to protect public health and the environment.