



Chemicals in the Americas

November 30, 2017
The Houston Club, Houston TX

www.bdlaw.com/2017ChemicalsConference



New Frontiers in Chemicals Liability: Litigation Risk from Emerging Contaminants

Judi Durda, Vice President, Integral Consulting
Bryan Moore, Principal, B&D
Bina Reddy, Principal, B&D

Emerging Contaminants Defined

- Pathway to environment
- Potential for adverse effects
- Knowledge lacking or evolving
 - No standards
 - New science
 - New detection capabilities
 - New exposure pathways



Perceived Threat Is a Common Theme

- ***Perceptions*** of risk drive action
- Limited data, unknowns create uncertainty
- “Acceptable” levels highly dependent on risk *tolerance* rather than magnitude of threat



EC Highlights and Trends

- States moving in advance of federal agencies
- Lawsuits proceed with what amounts to screening-level evidence
- Occurrence and public perception are key drivers

Why Now?

Monitoring
Research
Regulation
Reaction



ECs - Categories & Examples



perfluorinated substances
(PFOA, PFOS), PBDE, paraffins



1,4-dioxane, BPA, nonylphenol



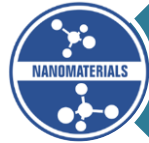
acetaminophen, estradiol,
sulfamethoxazole



nickel, lead, arsenic



microplastics, triclosan,
parabens



metal oxides/elements, carbon
nanotubes, quantum dots



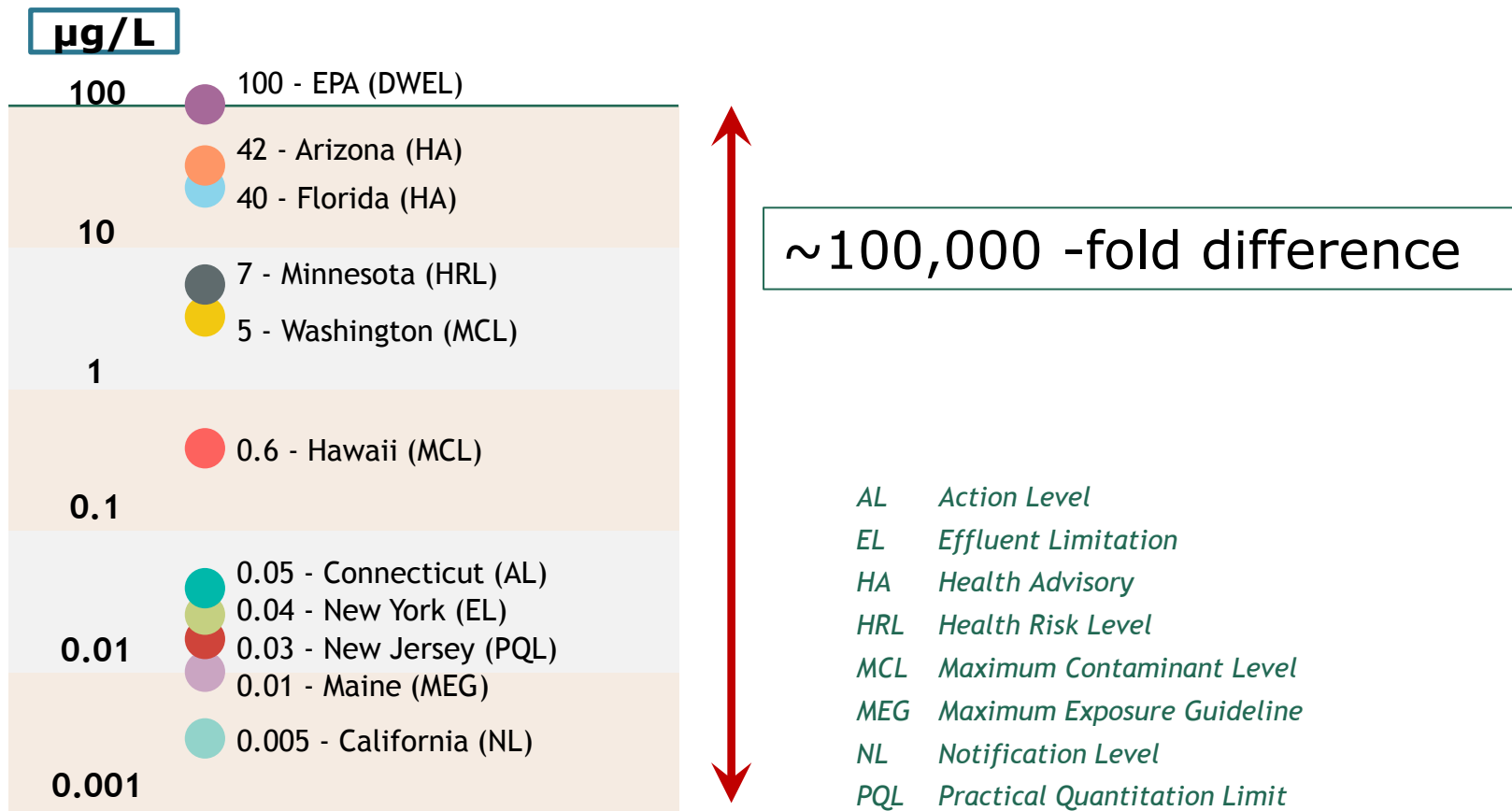
microbial toxins, cyanobacteria,
viruses



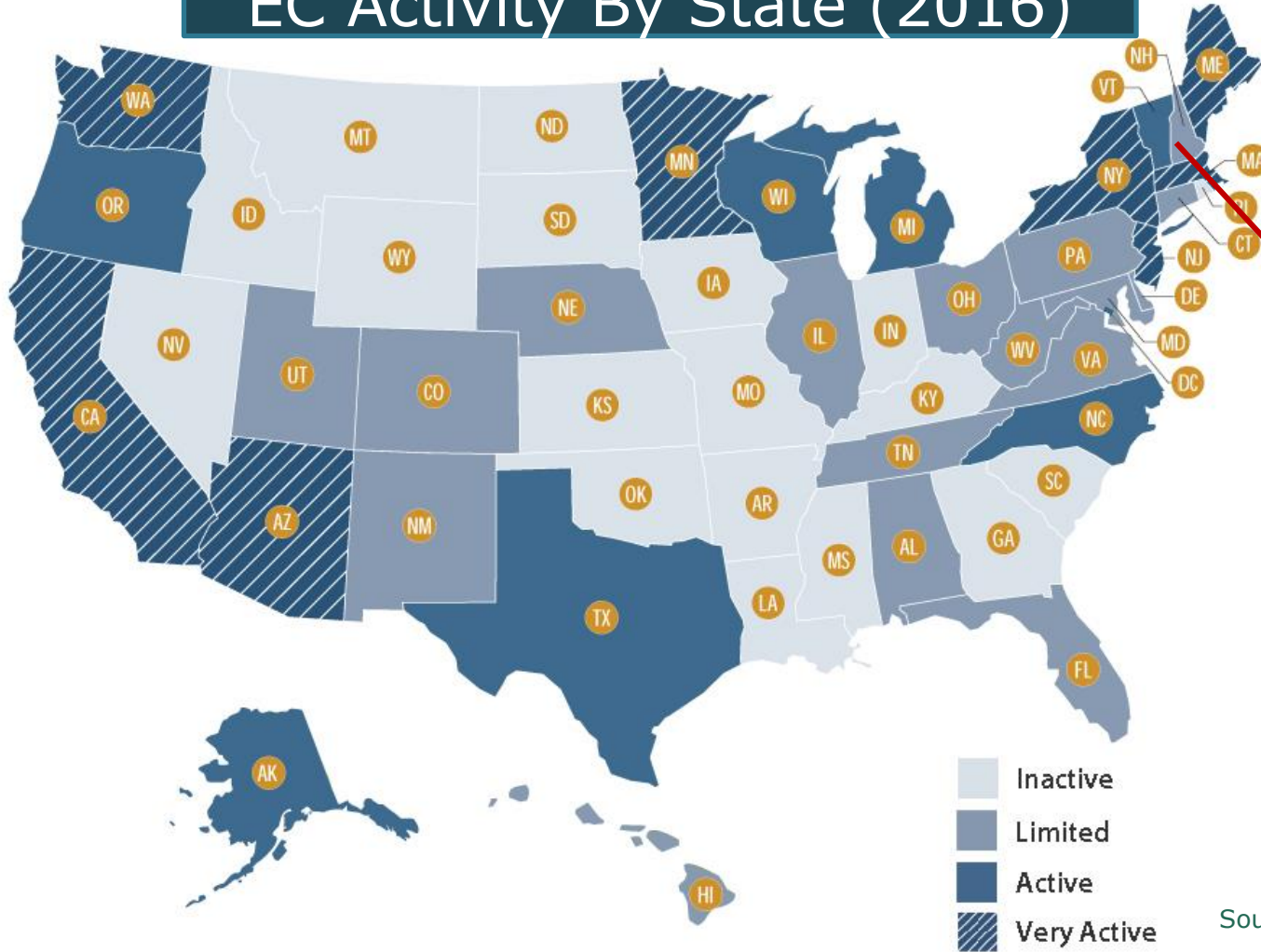
1,2,3-TCP, lindane, glyphosate



1,2,3-Trichloropropane

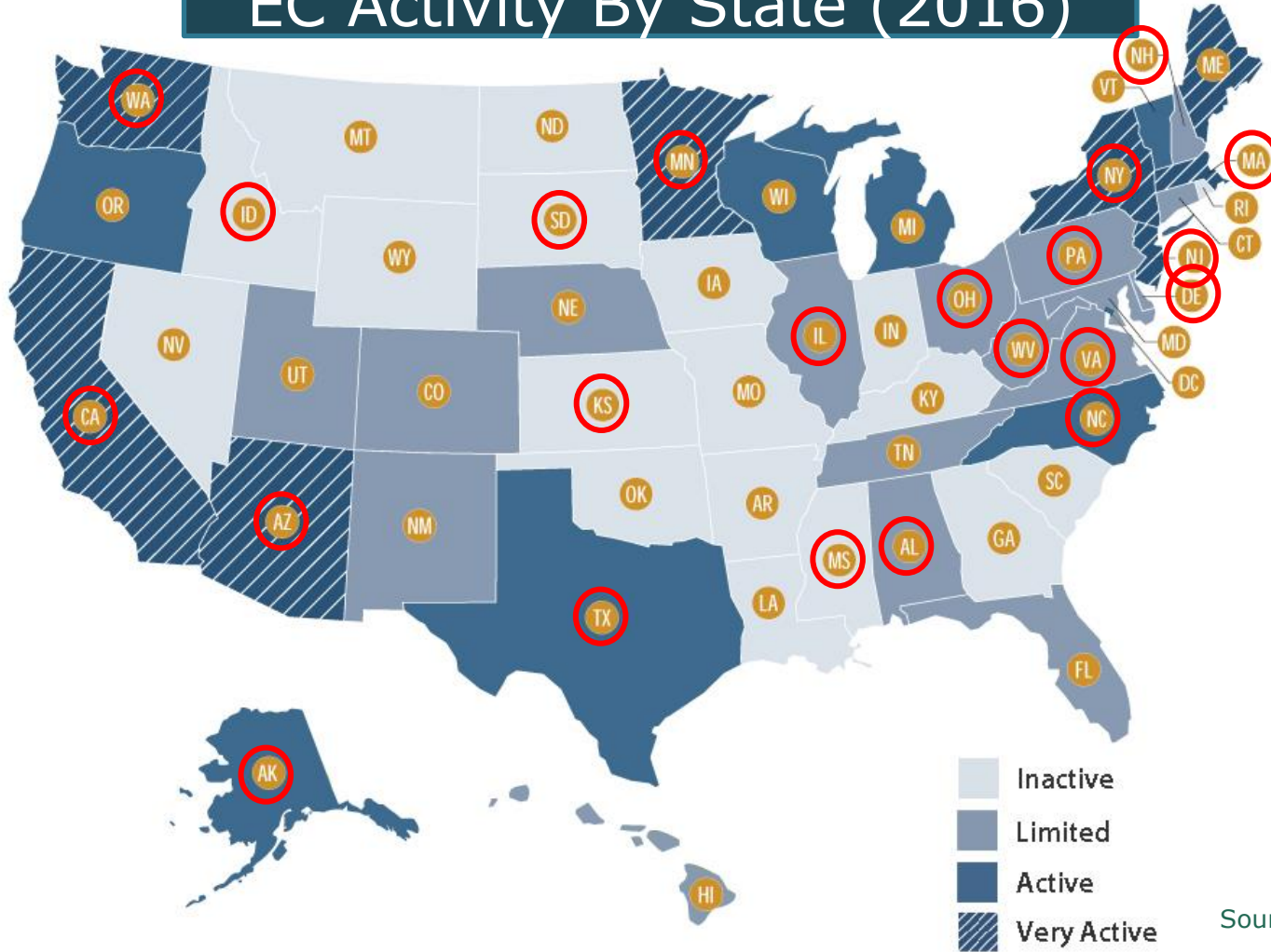


EC Activity By State (2016)



2017
NH 19 drinking water supplies being tested for PFAS

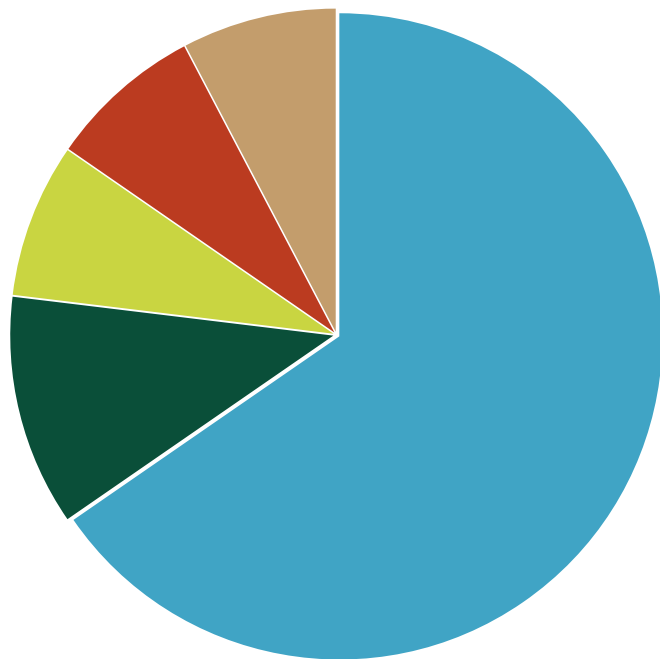
EC Activity By State (2016)



2017
Nationwide
70+ DWS being
monitored for
PFAS

PFOA/PFAS Cases Brought to Date

26 Cases Brought By:



- Class action plaintiffs
- Government / municipality
- Individual plaintiff(s)
- Water authority (no private plaintiffs)
- NGO

Primary Defendants in PFC Litigation to Date

- Manufacturers of PFCs and consumer products with PFCs (DuPont, 3M)
- Manufacturers/sellers/users of fire suppressing foams (AFFFs)
- Cities, contractors, and farmers applying biosolids (treated sewage sludge) to farms





Major Cases: DuPont

DuPont and Chemours

- Approx. 3,500 drinking water claims in Ohio and WV
- \$1.6MM jury verdict in Oct. 2016
- \$5.1MM jury verdict in July 2016, \$500K punitives
- \$2MM verdict Jan. 2017, \$10MM punitives
- MDL Settlement (February 2017) valued at \$670.7MM

Major Cases: DuPont

- C8 (PFOA) Epidemiology Panel established as part of earlier settlement
- Concluded “probable link” between C8 exposure and ulcerative colitis, thyroid disease, testicular cancer, kidney cancer



Recent EC Case Developments

- *Minnesota v. 3M*, No. 27 CV 10 28862 (Minn. Dist. Ct., Hennepin Co.) (in November 2017 filing, State estimated damages at more than \$5 billion).
- *Tennessee v. 3M*, 2017 WL 784991 (NDAL 2017) (RCRA claims re groundwater and soil contamination allowed to proceed)
- *City of Lake Elmo v. 3M*, 2017 WL 630740 (DMN) (CERLCA claims for remediation of water supply)
- *Baker v. Saint-Gobain*, 2017 WL 486939 (NDNY 2017) (medical monitoring claims survive motion to dismiss, certified for interlocutory appeal)
- *Sullivan v. Saint-Gobain*, 2016 WL 7487723 (DVT 2016) (stay during challenge to state rule rejected)

Thank you!



Bina Reddy - moderator

Principal
Beveridge & Diamond, P.C.
breddy@bdlaw.com
512.391.8045



Judi Durda

Principal
Integral Consulting, Inc.
jdurda@integral-corp.com
410.573.1982 ext. 514



Bryan Moore

Principal
Beveridge & Diamond, P.C.
bmoore@bdlaw.com
512.391.8030
