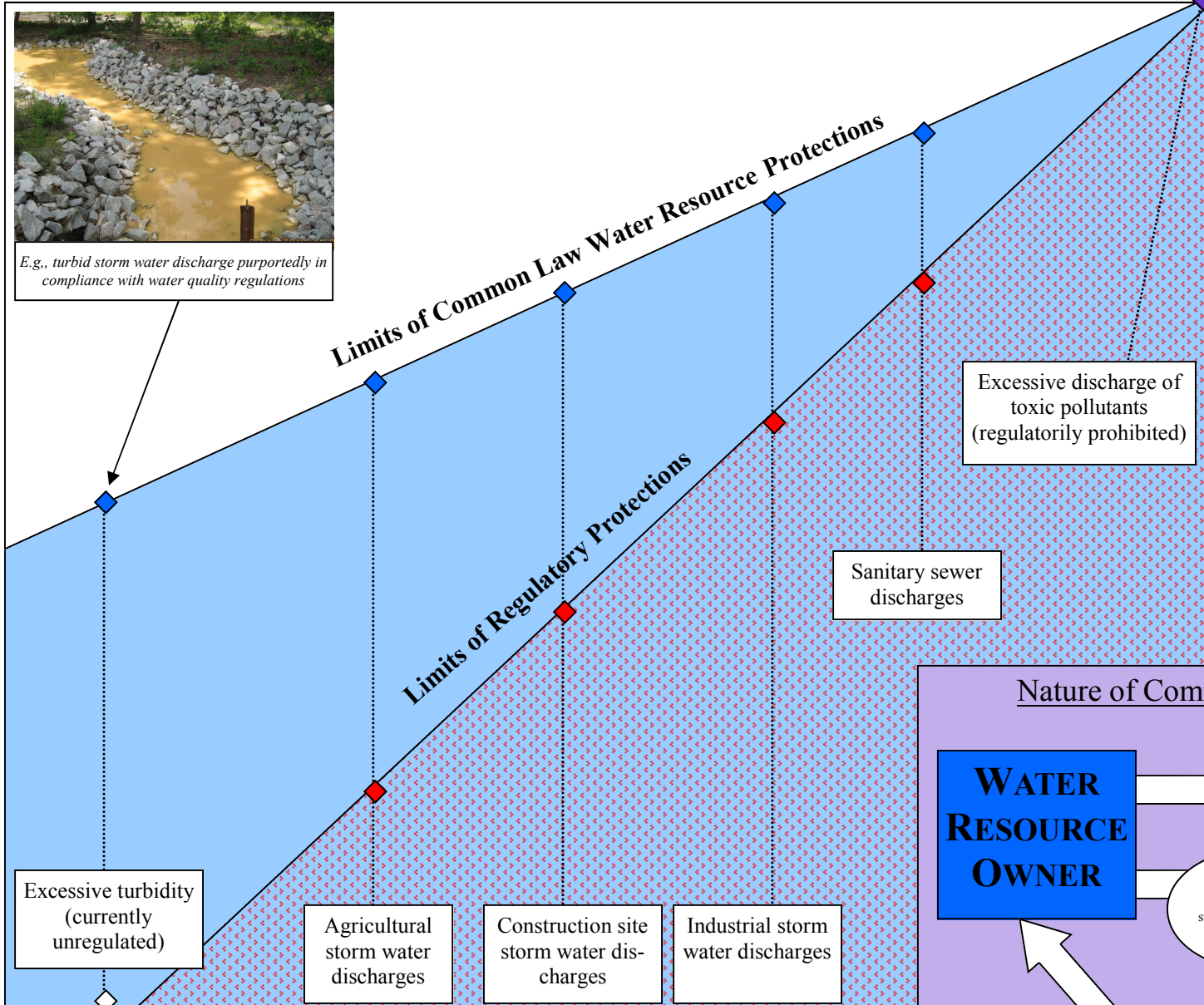


# THE RELATIONSHIP BETWEEN REGULATORY WATER RESOURCE PROTECTIONS AND COMMON LAW PROPERTY RIGHTS IN SOUTH CAROLINA



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Level of Water Resource Legal Protections (qualitative by increasing level of protection)



Water Polluting Activities  
(qualitative by increasing environmental/health impact)

- ◆ Limit of common law protection
- ◆ Limit of regulatory protection
- ◇ Unregulated
- ◆ Regulatorily prohibited

### Summary

Water resource owners are protected both (a) regulatory restrictions on the discharge of pollutants and (b) common law property rights (e.g., right enforceable through trespass and nuisance lawsuits). **A common misperception is that regulatory compliance constitutes a legal safe harbor against liability for violations of common law rights in water resources.** However, as illustrated on the graph (left), common law property rights provide protection over and above minimum regulatory restrictions of pollutant discharges. The degree of additional protection varies across different categories of polluting activities.

For some categorically prohibited activities (e.g., discharge of certain toxic pollutants), government regulations provide absolute protections commensurate with common law property rights. Other activities (e.g., discharges of sediment and permit pollutants) are allowed within certain regulatory limits but can result, even where regulatory requirements are met, in violations of enforceable common law rights. Still other activities (e.g., discharges of turbid storm water) are largely unregulated but nonetheless invoke common law nuisance and trespass liability.

For context, the secondary graph (below) illustrates the nature and enforceability of two important common law property rights (the right of enjoyment and the right of exclusive possession).

