THE CENTER FOR WATER SECURITY AND COOPERATION

WATERKEEPER® ALLIANCE

May 2026

REPORT

Protecting Clean Water at the State Level After *Sackett*

How States Can Step Up to Keep Rivers, Streams, Lakes, and Wetlands Clean When Federal Protections Fall Short

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ACKNOWLEDGEMENTS

This report was produced by the Center for Water Security and Cooperation, Washington, D.C. and Waterkeeper® Alliance, New York, N.Y. Thank you to the following colleagues and partners for providing review and feedback on this report: Bob Menees, Staff Attorney, Great Rivers Environmental Law Center; Jon Devine, Senior Attorney & Director, Natural Resources Defense Council, Freshwater Ecosystems, Nature Program; K. Grace Stranch, Chief Executive Officer, Harpeth Conservancy; Ken Kopocis, Adjunct Associate Professor, American University, Washington College of Law; Haley Gentry, Assistant Director, Tulane Institute on Water Resources Law & Policty; Abby Braman, Interim Riverkeeper, Pearl Riverkeeper; Andrew Whitehurst, Board Member, Pearl Riverkeeper; Daniel E. Estrin, General Counsel & Legal Director, Waterkeeper Alliance, and Eliette Albrecht, Center for Water Security and Cooperation, Spring 2026 Legal Extern.

This report was made possible by support from Liquid I.V.

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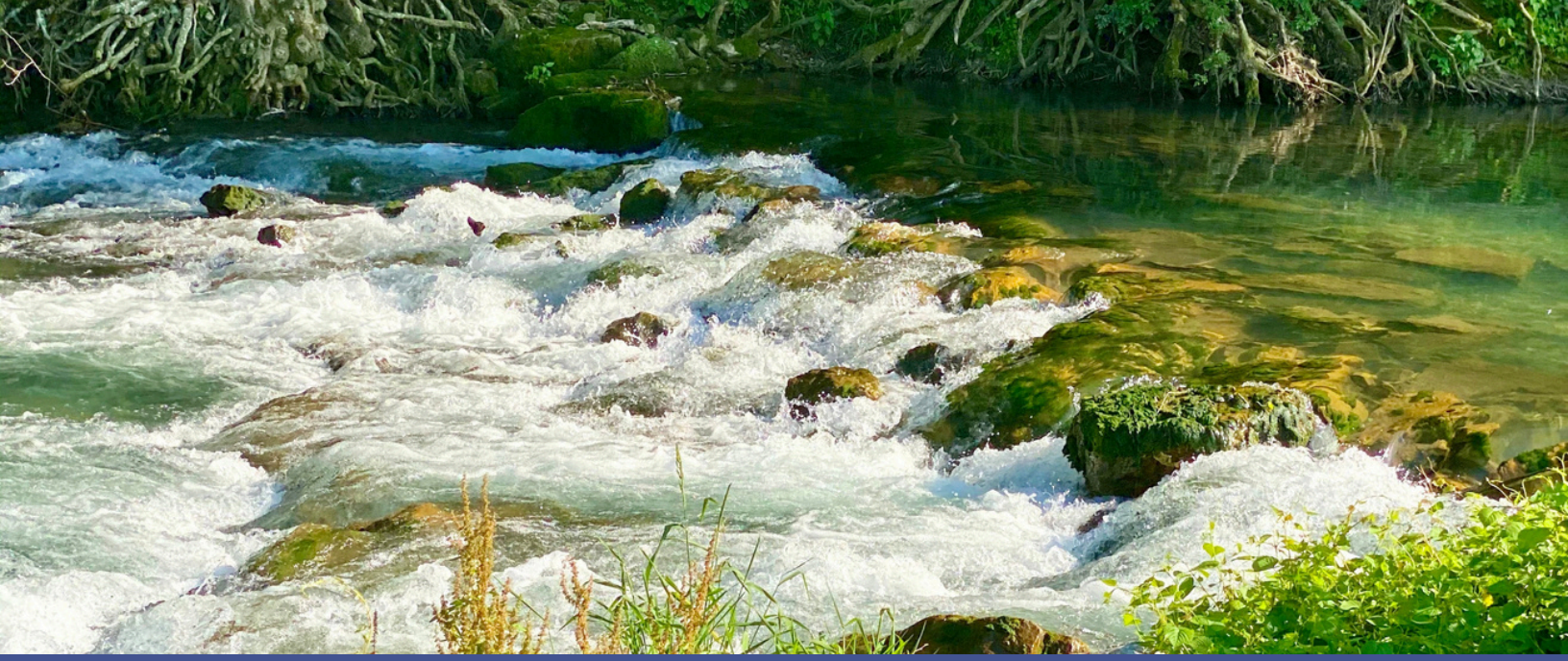

Roaring River, MO @ K. Foster

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Introduction

Rivers, lakes, streams, wetlands, and coastal waters are valuable public resources. Waterbodies and waterways provide drinking water; recreation spaces; habitat for fish and wildlife; water for agricultural, commercial, and industrial uses; and connections to other communities. Controlling water pollution and restoring water quality in the nation's waters is important for the protection of human health, the well-being of communities, the success of local, state, and national economies, and the functioning of our nation's vast, interconnected aquatic ecosystems, as well as the many threatened and endangered species that depend upon those resources.

Historically, the nation's waters were severely contaminated by sewage, trash, oil, and toxic industrial pollution. Our national laws were inadequate to protect and restore them, in part, because only a small subset of the nation's waters were protected. The Federal Water Pollution Control Act—better known as the Clean Water Act ("CWA")—was first adopted in 1948 and was amended several times in subsequent years. In 1972, the CWA was significantly revised by Congress to strengthen water quality protections and control pollution at its source by extending protections beyond just traditional navigable waters and interstate waters, along with their tributaries,[1] to virtually all bodies of surface water in the country.[2]

As a result, streams, rivers, lakes, wetlands, and other waters became protected against uncontrolled discharges of untreated toxic, biological, chemical, and radiological pollution, and any pollutant discharges were required to meet the CWA's permitting and treatment requirements. Waters could no longer be dredged, filled, and polluted with impunity because of the CWA's most fundamental human health and environmental safeguard—the prohibition of unauthorized discharges of any pollutant in 33 U.S.C. § 1311(a).

The CWA's prohibition on the discharge of pollutants applies only to "waters of the United States, including the territorial seas."[3] However, the term "waters of the United States" was not defined in the CWA and was instead left to regulatory bodies to define.

Over the past fifty years, the U.S. Army Corps of Engineers ("Corps") and the Environmental Protection Agency ("EPA") have been responsible for defining "waters of the United States" through rulemaking, and the U.S. Supreme Court has also interpreted those definitions for consistency with the CWA on numerous occasions.

For many years, the regulatory definition of "waters of the United States" broadly included traditional navigable waters, interstate waters, tributaries, territorial seas, adjacent wetlands, and other waters. Starting in the 2000s, as discussed below, the Supreme Court began issuing opinions that narrowed the scope of the CWA, particularly with regard to certain wetlands and, as a result, the agencies initiated a series of non-regulatory and regulatory attempts to more narrowly define "waters of the United States."

However, the most significant weakening of the CWA arose from a 2023 decision by the Supreme Court in *Sackett v. EPA*, which eliminated protections for rivers, streams, lakes, wetlands, and other waters through a drastic reinterpretation of the CWA resulting in a narrow definition of "waters of the United States."[4] With regard to tribuaries and wetlands, the *Sackett* decision generally limited CWA jurisdiction to relatively permanent, standing or continuously flowing bodies of water, and wetlands adjacent to those waters, where the wetlands have a continuous surface connection to them. Soon thereafter, the agencies revised their regulatory definition of "waters of the United States" to conform it to the *Sackett* decision, resulting in an extremely limited protections for the nation's waters.

Cossatot River, AR @ K. Foster

The CWA has been responsible for very significant improvements in water quality across the United States, but much more remains to be done to meet the CWA's objective of eliminating water pollution and restoring the integrity of the nation's waters.[5]

EPA's 2004 National Water Quality Inventory showed, based on water quality reports from 44 states, 2 territories, and the District of Columbia, that only 16 percent of rivers and streams were assessed. Forty-four percent (246,002 miles) of the assessed rivers and streams reported as impaired. Only 39 percent of lakes, ponds, and reservoirs were assessed with 64 percent of the assessed waters (10,451,402 acres) reported as impaired.[6]

By comparison, EPA's most recent national summary of state water quality assessments published in 2017 estimates that, of those waters that had been assessed, roughly 53 percent of river and stream miles (588,173 miles), 71 percent of lake, reservoir, and pond acreage (13,208,917 acres), 54.2 percent of wetland acreage (672,924 acres), and 99.9 percent of Great Lakes open water (39,230 square miles) were not safe for fishing, swimming, or other beneficial uses.[7]

More recently, progress toward controlling pollution discharges and restoring water quality has been severely undermined by the exclusion of historically protected waters from the CWA's pollution prohibitions and water quality programs. Eliminating CWA protections for waters harms not only the waters directly receiving pollutant discharges or being dredged and filled, but also downstream waters because pollution travels through well-known hydrologic processes to downstream waters, harming drinking water supplies, recreational waters, fisheries, industries, agriculture, and, ultimately, human beings.

Until the CWA can be restored through federal legislation, state governments must play a significant role in water quality protection by implementing the CWA and also acting to protect waters beyond the requirements of the CWA. Under the CWA, states can serve as the primary enforcement authority in implementing the requirements established by the CWA.[8] They also can adopt and implement state legislation and regulations that provide greater protections than required by federal law. This report sets forth a template for how states can act to protect water quality given the more limited coverage of water quality protections under the CWA after *Sackett*.

Purpose of This Report

This report is intended to help support and enable a more harmonized, coordinated regional approach to advancing water quality protections at the state level. One of the benefits of federal law is having a consistent national approach to protecting water quality. By having one inclusive definition of the waters protected by the CWA, as was the case historically, federal law ensured that the same types of waters were protected in the same manner regardless of where they were located and that downstream states were protected from uncontrolled upstream, out-of-state pollution sources. Although the Supreme Court determined in 2023 that the CWA now only encompasses an extremely limited definition of protected waters, states are able to address many of the resulting gaps and shortcomings in the CWA by broadly defining "waters of the state," ensuring state laws protect water quality in all of the waters of the state, and granting state agencies the broad authority to manage water quality in state waters. In sum, states can adopt legislation and regulations to ensure that protective requirements and programs are extended to all waters of the state.

Even though this work must take place at the state level, it does not mean that each state needs to take its own approach in addressing the gaps left by *Sackett*. States can adopt laws that take the same approach to water quality protection and extend the protections to a broader scope of waters than those currently protected by the CWA. This would have at least two significant benefits. First, this would create consistency in approach across states, establishing a regional approach that imitates federal law. Multiple states can create the same protections, preventing a splintering of water quality protections. This consistency ensures that water quality and public health are protected equally regardless of what state you are in. Second, this approach would ensure waters are similarly governed in shared watersheds. Each state is, thus, able to do its part in protecting shared waters. Without a shared approach, downstream states could find themselves facing additional pollution control challenges as a result of more lax regulation upstream.

Through this report, we will focus on the limitations of the CWA created by the *Sackett* decision, as well as subsequent agency rulemaking, and the opportunities to remedy them at the state level. The purpose of this report is to create a playbook that can be used by community members and elected leaders to protect water quality at the state level, filling in the gap created in federal law. This report will:

1. **Set forth a framework to identify how state law can protect water quality and fill the gaps in federal protections caused by the *Sackett* decision and regulatory rollbacks.** We establish a framework identifying the types of legal provisions that could be included in a state law to limit the impact of the *Sackett* decision on water quality, ensure waters are broadly protected, and enable people to act to ensure implementation of, and compliance with, legal requirements.
2. **Examine existing state laws within a region.** We examine state laws in Arkansas, Mississippi, Missouri, and Tennessee—four states located within the lower Mississippi River basin—and apply the framework to identify where existing state statutes and regulations fall short in enabling state agencies to protect water quality in light of more limited protections under the CWA.
3. **Identify recommendations for how existing laws can be strengthened.** After identifying shortcomings, we set forth opportunities for strengthening existing statutes and regulations in Arkansas, Mississippi, Missouri, and Tennessee to enable state agencies to better protect water quality and do so in a way that enables continuity in water quality protection within shared watersheds.

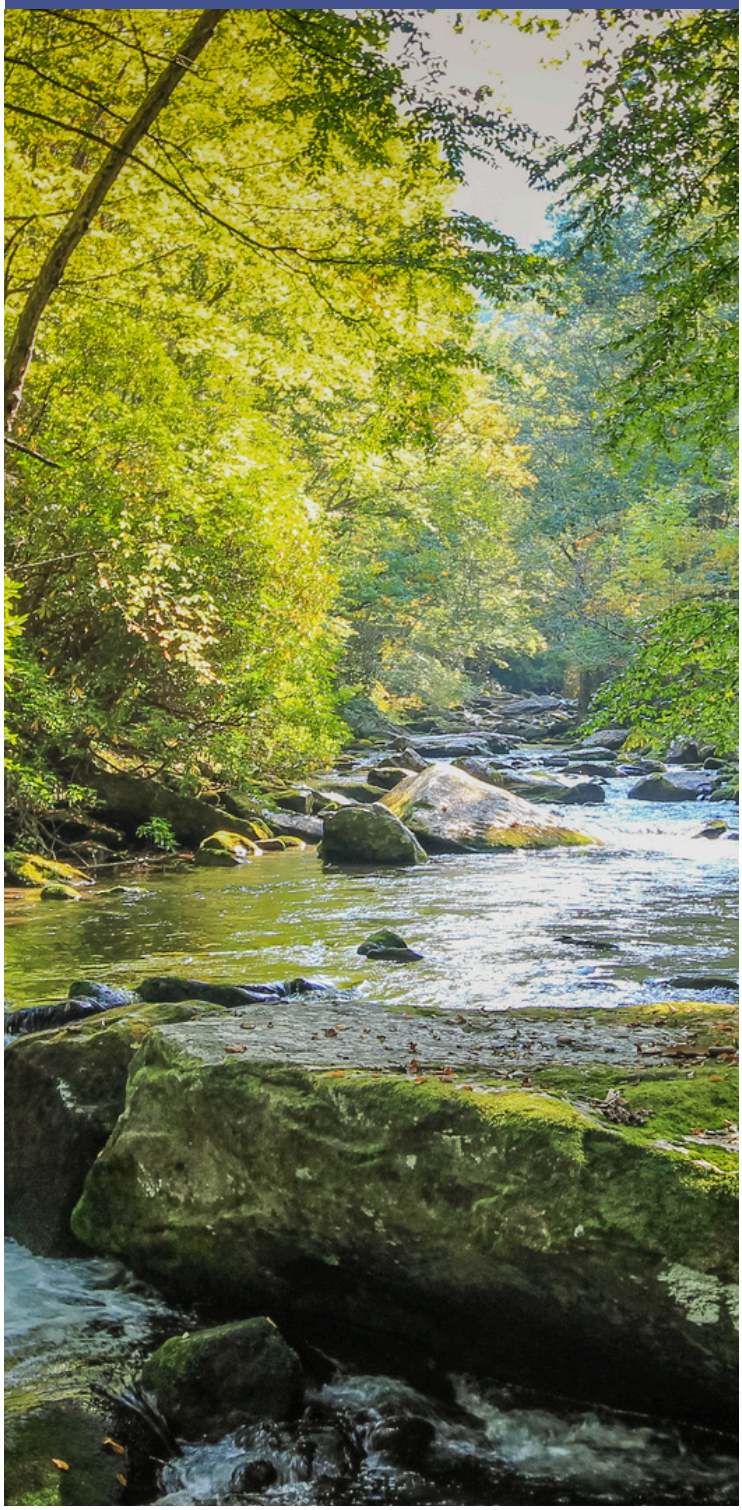
Who Can Use This Report

Stakeholders at the state and local levels are looking for opportunities to ensure critical streams, wetlands, and other waters remain protected after the *Sackett* decision. Through the following sections, we will show stakeholders how state law can be better implemented and/or amended to more fully protect water quality.

First, this report should be used by community members, community groups, and nonprofits to inform the development of any state legislation or regulations to enable greater water quality protection. The legal framework in the following section identifies how state law can protect water quality by addressing post-*Sackett* shortcomings, ensuring that state-level requirements and protections apply to a broader category of waters than currently supported by the CWA. The legal framework does so by giving state agencies authority to establish state programs to manage waters that are otherwise unprotected absent state intervention. Community groups can also work with community groups in other states to ensure the same protections and authorities are being proposed elsewhere, helping to create continuity in water quality protections across shared watersheds and more broadly, across the country. The report also analyzes four states' legal frameworks to identify strengths in the existing law that may not be fully utilized, as well as shortcomings and gaps that should be addressed. This analysis serves as an example to others seeking to understand whether and how their state law is or is not adequate to protect water quality after *Sackett*.

Second, this report should be used by state legislators and regulators. State legislators and regulators can apply the legal framework and identify how to amend their state law to pick up where federal law leaves off. State legislators and regulators can also work with their counterparts in other states to develop and adopt consistent laws that ensure greater consistency in approach and coverage of water quality protections.

This report is intended to support any stakeholder seeking to ensure there are state laws that adequately protect water quality at the state and watershed levels.



Stream near Gatlinburg, TN @ Karen Bahr/Shutterstock.com

Before the Clean Water Act

> *[T]oday, the rivers of this country serve as little more than sewers to the seas. Wastes from cities and towns, from farms and forests, from mining and manufacturing, foul the streams, poison the estuaries, threaten the life of the ocean depths.*
>
> – Senator Edmund Muskie (1971)

Statement of Sen. Muskie on S. 2770 117 Cong. Rec. 38797 (Nov. 2, 1971))

The passage of the Clean Water Act in 1972 occurred as a direct result of public outcry regarding dangerous pollution problems that, in large part, resulted from the limited authorities for pollution control under state and federal law and the associated failures by state and federal governments to protect people and public water resources from pollution.[9]

Before the 1972 amendments to the Federal Water Pollution Control Act, our nation's waters were severely contaminated by pollutants such as "oil and debris" and "raw sewage, industrial chemicals, and dangerous metals."[10] Large number of rivers, streams, and lakes across the country were unsafe for human contact, drinking water supplies, fish consumption, and other uses.

Documerica, EPA, Onieda County Dump on Banks of Wisconsin River (1973)

Documerica, EPA, Industrial Pollution in Arthur Kill River New Jersey (1974)

A two-year study of the federal water pollution control program by the U.S. Senate Committee on Public Works found "that the national effort to abate and control water pollution has been inadequate in every vital aspect," with the result being that many of the nation's waters were severely polluted, and major waterways near the industrial and urban areas were unfit for most purposes.[11] For example, it is estimated that two-thirds of lakes, rivers, and coastal waters did not meet water quality goals.[12]

Only 85 million Americans were served by sewage treatment plants that provided at least secondary treatment, and "raw sewage and industrial waste was routinely dumped directly into rivers, lakes, and coastal waters."[13] As shown in the image below, the Potomac River was so polluted that Alexandria, Virginia residents were advised to seek immediate medical attention if they had prolonged exposure to the water.

Documerica, EPA, Warning to Arlington, VA Residents on Use of Potomac River (1972)

The federal laws in effect at this time were inadequate to address these problems because of narrowly defined categories of protected waters, dependance on a patchwork of state laws, and limited federal authority and enforcement. For example, section 13 of the Rivers and Harbors Act made it unlawful to discharge refuse "into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water… ."[14] Additionally, pollution of interstate waters and their tributaries was addressed by the 1948 Water Pollution Control Act, which included all rivers, lakes, and other waters that flow across, or form a part of, state boundaries without regard to navigability, and the Act was expanded to encompass navigable waters and their tributaries in 1961.[15]

However, Section 13 of the Rivers and Harbors Act remained largely unenforced for more than 70 years until a 1966 Supreme Court decision. Further, the Federal Water Pollution Control Act left the primary responsibility for pollution control in the hands of the states and local governments, and only required federal water quality standards for protection of interstate waters, which is roughly 15 percent of the nation's waters.[16] Leaving state and local governments largely responsible for voluntarily controlling a national pollution problem under a patchwork of weak, ineffective, or varied federal and state laws, combined with lax state and federal enforcement and laws that did not apply to many of the nation's waters, led to a national water pollution crisis, eventually creating the urgent circumstances where the federal government was required to act.[17]

The Clean Water Act: A Comprehensive Solution

Congress passed the 1972 CWA recognizing that solving the nation's water quality problems required "broad federal authority to control pollution, for '[w]ater moves in hydrologic cycles and it is essential that discharge of pollutants be controlled at the source.'"[18] Congress intended for the CWA to serve as "an all-encompassing program of water pollution regulation" that "applies to all point sources and virtually all bodies of water… ."[19] Accordingly, Congress expanded the scope of waters to be protected beyond navigable waters, interstate waters, and their respective tributaries by providing that the CWA applies to all "waters of the United States, including the territorial seas."[20]

The objective of the CWA is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."[21] The CWA calls for uniform national standards, programs, and support provisions that would ultimately lead to a flat prohibition of all pollutant discharges into the nation's waters.[22] Under the CWA, "it is illegal for anyone to discharge pollutants into the Nation's waters except pursuant to a permit."[23]

To implement the CWA, states can enact and administer their own regulatory programs for "waters of the United States," within limits established by federal minimum standards; and state regulatory programs can be more, but not less, stringent than the federal minimum requirements.[24] States can also adopt independent regulatory programs for waters that are not protected by the CWA.

However, when waters are excluded from the definition of "waters of the United States," the core protections of the CWA become inapplicable and cannot prevent pollution, degradation, and destruction as Congress intended. This includes the section 402 National Pollutant Discharge Elimination System ("NPDES") discharge standards and permitting requirements for point sources,[25] the CWA section 404 Dredged or Fill Material standards and permitting,[26] CWA section 401 Water Quality Certifications,[27] water quality standards and total maximum daily loads,[28] effluent limitation guidelines,[29] and myriad other standards and programs.

Core CWA Components That Only Apply to Waters of the U.S.

Provision #1	Provision #2	Provision #3	Provision #4
Discharge Elimination Permits	**Dredge and Fill Permits**	**State and Tribal Backstops**	**Technology Forcing and Water Quality-Based Pollution Standards**
Prohibit corporations, wastewater treatment plants, and others from using pipes, ditches, and similar conveyances to dump dangerous wastes, chemicals, and other pollutants into water without a permit (CWA Section 402 Permits - led primarily by states and Tribes).	Prohibit discharging dredged or fill material into waters for mining, pipelines, and other development without a permit (CWA Section 404 permits - led primarily by the U.S. Army Corps of Engineers).	Allow states and Tribes to evaluate federal permits involving discharges of pollutants to ensure they protect water quality (CWA Section 401 - Certification).	Require permits to include pollution controls, limits, and monitoring that protect public health and water quality needed for drinking water, fisheries, swimming, wildlife, shellfish, farming and other uses (Water Quality Standards and Effluent Limits).

As a result, if a stream, river, lake, or wetland is not included in the definition of "waters of the United States," untreated toxic, biological, chemical, and radiological pollution can be discharged directly into those waters without meeting any of the CWA's permitting and treatment requirements.[30] Excluded waters could be dredged, filled, and polluted with impunity under federal law because the CWA's most fundamental human health and environmental safeguard—the prohibition of unauthorized discharges in 33 U.S.C. § 1311(a)—would no longer apply.

Unregulated pollution discharged into waterways that fall outside the agencies' regulatory definition will not only harm those receiving waters but will also harm other hydrologically connected water resources, including drinking water supplies, recreational waters, fisheries, industries, agriculture, endangered and threatened species, and, ultimately, human beings. Other important CWA protections could also be adversely impacted.

For example:

- **Water Quality Assessment and Restoration:** EPA, states, and tribes are required to assess water quality and take action to restore polluted waters where the waters are covered by the CWA (Assessment and Restoration).[31]
- **Citizen Rights and Enforcement:** Citizens have rights to information and to participate in water quality decision making and permitting, including the right to enforce the CWA in federal court when governments or polluters violate the law (Citizen Suits).[32]
- **Supportive Resources, Funding, and Programs:** The CWA contains many programs to protect and restore watersheds through public-private partnerships, infrastructure supports, grant programs, and scientific, technical, and educational resources (Healthy Watersheds).[33]

Prior to August 27, 2015, the CWA regulatory definition of "waters of the United States" had remained in place largely unchanged since the 1970s and broadly encompassed jurisdiction over the nation's waters.[34] The agencies' Pre-2015 Definition of "waters of the United States" protected navigable-in-fact waters, interstate waters, impoundments of waters of the United States, tributaries to these waters, wetlands adjacent to other waters of the United States, the territorial seas, and "[a]ll other waters… the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce… ."[35]

These broad categories of waters included in the Pre-2015 Definition are necessary to achieve the objectives of the CWA. This is because we cannot have clean water unless we control pollution at its source—wherever that source may be. This entails protecting waters throughout the entire watershed and all waters that form the hydrologic cycle without regard to whether the waters directly or indirectly flow into traditional navigable waterways.

Sylamore Creek, AR @ K. Foster

The broad protections of the CWA dramatically reduced pollution and improved water quality across the country, but continued progress is threatened by deregulation, lack of enforcement, and most recently the elimination of protections as a result of the *Sackett* decision.

Water Quality Improvements Under the CWA

- **Each year, national technology-forcing standards have eliminated 700 billion tons of toxic pollution from about 40,000 facilities that discharge directly to water, 129,000 facilities that discharge to municipal wastewater treatment systems, and discharges from certain construction sites.[36]**
- **It is no longer common to dump untreated sewage directly into water. By 2012, 234 million people (74% of the U.S. population) were being served by sewage treatment systems using at least secondary treatment.[37]**
- **A nationwide review of 50 million water quality measurements by researchers at UC Berkeley and Iowa State University found that the CWA has "driven significant improvements in U.S. water quality" and that "[m]ost of [the] 25 water pollution measures [they evaluated] showed improvement, including an increase in dissolved oxygen concentrations and a decrease in fecal coliform bacteria. The share of rivers safe for fishing increased by 12 percent between 1972 and 2001." [38]**

However, many waters across the country remain polluted due to governmental failures to implement and enforce the CWA as intended. In addition, many of the nation's waters are not even monitored under the CWA due to lack of funding, prioritization, and other resource limitations. EPA's most recent National Water Quality Inventory demonstrates that, where waters have been assessed by the agency, significant pollution problems persist.[39]

For example:[40]

- 47 percent of rivers and streams, 24 percent of lakes, 34 percent of wetlands, and 21 percent of the Great Lakes are in poor biological condition.
- Nutrient pollution is a pervasive problem impacting waters across the country, with excessive levels of phosphorus causing poor water quality in 42 percent of river and stream miles, 45 percent of lakes, and approximately 23 percent of the Great Lakes.
- Habitat degradation is widespread across the country with 36 percent of wetland acres, 29 percent of lakes, and 27 percent of river and stream miles in poor condition.
- 100 percent of whole fish composite samples in rivers and the Great Lakes nearshore waters had detectable levels of mercury and polychlorinated biphenyls ("PCBs"), and more than 92 percent of the samples contained detectable levels of perfluorooctane sulfonate ("PFOS").

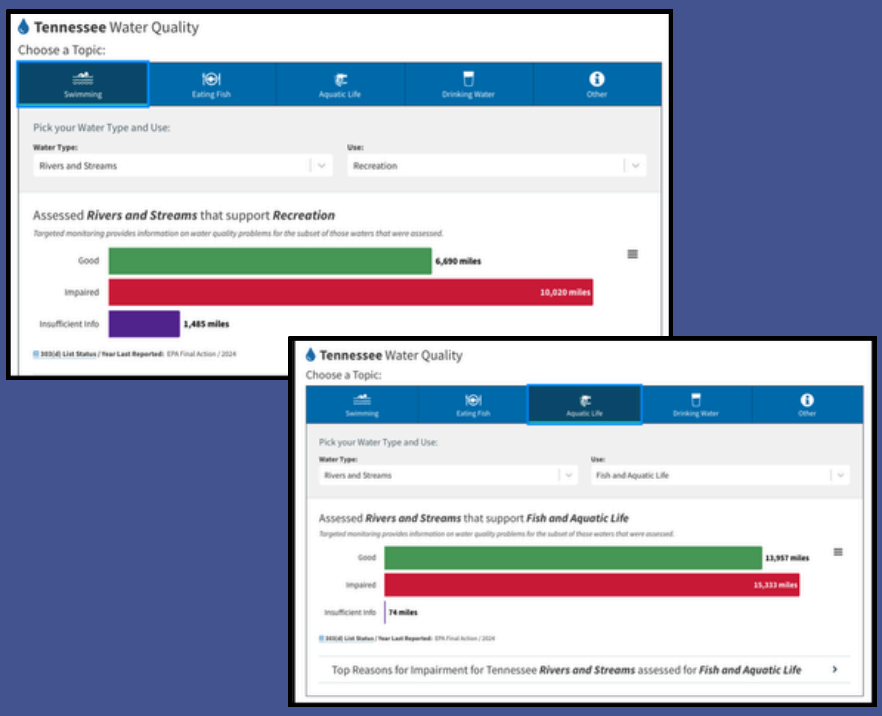
States and tribes also conduct recurring and/or targeted, site-specific monitoring and assessments. Where it is available, the information collected by the states and provided to EPA also shows continuing, widespread pollution, as well as lack of adequate monitoring for many waters.[41] For example, in Arkansas, 95 percent of reported lakes and reservoirs (78,785 acres) lack sufficient information to determine whether the water quality can support primary contact recreation, like swimming.[42]

On the other hand, where more assessment data is available in Arkansas, nearly 33 percent of assessed lakes and reservoirs (31,747 acres) do not meet water quality standards for safe human consumption of fish and 24.3 percent of assessed rivers and streams (3,311 miles) do not meet water quality standards for supporting aquatic life.[43]

Missouri reports that nearly 58 percent of assessed rivers and streams (3,155 miles) do not meet water quality standards for whole body contact recreation (i.e., are not safe for swimming and similar recreational activities), while 95.3 percent (109,662 miles) of the state's reported rivers and streams with this use lack sufficient information determine whether the waters are impaired.[44] Additionally, nearly 75 percent of assessed lakes and reservoirs (198,412 acres) do not meet water quality standards for protection of warm water aquatic life and human health-fish consumption, while 17.3 percent of the state's reported lakes and reservoirs with this use (55,659 acres) lack sufficient information to assess their impairment status.[45]

EPA's database indicates that Tennessee has assessed roughly 45 percent of the state's river and stream miles (27,394 out of 60,435 total miles) and 99 percent of lake acres (565,454 acres).[46] Tennessee reports that nearly 60 percent of assessed rivers and streams (10,020 miles) are too impaired to support recreation, with only 8.2 percent of the total reported miles of rivers and streams (1,485 miles) assessed for this use lacking sufficient information for assessment.[47] Additionally, 52.3 percent of assessed river and streams (15,333 miles) do not meet water quality standards for support of fish and aquatic life, with only 0.3 percent of the total reported miles of rivers and streams (74 miles) assessed for this use lacking sufficient information for assessment.[48] 46.5 percent of assessed lakes and reservoirs (256,091 acres) are reported to be too impaired to support recreation, with roughtly 98 percent of reported lakes and reservoirs assessed for this use having sufficient information for assessment.[49]

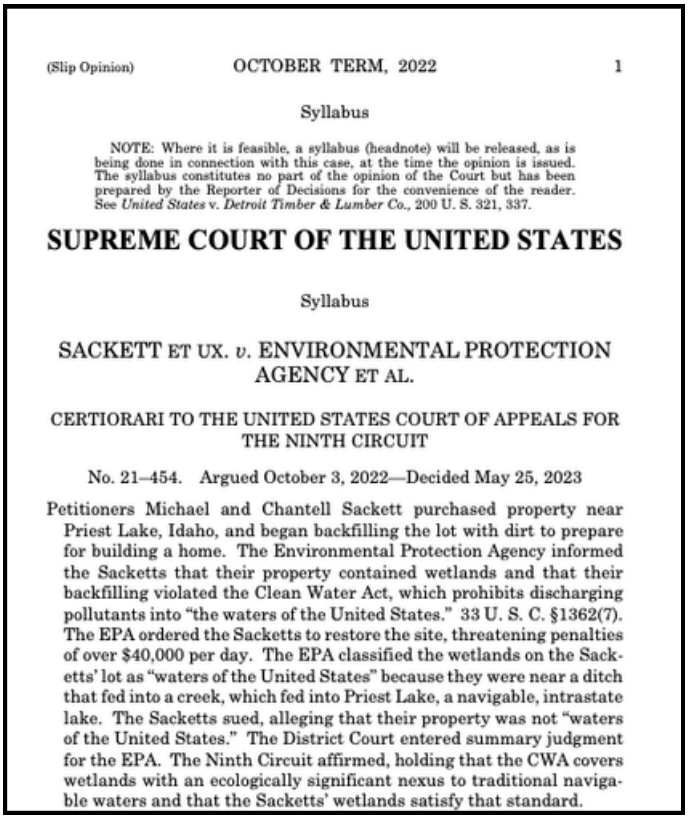
The Arkansas, Missouri, and Tennesse examples of state reporting data illustrate the variations in available data and water quality impairments between the states, the need for additional water quality monitoring and assessment, and the reality that, when waters are assessed by the states, many waters are found to not meet their water quality standards. State information like that provided above for Tennessee can be found online at EPA's How's My Waterway? site.



The Sackett Decision's Destructive Impacts

Starting in 2015, the agencies began adopting changes to the "waters of the United States" regulatory definitions, and by January 2023, the agencies had adopted four different definitions that narrowed and maintained protections to varying degrees based on widely divergent legal interpretations of the scope of the CWA.[50] During certain periods, the longstanding Pre-2015 Definition was put back in place; however, the agencies limited jurisdiction over historically protected waters contrary to the text of the definition and the CWA through application of guidance documents and other means.[51]

This all changed after the U.S. Supreme Court's May 2023 decision in *Sackett.* In that case, the Court evaluated CWA jurisdiction over wetlands adjacent to non-navigable tributaries and issued an opinion that resulted in an extremely narrow jurisdictional scope for the CWA.



(Slip Opinion) OCTOBER TERM, 2022 1

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SACKETT ET UX. *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 21–454. Argued October 3, 2022—Decided May 25, 2023

Petitioners Michael and Chantell Sackett purchased property near Priest Lake, Idaho, and began backfilling the lot with dirt to prepare for building a home. The Environmental Protection Agency informed the Sacketts that their property contained wetlands and that their backfilling violated the Clean Water Act, which prohibits discharging pollutants into "the waters of the United States." 33 U. S. C. §1362(7). The EPA ordered the Sacketts to restore the site, threatening penalties of over $40,000 per day. The EPA classified the wetlands on the Sacketts' lot as "waters of the United States" because they were near a ditch that fed into a creek, which fed into Priest Lake, a navigable, intrastate lake. The Sacketts sued, alleging that their property was not "waters of the United States." The District Court entered summary judgment for the EPA. The Ninth Circuit affirmed, holding that the CWA covers wetlands with an ecologically significant nexus to traditional navigable waters and that the Sacketts' wetlands satisfy that standard.

Specifically, the Court adopted an approach first set forth by a plurality of Justices in *Rapanos v. United States*, which focused on the meaning of "the waters" in 33 U.S.C. § 1362(7).[52] There, the plurality concluded that "[o]n this definition, 'the waters of the United States' include only relatively permanent, standing or flowing bodies of water. The definition refers to water as found in 'streams,' 'oceans,' 'rivers,' 'lakes,' and 'bodies' of water 'forming geographical features.' All of these terms connote continuously present, fixed bodies of water, as opposed to ordinarily dry channels through which water occasionally or intermittently flows."[53] The *Rapanos* plurality also determined that wetlands adjacent to "relatively permanent" bodies of water are covered under the CWA only if they possess a "continuous surface connection" to that adjacent water.[54]

Following the *Rapanos* plurality's approach, the Court in *Sackett* held that "the CWA extends to only wetlands that are 'as a practical matter indistinguishable from waters of the United States.'"[55] In so doing, however, the Court announced a standard that eliminated CWA jurisdiction over a wide range of rivers, streams, lakes, wetlands, and other waters as follows: "This requires the party asserting jurisdiction over adjacent wetlands to establish 'first, that the adjacent [body of water constitutes]…'water[s] of the United States,' (*i.e.*, a relatively permanent body of water connected to traditional interstate navigable waters); and second, that the wetland has a continuous surface connection with that water, making it difficult to determine where the 'water' ends and the 'wetland' begins."[56] In response, the January 2023 Definition, which had already significantly narrowed the scope of protected waters, was amended in September 2023 to further narrow the definition and conform it with the Court's decision in *Sackett*.[57]

For example, the September 2023 Definition narrowed the scope of protected tributaries (must be "relatively permanent" and flow into traditional navigable waters, interstate waters, the territorial seas, or impoundments) and adjacent wetlands (must be adjacent to a narrower class of waters and have a continuous surface connection). S*ee, e.g.,* Comparison of Pre-2015 and Septmember 2023 Definitions Table below.

The resulting definition, among other things, leaves many non-perennial rivers, streams, canals, and other tributaries that flow seasonally (intermittently) or only in response to precipitation (ephemerally) at risk of being outside the scope of the CWA. Those types of waters often make up a significant portion of state waters and serve as critical waters for drinking water supplies, aquatic habitat, and other important uses, including supplying much of the water and any uncontrolled pollution to larger downstream waters.[58] The September 2023 Definition is also being interpreted by the current administration to exclude all wetlands that do not directly abut, i.e., physically touch, another "water of the United States" according to a March 12, 2025 Joint Memorandum issued by EPA and the Corps,[59] resulting an even more extreme elimination of wetland protections than required by the *Sackett* decision and than intended when the definition was adopted.[60] Depending on how the September 2023 Definition is interpreted, an analysis by the Natural Resources Defense Council ("NRDC") recently found that between 60 and 95 percent of the nation's individual wetlands could lack protection under the CWA.[61]

To help illustrate the loss of CWA protections over time, a comparison of the Pre-2015 Definition and the *Sackett*-conforming September 2023 Definition is set forth below. Categories of waters that are narrowed under the September 2023 Definition as compared to the Pre-2015 Definition are highlighted in orange.

Comparison of Pre-2015 and September 2023 WOTUS Definitions		
Protected Category	**Pre-2015 WOTUS Definition 33 C.F.R. § 328.3 (Aug. 2015)**	***Sackett*-Conforming 2023 WOTUS Definition 33 C.F.R. § 328.3 (Sept. 2023)**
Traditional Navigable Waters	Currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide	Currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide
Territorial Seas	Included per statute	Included per statute
Interstate Waters	All interstate waters, including interstate wetlands	Interstate waters
Impoundments of Jurisdictional Waters	Impoundments of all defined WOTUS	Impoundments of jurisdictional waters, except for impoundments of intrastate lakes and ponds
Tributaries to Above Waters	All tributaries to traditional navigable waters, interstate waters, impoundments and "other waters"	Relatively permanent, standing or continuously flowing tributaries to traditional navigable waters, interstate waters, impoundments, and territorial seas
Adjacent Wetlands	Wetlands adjacent to traditional navigable waters, interstate waters, territorial seas, impoundments, tributaries, and "other waters"	Wetlands with a continuous surface connection to traditional navigable waters, interstate waters, territorial seas, impoundments, and tributaries
Other Waters	All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which would affect or could affect interstate or foreign commerce	Relatively permanent, standing or continuously intrastate lakes and ponds with a continuous surface connection to traditional navigable waters, interstate waters, territorial seas, and tributaries
Exemptions	Prior converted cropland and waste treatment systems	Waste treatment systems; prior converted cropland; non-relatively permanent ditches excavated wholly in and draining only dry land; certain artificial lakes and ponds; small ornamental bodies of water; water filled depressions created in dry land; pits excavated in dry land for fill, sand, or gravel, unless abandoned and the resulting body of water later meets the definition; and swales and erosional features

Additionally, due to ongoing legal challenges to the September 2023 Definition, EPA and the Corps are implementing an approach they refer to as the "pre-2015 regulatory regime" in 26 states.[62] In those states, it is difficult to know which waters are protected by the CWA under the "pre-2015 regulatory regime" because, although the Pre-2015 Definition is in effect legally, the agencies are not implementing it as it is written. Instead, they are determining whether waters are protected based on the following vague factors: "relevant case law and longstanding practice, as informed by applicable guidance, training, and experience, consistent with *Sackett* (hereinafter Pre-2015 Definition "consistent with Sackett)."[63]

This is particularly problematic because the Corps districts responsible for making CWA jurisdictional determinations under CWA section 404 (Dredged or Fill Material permits) have a long history of interpreting and applying guidance in different ways from district to district, resulting in inconsistent application of the law and leaving waters vulnerable to pollution and destruction.[64]

Additionally, on March 24, 2025, EPA and the Corps issued a notice requesting recommendations on the September 2023 Definition and announcing listening sessions on the issues identified in the notice to be held in April-May 2025.[65]

The March 24, 2025 Notice stated that EPA and the Corps sought "to gather recommendations on the meaning of key terms in light of *Sackett* to inform any potential future administrative actions to clarify the definition of 'waters of the United States' and to ensure transparent, efficient, and predictable implementation."[66] The Notice specifically sought perspectives from stakeholders on jurisdictional scope and specific technical questions regarding three discrete topics associated with the January 2023 Definition—the scope of "relatively permanent waters," the scope of "continuous surface connection," and the scope of "jurisdictional ditches."[67]

Despite this outreach and the listening sessions soliciting feedback on the definition, it was apparent that the agencies intended to propose an even more narrow "waters of the United States" definition that would leave additional waters across the country unprotected. Specifically, EPA Administrator Zeldin announced that, in adopting the current definition, "EPA has failed to follow the law and implement the Supreme Court's clear holding in *Sackett*," and that "[t]he agencies will move quickly to ensure that a revised definition follows the law, reduces red-tape, cuts overall permitting costs, and lowers the cost of doing business in communities across the country while protecting the nation's navigable waters from pollution."[68]

Little Buffalo River, AR @ K. Foster

On November 20, 2025, the agencies published a proposed rule to narrowly redefine "waters of the United States" and reduce CWA protections for the nation's waters far beyond what is required by the *Sackett* decision.[69] If this proposed definition is adopted, there will be an even more urgent need for states to protect waters that will lose CWA protections. The definition would, for example:

- Entirely eliminate the longstanding Interstate Waters Category.[70]
- Reduce jurisdiction over tributaries by eliminating the Interstate Waters Category and:
    - Narrowly defining "relatively permanent" to mean "standing or continuously flowing bodies of surface water that are standing or continuously flowing year-round or at least during the wet season."[71]
    - Narrowly defining "tributary" in a way that requires all downstream features, such as a stream, culvert, tunnel, dam, wetland, ditch, or subsurface feature, through which the tributary is connected to a traditional navigable water to also have relatively permanent flow, unless the downstream feature is a part of a water transfer.[72]
    - Broadly defining "ditch" to mean "a constructed or excavated channel used to convey water," which could include channelized streams and canals, and expanding the Ditch Exclusion to include any ditch constructed or excavated entirely in "dry land." The new exclusion would not apply to "ditches" that are also traditional navigable waters.[73]
- Reduce jurisdiction over "adjacent wetlands" by eliminating the Interstate Waters Category, reducing jurisdiction over tributaries, and:
    - Narrowly defining "continuous surface connection" to mean "having surface water at least during the wet season and abutting (i.e., touching) a jurisdictional water."[74]
    - Expanding the Prior Converted Cropland Exclusion by, among other things, only restoring protection to the wetland after the area is not used for, or in support of, agricultural purposes at least once in the immediately preceding five years.[75]
- Reduce jurisdiction over impoundments, tributaries, adjacent wetlands, and (a)(5) lakes and ponds by expanding the Waste Treatment System Exclusion.[76]
- Add a Groundwater Exclusion.[77]

In the 2025 Proposed Rule Notice, the agencies indicate they are also considering for adoption in the final rule numerous, inadequately described alternatives to the above definition, as well as other implementation measures, that would further reduce jurisdiction, often in even more extreme ways, such as:

- Excluding all waters except traditional navigable waters, tributaries that flow directly into them, and adjacent wetlands with a continuous surface connection to those waters.[78]
- Changing, likely narrowing, which waters are protected as traditional navigable waters through "clarifications" in the final rule preamble or another rulemaking.[79]
- Establishing additional, more restrictive requirements for "relatively permanent" waters, tributaries, adjacent wetlands, lakes, and ponds.[80]

A comparison of the text September 2023 Definition and the 2025 Proposed Definition is set forth below. Categories of waters that could lose protection are highlighted in red (eliminated) or orange (reduced).

Comparison of September 2023 Definition and 2025 Proposed Definition		
Protected Category	**September 2023 Definition**	**2025 Proposed Rule Definition**
Traditional Navigable Waters (a)(1)	Currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide	Currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide (May Narrow Interpretation)
Territorial Seas (a)(1)	Included	Included
Interstate Waters (a)(1)	Waters that flow across or form state borders	**Eliminated**
Impoundments of WOTUS (a)(2)	Except for impoundments of (a)(5) waters	Except for impoundments of (a)(5) waters (Narrowed through other categories)
Tributaries to Above (a)(3)	If relatively permanent, standing or continuously flowing bodies of water	If relatively permanent, standing or continuously flowing year-round or at least during the wet season and flow into a traditional navigable water or territorial sea directly or indirectly through one or more waters or features that convey relatively permanent flow
Adjacent Wetlands (a)(4)	Must have a continuous surface connection to (a)(1) waters, (a)(2) impoundment or (a)(3) jurisdictional tributary	Must have a continuous surface connection to (a)(1) waters (excluding Interstate waters), (a)(2) impoundment or (a)(3) tributary by having surface water at least during the wet season and abutting (i.e., touching) the jurisdictional water
Lakes and Ponds (a)(5)	Must be either relatively permanent, standing or continuously flowing bodies of water with a continuous surface connection to the (a)(1) or (a)(3) relatively permanent waters	Must be relatively permanent, standing or continuously flowing and have a continuous surface connection to the (a)(1) waters (excluding interstate waters) or (a)(3) tributary by having surface water at least during the wet season and abutting (i.e., touching) the jurisdictional water
Waste Treatment System Exclusion	Waste treatment systems, including treatment ponds or lagoons, designed to meet the requirements of the CWA	All components of a waste treatment system designed to meet the requirements of the CWA
Ditch Exclusion	Ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water	Constructed or excavated channels used to convey water that are constructed or excavated entirely in dry land.
Other Exclusions	Prior converted cropland; certain artificial lakes and ponds; small ornamental bodies of water; water filled depressions created in dry land; pits excavated in dry land for fill, sand, or gravel, unless abandoned and the resulting body of water later meets the definition; and swales and erosional features	**Prior converted cropland**; certain artificial lakes and ponds; small ornamental bodies of water; water filled depressions created in dry land; pits excavated in dry land for fill, sand, or gravel, unless abandoned and the resulting body of water later meets the definition; swales and erosional features; and **groundwater**

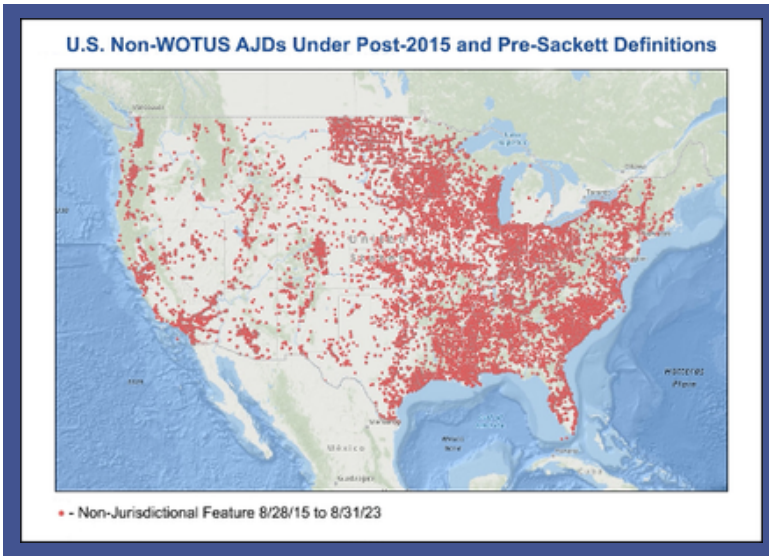
Unprotected Waters

Since August 28, 2015, EPA and the Corps have applied five different regulatory definitions of "waters of the United States," as well as an interpretation of the Pre-2015 Definition based on vaguely described factors that the agencies refer to as the "pre-2015 regulatory regime,"[81] to evaluate whether rivers, streams, lakes, wetlands, and other waters are protected under the CWA. Each of these regulatory definitions and the pre-2015 regulatory regime protect fewer waters than were historically included in the Pre-2015 Definition, which had encompassed virtually all surface water bodies and surface water in the country for many decades.[82]

The agencies have not created a database showing the jurisdictional status of all waters under any of the definitions. As a result, it is not currently possible to comparatively analyze the jurisdictional status of all individual waters or all waters cumulatively before and after the elimination of protections through agency regulations, the "pre-2015 regulatory regime," and the *Sackett* decision. However, since August 28, 2015, EPA has maintained a database of official jurisdictional determinations by the Corps called Approved Jurisdictional Determinations ("AJDs") that apply the applicable regulatory definition (or the "pre-2015 regulatory regime") to determine the presence or absence of a "water of the United States." [83]

AJDs are only issued in response to a request from an individual or organization. As a result of this and other factors, the database does not include the jurisdictional status of all waters in the United States, so a review of AJDs can only reflect a fraction of the impacts.[84] However, the information in EPA's database provides a general sense of the scale of lost CWA protections based on the Corps' non-jurisdictional determinations under the various approaches.

A review of all reported AJDs since August 28, 2015, indicates that the Corps is determining that the overwhelming majority of features evaluated are non-jurisdictional and not protected by the CWA; i.e., that the features are not "waters of the United States" under the five regulatory definitions adopted since August 2015 and the agencies' "pre-2015 regulatory regime." Some of these features would be non-jurisdictional under any of the regulatory definitions, but others have become non-jurisdictional due to the narrowing of the scope of protected waters through agency definitions, agency interpretations, and the *Sackett* decision. However, consistent with continued narrowing of the regulatory definition, it appears that the overall percentage of non-jurisdictional determinations has increased after the *Sackett* decision and adoption of the September 2023 Definition.

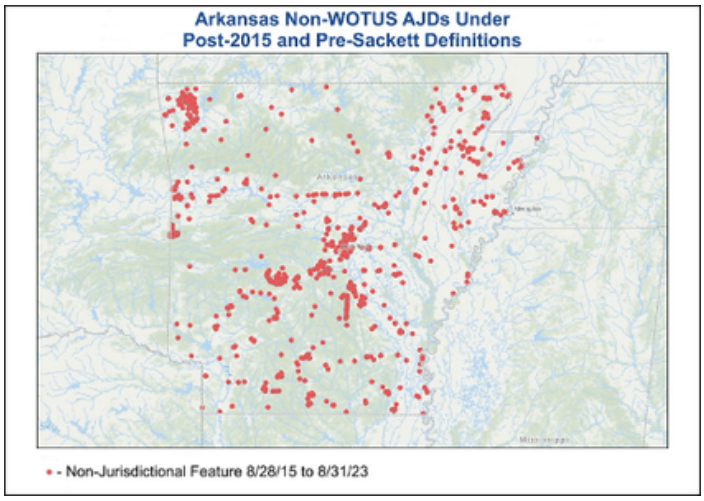


Between August 28, 2015 and August 31, 2023, the agencies reported that 166,065 AJDs for the nation's waters had been issued and 108,966 (65.6%) of the features evaluated were determined not to be protected by the CWA (non-jurisdictional) under the 2015 Clean Water Rule Definition, the 2020 Navigable Waters Protection Rule, the Pre-2015 Definition as modified by agency interpretations and guidance, and the January 2023 Definition.[85] As indicated on this map, these non-jurisdictional determinations have impacted features across the country.

After the *Sackett* decision, between September 1, 2023 and March 6, 2026, the Corps issued 58,786 AJDs across the country and determined that approximately 48,923 (83.2%) of the features evaluated are not protected by the CWA under the September 2023 Definition or the Pre-2015 Definition "consistent with *Sackett*."[86] These excluded features include rivers, streams, wetlands, lakes, ponds, ditches, and other types of waters, some of which may now be classified as "upland" or dry land. As detailed below, a review of AJDs and other information for Arkansas, Mississippi, Missouri, and Tennessee show similar results.

Jurisdictional Determinations in Arkansas

In Arkansas, between August 28, 2015 and August 31, 2023, the Corps issued 2,583 AJDs and determined that 1,835 (71%) of the assessed features were non-jurisdictional.[87]



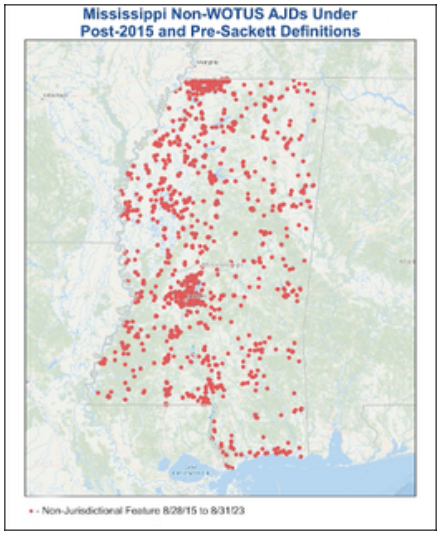
After the *Sackett* decision, in Arkansas, the Corps began making jurisdictional determinations based on the Pre-2015 Regulatory Definition as modified by "relevant case law and longstanding practice, as informed by applicable guidance, training, and experience, consistent with *Sackett*," i.e. the "pre-2015 regulatory regime."[88] Under the Pre-2015 Definition "consistent with *Sackett*," the Corps issued 790 AJDs and determined that 637 (80.6%) of those assessed features were non-jurisdictional as of February 23, 2026.[89]

This is, unfortunately, consistent with a recent analysis of the impacts of the *Sackett* decision by NRDC, which predicted that 83 percent of 2,378,881.8 wetland acres and 94 percent of 133,915 individual wetlands could lack protection under its "Most Damaging Scenario," a model they developed based on industry's push to exclude "any water body that is not 'indistinguishable' from the adjacent, relatively permanent water body."[90] Additionally, NRDC's analysis shows that 80.9 percent of stream lengths in Arkansas are non-perennial and are at risk of being excluded from CWA protections for two reasons—a portion of those rivers and streams are ephemeral, i.e., flowing primarily in response to rainfall, and industry is pushing for the agencies to interpret *Sackett* more broadly to exclude at least some intermittent rivers and streams, i.e., flowing seasonally, as well.[91]

The risks to state waters are heightened because Arkansas has a significant number of losing streams that, due to karst geology, "disappear into the subsurface through fractures and passageways and travel underground for some distance before re-appearing downstream or discharging as a spring elsewhere."[92] Continued protection of these streams is threatened under the Pre-2015 Definition "consistent with *Sackett*." In addition, the 2025 Proposed Definition specifically proposes to exclude tributaries that go subsurface where the subsurface portion does not convey "relatively permanent" flow to the downstream jurisdictional water or, alternatively, even when the subsurface portion does convey "relatively permanent" flow to the downstream jurisdictional water.[93] Exclusion of losing streams from the CWA imperils not only the streams themselves, but also the downstream waters, underlying aquifers, and connected springs. Protection of losing streams is so important that, as part of its permitting program, Arkansas has prohibited new discharges into the streams if alternatives are environmentally and economically available and wastewater discharges are subject to special standards when allowed.[94]

Jurisdictional Determinations in Mississippi

In Mississippi, between August 28, 2015 and August 31, 2023, the Corps issued 3,360 AJDs and determined that 2,758 (82.1%) of the assessed features were non-jurisdictional.[95]

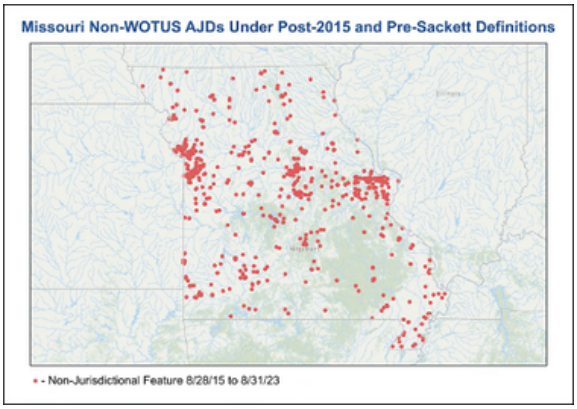


After the *Sackett* decision, in Mississippi, the Corps began making jurisdictional determinations based on the Pre-2015 Definitions as modified by "relevant case law and longstanding practice, as informed by applicable guidance, training, and experience, consistent with *Sackett*," i.e., the "pre-2015 regulatory regime."[96] Under the Pre-2015 Definition "consistent with *Sackett*," the Corps issued 947 AJDs and determined that 726 (76.7%) of the assessed features are non-jurisdictional as of February 23, 2026.[97]

NRDC's analysis, which predicted that 92 percent of 3,470,500 wetland acres and 94 percent of 159,298 individual wetlands could lack protection under its "Most Damaging Scenario, indicates much greater losses are possible.[98] Additionally, NRDC's analysis shows that at least 54.7 percent of stream lengths in Mississippi are non-perennial and are at risk of being excluded from CWA protections based on ephemeral flows and industry's push to exclude at least some intermittent rivers and streams.[99] An additional 34 percent of Mississippi streams are not classified by flow regime in the National Hydrography Dataset leaving them potentially vulnerable to losing CWA protections as non-relatively permanent waters.[100]

Jurisdictional Determinations in Missouri

In Missouri, between August 28, 2015 and August 31, 2023, the Corps issued 1,768 AJDs and determined that 1,306 (73.9%) of the assessed features were non-jurisdictional.[101]



After the *Sackett* decision, in Missouri, the Corps began making jurisdictional determinations based on the Pre-2015 Definition as modified by "relevant case law and longstanding practice, as informed by applicable guidance, training, and experience, consistent with *Sackett*," i.e., the "pre-2015 regulatory regime."[102] Under the Pre-2015 Definition "consistent with *Sackett*," the Corps issued 1,617 AJDs and determined that 1,390 (86%) of the assessed features were non-jurisdictional as of February 23, 2026.[103]

This is consistent with NRDC's analysis, which predicted that 99 percent of 979,625.5 wetland acres and 99 percent of 315,196 individual wetlands could lack protection under its "Most Damaging Scenario.[104] Additionally, NRDC's analysis shows that 86.4 percent of stream lengths in Missouri are non-perennial and at risk of being excluded from CWA protections based on ephemeral flows and industry's push to exclude at least some intermittent rivers and streams.[105]

This risk is heightened because Missouri has a large number of losing streams, which are streams or parts of streams where a significant amount of water flows underground, particularly in karst areas with sinkholes, springs, and caves.[106] Continued protection of these streams is threatened under the Pre-2015 Definition "consistent with *Sackett*."

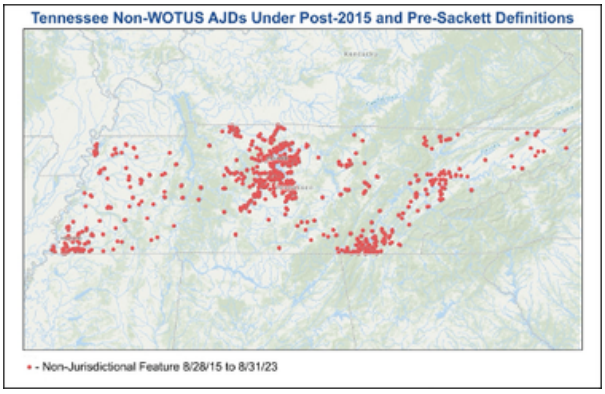
In addition, the 2025 Proposed Definition specifically proposes to exclude tributaries that go subsurface where the subsurface portion does not convey "relatively permanent" flow to the downstream jurisdictional water or, alternatively, even when the subsurface portion does convey "relatively permanent" flow to the downstream jurisdictional water."[107] Protecting these losing streams is important because they frequently reemerge downstream or through springs, such as Maramec Spring, which is fed by numerous losing streams.[108]

Meramec Spring, MO @ K. Foster

Pollution discharged into losing streams also moves more quickly into groundwater, threatening drinking water in wells.[109] As is the case with Arkansas, Missouri has also adopted special protective standards for avoiding or controlling discharges of pollutants into losing streams and, "prior to discharging to a losing stream, alternatives such as relocating the discharge to a gaining stream and connection to a regional wastewater treatment facility must be evaluated and determined to be unacceptable for environmental and/or economic reasons."[110]

Jurisdictional Determinations in Tennessee

In Tennessee, between August 28, 2015 and August 31, 2023, the Corps issued 3,630 AJDs and determined that 2,812 (77.5%) of the assessed features are non-jurisdictional.[111]



After the *Sackett* decision, in Tennessee, the Corps began making jurisdictional determinations based on the Pre-2015 Definition as modified by "relevant case law and longstanding practice, as informed by applicable guidance, training, and experience, consistent with *Sackett*," i.e., the "pre-2015 regulatory regime." [112] Under the Pre-2015 Definition "consistent with *Sackett*," the Corps issued 4,080 AJDs and determined that 3,658 (89.7%) of assessed features are non-jurisdictional as of February 23, 2026.[113]

This is also consistent with NRDC's analysis, which predicted that 91 percent of 817,852.9 wetland acres and 96 percent of 75,414 individual wetlands could lack protection under its "Most Damaging Scenario.[114] Additionally, NRDC's analysis shows that 32.2 percent of stream lengths in Tennessee are non-perennial and are at risk of being excluded from CWA protections based on ephemeral flows and industry's push to exclude at least some intermittent rivers and streams.[115]

Similar to Arkansas and Missouri, Tennessee is also characterized by karst geology and limestone with sinkholes, caves, and underground streams resulting in a prevalence of "losing streams" that can disappear and emerge at the surface "after several hundred meters or even a mile or two."[116] Losing streams may not be considered "relatively permanent" so as to be protected by the CWA under the Pre-2015 Definition "consistent with *Sackett*" or under the 2025 Proposed Definition, but protecting these streams is important for preserving water quality in downstream waters and in the groundwater.

The State Legal Framework

The proposed framework identifies the types of provisions that should be found in state law in order to address the threats to water quality and gaps in state authority created by the *Sackett* decision. The CWA creates a foundation for managing the release of pollution into waterways and the protection of water quality. There are many ways that state law could fill the gaps and shortcomings in the CWA in order to better address threats to water quality and drinking water sources. This report narrowly focuses on how state law can address the impact of the *Sackett* decision and the narrowing of federal jurisdiction over the protection of water quality through regulatory definitions and agency interpretations. The objective, as previously stated, is to identify the types of provisions that state legislatures or regulators can adopt to ensure state waters are fully protected and that the water quality protections that existed before *Sackett* and the post-2015 regulatory definitions continue to apply at the state level.

First, we have identified broad categories of the types of provisions that should be included within state water quality laws in order to address the narrowing of federal jurisdiction by *Sackett*, the September 2023 Definition, and any future changes to the "waters of the United States" definition. These categories broadly represent how state law can enable state agencies to manage water quality within their borders. Second, we identified the more specific topics the individual provisions within a state law needs to address to be effective. These topics identify specific definitions, rules, requirements, and authorities that need to be included in state law in order to ensure that state agencies have the authorities they need to manage water quality in state waters, including in waters now unprotected by the CWA. The chart below establishes a framework for ensuring that state laws enable states to fully protect water quality within their borders.

POST-*SACKETT* STATE LEGAL FRAMEWORK

The purpose of this legal framework is to address provisions needed to protect "waters of the state" after the *Sackett* decision and the narrowing of the regulatory definition of "waters of the United States." The *Sackett* decision limited the applicability of the CWA by narrowing the scope of waters to which the Act applies. However, state legislatures can adopt state laws that fill the gaps left by the narrowed scope of the CWA and protect state waters.

The framework is made up of three parts:

- **Category represents the broad subject area of state law being addressed.**
- **Why It Is important explains why addressing that category of law in this framework matters.**
- **Core Requirements identifies the specific legal elements states should include in their statutes and regulations to protect state waters and fill the gaps created by the *Sackett* decision and agency regulatory definitions.**

CATEGORY	WHY IT IS IMPORTANT	CORE REQUIREMENTS
State Pollution Prohibitions	State law must include legal prohibitions that prevent pollution of waters of the state. These prohibitions form the legal basis for holding polluters responsible for controlling their pollutant discharges into waterways, establishing regulatory requirements for permitting, and ensuring that water quality is maintained, protected, and restored. Core requirements must broadly prohibit the pollution of waters of the state and the violation of any water quality standards for state waters. Requirements must also prohibit discharges of pollutants to state waters without a permit, making the permittee subject to specified pollution controls.	–State law prohibits causing pollution of waters of the state. –State law prohibits placing or causing to be placed any wastes in a location where they are likely to cause pollution of waters of the state. –State law prohibits violation of any rule, regulation, permit, or standard of water quality in waters of the state. –State law prohibits discharging pollutants into waters of the state without compliance with a permit.
State Regulatory Authority	State law must give a state agency authority to regulate activities that endanger the water quality of waters of the state to fill in the gap in authority at the federal level left after *Sackett.* Implementation and enforcement of the law rely on a state agency being required to act and being given the responsibilities and authorities necessary to manage activities that impact the water quality of waters of the state. Without a state agency designated as responsible for managing water quality, no one would be responsible for acting on the requirements established in the law, including developing regulations to implement the law, monitoring compliance, implementing programs, and enforcing the law. Core requirements must broadly task a state agency with managing the water quality of waters of the state by developing, implementing, and enforcing rules and standards that manage water quality and issuing permits for activities that impact water quality.	–State law requires a state agency to manage water quality of waters of the state and the activities that impact the water quality. –State law requires a state agency to issue permits for activities that alter the properties of waters of the state and for discharges of pollutants into waters of the state. –State law requires a state agency to prepare and develop comprehensive regulations and programs for preventing, reducing, or eliminating the pollution of waters of the state, including but not limited to pollutant discharges and dredged or fill material programs. –State law requires the state agency to establish, implement, amend, and enforce effluent limitations, water quality standards, impaired waters lists, and total maximum daily loads, including promulgating other rules to protect, maintain, and improve the best uses of waters of the state in the interest of the public under such conditions as may be necessary or appropriate for the prevention, control, and abatement of pollution.
State Definitions	State law must define key terms inclusively in order to address the narrowing of federal law coverage and the need for states to more comprehensively manage the water quality of waters of the state. Core requirements define key terms—such as waters of the state and wetland—that determine how and when the requirements of the law are applied.	–State law defines key terms, including: (1) waters of the state, (2) wetland, (3) pollution, (4) pollutant, (5) discharge, (6) discharge of dredged material, (7) fill material, and (9) dredged material. –Waters of the state should be defined broadly to cover all waters within the boundaries of the state regardless of flow permanence or the water's connection to a traditional navigable water or interstate water. The definition should: (1) include all surface waters, even if intermittent or ephemeral, (2) define wetlands by hydrological and ecological criteria rather than an adjacency test, and (3) include groundwater.
State Permitting	State law must explicitly prohibit activities that impact the water quality of waters of the state and must require that all pollutant discharges of pollutants comply with water quality standards, effluent limitations, the terms of a permit, and other requirements. State law must also require the establishment of a permitting program to manage water quality in waters of the state and regulations to implement it. A robust permitting program creates the foundation for managing activities that impact water quality in waters of the state. Core requirements ensure that permitting supports rather than undermines the goal of water quality protection by requiring that permits be issued before activities are started, ensuring general permits and authorizations are used responsibly, requiring that permits ensure compliance with water quality standards, and by first requiring identification of approaches that will avoid and minimize impacts to waters of the state. Where impacts to waters from dredged and fill material cannot be avoided, the law must require compensatory mitigation.	–State law establishes protective requirements for permits and permitting programs comparable to the federal CWA and that ensure compliance with water quality standards. –State law requires a permit be obtained before the start of any activities that will impact the water quality in waters of the state or result in the discharge of pollutants into waters of the state. –State law ensures that general permits are only used for similar activities with similar impacts and only when individual and cumulative environmental impacts will be minimal. –State law: 1. Prohibits the issuance of dredged or fill material permits where less damaging alternatives are available, unavoidable impacts are not minimized, and water quality standards would be violated, with the goal of achieving no net loss of wetlands; (2) Requires compensatory mitigation; and (3) Ensures compensatory mitigation will compensate for all functions of state waters that will be lost as a result of activities.
State Citizen Enforcement	State law must empower citizens to bring suits to ensure compliance with the law and to ensure implementation and enforcement of the law by the state government. This is essential to enable private citizens to take action and ensure that the state law managing waters of the state is implemented and enforced. Core requirements allow residents to bring administrative actions and lawsuits to achieve the implementation and enforcement of the law.	–State law allows private citizens to bring an administrative action or lawsuit for a failure to comply with the law, such as a permit violation or discharge without a permit, and to require the state government to act where it has failed to comply with a non-discretionary duty.
State Authority not Limited to Federal Authority	State law should not restrict the state from going above and beyond the requirements or programs established by federal law, including through protecting more or different types of waters or adopting new or different programs or standards. Core requirements remove any state legal provisions that restrict states from acting to protect water quality and public health beyond what is required by the CWA or other federal laws.	–State law does not include a “no more stringent than” or an equivalent limiting provision (e.g., a provision that limits protections to waters protected by the CWA or requires automatic adoption of federal nationwide and regional permits and their terms and conditions).

Application of Legal Framework to Four States

The states of Arkansas, Mississippi, Missouri, and Tennessee form part of the lower Mississippi River Basin. The Mississippi River watershed is a critical watershed within the United States that covers thirty-one states and provides significant economic, environmental, and social value to the communities who reside within the watershed. Below we examine the state laws governing the water quality management of "waters of the state" in Arkansas, Mississippi, Missouri, and Tennessee to identify whether state laws as written are sufficient to manage water quality in state waters and opportunities for building regional cooperation in managing water quality. To support this evaluation, we compared state statutes and regulations to the State Legal Framework. A summary of the results of that evaluation are included below.

OVERVIEW OF STATE LEGAL FRAMEWORK EVALUATION FINDINGS

CATEGORY	AR	MS	MO	TN
State Pollution Prohibitions	Yes	Yes	Yes	Yes
State Regulatory Authority	Yes	Yes	Yes	Yes
State Definitions	Partial	Yes	Partial	Yes
State Permitting	Partial	Partial	Partial	Partial
State Citizen Suits	No	No	No	No
State Authority Limited to Federal Authority Provision	No	Partial	No	No

Arkansas

The State of Arkansas has adopted broad water quality laws to control pollution from a wide range of facilities. Arkansas statutes make it illegal for any person to cause pollution of any "waters of this state;" to "place or cause to be placed any sewage, industrial waste, or other wastes in a location where it is likely to cause pollution of any waters of this state;" and to violate any provisions of the state's Water and Air Pollution Control Act (the "Act"), including rules and orders issued by the Arkansas Pollution Control and Ecology Commission ("APC&EC") and permits issued by the Arkansas Division of Environmental Quality ("ADEQ").[117] "Pollution" is defined broadly as "contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous, or solid substance in any waters of the state as will, or is likely to, render the waters harmful, detrimental, or injurious" to public health, safety, or welfare; beneficial uses of water; or animals, fish, or other aquatic life.[118]

It is also unlawful for any person to, among other things, discharge sewage, industrial waste, or other wastes into any of the waters of the state or to construct or use any new outlet for the discharge of any wastes into waters of the state without first obtaining a permit.[119] "Wastes" is defined broadly to include sewage, industrial wastes, garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, oil, tar chemicals, and all other organic or inorganic substances.[120]

Arkansas defines "waters of the state" broadly in the Act to include "all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state." [121] Although wetlands are not expressly listed, the definition includes marshes and other bodies or accumulations of surface water.

Buffalo River, AR @ K. Foster

These statutes, taken together, are broad enough to cover point source discharges and discharges from dredged or fill material—including industrial activity typically subject to CWA section 404 permitting like mining, commercial and residential construction, and oil and gas production—to all waters within Arkansas that are no longer protected by the CWA after the *Sackett* decision. However, Arkansas does not have a statute that creates a citizen suit similar to the CWA authorizing any person to bring an action against the state regulatory agency or a person violating the Water and Air Pollution Control Act in waters of the state.

Although significant statutory authority to protect waters exists, it appears that the APC&EC and ADEQ may not be fully implementing the Water and Air Pollution Control Act to fill the gap left after *Sackett*. The APC&EC has adopted regulations for the construction and operation of wastewater facilities, which provide that "[a]ny person who desires to construct, operate, or modify any disposal system that will discharge to the waters of the state, or to discharge any sewage, industrial waste, or other wastes into the waters of the state, or to do any other act that requires a permit under Arkansas Code § 8-4-217(b), shall submit an application for a permit for the activity." [122]

It has also developed related regulations for Oil Field Waste,[123] Liquid Animal Waste Management Systems,[124] Open-Cut Mining,[125] and regulations for "no-discharge" permits for storage, discharge, or disposal systems that do not discharge directly to waters of the state, including "standards applicable to the storage, discharge, or disposal of any waste which, if unregulated, will cause pollution of waters of the state or result in wastes being placed in a location where it is likely to cause pollution of the waters of the state."[126]

However, the APC&EC has not established a comprehensive Dredged or Fill Material permitting program that can take the place of the CWA section 404 permitting program for waters of the state that are no longer protected after the *Sackett* decision.

It has established what it refers to as a "Short-Term Activity Authorization," which allows the ADEQ Director to authorize, without any public notice, short-term activities, including dredged and fill material projects and construction activities, that might cause a violation of water quality standards in waters of the state.[127] Additionally, Arkansas has not established a statewide regulatory program for the protection of wetlands that are no longer protected by the CWA.[128] This is of great concern, because Arkansas lost 72 percent of its wetlands by the 1980s and continuing threats to the "remaining, primarily forested wetlands" include: "(1) drainage and flood protection, (2) dredging and stream channelization, (3) conversion of forested wetland to scrub-shrub, emergent, or open-water wetlands, (4) alteration of drainage patterns, (5) construction of dikes and levees, and (6) discharge of pollutants." [129]

KEY TAKEAWAYS

- Arkansas statutes broadly address activities that impact water quality in "waters of the state," which include rivers, streams, lakes, marshes, and other waters that may no longer be protected by the CWA.
- State statutes require the establishment of robust permitting programs for pollution discharges, including dredged and fill material activities that discharge or create water pollution, but Arkansas statutes do not have a citizen suit provision to allow the public to enforce these laws.
- The APC&EC and ADEQ do not appear to be fully implementing the Water and Air Pollution Control Act, particularly as it relates to regulating and permitting dredging and filling operations and protecting wetlands. These entities need to create a regulatory program to fully implement their authorities in light of the loss of CWA protections for state waters no longer considered "waters of the United States."

Mississippi

Mississippi statutes and regulations establish broad protections against polluting "waters of the state" under the Mississippi Air and Water Pollution Control Law.[130] The Mississippi Commission on Environmental Quality ("MCEQ"), the Permit Board, and the Mississippi Department of Environmental Quality ("MDEQ") Executive Director are charged with managing water quality in state waters.[131] The Air and Water Pollution Control Law prohibits the "pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state. It is also unlawful to discharge any wastes into any waters of the state which reduce the quality of those waters below the water quality standards" set by the MCEQ, and the violation of any effluent limitations, other limitations, or standards established by the MCEQ, except as allowed in compliance with a permit or if exempted by regulation.[132] Any such action is considered a public nuisance.[133]

The Air and Water Pollution Control Law also identifies a list of activities that are prohibited unless the person has a permit or is exempt based on regulations adopted by the MCEQ.[134] Activities that are unlawful except in compliance with a permit include: (a) the construction, installation, modification, or operation of any disposal system, as well as the extension of or addition to the system, (b) the increase in volume or strength of any wastes in excess of the allowed discharges set forth in an existing permit, (c) the construction, installation, or operation of any industrial, commercial, or other establishment "the operation of which would cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized," and (d) the construction or use of any new outlet for discharging wastes into any waters of the state.[135] This list broadly encompasses most activities that are likely to cause pollution of waters of the state.

Pearl River, MS @ Pearl Riverkeeper

Under the Air and Water Pollution Control Law, "waters of the state" is broadly defined as including "all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, situated wholly or partly within or bordering upon the state, and such coastal waters as are within the jurisdiction of the state, except lakes, ponds or other surface waters which are wholly landlocked and privately owned, and which are not regulated under the Federal Clean Water Act…" [136] The regulatory definition of "waters of the state" also expressly includes "wetlands."[137] Therefore, the MCEQ, the Permit Board, and MDEQ have authority to manage water quality and discharges of pollution into waters of the state, a broader list of waters than the federal regulatory definition of "waters of the United States" currently includes.[138]

Mississippi has assumed responsibility for implementing CWA section 402 NPDES permits under the CWA and also issues state permits "for the operation of a treatment works from which no discharge occurs, for discharges into State waters where an NPDES or UIC permit may not be applicable, or for discharges to a publicly owned treatment works where a pretreatment system is utilized."[139] However, Mississippi has not assumed responsibility for CWA section 404 Dredged or Fill Material permits. Therefore, CWA section 404 permits in Mississippi are issued by the Corps.

Upper Pearl River, MS @ Pearl Riverkeeper

Mississippi also has a standalone state law that governs publicly-owned coastal wetlands called the Coastal Wetlands Protection Act that was adopted in 1973.[140] The Coastal Wetlands Protection Act prohibits any regulated activity from affecting coastal wetlands without a permit, unless the activity is excluded in the law.[141]

Certain activities that have been explicitly excluded under the law (and are therefore allowed without a permit) include, for example: the "exercise of riparian rights by the owner of the riparian rights" if structures are constructed on pilings that permit a reasonably unobstructed ebb and flow of the tide; any permitted activity "affecting wetlands that is associated with or is necessary for the exploration, production or transportation of oil or gas;" wetlands "conveyed by the state for industrial development" pursuant to section 211 of the Mississippi Constitution and section 29-3-61 of the Mississippi Code; and activities by several port and harbor commissions where those activities affect wetlands within their jurisdiction.[142]

Furthermore, the Director of the Department of Marine Resources can determine, after an on-site inspection, that a regulated activity will not have a harmful impact on the environment and will make no substantial change in the wetlands and, as a result, decide to waive the permit requirement.[143] Otherwise, for noncoastal wetlands, Mississippi relies on the protections of CWA sections 401 and 404 for controlling discharges of dredged and fill material.

Mississippi statutes and MCEQ regulations do not specifically reference permitting requirements for the discharge of dredged or fill material to state waters, but the statutory definition of pollution is broad enough to encompass these discharges.

Pollution is defined as "contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance or leak into any waters of the state unless in compliance with a valid permit issued therefor by the Permit Board."[144]

Based on the definition of pollution and the broad prohibition on pollution, state law prohibits pollution of waters of the state created by dredged and fill material activities. Accordingly, dredged and fill material activities should only be allowed to be conducted in accordance with a state-law permit under the Air and Water Pollution Control Law and as discussed below, regulations are needed to implement a statewide program to address these discharges under state law as a result of the narrowed regulatory definition of "waters of the United States" and the *Sackett* decision.[145]

Under the Air and Water Pollution Control Law, MCEQ has authority to adopt statewide regulations and the MDEQ has the authority to issue permits to control discharges of pollutants and dredged or fill materials into waters of the state. Before the *Sackett* decision, most state waters were also federally protected waters of the United States and were covered by federal CWA permitting requirements.[146] However, now that there are waters of the state where only the state of Mississippi has jurisdiction, MCEQ and MDEQ must ensure that their state law regulatory programs adequately protect those waters of the state against pollution, including all pollutant discharges from dredged or fill material operations and other sources.

MDEQ is in the process of finalizing the proposed State Water Alteration Program ("SWAP") regulations that are intended to regulate certain impacts to waters of the state that may not be covered under the CWA after *Sackett*.[147] On January 5, 2026, MDEQ published an Advanced Notice of Proposed Rulemaking for SWAP Regulations.[148] The Notice informs the public that MDEQ anticipates publishing a full set of SWAP rules in 2026 for public review and comment, seeks to inform the public as to current thinking on the regulations, and solicits informal feedback.

KEY TAKEAWAYS

- "Waters of the state" is defined by Mississippi statutes and regulations more broadly than "waters of the United States" and includes rivers, streams, lakes, wetlands, marshes, and nearly every other type of surface water and groundwater.
- The Mississippi Air and Water Pollution Control Law also broadly defines pollution, prohibits pollution of waters of the state, and empowers the MCEQ, Permit Board, and MDEQ to control pollution of waters of the state through regulations, permits, and other means thus ensuring that the state can protect waters that are no longer protected under the CWA.
- The MCEQ has authority to adopt regulations and the MDEQ has authority to issue permits to control discharge of dredged and fill material in waters of the state, but these entities need to create a regulatory program to implement that authority in light of the loss of CWA protections for waters that were previously considered "waters of the United States" and protected by CWA sections 401 and 404 prior to the *Sackett* decision. MDEQ is in the process of developing a state program to address this need that is referred to as the State Water Alteration Program.

Missouri

The State of Missouri has established a strong, protective policy of preventing water pollution to prevent public nuisance and protect water uses, public health, and aquatic life within the state and in adjoining states through the Missouri Clean Water Law (the "Clean Water Law").[149] Specifically, it is Missouri's policy to: (1) "conserve the waters of the state and to protect, maintain, and improve" their quality; (2) prohibit the discharge of waste into any waters of the state without the necessary treatment or other corrective action to protect beneficial uses and meet the requirements of the federal CWA; (3) prevent, abate, and control new or existing water pollution; and (4) "to cooperate with other agencies of the state, agencies of other states, the federal government and any other persons in carrying out these objectives."[150] Missouri's Clean Water Law defines pollution broadly as "such contamination or other alteration of the physical, chemical or biological properties of any waters of the state . . . or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is reasonably certain to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, industrial, agricultural, recreational, or other legitimate beneficial uses, or to wild animals, birds, fish or other aquatic life."[151]

The Clean Water Law broadly defines "waters of the state" as "all waters within the jurisdiction of this state, including all rivers, streams, lakes and other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two or more persons jointly or as tenants in common."[152] This definition encompasses all rivers, streams, lakes, and other surface waters without including any limitation based on the frequency of flow or any requirement for direct or indirect connections to traditional navigable waters.

The definition also includes wetlands, which are bodies of surface water, to the extent they are within or forming the boundaries of the state.[153] However, the definition does not include any of the listed waters when they are located entirely on land owned, leased, or otherwise controlled by a single person or multiple people jointly or as tenants in common. This exclusion could potentially encompass many wetlands in Missouri.

To implement state policy and protect waters of the state, the Clean Water Law makes it unlawful for any person to: (1) "cause pollution of any waters of the state or to place or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state;" (2) "discharge any water contaminants into any waters of the state which reduce the quality of such waters below the water quality standards established by the [Missouri Clean Water Commission];" (3) "violate any pretreatment and toxic material control regulations, or to discharge any water contaminants into any waters of the state which exceed effluent regulations or permit provisions as established by the commission or required by any federal water pollution control act;" and 4. "discharge any radiological, chemical, or biological warfare agent or high-level radioactive waste into the waters of the state."[154]

"Discharge" is defined broadly to include "the causing or permitting of one or more water contaminants to enter waters of the state," and "water contaminant" is broadly defined to encompass "any particulate matter or solid matter or liquid or any gas or vapor or any combination thereof, or any temperature change which is in or enters any waters of the state either directly or indirectly by surface runoff, by sewer, by subsurface seepage or otherwise, which causes or would cause pollution upon entering waters of the state, or which violates or exceeds any of the standards, regulations or limitations" set forth in multiple Clean Water Law sections or the CWA.[155] These definitions encompass the types of pollutants typically associated with discharges from municipal, industrial, agricultural, dredged/fill material operations, and other activities.

Shoal Creek, MO @ K. Foster

The Clean Water Law also makes it unlawful for any person "to operate, use or maintain any water contaminant or point source in th[e] state that is subject to [applicable Clean Water Law] standards, rules or regulations" without a permit, unless subject to an exception in Missouri Clean Water Commission regulations.[156]

The Missouri Clean Water Commission is empowered by the Clean Water Law to, among other things, adopt regulations to implement and enforce the Clean Water Law and as "necessary to prevent, control and abate existing or potential pollution;" issue "orders prohibiting or abating discharges of water contaminants into the waters of the state;" issue "permits for the discharge of water contaminants into the waters of this state" under conditions it prescribes "to prevent, control or abate pollution or any violations of" sections 644-006 through 644-141 of the Clean Water Law or the CWA; and to "[e]stablish effluent and pretreatment and toxic material control regulations" to implement sections 644-006 through 644-141 of the Missouri Clean Water Law and to ensure compliance with the CWA requirements.[157]

Missouri River, MO @ K. Foster

These state law water pollution prohibitions and permitting requirements for state waters apply to a broad range of activities with limited exceptions. For example, agricultural stormwater discharges and return flows from irrigated agriculture are exempted from permitting requirements under the Clean Water Law and are not considered unlawful under section 644.051(1) and (2) unless they "have entered waters of the state and have rendered such waters harmful, detrimental, or injurious to public health, safety, or welfare, or to industrial or agricultural uses, or to wild animals, birds, or fish."[158] Most nonpoint source pollution is also exempted from the permitting requirements by regulation, but there are some permitting requirements for some sources.[159]

Accordingly, Missouri statutes provide adequate authority to use state law to regulate and control pollutant discharges to waters of the state, including rivers, streams, lakes, wetlands, and other waters that are no longer protected by the CWA (so long as they are not located entirely on certain types of private property). This includes the authority to implement state law point source discharge and water contaminant permitting programs and a dredged or fill material permitting program.

However, the Clean Water Law does not provide a citizen suit provision similar to the CWA that authorizes any person to bring an action against the state regulatory agency or a person violating the Clean Water Law for waters of the state, which is a key provision from the CWA that is no longer available to protect waters that lost protections after the *Sackett* decision. Additionally, the Missouri Clean Water Commission and Missouri Department of Natural Resources may not be fully utilizing these authorities.

For example, state regulations establish a permitting requirement for dischargers and non-dischargers as follows: "[p]ersons who build, erect, alter, replace, operate, use, or maintain any water contaminant source, point source, or wastewater treatment facility which discharges to waters of the state shall obtain an operating permit from the department before any discharge occurs… [and] [n]ondischarging facilities for the treatment or disposal of wastes, wastewater, or residuals shall obtain permits as provided in 10 CSR 20-6.015." [160]

But the Clean Water Commission appears to have only established three types of state law general permits for dredged or fill material operations impacting state waters: (1) Discharges from Dredged Aggregate to Lakes, Rivers, Harbors — General Permit No. MO-G690000, (2) Discharges from Dredged Aggregate to Big Rivers - General Permit No. MO-G698000, and (3) Sand And Gravel Washing General Permit No. MO-G500000. These permits are only designed to control the discharge of process wastewater, wash water/dewatering or return water, and/or stormwater, not the full range of pollution asociated with dredged and fill material operations.[161]

Additionally, the Clean Water Commission has not created a state law permitting program to control discharges associated with filling wetlands but depends on the CWA sections 401 and 404.[162] As a result, despite the pollution prohibitions in the Clean Water Law, wetlands that are waters of the state, but are no longer "waters of the United States" under the CWA, do not appear to be protected against discharges associated with filling operations through permits and regulations. This is of great concern because Missouri has already lost more than 87 percent of its wetlands.[163]

The lack of state regulations and permitting requirements, as well as provisions in existing permits that defer to the CWA permitting requirements, for controlling discharges of dredged and fill operations, leaves a significant gap in protections for waters of the state. For example, Sand and Gravel Washing – General Permit MO-G500000 does not authorize "placement of fill material into any stream or wetland, alteration of a stream channel, or obstruction of stream flow unless the appropriate Clean Water Act ("CWA") Section 404 permitting authority provides approval for such actions or determines such actions are exempt from Section 404 jurisdiction." [164] As a result of this language, it appears an entity engaged in sand and gravel mining could potentially be authorized to fill in a stream or wetland, alter a stream channel, or obstruct stream flow without complying with the Clean Water Law pollution prohibitions if the waterbody is no longer protected by the CWA after *Sackett*.

Similarly, Discharges from Dredged Aggregate to Lakes, Rivers, Harbors – General Permit MO-G690000 contains the same language and also exempts all "[f]acilities operating within lakes, ponds, and reservoirs, which discharge all dredged material within the same water body, with no upland application" from the requirement to obtain the permit, but indicates that those facilities may need to obtain a permit from the Corps.[165] Thus, under this permit, it appears that, in addition to exempting the filling a stream or wetland, altering of a stream channel, or the obstructing stream flow when those actions are exempt from CWA section 404 permitting, discharges of dredged material back into the same water of the state would be unregulated if those waters are not "waters of the United States" under the CWA. Regulations and permitting requirements that govern activities and waters that are not covered by the CWA are needed in Missouri to fill the gap in water quality protections after *Sackett* and in light of the CWA regulatory definitions being applied and proposed by EPA and the Corps.

Spring River, MO @ K. Foster

KEY TAKEAWAYS

- Missouri's Clean Water Law broadly addresses activities that impact water quality in waters of the state, including rivers, streams, lakes, wetlands, and other waters that may no longer be protected by the CWA. However, the exclusion of waters located on certain types of private property from state law protections may leave some waters like wetlands unprotected.
- The Clean Water Law requires the establishment of robust regulations, permitting, and abatement programs for pollutant discharges, including dredged and fill material activities that discharge or create water pollution, but it does not have a citizen suit provision to allow the public to enforce these laws.
- The Missouri Department of Natural Resources and Missouri Clean Water Commission do not appear to be fully implementing the Missouri Clean Water Law, particularly as it relates to regulating and permitting dredging and filling operations and protecting wetlands. Regulatory programs are needed to implement these authorities in light of the loss of CWA protections for waters that were previously considered "waters of the United States."

Tennessee

Tennessee state law broadly manages activities that have the potential to negatively impact the quality of waterways through the Water Quality Control Act of 1977 (the "Water Quality Control Act" or "Act").[166] The Water Quality Control Act prohibits, among other things, any person from carrying out any activities that alter "the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state" except in accordance with the conditions of a permit.[167]

Accordingly, under Tennessee law, a permit is required for a broad range of activities that may impact waters of the state, including activities that would release dredged or fill material into, or otherwise alter, waters of the state. Regulatory language implementing the Water Quality Control Act further supports this by, for example, defining the types of activities that alter the properties of water and are prohibited without a permit as including "the discharge of dredge or fill material, dredging, stream channel modifications, water withdrawals, wetlands alterations including drainage, and other construction activities which result in the alteration of the waters of the state." [168]

Permits are also required in the regulations for a wide range of other activities impacting waters of the state that are listed in Section 69-3-108(b) and (c) of the Act, such as the "discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters . . ."[169] and "non-discharging wastewater systems, including but not limited to: land application; animal feeding operations; pumping and hauling; collection and conveyance; and non-potable reuse of reclaimed wastewater."[170]

These water quality protections and permit requirements apply to a broadly-defined set of "waters" that includes: "any and all water, public or private, on or beneath the surface of the ground, that are contained within, flow through, or border upon Tennessee or any portion thereof, except those bodies of water confined to and retained within the limits of private property in single ownership that do not combine or effect a junction with natural surface or underground waters." [171]

Tennessee River, TN @ Marcus E. Jones/Shutterstock.com

While the term "wetland" is not expressly included in the Water Quality Control Act's definition of "waters," the Act defines wetland as "[a] type of waters that are not wet weather conveyances, and generally include swamps, marshes, bogs, and similar areas," thereby ensuring that wetlands are considered "waters" of the state under the Act.[172] Furthermore, Tennessee Department of Environment & Conservation ("TDEC") regulations treat wetlands as state waters under the Act.[173]

Tennessee has assumed responsibility for implementing section 402 NPDES permitting under the CWA and TDEC has also developed regulations and permits that more broadly cover discharging and non-discharging facilities impacting waters of the state, but Tennessee has not assumed responsibility for CWA section 404 Dredged or Fill Material permits. However, Tennessee had established a state-level permit program for dredged and fill material activities in state waters that covers a broader set of waters than the CWA section 404 program implemented by the Corps in Tennessee, resulting in both the TDEC and the Corps having jurisdiction to regulate dredged and fill material activities in the state.

The Commissioner for the TDEC is broadly responsible for issuing permits for discharges and activities that alter the physical, chemical, radiological, biological, or bacteriological properties of waters or otherwise fall within the activities listed in Section 69-3-108(b) of the Water Quality Control Act.[174] This includes individual and general permits issued by TDEC called "Aquatic Resource Alteration Permits" ("ARAPs"), which cover the discharge of dredged and fill materials and other activities that alter waters of the state from activities other than discharges of wastewater through a pipe, ditch, or other conveyance.[175] A hydrologic determination is generally required when applying for an ARAP in order to determine if the waterway is a regulated stream or a wet weather conveyance.[176] A different process is used to identify and classify wetlands.[177]

These longstanding protections were recently weakened, however, through a law signed by Tennessee's Governor on May 9, 2025, that, among other things, limited the level of protection provided for certain types of wetlands under state law.[178] The new law, which amended several parts of the Tennessee Code related to wetlands, identifies four types of "isolated" wetlands and sets different standards for how each is governed under the Water Quality Control Act, including low-quality, moderate-quality, high-quality, and artificial wetlands.[179] An "isolated wetland" is defined using language taken from the *Sackett* decision that is rephrased as follows: "a wetland that does not have a continuous surface connection to a relatively permanent body of water that is connected to a traditional interstate navigable water and, as such, is distinguishable from that body of water."[180]

Each type of "isolated" wetland is also defined. For example, low-quality, moderate-quality, and high-quality "isolated" wetlands are distinguished based on the degree of ecological, hydrologic, and biogeochemical functions they provide as measured by the department's wetland resource assessment tool.[181] The new statutory language allows for alterations of varying acreages of low-quality and moderate-quality "isolated" wetlands, and any acreage of artificial isolated wetlands, without a permit where certain conditions are met and without compensatory mitigation with limited exceptions.[182]

For example, the alteration of a low-quality "isolated" wetland up to one acre in size is allowed without a permit or compensatory mitigation if toxic pollutants are not discharged, sediment is prevented from entering a stream or other surface waters, appropriate steps are taken to ensure petroleum and other chemical pollutants do not enter waters of the state, and immediate action is taken to prevent pollution by spills.[183]

Wetland at Reelfoot Lake, TN @ Melinda Fawver/Shutterstock.com

Alterations to larger "isolated" wetlands are also subject to limited oversight. For example, alterations of a low-quality "isolated" wetland greater than one acre up to two acres in size or a moderate-quality "isolated" wetland that is greater than one-quarter acre up to two acres in size must be regulated by a general ARAP and the general permit cannot impose requirements related to riparian buffers, cumulative impact analysis, or antidegradation.[184] Furthermore, "isolated" wetlands and artificial "isolated" wetlands are not to be considered when determining the cumulative impact of a project for purposes of a permit, even when the project contains wetlands protected by the Corps under the CWA, and cannot be considered when Tennessee evaluates cumulative impact or a common plan of development associated with issuing CWA section 401 Water Quality Certifications for federal permits.[185]

This legislation significantly changed the reach of Tennessee state laws. It has been estimated that 80 percent of Tennessee's "isolated wetlands" are smaller than one acre and 94 percent of "isolated wetlands" are smaller than two acres, which means a majority of the state's wetlands are likely either no longer protected by regulations or are subject to less protective regulatory requirements.[186]

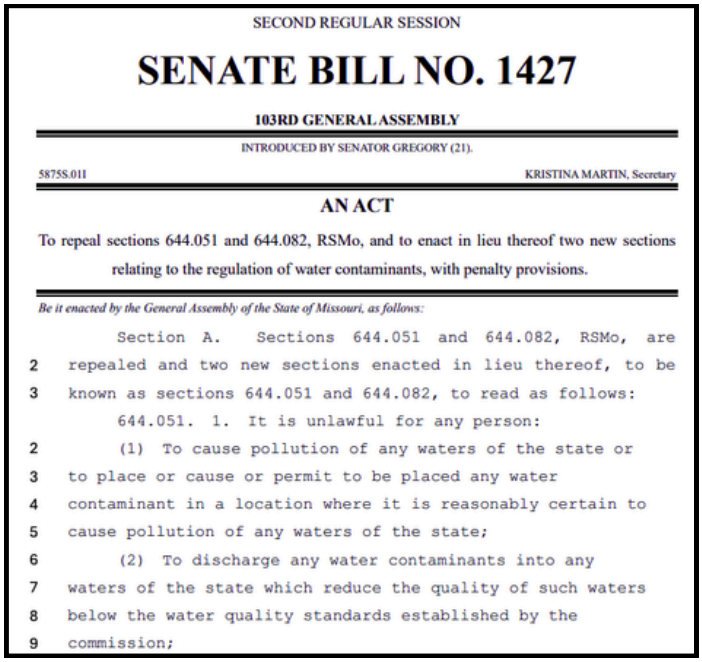
KEY TAKEAWAYS

- Tennessee's Water Quality Control Act broadly regulates activities that impact water quality of waters of the state, which includes dredged and fill material activities.
- Waters of the state as defined in Tennessee state law includes a wide range of waters, including wetlands. However, a law adopted by the state legislature and signed by the Governor in May 2025 limits the application of permitting and mitigation requirements on certain types of wetlands, thereby limiting the protections afforded by Tennessee law.
- State law establishes a robust permit program for activities that negatively impact waters of the state, with the exception of the newly reduced protections for certain categories of wetlands.

State Responses to the Sackett Decision

All of the states evaluated take similar approaches to managing water quality protection. Each state has given state agencies authority to develop and oversee water quality protection and permitting programs that broadly cover state waters, including waters that are no longer protected by the CWA after the *Sackett* decision and/or under current and proposed changes to the agencies' regulatory definition of "waters of the United States." Until recently, Tennessee shared a similar authority with the other states to manage water quality protection in wetlands, but legislation enacted in May 2025 has limited the scope of wetlands that can be protected by permits and with mitigation. With the exception of this limitation in Tennessee, all of the state agencies generally have broad authorities but none of them appear to be fully exercising these authorities through regulations and permitting programs to fill the gaps left after *Sackett*. Furthermore, none of the four states have enacted a citizen suit provision to empower citizens to enforce the law and ensure that state laws are implemented to protect the waters of the respective states.

Since the *Sackett* decision, legislation has been introduced in each of the four states evaluated in this report that would either limit or broaden state authority to protect waters now excluded from regulation under the CWA after *Sackett*. For example, as discussed above, a new law in Tennessee limited the application of water quality protections to certain types of wetlands, ultimately narrowing the scope of longstanding and broadly protective state laws.[187] By contrast, during the 2024 legislative session in Mississippi, Senate Bill No. 2650 would have added the term "wetlands" to the definition of "waters of the state," but the bill ultimately died in committee, leaving the definition as is.[188] In Arkansas, Senate Bill 557 would have specifically prohibited a "retail developer or permittee" under the Water and Air Pollution Control Act from discharging "into an ephemeral or intermittent stream or waterway," but the bill did not pass and was recommended for study in an interim committee.[189]



SECOND REGULAR SESSION

SENATE BILL NO. 1427

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR GREGORY (21).

5875S.011 KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 644.051 and 644.082, RSMo, and to enact in lieu thereof two new sections relating to the regulation of water contaminants, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 644.051 and 644.082, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 644.051 and 644.082, to read as follows:

644.051. 1. It is unlawful for any person:

(1) To cause pollution of any waters of the state or to place or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state;

(2) To discharge any water contaminants into any waters of the state which reduce the quality of such waters below the water quality standards established by the commission;

In Missouri, Senate Bill No. 981 was introduced during the 2024 Regular Session to modify the definition of "waters of the state" by adopting language from the *Sackett* decision, but applying it in a different manner such that it would protect fewer rivers, streams, lakes, ponds, and wetlands than are protected by the federal CWA post-*Sackett*, including reducing state protections for groundwater and certain bodies of surface water.[190] A hearing was conducted by the Senate Agriculture, Food Production, and Outdoor Resources Committee in March 2024, but the bill has not moved forward since that time. If Missouri's definition of "waters of the state" would have been narrowed in the manner proposed by that bill, it would have eliminated clean water protections for a wide range of rivers, streams, lakes, ponds, wetlands, subsurface waters, and other waters across the state. A bill taking a different approach to reducing water quality protections in Missouri was introduced in the current session (2026 Regular Session). Senate Bill No. 1427 as introduced would dramatically weaken a fundamental state authority to fill the gap left by the *Sackett* decision by eliminating the requirement to obtain a permit for the control of water contaminants under section 644.051 of Missouri's Clean Water Law.[191]

Funding Needed for Expanded State Programs

Expansion of state water protection programs to address the loss of federal CWA protections after *Sackett* will require increases in funding, staff, and other resources. Unfortunately, the need for states to fund expanded protections coincides with efforts to reduce appropriations for the core water quality programs that state agencies need to implement permitting, monitoring, and other protections. For example, the President's FY2026 Budget Request sought to eliminate 19 of the 22 categorical State and Tribal Assistance Grants, including CWA section 106 Water Pollution Control Grants and section 319 Nonpoint Source Grants, for a total proposed reduction of approximately $1 billion.[192] State legislatures could be faced with both the need to make up for the loss of federal funding and the need to provide new funding to support creation or expansion of state law programs to fill the gaps left after *Sackett*. This confluence of events may result in the further loss of water quality programs and protections due to budget shortfalls.

For example, CWA section 106 Grants provide funding "to states, territories, and interstate agencies to assist in administering CWA programs for the prevention, reduction, and elimination of pollution" and "support state efforts to implement major requirements of the CWA, including efforts to monitor and assess water quality, develop and review water quality standards, list impaired waters and develop total maximum daily loads (i.e., waterbody-specific plans to achieve water quality standards), and administer and enforce CWA permits."[193]

In FY2025, the CWA section 106 Grant program received appropriations of $225.4 million to support these programs,[194] and if the President's budget request was adopted by Congress, the states would not have received any funding in FY2026.

According to the Environmental Council of the States ("ECOS"), states depend on federal funding to "carry out more than 90% of the nation's federal environmental programs" and "cuts to categorical grant programs [...] will devastate economic development, critical infrastructure, and environmental protections across the nation."[195] The Association of Clean Water Administrators ("ACWA") indicated that this "reduction or elimination of dedicated funding for states to implement the CWA places an undue financial burden on state agencies," could "lead to decreased staffing, technical expertise, and increased infrastructure needs straining already limited state budgets," and "threatens the ability of the states to effectively safeguard water resources, protect public health, and meet statutory obligations."[196]

The ACWA also reported that, with the loss of federal funding "states say they would likely be facing widespread environmental degradation, dated permits that become backlogged, fewer inspections and compliance reviews, weaker enforcement, and missed opportunities for strategic infrastructure investment" and "[p]ublic health will be endangered. Without sufficient monitoring, permitting, and enforcement, states cannot ensure water is safe to drink, swim in, or fish from."[197]

Examples of funding loss impacts identified by the ACWA include:[198]

- **Program Collapse:** Many states report that entire sections or bureaus would cease to function, including those responsible for water quality standards, Total Maximum Daily Loads (TMDLs), nonpoint source pollution, monitoring, and enforcement.
- **Loss of Authority:** Some states may no longer meet federal requirements to retain authority for programs such as the National Pollutant Discharge Elimination System (NPDES) and Drinking Water programs.
- **Staff Layoffs:** Elimination of these grants would lead to significant staff reductions, sometimes by over 90%, affecting both state agency personnel and local project staff supported through pass-through funding.
- **Reduced Monitoring and Oversight:** Ambient water quality monitoring, watershed assessments, and enforcement would be drastically reduced, leaving gaps in regulatory oversight and public health protections.
- **Halted Projects:** Ongoing nonpoint source projects, watershed restoration, permit support, stream/wetland restoration, and flood resilience planning would stop or be delayed, potentially worsening water pollution and impeding economic development.
- **Economic Impacts:** Funding loss could harm local economies reliant on recreational waters, tourism, and agriculture, while also stalling infrastructure and permitted projects due to regulatory delays.

Big Sugar Creek, MO @ K. Foster

Even though this federal funding was not ultimately eliminated in FY2026, the threat of this happening in future years will likely make it challenging for states to commit to funding for the expansion of water quality programs. Additionally, it appears that there could be increasing efforts to reduce or eliminate state funding for water protection programs at the state level as well. For example, in June of 2025, Missouri's Governor vetoed a significant number of water quality-related appropriations and expressed a need to control new spending based on "fiscal forecasts" indicating a budget shortfall in FY2027.[199] As it is in other states, federal funding makes up a significant portion of the Missouri Department of Natural Resource's budget. The agency's FY2026 Budget Request for the core Water Protections Program indicated that, in FY2025, its budget included $1,722,205 from state General Revenue appropriations and $13,406,048 from federal funding, as well as $7,739,491 from three funding accounts that appear to be supported by fees.[200] This indicates that federal funds comprised roughly 59 percent of Missouri's Water Protections Program budget in FY2025.

RECOMMENDATIONS

Based on the Legal Framework standards and the analysis conducted in this report, we make the following six key recommendations:

1. States with limited or no protections for waters of the state should revise their laws.

States must ensure that state law empowers and requires state agencies to manage water quality for broadly defined "waters of the state." Before the post-2015 changes to the regulatory definition of "waters of the United States" and a series of Supreme Court opinions that narrowed the scope of the Act, including the *Sackett* decision, most waters of the state were protected under the CWA. However, with the narrowing of the "waters of the United States" definition, many state waters are no longer protected by the CWA. To protect the quality of state waters and replace the federal protections that have been lost, states must have their own comprehensive state water quality laws. State agencies need legal authority and a mandate to manage water quality in order to ensure that harmful pollution is not released into state waters and does not threaten the health, well-being, and economic vitality of communities. This authority must be accompanied by a prohibition on the pollution of state waters, a robust and active permitting program, and inclusive definitions of key terms, such as a broad definition of "waters of the state" that recognizes the value and connectivity of rivers, streams, lakes, wetlands, groundwater, and other waters in order to protect the core beneficial uses of waters within and among the states. Together, those legal obligations will enable the states to ensure water quality is maintained at levels that will support drinking water, recreational, and other beneficial uses.

2. States should fully utilize their authorities to develop and implement robust water quality programs.

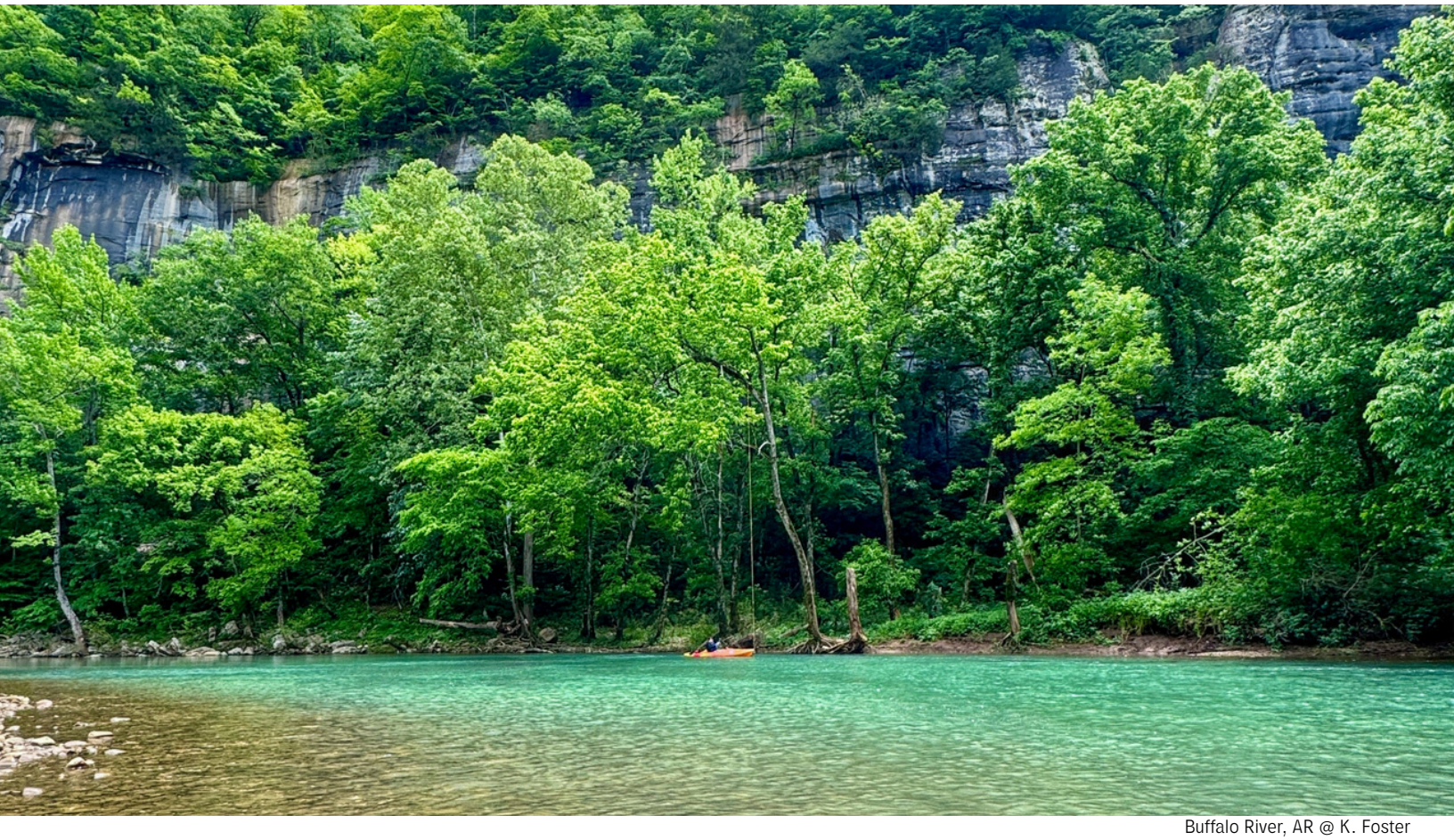
State agencies must fully utilize their authorities to manage water quality under existing laws to develop and implement robust water quality programs that fill the gaps left after *Sackett*. States are now solely responsible for protecting water quality in many waters of the state. To do that, state agencies must develop and implement discharge and dredged and fill material permit programs, as well as other programs, that broadly protect the physical, chemical, and biological integrity of state waters within and among the states. First, programs should ensure that water quality standards are adopted for all waters of the state and are applied, along with effluent and other limitations and standards, to control pollution and achieve the assigned water quality criteria that will protect designated uses for waters of the state. Second, state agencies should use their authorities to establish permit and water quality management programs to govern any activities that could impact the physical, chemical, or biological properties of waters, especially those waters that are no longer protected by the CWA, including waters impacted by dredged and fill material activities. Because of the federal protections previously provided for most state waters by the CWA, states did not have to create state-level permitting programs, independent from the CWA, for many activities and state waters. Now that many waters of the state are no longer protected under the CWA, states must use the authorities they have under state law and to independently manage and protect water quality in state waters. With the scope of waters protected by the CWA significantly reduced, waters of the state can only be comprehensively managed and protected if state agencies possess and fully utilize their authorities under state law to fill the gaps.

3. States should remove “no more stringent than” provisions.

States should not limit their ability to protect waters of the state against pollution, including by prohibiting state agencies from establishing standards or protecting waters beyond the scope of the federal CWA. Even prior to the loss of protections due to the *Sackett* decision, the CWA was intended to be a floor of necessary environmental protections, and it does not address all of the water quality issues that might arise in any given state. States have the authority to regulate above and beyond the scope of the CWA and state legislatures should not adopt blanket limitations on state authority to adopt more protective standards or protect more types of waters than are currently in effect under the federal CWA.

With the threats to water quality presented by the *Sackett* decision and the limiting of federal agency authority to regulate certain waters considered outside the scope of “waters of the United States,” states need to protect their interests by adopting statutes and regulations that go beyond the CWA and provide protections to the full scope of state waters. States, like Tennessee, whose longstanding state laws established broad protections, programmatic, and permitting authorities, should be embracing those authorities rather than adopting new laws that limit the scope of waters the states can protect, creating new threats to water quality.

Wetlands and waters that are no longer considered “waters of the United States” serve as critical components of the hydrologic systems that are essential for drinking water, recreation, fishing, agricultural production, navigation, and economic purposes. Protecting waters is an investment in public health and the U.S. economy, and state laws should reflect their importance by ensuring the protection of water quality.



Buffalo River, AR @ K. Foster

4. State statutes should include citizen enforcement provisions.

The effectiveness of water quality protection laws, like all laws, depends on meaningful implementation and enforcement. Government agencies bear the primary responsibility to implement these laws and ensure compliance with pollution limits. Often, though, state agencies do not carry out those duties, because they are underfunded and understaffed, and because politically powerful polluters can wield extraordinary control over the agencies that are assigned to police them—a phenomenon known as "regulatory capture." Congress in the 1970s anticipated that a lack of government resources or political will could severely undermine enforcement of environmental laws, so it included innovative provisions authorizing private citizens to bring suit to address violations when the government fails to do so.

Whereas previous legal remedies were generally available only to individuals who suffered personal injury or property damage, the new statutes empowered any citizen to file suit to stop illegal pollution if their use and enjoyment of a waterway or other resource was being diminished by it. And, unlike plaintiffs in personal injury lawsuits, who typically seek monetary compensation for their injuries, citizen-suit plaintiffs seek to bring violators into compliance with the law and to clean up the pollution, benefitting not only themselves but also their neighbors and all society. While this right to bring a citizen suit exists in the CWA, it may not exist in state law. State statutes should be amended to ensure citizens have the opportunity to enforce state water quality protection laws. In filling the gap in the CWA after *Sackett*, citizens need robust rights to access information about their environment and the activities that cause pollution of state waters in state statutes. This includes the right to notice of, and the right to participate in, water quality decision making and permitting, the right to request information and records from state governments, and the right to enforce state clean water laws in court when governments or polluters violate the law.

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WATERKEEPER ALLIANCE, CENTER FOR BIOLOGICAL DIVERSITY, CLEAN WATER ACTION, FOOD & WATER WATCH, SURFRIDER FOUNDATION, ENVIRONMENT AMERICA, BAYOU CITY WATERKEEPER, BLACK WARRIOR RIVERKEEPER, HEALTHY GULF, SAN ANTONIO BAY ESTUARINE WATERKEEPER, TENNESSEE RIVERKEEPER and SAN FRANCISCO BAYKEEPER,

Plaintiffs,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY and MICHAEL S. REGAN, Administrator, in his official capacity as Administrator of the United States Environmental Protection Agency

Defendants.

No. _____

PETITION FOR REVIEW

PETITION FOR REVIEW OF AN ACTION BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Pursuant to Clean Water Act Section 509(b)(1), 33 U.S.C. § 1369(b)(1), Federal Rule of Appellate Procedure 15, and Ninth Circuit Local Rule 15-1, Waterkeeper Alliance, Center For Biological Diversity, Clean Water Action, Food

Citizen Water Quality Monitoring @ Waterkeeper Alliance

5. States should be collaborating and working together regionally.

The purpose of federal laws like the CWA is to ensure a common baseline and minimum level of protection across the United States. With the now narrowed scope of waters protected under the CWA, states must address those gaps in order to maintain the water quality of rivers, streams, lakes, wetlands, groundwater, and other waters of the state. States must also act to limit and eliminate their impact on the water quality of waters in other states. Water quality impacts do not remain confined within political boundaries. Chemicals and other contaminants that are released in one state often travel into other states. Therefore, one state's decision to pursue more limited water quality protections can impact another state's water quality and the actions that a state must take to manage their water quality. States that share a watershed should work together to adopt a shared approach. Collaboration across state lines better protects the watershed and helps to ensure that the action, or inaction, of one state does not undermine the work being done by another state. Greater regional collaboration will help states to achieve their water quality objectives more effectively.

6. Funding should be increased so state agencies can utilize their authorities.

State agencies need financial resources to develop, manage, and implement water resource protection and permitting programs for rivers, streams, lakes, wetlands, and other waters of the state. Developing, implementing, and enforcing a water protection program requires financial resources. State appropriation laws must allocate greater funding to the state agency or agencies responsible for overseeing regulatory and permitting programs. Healthier budgets would enable states to hire sufficient staff to review permit applications and to do so more rapidly, to monitor compliance, and to develop and enforce the standards, thereby ensuring protection of the state's water resources and enabling more efficient regulatory and permitting processes. State governments can also continue to advocate for expanded federal funding support and against the reduction or elimination of federal funding for water programs. Federal funding is a key source of financial support for states.

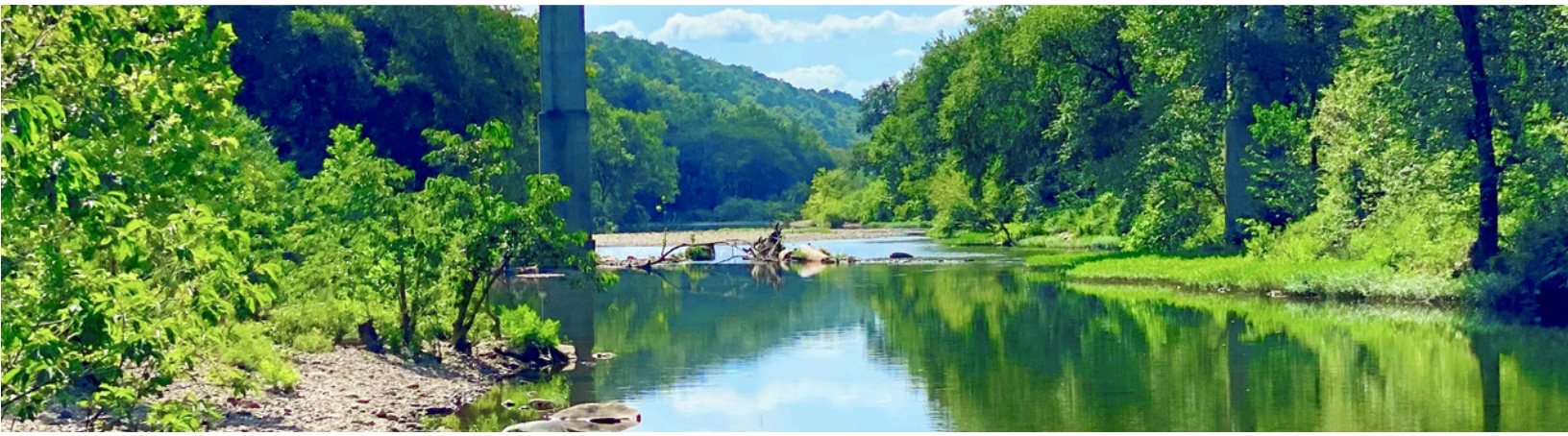
CONCLUSION

The *Sackett* decision and EPA/Corps' rulemaking have severely limited the scope of the waters protected under the CWA. Many rivers, streams, lakes, wetlands, and other waters are no longer protected by the standards, permitting, and other requirements of the CWA as a result. While the CWA has now been interpreted narrowly, states can and should utilize all of the states' existing authorities and adopt new laws, regulations, and programs where necessary to fill in the gaps and fully protect all of the states' waters, including wetlands. Without the protections provided by the CWA applying to most of states' waters, states must develop more robust water quality protection programs in order to ensure that state waters are not polluted, degraded, or destroyed.

This report sets forth a template for the types of provisions that must be in any state law in order for the state agency responsible for water quality programs to be able to protect the state's waters that are now excluded from the CWA after *Sackett*. The key components of a protective state law include:

- **Statutory pollution prohibitions and permitting requirements.**
- **Protective standards for regulations and permits.**
- **Inclusive definitions of key terms, such as "pollution" and "waters of the state."**
- **Broad grants of authority to a state regulatory agency to adopt regulations and implement permitting requirements.**
- **Citizen enforcement provisions.**
- **The absence of "no more stringent than" provisions.**

Together these components help to ensure that the state can act to prevent and remediate pollution, all state waters are protected, the state agencies can and must act to protect state waters, and the state is not harmed by the newly limited scope of the CWA. Failure to ensure the protection of all waters of the state will allow uncontrolled pollution discharges and degradation or destruction of the state's waters, which will harm the public, the state's natural resources, and the state's economy. In order to protect the water quality of the state, state legislatures must take steps to ensure that these provisions are in place and that state environmental agencies are sufficiently funded and empowered to implement them.



ENDNOTES

[1] Prior to the CWA, federal law was focused on controlling pollution of traditional navigable waters, interstate waters, and their tributaries. *See, e.g.*, Section 13 of the Rivers and Harbors Appropriations Act of 1899, Ch. 425, § 13, 30 Stat. 1121, 1152 (1899), codified as amended at 33 U.S.C. § 407, ("That it shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited . . . refuse matter of any kind or description whatever . . . into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water . . .."); Water Pollution Control Act of 1948, 33 U.S.C. § 466a(d)(1) (1952), codifying Pub. L. No. 80-845, § 2(d)(1), 62 Stat. 1155, 1156 (1948), ("The pollution of interstate waters in or adjacent to any State or States (whether the matter causing or contributing to such pollution is discharged directly into such waters or reaches such waters after discharge into a tributary of such waters), which endangers the health or welfare of persons in a State other than that in which the discharge originates, is hereby declared to be a public nuisance and subject to abatement as described herein.").

[2] *See Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 486, 492 (1987) (The Supreme Court held that the CWA "applies to virtually all surface water in the country . . ." and established "an all-encompassing program of water pollution regulation . . ." that "applies to all point sources and virtually all bodies of water . . .") (citations omitted).

[3] 33 U.S.C. § 1362(7).

[4] *Sackett v. EPA*, 598 U.S. 651 (2023) ("*Sackett*").

[5] *See City of Milwaukee v. Illinois & Michigan*, 451 U.S. 304, 318 (1981) ("Congress' intent in enacting the Amendments was clearly to establish an all-encompassing program of water pollution regulation. Every point source discharge is prohibited unless covered by a permit, which directly subjects the discharger to the administrative apparatus established by Congress to achieve its goals. The 'major purpose' of the Amendments was 'to establish a comprehensive long-range policy for the elimination of water pollution.'") (emphasis in original) (citations omitted).

[6] EPA, *National Water Quality Inventory: Report to Congress, 2004 Reporting Cycle*, at 13, 17 (Jan. 2009), https://www.epa.gov/sites/production/files/2015-09/documents/2009_01_22_305b_2004report_2004_305breport.pdf.

[7] *National Summary of State Information*, EPA, last updated in 2017, available at: https://web.archive.org/web/20220423233434/https://ofmpub.epa.gov/waters10/attains_nation_cy.control (last accessed on Feb. 11, 2026).

[8] Under the CWA, states can seek authorization from the EPA to administer and enforce the National Pollutant Discharge Elimination System ("NPDES") permit program under section 402 (33 U.S.C. § 1342) or the Dredged or Fill Material permitting program under section 404 (33 U.S.C. § 1344). Assumption allows states to take over permitting and other authority from the federal government, provided their regulatory programs are at least as stringent as federal requirements. EPA retains oversight authority and can withdraw state authority if they fall out of compliance. As of 2026, Massachusetts, New Hampshire, New Mexico, the District of Columbia, and four U.S. territories have not assumed section 402 permitting responsibilities, while only Michigan and New Jersey have assumed section 404 permitting responsibilities. EPA also administers the CWA on federal Tribal lands. *See, e.g.*, *NPDES State Program Authority*, EPA, https://www.epa.gov/npdes/npdes-state-program-authority and *Tribal and State Section 404 Assumption Efforts*, EPA, https://www.epa.gov/cwa404g/tribal-and-state-section-404-assumption-efforts (last accessed Mar. 5, 2026).

[9] *See, e.g.*, N. William Hines, *History of the 1972 Clean Water Act: The Story Behind How the 1972 Act Became the Capstone on a Decade of Extraordinary Environmental Reform*, 4 J. Energy & Env't L. 80, 81-82 (2013), https://gwujeel.files.wordpress.com/2013/10/4-2-hines.pdf ("Hines History of the CWA").

[10] *50 Years After the Clean Water Act—Gauging Progress*, U.S. Gov't Accountability Off., (Oct. 17, 2022), https://www.gao.gov/blog/50-years-after-clean-water-act-gauging-progress.

[11] S. Rep. No. 92-414, at 7 (1971), *reprinted in* 1972 U.S.C.C.A.N. 3668, 3674.

[12] *The Clean Water Act at Fifty: Highlights and Lessons Learned from a Half Century of Transformative Legislation*, Remote Hearing Before the Subcommittee on Water Resources and Environment of the Committee on Transportation and Infrastructure, U.S. House of Representatives, 117th Cong. (2022), at 10, 52 https://www.congress.gov/117/chrg/CHRG-117hhrg49438/CHRG-117hhrg49438.pdf.

[13]. Jonathan L. Ramseur, *Wastewater Infrastructure: Overview, Funding, and Legislative Developments*, CRS Report No. R44963, at 1 (May 2018), https://sgp.fas.org/crs/misc/R44963.pdf; Carol M. Browner, EPA Administrator, Remarks Prepared for Delivery 25th Anniversary of the Clean Water Act, Minneapolis, Minnesota (Oct. 17, 1997), https://www.epa.gov/archive/epapages/newsroom_archive/speeches/872d86a1679743df8525701a0052e3a5.html.

[14] *See* Section 13 of the Rivers and Harbors Act, 33 U.S.C. § 407; Hines History of the CWA, *supra* n. 9, at 83 ("Of vital importance to the modern history of U.S. water pollution control, the 1899 amendments to the Rivers and Harbors Act also gave the Corps the authority to regulate all discharges of wastes to the affected waters, except liquid wastes flowing from municipal sanitary sewers and storm sewers. Interestingly, this potentially powerful federal tool to control and prevent water pollution nationwide remained dormant for over seventy years until revitalized by a Supreme Court decision in 1966.") (citations omitted).

[15] Water Pollution Control Act of 1948, *supra* n. 1, 62 Stat. 1156-61, §§ 2, 10(e); Federal Water Pollution Control Act Amendments of 1961, Pub. L. No. 87-88 § 8(a), 75 Stat. 204, 208, § 8(b) (1961).

[16] *Id.*; Hines History of the CWA, *supra* n. 9, at 85, 89-90, n. 158.

[17] *See, e.g.*, Hines History of the CWA, *supra* n. 9, at 81-82.

[18] *U.S. v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 132-33 (1985) (citing S. Rep. No. 92—414, at 77 (1972); 1972 U.S.C.C.A.N. 3668, 3742).

[19] *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 492 (1987) (citing *City of Milwaukee v. Illinois & Michigan*, 451 U.S. 304, 318 (1981)).

[20] 33 U.S.C. § 1362(7) (defining "navigable waters" to mean "the waters of the United States, including the territorial seas.").

[21] *Id*. § 1251(a).

[22] *Id*. § 1251(a)(1) ("[I]t is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985.").

[23] *City of Milwaukee v. Illinois & Michigan*, 451 U.S. at 310–11. Specifically, the CWA prohibits discharging pollutants into "waters of the United States" except in compliance with, among other things, sections 1342 and 1344 of the Act. 33 U.S.C. § 1311(a).

[24] *See, e.g.*, 33 U.S.C. § 1370; *see also, e.g., Hodel v. Virginia Surface Min. & Reclamation Ass'n, Inc.*, 452 U.S. 264, 289, n.30 (1981) ("[C]ooperative federalism . . . allows the States, within limits established by federal minimum standards, to enact and administer their own regulatory programs, structured to meet their own particular needs.") (citations omitted).

[25] 33 U.S.C. §§ 1342 (Establishing NPDES permit requirements for the discharge of any pollutant or combination of pollutants with limited exceptions), 1362(12) ("The term 'discharge of a pollutant' and the term 'discharge of pollutants' each means (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft."), 1362(14) ("The term 'point source' means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture."). Nonpoint source pollution is any source of water pollution that does not meet the legal definition of "point source," and "generally results from land runoff, precipitation, atmospheric deposition, drainage, seepage or hydrologic modification." *See, e.g.*, *Basic Information about Nonpoint Source (NPS) Pollution*, EPA, https://www.epa.gov/nps/basic-information-about-nonpoint-source-nps-pollution (last accessed Mar. 5, 2026).

[26] 33 U.S.C. § 1344 (Establishing permit requirements for the "discharge of dredged or fill material into the navigable waters at specified disposal sites.").

[27] *Id*. § 1341(a)(1) ("Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of" the CWA.).

[28] *Id*. § 1313.

[29] *See, e.g.*, *Id*. §§ 1311, 1312, 1314, and 1317.

[30] For example, the CWA contains the following core water quality protections: point source additions of pollutants to waters must obtain and comply with a permit, 33 U.S.C. §§ 1311(a), 1342; the absolute prohibition against discharging "any radiological, chemical, or biological warfare agent, any high-level radioactive waste, or any medical waste," *id*. § 1311(f); protections against the discharge of oil or hazardous substances, *id*. § 1321; and restrictions on the disposal or use of sewage sludge, *id*. § 1345.

[31] *See, e.g.*, *id.* § 1313(d); *Overview of Listing Impaired Waters under CWA Section 303(d)*, EPA, https://www.epa.gov/tmdl/overview-listing-impaired-waters-under-cwa-section-303d (last accessed Apr. 14, 2026).

[32] 33 U.S.C. §§ 1251(e) (Public participation), 1365 (Citizen Suits).

[33] *See, e.g.*, *Healthy Watersheds Protection*, EPA, https://www.epa.gov/hwp (last accessed Feb. 11, 2026); *Water Pollution Control Grants*, EPA, https://www.epa.gov/water-pollution-control-section-106-grants (last accessed Feb. 11, 2026); *Water Quality Management Planning Grants*, EPA, https://www.epa.gov/nps/water-quality-management-planning-grants (last accessed Feb. 11, 2026).

[34] *See, e.g.*, 40 C.F.R. § 230.3 (to Aug. 27, 2015); 33 C.F.R. § 328.3 (to Aug. 27, 2015) ("Pre-2015 Definition").

[35] *Id*.

[36] *Effluent Guidelines Plan*, EPA, https://www.epa.gov/eg/effluent-guidelines-plan (last accessed Feb. 11, 2026).

[37] *Wastewater Infrastructure: Overview, Funding, and Legislative Developments*, *supra* n. 13, at 1.

[38] Kara Manke, *Clean Water Act dramatically cut pollution in U.S. waterways*, UC Berkeley News, (Oct. 2018), https://news.berkeley.edu/2018/10/08/clean-water-act-dramatically-cut-pollution-in-u-s-waterways/.

[39] *See generally* EPA, *National Water Quality Inventory: Report to Congress*, Report # 841-R-23-001, (Oct. 2024), https://www.epa.gov/system/files/documents/2025-01/national-inventrory-report-to-congress.pdf.

[40] *Id*. at 4-5, 21.

[41] *See, e.g.*, *How's My Waterway?*, EPA, https://mywaterway.epa.gov/state-and-tribal (last accessed Feb. 12, 2026). Limitations with assessment of the information on this platform arise from the fact that different types of data and information are available from state to state, and the database does not include sufficient information on all state waters, particularly waters that have not been assessed. For example, Mississippi's page indicates that there are 82,154 river and stream miles in the state, but it is not clear whether that figure represents all or only assessed river and stream miles. Additionally, for example, only 414 river and stream miles have information about Primary Body Contact Recreation and only 7,025 river and stream miles have information about Aquatic Life Support. By contrast, Arkansas, Missouri, and Tennessee provide the total numbers of assessed waters and provide data on numbers of impaired acres and miles of water that are more congruent with their numbers of assessed waters. In the evaluation of state data below, Mississippi data is omitted and, for the other three states, because it is unclear whether "Insufficient info" includes all unassessed waters or only assessed waters with inadequate information, the totals for good and impaired waters for each designated use are utilized to calculate percentages for assessed waters, whereas totals of good, impaired, and insufficient information are utilized to calculate the percentage of reported waters with insufficient information.

[42] *How's My Waterway?*, *Arkansas by the Numbers*, EPA, https://mywaterway.epa.gov/state/AR/water-quality-overview (last accessed Feb. 12, 2026).

[43] *Id*.

[44] *How's My Waterway?*, *Missouri by the Numbers*, EPA, https://mywaterway.epa.gov/state/MO/water-quality-overview (last accessed Feb. 12, 2026).

[45] *Id*.

[46] *How's My Waterway?*, *Tennessee by the Numbers*, EPA, https://mywaterway.epa.gov/state/TN/water-quality-overview (last accessed Feb. 12, 2026).

[47] *Id*.

[48] *Id*.

[49] *Id*.

[50] *See* EPA and Corps WOTUS Regulatory Definitions: (1) Clean Water Rule: Definition of "Waters of the United States," 80 Fed. Reg. 37054 (June 29, 2015); (2) Definition of "Waters of the United States"—Recodification of Pre-Existing Rules, 84 Fed. Reg. 56626 (Oct. 22, 2019); (3) The Navigable Waters Protection Rule: Definition of "Waters of the United States," 85 Fed. Reg. 22250 (Apr. 21, 2020) ("NWPR"); (4) Revised Definition of ''Waters of the United States," 88 Fed. Reg. 3004 (Jan. 18, 2023) ("January 2023 Definition").

[51] *See, e.g.*, EPA and Corps, *Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States* (2008), https://www.epa.gov/sites/default/files/2016-02/documents/cwa_jurisdiction_following_rapanos120208.pdf.

[52] *Rapanos v. United States*, 547 U.S. 715, 732 (2006) ("*Rapanos*").

[53] *Id*. at 732-33 (citations and footnotes omitted). The plurality also noted that "[b]y describing 'waters' as 'relatively permanent,'" it did not "necessarily exclude streams, rivers, or lakes that might dry up in extraordinary circumstances" or "seasonal rivers, which contain continuous flow during some months of the year," and, further, that it had "no occasion in this litigation to decide exactly when the drying-up of a streambed is continuous and frequent enough to disqualify a channel as a 'wate[r] of the United States.'" *Id*. at 732 n.5 (emphasis and internal citations omitted).

[54] *Id*. at 757 (The plurality ordered remand of the cases for a determination by the lower courts "whether the ditches or drains near each wetland are 'waters' in the ordinary sense of containing a relatively permanent flow; and (if they are) whether the wetlands in question are 'adjacent' to these 'waters' in the sense of possessing a continuous surface connection that creates the boundary-drawing problem we addressed in *Riverside Bayview*.").

[55] *Sackett*, 598 U.S. at 678 (quoting *Rapanos*, 547 U.S. at 755).

[56] *Id*. at 678-79 (quoting *Rapanos*, 547 U.S. at 742).

[57] Revised Definition of "Waters of the United States"; Conforming, 88 Fed. Reg. 61964 (Sept. 8, 2023) (codified at 33 C.F.R. § 328.3 (Corps) and 40 C.F.R. § 120.2 (EPA)) ("September 2023 Definition").

[58] *See, e.g.*, USEPA., *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence (Final Report)*, U.S. Environmental Protection Agency, Washington, D.C., EPA/600/R-14/475F, ES 7-9 (Jan. 2015), https://assessments.epa.gov/risk/document/&deid%3D296414.

[59] EPA and Corps, *Memorandum to the Field Between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency Concerning the Proper Implementation of "Continuous Surface Connection" under the Definition of "Waters of the United States" under the Clean Water Act*, at 5 (Mar. 12, 2025), https://www.epa.gov/system/files/documents/2025-03/2025cscguidance.pdf.

[60] *See, e.g.*, EPA and Corps, *Updates for Tribes and States on "Waters of the United States*," at 27-30 (Nov. 15, 2023) (A "continuous surface connection" did not require a continuous presence of surface water if a wetland abuts a jurisdictional water and, for non-abutting wetlands, the connection could be demonstrated through non-jurisdictional features like ditches, pipes, and culverts connecting the wetland to a jurisdictional feature on a case by case basis), https://www.epa.gov/system/files/documents/2023-11/wotus-overview_tribes-and-states_11-15-23_508.pdf.

[61] NRDC, *Mapping Destruction: Using GIS Modeling to Show the Disastrous Impacts of Sackett v. EPA on America's Wetlands*, at 12 (Mar. 2025), available at: https://www.nrdc.org/sites/default/files/2025-03/Wetlands_Report_R_25-03-B_05_locked.pdf ("NRDC, Mapping Destruction").

[62] WOTUS Notice: The Final Response to SCOTUS; Establishment of a Public Docket; Request for Recommendations, Dkt. ID No. EPA—HQ—OW—2025—0093, 90 Fed. Reg. 13428, 13429 nn. 3, 4 (Mar. 24, 2025); EPA, Definition of "Waters of the United States": Rule Status and Litigation Update, https://www.epa.gov/wotus/definition-waters-united-states-rule-status-and-litigation-update (last accessed Feb. 23, 2026).

[63] WOTUS Notice: The Final Response to SCOTUS; Establishment of a Public Docket; Request for Recommendations, 90 Fed. Reg. at 13429, n.4.

[64] *See, e.g.*, U.S. Gen, Accounting Off., *WATERS AND WETLANDS Corps of Engineers Needs to Evaluate Its District Office Practices in Determining Jurisdiction*, GAO-04-297 (2004), http://www.gao.gov/new.items/d04297.pdf.

[65] WOTUS Notice: The Final Response to SCOTUS; Establishment of a Public Docket; Request for Recommendations, 90 Fed. Reg. at 13428.

[66] *Id*. at 13429.

[67] *Id*. at 13430-31.

[68] *Administrator Zeldin Announces EPA Will Revise Waters of the United States Rule*, EPA, (Mar. 12, 2025), available at: https://www.epa.gov/newsreleases/administrator-zeldin-announces-epa-will-revise-waters-united-states-rule.

[69] Updated Definition of "Waters of the United States," Dkt. ID No. EPA–HQ–OW–2025–0322, 90 Fed. Reg. 52498 (Nov. 20, 2025) ("2025 Proposed Rule Notice," or "2025 Proposed WOTUS Definition").

[70] *Id*. at 52516-52517.

[71] *Id*. at 52517-52521, 52523-52524.

[72] *Id*. at 52521-52526.

[73] *Id*. at 52538-52541.

[74] *Id*. at 52527-52533.

[75] *Id*. at 52535-52538.

[76] *Id*. at 52534-52535.

[77] *Id*. at 52541.

[78] *Id*. at 52515 ("All other waters would be excluded.").

[79] *Id*.

[80] *Id*. at 52519-52523, 52529-525530, 52533, 52540.

[81] *See, e.g.*, *Coordination Process for Approved Jurisdictional Determinations and Field Memoranda,* EPA, https://www.epa.gov/wotus/coordination-process-approved-jurisdictional-determinations-and-field-memoranda.

[82] *See, e.g.*, *Int'l Paper Co. v. Ouellette*, 479 U.S. at 486, 492.

[83] The EPA and Corps evaluations that result in Approved Jurisdictional Determinations ("AJDs") since August 28, 2015, are reported on an EPA website. *See Clean Water Act Approved Jurisdictional Determinations*, EPA, https://watersgeo.epa.gov/cwa/CWA-JDs/.

[84] For example, this database does not include information on CWA jurisdictional determinations made through other mechanisms, such as certain permitting actions or court decisions, and it does not contain information on the jurisdictional status of a water where an AJD has not been requested by an individual or organization, such as where a private party engages in a potentially regulated activity without requesting an AJD under the assumption that a water is not protected by the CWA.

[85] *Clean Water Act Approved Jurisdictional Determinations*, EPA, https://watersgeo.epa.gov/cwa/CWA-JDs/ (108,966 non-jurisdictional features and 57,099 jurisdictional features between August 28, 2015 and August 31, 2023).

[86] *Id*. (September 2023 Definition–18,563 non-jurisdictional features and 3,214 jurisdictional features after the *Sackett* decision as of February 23, 2026; Pre-2015 Definition Modified to Conform to *Sackett*–30,360 non-jurisdictional features and 6,649 jurisdictional features across the U.S. after the *Sackett* decision as of March 6, 2026).

[87] *Id*. (1,835 non-jurisdictional features and 748 jurisdictional features in Arkansas—all post-2015 definitions prior to the *Sackett* decision—between August 28, 2015 and August 31, 2023).

[88] *See Definition of "Waters of the United States": Rule Status and Litigation Update*, EPA, https://www.epa.gov/wotus/definition-waters-united-states-rule-status-and-litigation-update; WOTUS Notice: The Final Response to SCOTUS; Establishment of a Public Docket; Request for Recommendations, 90 Fed. Reg. at 13429, n.4.

[89] *Clean Water Act Approved Jurisdictional Determinations*, EPA, https://watersgeo.epa.gov/cwa/CWA-JDs/ (637 non-jurisdictional features and 153 jurisdictional features in Arkansas—1986/88 Regulations Consistent with *Sackett* as of February 23, 2026).

[90] NRDC, *Mapping Destruction*, *supra* n. 61, at 12, 19 ("On the basis of national datasets of wetlands and of other water bodies, NRDC estimates that under our Damaging Scenario, 11 percent of the wetland acreage and 39 percent of the individual wetlands in Arkansas will lack federal Clean Water Act protections following the Supreme Court's *Sackett* decision. In our More Damaging Scenario, 32 percent of wetland area and 71 percent of individual wetlands are predicted to lack protection. And in NRDC's Most Damaging Scenario, 83 percent of wetland area and 94 percent of individual wetlands are predicted to lack protection.").

[91] *Id*. at 15.

[92] Arkansas Geological Survey, *Arkansas Geology: Karst and Caverns,* Educational Workshop Series 07, at 9 (2014), available at: https://www.geology.arkansas.gov/docs/pdf/publication/educational-workshops/EWS-07.pdf.

[93] *See, e.g.*, 2025 Proposed Rule Notice, 90 Fed. Reg. at 52521 ("Further, the agencies' proposed definition of 'tributary' clarifies that a 'tributary does not include a body of water that contributes surface water flow to a downstream jurisdictional water through a feature such as a channelized non-jurisdictional surface water feature, subterranean river, culvert, dam, tunnel, or similar artificial feature, or through a debris pile, boulder field, wetland, or similar natural feature, if such feature does not convey relatively permanent flow . . ..'"); *id*. at 52523 ("Another approach could provide that a tributary would lose its jurisdictional status if it contributes surface water flow to a jurisdictional water through non-surface features (e.g., subterranean rivers, underground tunnels), even if such features convey relatively permanent flow.").

[94] 8 CAR § 25-301 (2026).

[95] *Clean Water Act Approved Jurisdictional Determinations*, EPA, https://watersgeo.epa.gov/cwa/CWA-JDs/ (2,758 non-jurisdictional features and 602 jurisdictional features in Mississippi—all post-2015 definitions prior to the *Sackett* decision—between August 28, 2015 to August 31, 2023).

[96] *See Definition of "Waters of the United States": Rule Status and Litigation Update*, EPA, https://www.epa.gov/wotus/definition-waters-united-states-rule-status-and-litigation-update; WOTUS Notice: The Final Response to SCOTUS; Establishment of a Public Docket; Request for Recommendations, 90 Fed. Reg. at 13429, n.4.

[97] *Clean Water Act Approved Jurisdictional Determinations*, EPA, https://watersgeo.epa.gov/cwa/CWA-JDs/ (726 non-jurisdictional features and 221 jurisdictional features in Mississippi—1986/88 Regulations Consistent with *Sackett* as of February 23, 2026).

[98] NRDC, *Mapping Destruction*, *supra* n. 61, at 13, 39 ("On the basis of national datasets of wetlands and of other water bodies, NRDC estimates that under our Damaging Scenario, 8 percent of the wetland acreage and 34 percent of the individual wetlands in Mississippi will lack federal Clean Water Act protections following the Supreme Court's *Sackett* decision. In our More Damaging Scenario, 32 percent of wetland area and 70 percent of individual wetlands are predicted to lack protection. And in NRDC's Most Damaging Scenario, 92 percent of wetland area and 94 percent of individual wetlands are predicted to lack protection.")

[99] *Id*. at 15.

[100] *Id*. at 16.

[101] *Clean Water Act Approved Jurisdictional Determinations*, EPA, https://watersgeo.epa.gov/cwa/CWA-JDs/ (1,306 non-jurisdictional features and 462 jurisdictional features in Missouri—all post-2015 definitions prior to the *Sackett* decision—between August 28, 2015 to August 31, 2023).

[102] *See Definition of "Waters of the United States": Rule Status and Litigation Update*, EPA, https://www.epa.gov/wotus/definition-waters-united-states-rule-status-and-litigation-update.

[103] *Clean Water Act Approved Jurisdictional Determinations*, EPA, https://watersgeo.epa.gov/cwa/CWA-JDs/ (1,390 non-jurisdictional features and 227 jurisdictional features in Missouri—1986/88 Regulations Consistent with *Sackett* as of February 23, 2025).

[104] NRDC, *Mapping Destruction*, *supra* n. 61, at 13, 40 ("On the basis of national datasets of wetlands and of other water bodies, NRDC estimates that under our Damaging Scenario, 20 percent of the wetland acreage and 58 percent of the individual wetlands in Missouri will lack federal Clean Water Act protections following the Supreme Court's *Sackett* decision. In our More Damaging Scenario, 39 percent of wetland area and 75 percent of individual wetlands are predicted to lack protection. And in NRDC's Most Damaging Scenario, 99 percent of wetland area and 99 percent of individual wetlands are predicted to lack protection.").

[105] *Id*. at 15.

[106] *See, e.g.*, *Losing Streams*, Mo. Dep't of Nat. Res., https://dnr.mo.gov/land-geology/geology/karst-missouri/losing-streams (last accessed Feb. 23, 2026).

[107] *See, e.g.*, 2025 Proposed Rule Notice, 90 Fed. Reg. at 52521 ("Further, the agencies' proposed definition of 'tributary' clarifies that a 'tributary does not include a body of water that contributes surface water flow to a downstream jurisdictional water through a feature such as a channelized non-jurisdictional surface water feature, subterranean river, culvert, dam, tunnel, or similar artificial feature, or through a debris pile, boulder field, wetland, or similar natural feature, if such feature does not convey relatively permanent flow . . . .'"); *id*. at 52523 ("Another approach could provide that a tributary would lose its jurisdictional status if it contributes surface water flow to a jurisdictional water through non-surface features (e.g., subterranean rivers, underground tunnels), even if such features convey relatively permanent flow.").

[108] Missouri Division of Geology and Land Survey, Water Resources Report No. 55, *The Hydrology of Maramec Spring* (1996).

[109] *Id*.; Missouri Department of Natural Resources, *Losing Streams*, *supra* n. 106.

[110] *See* 10 CSR § 20-7.015(4).

[111] *Clean Water Act Approved Jurisdictional Determinations*, EPA, https://watersgeo.epa.gov/cwa/CWA-JDs/ (2,812 non-jurisdictional features and 818 jurisdictional features in Tennessee—all post-2015 definitions prior to the *Sackett* decision—between August 28, 2015 to August 31, 2023).

[112] *See Definition of "Waters of the United States": Rule Status and Litigation Update*, EPA, https://www.epa.gov/wotus/definition-waters-united-states-rule-status-and-litigation-update.

[113] *Clean Water Act Approved Jurisdictional Determinations*, EPA, https://watersgeo.epa.gov/cwa/CWA-JDs/ (3,658 non-jurisdictional features and 422 jurisdictional features in Tennessee—1986/88 Regulations Consistent with *Sackett* as of February 23, 2026).

[114] NRDC, *Mapping Destruction*, *supra* n. 61, at 13, 57 ("On the basis of national datasets of wetlands and of other water bodies, NRDC estimates that under our Damaging Scenario, 11 percent of the wetland acreage and 36 percent of the individual wetlands in Tennessee will lack federal Clean Water Act protections following the Supreme Court's *Sackett* decision. In our More Damaging Scenario, 23 percent of wetland area and 51 percent of individual wetlands are predicted to lack protection. And in NRDC's Most Damaging Scenario, 91 percent of wetland area and 96 percent of individual wetlands are predicted to lack protection.").

[115] *Id*. at 16.

[116] Jess Martin, *Understanding the Connection Between Surface Water and Groundwater in Tennessee*, Harpeth Conservancy, (July 3, 2024) https://harpethconservancy.org/understanding-the-connection-between-surface-water-and-groundwater-in-tennessee.

[117] *See, e.g.*, Ark. Code Ann. §§ 8-1-202, 8-4-207, 8-4-217(a) (2026).

[118] *Id*. § 8-4-102(7) (2026).

[119] *See id*. § 8-4-217(b) (2026).

[120] *Id*. § 8-4-102(1), (4)-(5) (2026).

[121] *See id*. § 8-4-102(11) (2026).

[122] 8 CAR § 25-202(a)(1). This provision is included in Title 8, Part 25 of the Code of Arkansas Rules, which was adopted to qualify Arkansas to receive authorization to implement "the state water pollution control permitting program, in lieu of the federal NPDES program, pursuant to the federal Clean Water Act . . . ." *See* 8 CAR § 25-102. However, the state permitting program does not appear to be limited to the scope of the CWA.

[123] Prevention of Pollution by Oil Field Waste, 8 CAR Pt. 20.

[124] Liquid Animal Waste Management Systems, 8 CAR Pt. 24.

[125] Arkansas Open-Cut Mining and Land Reclamation, 15 CAR Pt. 231.

[126] State Water Permit Rule, 8 CAR Pt. 27; 8 CAR §§ 27-101, 27-103(a); *see also No-Discharge Permit Program*, Ark. Div. of Env't Quality, https://www.adeq.state.ar.us/water/permits/nodischarge/ (last accessed Feb. 26, 2026).

[127] Ark. Code Ann. § 8-4-234 (2026); 8 CAR § 21-305.

[128] *See generally* University of Arkansas, Division of Agriculture, Public Policy Center, *Arkansas Water Primer Series: Protecting Arkansas' Wetlands*, https://www.uaex.uada.edu/publications/pdf/FSPPC108.pdf (last accessed Feb. 26, 2026).

[129] U.S. Geological Survey, *National Water Summary on Wetland Resources*, at 123 (1996), https://pubs.usgs.gov/wsp/2425/report.pdf.

[130] Miss. Code Ann. §§ 49-17-1 *et seq*. (West 2026).

[131] The MCEQ is designated as the "pollution control agency" and is charged with administering federal pollution control legislation and programs. *Id*. § 49-17-13. The MCEQ also has the power and duty to "develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the . . . waters of the state" and to "adopt, modify, repeal, and promulgate" regulations to effectuate its duties and as it "may deem necessary to prevent, control and abate existing or potential pollution." *Id*. §§ 49-2-9, 49-17-17(b), (i). With regard to water pollution, the MCEQ acts through the Office of Pollution Control within the MDEQ. *Id*. § 49-17-5(3); *see also id*. §§ 49-17-28, 49-17-29 (establishing duties of the Permit Board and MDEQ Executive Director in issuing, reissuing, modifying, revoking or denying permits and CWA section 401 certifications.); 11 Miss. Admin. Code Pt. 1, R. 4.2 (2025) (Permit Board delegation of water pollution control permitting authority to the MDEQ Executive Director.).

[132] Miss. Code Ann. § 49-17-29(2)(a) and (b) (West 2026).

[133] *Id*. § 49-17-29(2)(a).

[134] *Id*. § 49-17-29(2)(b) (Stating that "[i]t is unlawful for any person to carry on any of the following activities, unless that person holds a current permit for that activity from the Permit Board, or unless that person is exempted from holding a permit by a regulation promulgated by the [MCEQ] . . ." and lists the specific activities that require a permit.). While there is a broad prohibition on the pollution of any waters, not all of the polluting activities covered by the broad prohibition are necessarily addressed in the list of activities which require a permit. The Permit Board is also allowed to exempt certain activities. *See id*. § 49-17-29(3)(a).

[135] *Id*. § 49-17-29(2)(b).

[136] *Id*. § 49-17-5(1)(f).

[137] 11 Miss. Admin. Code Pt. 6, R. 1.1.1.A(85) (2025). The term wetlands is not further defined in the regulations. Effluent channels, ephemeral streams, dystrophic waters, and shellfish waters are subject to different water quality based effluent limitations than other waters of the state. *See* 11 Miss. Admin. Code Pt. 6, R. 1.2.5 (2025).

[138] The Air and Water Pollution Control Law states that "[a]ll rules, regulations and standards relating to air quality, water quality or air emissions or water discharge standards promulgated by the commission after April 16, 1993 shall be consistent with and shall not exceed the requirements of federal statutes and federal regulations, standards, criteria and guidance relating to air quality, water quality or air emission or water discharge standards that have been duly promulgated pursuant to the federal Administrative Procedures Act . . .." Miss. Code Ann. § 49-17-34(2) (West 2026). However, the Air and Water Pollution Control Law further states that "[i]f there are no federal statutes or federal regulations, standards, criteria or guidance that have been duly promulgated pursuant to the federal Administrative Procedures Act addressing matters relating to air quality or water quality, or air emission or water discharge standards, the commission may promulgate regulations to address these matters in accordance with the Mississippi Administrative Procedures Act, when the commission determines that such regulations are necessary to protect human health, welfare or the environment." *Id*. § 49-17-34(3). The latter provision ensures that the MCEQ possesses the authority adopt regulations that fully protect waters of the state against pollution for both CWA and state law programs.

[139] *See, e.g.*, 11 Miss. Admin. Code Pt. 6, R. 1.1.1.A(66) and R 1.1.3 (2025).

[140] Miss. Code Ann. §§ 49-27-1 *et seq*. (West 2026).

[141] *Id*. § 49-27-9.

[142] *Id*. § 49-27-7.

[143] *Id*.

[144] *Id*. § 49-17-5(1)(a).

[145] *See, e.g., id*. § 49-17-29(2)(b)(iii).

[146] *Frequently Asked Questions and Answers: Waters of the State*, Miss. Dep't of Env't Quality, at FAQ 2, https://www.mdeq.ms.gov/wots/ (last accessed Feb. 2, 2026).

[147] *Advance Notice of Proposed Rulemaking for State Water Alteration Program (SWAP) Regulations, Miss. Dep't of Env't Quality* (Jan. 5, 2026), https://www.mdeq.ms.gov/wots/.

[148] Miss. Dep't of Env't Quality, *State Water Alteration Program, Advance Notice of Proposed Rulemaking and Request for Stakeholder Input* (Jan. 5, 2026), https://www.mdeq.ms.gov/wp-content/uploads/2026/01/SWAP-ANPRM_2026.01.05.pdf.

[149] *See* Mo. Ann. Stat. §§ 644.006 *et seq*. (West 2025).

[150] Mo. Ann. Stat. § 644.011 (West 2025).

[151] *Id*. § 644.016(21).

[152] *Id*. § 644.016(31) (West).

[153] *See, e.g.*, 10 CSR § 20-7.031(FF) (West) (defining "Wetlands" as "[t]hose areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. This definition is consistent with both the United States Army Corps of Engineers wetlands definition at 33 CFR 328.3(b) and the United States Environmental Protection Agency wetlands definition at 40 CFR 232.2(r).").

[154] Mo. Ann. Stat. § 644.051(1) (West 2025); *see also id*. § 644.082(2) ("It shall be unlawful for any person to operate, use or maintain and discharge water contaminants from any water contaminant or point source or wastewater treatment plant unless he holds a permit from the commission.").

[155] *Id*. § 644.016(7), (28) (A water contaminant also includes any contaminant that is included in the definition of pollutant under the CWA.).

[156] *Id*. § 644.051(2) (Providing also that "no operating permit shall be required of any person for any emission into publicly owned treatment facilities or into publicly owned sewer systems tributary to publicly owned treatment works.").

[157] *See, e.g.*, *id*. § 644.026(8)-(9), (13), (17).

[158] *Id*. § 644.059 ("Nothing in this section shall be construed to effect, limit, or supersede sections 640.700 to 640.755 or any other law or regulation of concentrated animal feeding operations.").

[159] *See, e.g.*, 10 CSR § 20-6.010(1)(B)(1) (West 2025); *Nonpoint Source Pollution*, Mo. Dep't of Nat. Res., https://dnr.mo.gov/water/hows-water/pollutants-sources/nonpoint-source-pollution ("Permits are issued to control stormwater runoff from land disturbance activities of an acre or more, as well as for certain industries like biodiesel manufacturers, agrichemical producers and Concentrated Animal Feeding Operations (CAFOs). Other activities requiring a permit include clay, rock and mineral mining, abandoned mine land reclamation, land application of human and animal wastewater and underground petroleum storage.") (last accessed Feb. 27, 2026).

[160] 10 CSR § 20-6.010(7)(A) (West 2025); *see also id*. §§ 20-6.015 (No-Discharge Permits), 20-6.200 (Stormwater), 20-6.300 (Concentrated Animal Feeding Operations).

[161] *See, e.g.*, *Master General Permits*, Mo. Dep't of Nat. Res., https://dnr.mo.gov/water/business-industry-other-entities/permits-certification-engineering-fees/wastewater (last accessed Apr. 21, 2026); Mo. Dep't of Nat. Res., *Discharges from Dredged Aggregate to Lakes, Rivers, Harbors - General Permit MO-G690000*, 1 (2024) (Addresses "[r]eturn water, wash water, and stormwater runoff from dredged aggregate deposition sites and other disturbance resulting from maintenance dredging in waters of the state, except those discharges to the Missouri, Mississippi, Osage, or other Applicable Section 10 Rivers."), https://dnr.mo.gov/water/business-industry-other-entities/permits-certification-engineering-fees/wastewater/discharges-dredged-aggregate-lakes-rivers-harbors-mo-g690000; Mo. Dep't of Nat. Res., *Discharges from Dredged Aggregate to Big Rivers — MO-G698000*, 1 (2024) (Addresses "[p]rocess Wastewater, Storm Water and Return [W]ater associated with dredging operations discharging to the Missouri, Mississippi, Osage, and Other Applicable Section 10 rivers and tributaries."), https://dnr.mo.gov/water/business-industry-other-entities/permits-certification-engineering-fees/wastewater/discharges-dredged-aggregate-big-rivers-mo-g698000; Mo. Dep't of Nat. Res., *Sand and Gravel Washing - General Permit MO-G500000*, 1 (2022), (Addresses: "[p]rocess wastewater, mine/pit dewatering, and/or stormwater discharges associated with sand and gravel mining/dredging, processing, and stockpiles."), https://dnr.mo.gov/water/business-industry-other-entities/permits-certification-engineering-fees/wastewater/sand-gravel-washing-mo-g500000.

[162] *See* Mo. Ann. Stat. § 644.037 (West 2025); Mo. Dep't of Nat. Res., *Missouri Wetland Program Plan, 2023-2028*, at 3 (2024), https://dnr.mo.gov/document-search/missouri-wetland-program-plan-2023-2028 ("The State of Missouri has no specific wetland protection statutes, nor does it have state-specific permitting rules or penalties to control or promote protection or restoration of wetland activities."); *Nonpoint Source Pollution*, Mo. Dep't of Nat. Res., https://dnr.mo.gov/water/hows-water/pollutants-sources/nonpoint-source-pollution ("Construction, placement, dredging and filling, or general earth moving within a wetland or waterbody requires a 401 certification from the department and 404 permit from the U.S. Army Corps of Engineers.") (last accessed Mar. 3, 2026).

[163] *See* Bonnie Chasteen, *Wonderful Wetlands*, Mo. Dep't of Conservation (Dec. 1, 2016), https://mdc.mo.gov/magazines/conservationist/2016-12/wonderful-wetlands.

[164] *Sand and Gravel Washing - General Permit MO-G500000*, *supra* n. 161, at 4 (emphasis added).

[165] *Discharges from Dredged Aggregate to Lakes, Rivers, Harbors - General Permit MO-G690000*, *supra* n. 161, at 4.

[166] Tenn. Code Ann. §§ 69-3-101 *et seq*. (2026).

[167] *Id*. § 69-3-108(b)(1) (Dischargers to publicly owned treatment works and domestic dischargers to privately owned treatment works are excluded from this section). Other activities are also specifically prohibited without a permit, including, for example: (a) the construction, installation, modification, or operation of treatment works, (b) an increase in the volume or strength of wastes above what is allowed by permit, (c) the development of a natural resource or construction, installation, or operation of any establishment, "the operation of which will or is likely to cause an increase in the discharge of wastes into waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized," (d) the construction of new outlets for discharging wastes into waters of the state, (e) the discharge of sewage or wastes into waters of the state or a location from which it is likely that the discharged substance will move into waters, (f) certain activities related to the operation of certain sized animal feeding operations, and (g) the discharge of sewage or wastes into a well or location where it is likely it to move into a well. *Id*. Additional information about the available water permit programs is available on the Tennessee Department of Environment & Conservation website at *Water Permits*, Tenn. Dep't of Env't & Conservation, https://www.tn.gov/environment/permit-permits/water-permits.html (last accessed Mar. 4, 2026).

[168] Tenn. R. & Regs. R. 0400-40-07-.01(3) (2026) (emphasis added).

[169] *Id*. R. 0400-40-05-.05(1) (2026); Tenn. Code Ann. § 69-3-108(b)-(c) (2026).

[170] Tenn. R. & Regs. R. 0400-40-06-.01 (2026).

[171] Tenn. Code Ann. § 69-3-103(48) (2026).

[172] *Id*. § 69-3-103(50).

[173] *See, e.g.*, Tenn. R. & Regs. R. 0400-40-07.01(3) (2026) (Providing "that it is unlawful for any person, except in accordance with the conditions of a valid permit, to carry out any activity which results in the alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state, including wetlands.")

[174] Tenn. Code Ann. § 69-3-108(g)(1) (2026).

[175] Tenn. R. & Regs. R. 0400-40-07-.03(4) & .04 (2026).

[176] Tenn. Code Ann. §69-3-105(m) (2026) (authorizing the Commission to develop and submit rules for wet weather conveyance determinations). Wet weather conveyances are man-made or natural watercourses that meet certain criteria. *Id*. § 69-3-103(49). A stream is defined as "a surface water that is not a wet weather conveyance." *Id*. § 69-3-103(42). Wetlands are defined as "[a]n area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions" and is not a wet weather conveyance, generally including "swamps, marshes, bogs, and similar areas." *Id*. at § 69-3-103(50).

[177] Tenn. Dep't of Env't and Conservation, *Frequently Asked Questions Regarding Wetlands in Tennessee*, at 1 https://www.tn.gov/content/dam/tn/environment/external-affairs/documents/business/oea_business-faq-regarding-wetlands-tn.pdf; *see generally* Tenn. Dep't of Env't and Conservation, Div. of Water Res.: Nat. Res. Unit, *Tennessee Rapid Assessment Method for Wetlands* (2025), https://www.tn.gov/content/dam/tn/environment/water/natural-resources-unit/wr_nru-tn-rapid-assessment-method-wetlands-2025.pdf.

[178] Tennessee Chapter 437 of the Public Acts of 2025, S.B. 670, 2025-2026, 114th Gen. Assemb. (Tenn. 2025), amending Tenn. Code Ann. §§ 69-3-1 0B(g) and 69-3-108(r), and adding a new section at Title 69, Chapter 3, Part 1, https://publications.tnsosfiles.com/acts/114/pub/pc0437.pdf. This bill was signed into law on May 9, 2025.

[179] Tenn. Code Ann. § 69-3-106 (2026).

[180] *Id*. § 69-3-106(a)(3).

[181] *Id*. § 69-3-106(a)(2), (4)-(5).

[182] *Id*. § 69-3-106(b).

[183] *Id*. § 69-3-106(b)(1).

[184] *Id*. § 69-3-106(b)(2).

[185] *Id*. § 69-3-106(d).

[186] Cassandra Stephenson, *Legislation slashing development oversight of isolated wetlands heads to TN Gov. Bill Lee's desk*, WKMS: Tenn. Lookout, (Apr. 22, 2025), https://www.wkms.org/environment/2025-04-22/legislation-slashing-development-oversight-of-isolated-wetlands-heads-to-tn-gov-bill-lees-desk; Cassandra Stephenson, *Environmentalists: Second attempt at wetlands bill would leave 80% vulnerable to development*, WKMS: Tenn. Lookout (Mar. 20, 2025), https://tennesseelookout.com/2025/03/20/environmentalists-second-attempt-at-wetlands-bill-would-leave-80-vulnerable-to-development/.

[187] Tennessee Chapter 437 of the Public Acts of 2025, *supra* n. 178 (describing amended and new statutory sections).

[188] S.B. 2650, Miss. S., 2024 Reg. Sess. (Miss. 2024), https://legiscan.com/MS/bill/SB2650/2024; https://billstatus.ls.state.ms.us/documents/2024/pdf/SB/2600-2699/SB2650IN.pdf (unenacted).

[189] S.B. 557, 95th Gen. Assemb., Reg. Sess. (Ark. 2025), https://arkleg.state.ar.us/Bills/Detail?id=sb557&ddBienniumSession=2025%2F2025R (unenacted).

[190] S.B. 981, 102nd Gen. Assemb., 2nd Reg. Sess., (Mo. 2024), https://www.senate.mo.gov/24info/pdf-bill/intro/SB981.pdf (unenacted).

[191] S.B. 1427, 103rd Gen. Assemb., 2nd Reg. Sess. (Mo. 2026), https://legiscan.com/MO/bill/SB1427/2026 (unenacted); *see also* H.B. 3076, 103rd Gen. Assemb., 2nd Reg. Sess. (Mo. 2026), https://legiscan.com/MO/bill/HB3076/2026 (unenacted).

[192] Angela C. Jones *et. al*., Cong. Rsch. Serv., R48575, U.S. Env't Prot. Agency FY2026 President's Budget Request: In Brief, at 7 (2025), https://www.congress.gov/crs-product/R48575.

[193] *Id*. at 7-8.

[194] *Id*.

[195] Letter from James Kenney, *et al*., President, Env't Council of the States, to Lee Zeldin, U.S. Env't Prot. Agency (May 3, 2025), https://www.ecos.org/wp-content/uploads/2025/05/ECOS-Letter-to-EPA-on-FY26-Presidents-Budget.pdf.

[196] Letter from Adrian Stocks *et. al*., President, Ass'n of Clean Water Adm'rs, to Simpson & Pingree, Reps., H. Appropriations Comm.: Subcomm. on Interior, Env't & Other Related Agencies, at 2 (Apr. 4, 2025), https://www.acwa-us.org/wp-content/uploads/2025/04/Written-Testimony-FY-2026-Fiscal-Appropriations-v2.pdf.

[197] Association of Clean Water Administrators, *Protect Clean Water, Protect Communities: Why Congress Must Preserve STAG Funding in FY26*, at 1-2, https://www.acwa-us.org/wp-content/uploads/2025/06/106-One-Pager-Final.pdf.

[198] Association of Clean Water Administrators, *Summary: Impacts of FY 2026 Budget Proposal on State Water Programs*, at 1, available at: https://www.acwa-us.org/wp-content/uploads/2025/06/Impacts-of-FY-26-Budget-Proposal-on-State-Programs-Summary-of-Responses-Final.pdf (last accessed Apr. 22, 2026).

[199] Line-Item Veto of Sections of Mo. H.B. 6 (2025) (letter from Gov. Kehoe to Sec'y of State of the State of Mo., June 30, 2025) (vetoing funding in Sections 6.020—6.351), https://oa.mo.gov/sites/default/files/FY26_House_Bill_6_Signed.pdf.

[200] Missouri Department of Natural Resources, *FY 2026 Budget Request Programs Book*, at 34-35, available at: https://oa.mo.gov/sites/default/files/FY2026_Department_of_Natural_Resources_Programs_Boo.pdf (last accessed Apr. 22, 2026).