ENVIRONMENTAL LAW INSTITUTE

Navigating Newly Non-WOTUS Wetlands: A Study of Six States' Wetlands Programs after *Sackett v. EPA*

ILLINOIS SUPPLEMENT

SEPTEMBER 2024

ENVIRONMENTAL LAW • INSTITUTE®

ILLINOIS

I. Summary

Illinois contains around 1.24 million acres of wetlands, or around 15 percent of its original 8.2 million acres.[1] Many of these remaining wetlands have been severely degraded.

Historically, Illinois's wetlands regulation primarily relied on § 404 and § 401 of the Clean Water Act (CWA).[2] After the *Sackett* decision, the U.S. Army Corps' § 404 powers and the state's corresponding § 401 certification process will no longer apply to many Illinois wetlands, rendering many wetlands in the state unprotected unless they have a "continuous surface connection" to a larger stream or lake.[3]

However, Illinois state law provides a few specific wetlands protections left unaffected by the *Sackett* decision. First, the Illinois Department of Natural Resources (IDNR) has statutory authority to regulate *state-funded* projects and activities that impact wetlands through the Interagency Wetlands Policy Act of 1989 (IWPA).[4] This law creates a no-net-loss policy for state-funded activities adversely impacting wetlands. Second, the state's Rivers, Lakes, and Streams Act gives the IDNR authority to regulate any construction activity inside 100-year floodplains, areas that typically encompass many wetlands.[5]

Since the *Sackett* decision, Illinois lawmakers have introduced legislation to fill gaps in wetlands regulation. The proposed legislation (SB 771, the Wetlands Protection Act) would empower the IDNR to require permits from any developers (regardless of state funding status) before they discharge dredged or fill material into wetlands. This authority would effectively replace the U.S. Army Corps' § 404 powers as they applied to Illinois wetlands.[6] The bill has yet to pass the Illinois General Assembly, but the legislature will consider it in the November veto session.

---

[1] NATIONAL ASSOCIATION OF WETLAND MANAGERS, ILLINOIS STATE WETLAND PROGRAM SUMMARY (2015) https://www.nawm.org/pdf_lib/state_summaries/illinois_state_wetland_program_summary_083115.pdf (last visited August 27, 2015).
[2] ENVIRONMENTAL LAW INSTITUTE, STATE WETLAND PROTECTION: STATUS, TRENDS, & MODEL APPLICATIONS - ILLINOIS (2008) https://www.eli.org/sites/default/files/docs/core_states/Illinois.pdf (last visited August 27, 2024).
[3] Juanpablo Ramirez-Franco, *Illinois lawmakers seek to protect state wetlands*, NPR ILLINOIS (Mar. 6, 2024) Ihttps://www.nprillinois.org/illinois/2024-03-06/illinois-lawmakers-seek-to-protect-state-wetlands (last visited August 27, 2024).
[4] 20 ILL. COMP. STAT. § 830/2-1.
[5] 615 ILL. COMP. STAT § 5/18f
[6] Juanpablo Ramirez-Franco, *Illinois lawmakers seek to protect state wetlands*, NPR ILLINOIS (Mar. 6, 2024) Ihttps://www.nprillinois.org/illinois/2024-03-06/illinois-lawmakers-seek-to-protect-state-wetlands (last visited August 27, 2024).

II. Overview of Illinois's Wetlands

In 1818, Illinois contained an estimated 8.2 million acres of wetlands. In 1989, the National Wetlands Survey estimated that less than nine percent of the original acreage remained.[7] By 2015, the National Association of Wetland Managers estimated that about 1.25 million acres of wetlands existed in Illinois, or 15 percent of the original 8.2 million acres.[8] According to the IDNR, most of these remaining wetlands have also been highly degraded by the spread of invasive plants and animals, sedimentation, and artificial changes to their hydrology and drainage.[9]

Nonetheless, Illinois wetlands retain critical ecological functions, and four of them have been designated Wetlands of International Importance by the RAMSAR Convention. These include the Cache River and Cypress Creek wetlands in southern Illinois, the Chiwaukee Prairie Illinois Beach Lake Plain in northern Illinois, the Sue and Wes Dixon Waterfowl at Hennepin and Hopper Lake, and the Emiquon Complex along the Illinois River.[10]

Most of Illinois's remaining wetlands (93.7 percent) are palustrine wetlands, such as bottomland hardwood forests and bald cypress swamps. Illinois's wetlands are also heavily concentrated in the state's southern half, with nearly 47 percent located in southern Illinois along the Cache River. Lacustrine wetlands, mainly in Central Illinois, are the second next most abundant type of wetlands in the state at around 50,000 acres, followed by riverine wetlands located across the state at just over 29,000 acres.[11]

It is difficult to estimate the precise proportion of Illinois wetlands that will be newly unprotected after the *Sackett* decision. However, the Environmental Defense Fund operates a database that tracks federal wetlands jurisdictional determinations pre- and post-*Sackett* (although the database is still in its beta version). These trends in jurisdictional determinations may provide some insight into how many fewer Illinois wetlands are protected by federal law. As of July 31, 2024, a database created by the Environmental Defense Fund (EDF) estimates a 12 percent decline in the proportion of wetlands deemed within federal jurisdiction since the *Sackett* decision, from 32.8% to 20.8%.[12]

---

[7] 20 ILL. COMP. STAT. § 830/1-2(a).
[8] NATIONAL ASSOCIATION OF WETLAND MANAGERS, ILLINOIS STATE WETLAND PROGRAM SUMMARY (2015) https://www.nawm.org/pdf_lib/state_summaries/illinois_state_wetland_program_summary_083115.pdf (last visited August 27, 2015)
[9] ILLINOIS DEPARTMENT OF NATURAL RESOURCES, WILDLIFE ACTION PLAN – WETLANDS CAMPAIGN 223 (2015) https://dnr.illinois.gov/content/dam/soi/en/web/naturalheritage/speciesconservation/illinois-wildlife-action-plan/campaign-sections-2022/WetlandsCampaign2022.pdf
[10] Id. at 227.
[11] NATIONAL ASSOCIATION OF WETLAND MANAGERS, ILLINOIS STATE WETLAND PROGRAM SUMMARY (2015) https://www.nawm.org/pdf_lib/state_summaries/illinois_state_wetland_program_summary_083115.pdf (last visited August 27, 2015).
[12] *Approved Jurisdictional Determinations Viewer – Beta*, ENVIRONMENTAL DEFENSE FUND (Jun. 31, 2024) https://edfmaps.maps.arcgis.com/apps/dashboards/9f805266e95a44239f11e8612518bb39 (last visited Aug. 27, 2024).

Other analyses provide more concrete examples of the Illinois wetlands unprotected by federal law. For example, a 2002 analysis estimated that about 12 percent of the state's wetlands were "isolated wetlands," meaning "not connected to a tributary of a navigable stream by surface flow, outside the 100-year flood zone of a navigable stream, and not used for commercial operations."[13] These "isolated wetlands" very likely fall outside federal Clean Water Act jurisdiction, especially after the *Sackett* decision.

The preamble language of the proposed Wetlands Protection Act also specifically mentions the bottomland hardwood forest wetlands surrounding the Illinois River as an example of wetlands that will lose protection after *Sackett*. A network of levees separates these wetlands from the Illinois River, severing their continual surface connection to a navigable water. Nonetheless, these wetlands play a crucial role in providing flood control protections for Central Illinois.[14]

III. Regulatory Programs

a. "Waters" and "Wetlands" Definitions

Illinois has statutory definitions of both "waters" and "wetlands." First, the Illinois Environmental Protection Act – which provides the IEPA with most of its statutory authority – defines the "waters" of the state as encompassing "all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State."[15] While this definition may cover wetlands implicitly,[16] the IEPA usually presents its wetlands authority as stemming from § 401 of the CWA rather than the Illinois Environmental Protection Act.[17]

Second, the Interagency Wetlands Policy Act of 1989 (IWPA) codifies the federal definition of "wetlands" as detailed in the Emergency Wetlands Resources Act of 1986.[18] This definition reads:

---

[13] These sorts of isolated wetlands were largely stripped of CWA protection by the 2001 U.S. Supreme Court decision in *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*. *See* Geoffrey A. Levin, et al. G. *Status and function of isolated wetlands in Illinois*, ILLINOIS NATURAL HISTORY SURVEY SPECIAL PUBLICATION (2002).

[14] Wetlands Protection Act, Amendment to S.B. 771, § 5(9).

[15] 415 ILL. COMP. STAT. § 5/3.550.

[16] ENVIRONMENTAL LAW INSTITUTE, STATE WETLAND PROTECTION: STATUS, TRENDS, & MODEL APPLICATIONS 16 (2008) https://www.eli.org/sites/default/files/eli-pubs/d18__06.pdf (last visited August 27, 2024).

[17] *See e.g.*, NATIONAL ASSOCIATION OF WETLAND MANAGERS, ILLINOIS STATE WETLAND PROGRAM SUMMARY 3 (2015) https://www.nawm.org/pdf_lib/state_summaries/illinois_state_wetland_program_summary_083115.pdf (last visited August 27, 2015) and *Wetlands*, ILLINOIS DEP'T OF NATURAL RESOURCES, https://dnr.illinois.gov/conservation/wetlands.html (last visited Aug. 27, 2024) ("IEPA receives its authority from Section 401 of the CWA").

[18] Emergency Wetlands Resources Act of 1986, 16 U.S.C. § 3902.

> Land that has a predominance of hydric soils (soils which are usually wet and where there is little or no free oxygen) and 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 hydrophytic vegetation (plants typically found in wet habitats) typically adapted for life in saturated soil conditions.[19]

However, the IWPA's definition adds the following modifying sentence to the federal definition to ensure the protection of restored wetlands areas: "Areas which are restored or created as the result of mitigation or planned construction projects and which function as a wetland are included within this definition even when all three wetland parameters are not present."[20] Using these definitions, the IDNR's website clarifies that it considers intermittent streams and frequently flooded forest areas to be wetlands. It does not elaborate on other types of wetlands, like interdunal wetlands.[21]

b. Delineation

The Illinois General Assembly has provided statutory authority to establish state-specific wetlands delineation criteria. The IWPA authorizes the IDNR to develop technical procedures for "the consistent identification, delineation and evaluation of existing wetlands." The IDNR regulations implementing the IWPA acknowledge this authority, stating, "Technical procedures adopted for the implementation of the Act may include but are not limited to the following: a) Jurisdictional wetland delineation procedures."[22]

However, the IDNR has not used this authority to craft state-specific delineation criteria. Instead, Illinois's state delineation criteria follow the U.S. Army Corps of Engineers (Corps) 1987 Wetlands Delineation Manual[23] and regional supplements[24] for all nonagricultural lands. For example, in a 2021 project consultation between the IDNR and the Illinois Department of Transportation (IDOT), the IDNR formally requested that IDOT "conduct or cause to be conducted wetland delineations in the project area using methodology as describe [sic] in the *Corps of Engineers Wetlands Delineation Manual* and *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region (Version 2.0*)."[25]

---

[19] 20 ILL. COMP. STAT. § 830/1-6(a); and Emergency Wetlands Resources Act of 1986, 16 U.S.C. § 3902.
[20] 20 ILL. COMP. STAT. § 830/1-6(a).
[21] *Wetland Communities in Illinois,* ILLINOIS DEP'T OF NATURAL RESOURCES, https://dnr.illinois.gov/conservation/wetlands/wetland-communities-in-illinois.html (last visited Aug. 27, 2024).
[22] 20 ILL. ADM. CODE §1090.80.
[23] U.S. ARMY CORPS OF ENG'RS, TR Y-87-1, CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL (1987).
[24] U.S. ARMY CORPS OF ENG'RS, ERDC/EL TR-10-16, REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL: MIDWEST REGION (VERSION 2.0) (2010).
[25] Letter from Bradley Hayes to Kimberly Burkwald (Feb. 23, 2021) https://dnr.illinois.gov/content/dam/soi/en/web/dnr/programs/ecocat/documents/2021/2107212.pdf (last visited Aug. 27, 2024).

On agricultural lands, the USDA has published guidance for Illinois wetland determinations, which comply with the Highly Erodible Land Conservation and Wetland Conservation provisions of the 1985 Food Security Act.[26] These procedures are published in the National Food Security Act Manual and largely utilize the same criteria as the Corps' manual.[27]

c. Wetland-related State Agencies and Statutes

Illinois Department of Natural Resources: As mentioned, IDNR regulates Illinois wetlands through the IWPA and, to a lesser extent, the Rivers, Lakes, and Streams Act.

- *Interagency Wetlands Policy Act*: The IWPA directs all State agencies to "preserve, enhance, and create wetlands where possible and avoid adverse impacts to wetlands."

    - Scope: The Act's prohibitions apply to all state-funded construction activities that cost more than $10,000.[28] They do not apply to specific activities like the remediation of environmentally contaminated sites and projects subject to the federal National Environmental Policy Act.[29] The Act's implementing regulations specifically mention dredging, discharges and filling, altering drainage, disturbing the water level or water table, disturbing plant life, or transferring ownership of State-owned wetlands as examples of actions subject to the Act's requirements.

    - Policy: The Act establishes a goal for no-net-loss of wetlands acreage from projects pursued by state agencies. When an agency's project would adversely impact wetlands, and the "agency can establish that no other feasible alternative exists, and adverse wetland impacts are unavoidable, adverse impacts are to be compensated for through the development and implementation of a Department approved Wetland Compensation Plan."[30]

    - Process: According to the Act's implementing regulations, IDNR must review a project to determine whether a wetland impact will occur (a Wetland Impact Determination). If the IDNR determines there will not be an impact, the project will be approved and state funds may be released. If the IDNR determines the project will adversely impact wetlands, the agency requesting approval must

[26] U.S. DEP'T OF AGRICULTURE, GUIDANCE FOR ILLINOIS FOOD SECURITY ACT (FSA) WETLAND DETERMINATIONS INCLUDING STATE OFFSITE METHODS (SOSM) (July 2016) https://efotg.sc.egov.usda.gov/references/public/IL/IL_SOSM_July_2016.pdf (last visited Aug. 27, 2024)
[27] *Id*. at 2. ("The NFSAM Part 527 FSA Wetland Identification Procedures directs that NRCS will utilize Part IV: Methods contained in the Corps of Engineers Wetland Delineation Manual (Corps Manual) for onsite and offsite determinations. The NFSAM explains that the on-site procedures contained in the Corps Manual are supplemented by the Corps Regional Supplements and the FSA variances to the Corps Methods, as provided in Part 527 FSA Wetland Identification Procedures").
[28] 20 ILL. COMP. STAT. § 830/1-3
[29] *Id.*
[30] 20 ILL. COMP. STAT. § 830/3-1

create a plan detailing how it will compensate for the impact before the project (called a Wetland Compensation Plan). [31] The "Mitigation" section below covers the Act's mitigation policy and no-net-loss program in more detail.

- *Rivers, Lakes, and Streams Act*: The Rivers, Lakes, and Streams Act (RLSA) provides the IDNR authority to regulate construction activities in floodplains, thereby incidentally providing IDNR authority to regulate development impacting certain wetlands.

    - Scope: The RLSA requires IDNR to permit any construction inside 100-year floodplains (meaning those areas that are "inundated by a flood that has a 1% or greater chance of recurring in any given year").[32] Many wetlands are located within these floodplains, giving them added protection against development even though the RLSA does not mention wetlands.

    - Policy: The RLSA aims to prevent flood damage and development that exacerbates flooding.[33] Accordingly, permit decisions are guided by a project's impact on flood damage potential rather than wetlands or natural resource preservation. The RLSA's implementing regulations state that: "[p]ermits will ordinarily be granted for construction which does not have significant flood damage potential and which will not increase present or future flood damages on upstream, downstream, or adjacent lands. No construction will be permitted which will singly, or cumulatively, cause significant increases in flood stage or velocity."[34]

    - Process: The IDNR has issued several statewide, regional, or general permits to standardize the requirements for common floodplain construction activity like building bridges, culverts, underground pipelines, minor boat docks, and more.[35] Otherwise, applicants to build within floodplains must file general applications with the IDNR's Office of Water Resources.[36]

Illinois Environmental Protection Agency. The IEPA's primary role in wetlands regulation is operating the state's water quality standards and § 401 certification program (summarized below), which it does in accordance with the Illinois Environmental Protection Act and the CWA. After the *Sackett* decision, the state's § 401 certification program will only apply to projects impacting wetlands with continuous surface connections to a larger stream or lake.

---

[31] 20 ILL. ADM. CODE § 1090.50.
[32] 615 ILL. COMP. STAT. § 5/18f
[33] 17 ILL. ADM. CODE § 3706.120
[34] 17 ILL. ADM. CODE § 3706.230
[35] *Permits – Statewide, Regional, General,* ILLINOIS DEP'T OF NATURAL RESOURCES, https://dnr.illinois.gov/waterresources/permitsstatewideregionalgeneral.html (Aug. 27, 2024).
[36] 17 ILL. ADM. CODE § 3706.720

- *Illinois Environmental Protection Act*: The Illinois Environmental Protection Act does not explicitly mention wetlands. However, the law is relevant because it authorizes the IEPA to set water quality standards and operate the state's § 401 certification program. Each of these programs are summarized below.

d. Water Quality Standards

IEPA's Watershed Management Section (WMS) sets water quality standards in Illinois.

The IEPA has not adopted wetland-specific water quality standards or designated uses. However, wetlands are subject to the agency's "general use" water quality standards, which "must be met in all waters of the State for which there is no specific designation."[37]

These general use standards "protect the State's water for aquatic life, wildlife, agricultural use, secondary contact use, and most industrial uses and ensure the aesthetic quality of the State's aquatic environment."[38] A sample of the conditions required to meet the general use standards include:

1) Being free from sludge, bottom deposits, floating debris, visible oil, odor, and other nonnatural "offensive conditions"[39] and toxic substances.[40]
2) Maintaining a pH range between 6.5 and 9.0.[41]
3) Maintaining a phosphorus level below 0.05 milligrams per liter.[42]
4) Avoiding certain concentrations of chemical constituents such as arsenic, cadmium, lead, mercury, benezene, and more.[43]

In addition, one general-use standard explicitly mentions wetlands. The dissolved oxygen standard is location-dependent, and the regulation specifies that "Quiescent and isolated sectors of general use waters including wetlands, sloughs, backwaters, and waters below the thermocline in lakes and reservoirs must be maintained at sufficient dissolved oxygen concentrations to support their natural ecological functions and resident aquatic communities."[44]

Finally, while not an explicit water quality standard, the no-net-loss policy in the IWPA can be interpreted as an antidegradation standard specific to wetlands.[45]

---

[37] 35 ILL. ADM. CODE § 303.201.
[38] 35 ILL. ADM. CODE § 302.202.
[39] 35 ILL. ADM. CODE § 302.203.
[40] 35 ILL. ADM. CODE § 302.210.
[41] 35 ILL. ADM. CODE § 302.204.
[42] 35 ILL. ADM. CODE § 302.205.
[43] 35 ILL. ADM. CODE § 302.208.
[44] 35 ILL. ADM. CODE § 302.206.
[45] ENVIRONMENTAL LAW INSTITUTE, STATE WETLAND PROTECTION: STATUS, TRENDS, & MODEL APPLICATIONS 37 (2008) https://www.eli.org/sites/default/files/eli-pubs/d18__06.pdf (last visited August 27, 2024).

e. § 401 Certification

IEPA's Watershed Management Section (WMS) administers the state's § 401 certification program. Under the program, the Corps may not issue federal permits for a discharge into a water of the United States before the IEPA certifies, under § 401 of the CWA, that the discharge will comply with the water quality standards of the state.

The state's § 401 certification review process begins with a notification from the U.S. Army Corps of Engineers regarding the Corps permits required for a project. If the project falls under one of the Corps' Nationwide Permits (NWP) for which the IEPA has already attached a water quality certification, the IEPA takes no further action. If not, the IEPA conducts an individual review of the project. This individual certification process begins with an antidegradation review in accordance with the IEPA's water quality regulations.[46] These antidegradation reviews evaluates whether the project will hamper the existing uses of the waters, diminish water quality, or otherwise create unnecessary deterioration of waters of the State.[47]

The IEPA posts a public notice with the results from the antidegradation review online. Following the public notice period, the agency reviews any comments received. The agency may decide to hold a hearing, prepare written responses, or request additional information from the project applicant. If the project meets antidegradation criteria and narrative and numeric water quality standards, a § 401 water quality certification is issued and sent to both the Corps and the applicant.[48]

f. Nationwide and Regional Permits

In 2021, the Corps published two final rules for the Nationwide Permits Program under Rivers and Harbors Act of 1899, § 401 of the Clean Water Act, and the Marine Protection, Research and Sanctuaries Act. These rules reissued or newly created 57 Nationwide Permits for specific types of projects. In October 2021, the IEPA issued standing § 401 certifications for 48 of these Nationwide Permits – meaning projects encompassed by the Nationwide Permits do not require individual certifications from the state.

However, all these § 401 certifications were issued with "Special Conditions." The Special Conditions ensure the permit's compliance with any additional IEPA regulations relevant to the

---

("The Clean Water Act requires states to develop water quality standards (WQS), which may include narrative, chemical, and biological water quality criteria, designated uses, and anti-degradation policies…Four states have anti-degradation policies that specify wetlands: Florida, Illinois, Maine, and Ohio").

[46] 35 ILL. ADM. CODE § 302.105

[47] Id.

[48] 35 ILL. ADM. CODE § 395.

specific activities.[49] For example, for Nationwide Permit 13 concerning bank stabilization projects, the IEPA's special conditions add requirements that "[p]ursuant to 35 Ill. Admin. Code Sections 302.203 and 395.401(b), asphalt, bituminous material and concrete with protruding material such as reinforcing bars or mesh shall not be… used for backfill, placed on shorelines/streambanks; or placed in waters of the State."[50]

Additionally, Illinois has imposed three regional conditions for all Nationwide Permits for projects within the state of Illinois. These include: 1) pre-construction notifications for activities that involve mechanized land clearing in a forested wetland for utility line right-of-way, 2) pre-construction notifications for all proposed projects that result in the loss of greater than 300 linear feet of streambed located within Waters of the U.S., and 3) pre-construction notifications for any bank stabilization activities such as construction of jetties and stream barbs.[51]

g. Mitigation

The IWPA's no-net-loss policy is the primary wetlands mitigation policy in the State. Under the IWPA, any state-funded project that may adversely impact an Illinois wetland requires 1) a Wetland Impact Determination, and 2) a Wetland Compensation Plan.

The Wetland Impact Determination is the IDNR's review of the project proposal to determine if the project will adversely impact wetlands and if alternatives exist. An IDNR approved Wetland Impact Determination lasts for three years. If the project will adversely impact wetlands and no alternative exists, the state agency supporting the project must develop a Wetland Compensation Plan.[52]

The state agency's Wetland Compensation Plan must propose a plan to either replace the wetland areas lost, create a plan to replace the quantifiable ecosystem services lost, or pay a dollar value reflecting the value of property and its ecosystem services. The IWPA's implementing regulations also establish mitigation ratios incentivizing the least destructive projects. For example, projects that minimally alter a wetland would only need to establish a compensatory wetland of the same size (a 1:1 ratio), while projects that destroy a wetland would have to build a compensatory wetland 2.5 times the size of the original if it is on the same site, and 4 times the size if it is off-site. These mitigation ratios also apply to compensation plans using quantifiable ecosystem services or dollar values.

---

[49] *See e.g.*, *Section 401 Water Quality Certification to Discharge into Waters of the State - Reissuance and Modification of the Nationwide Permit Program*, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (2020) https://epa.illinois.gov/content/dam/soi/en/web/epa/public-notices/documents/401-certification/2020/c-0210-20-11102020-publicnoticeandfactsheet.pdf (last visited Aug. 27, 2024).

[50] Id. at 10.

[51] FACT SHEET NO. 9 (IL) NATIONWIDE PERMITS IN ILLINOIS, U.S. ARMY CORPS OF ENG'RS (Feb. 25, 2022) https://www.mvr.usace.army.mil/Portals/48/docs/regulatory/2022%20Nationwide%20Permits/Illinois%20Fact%20Sheet%209.pdf?ver=9XE8dTX6LeXU1WpOK3hE3A%3d%3d (last visited Aug. 27, 2024).

[52] 20 ILL. COMP. STAT. § 830/3-3.

State agencies are also authorized to bank mitigation credits by establishing Wetland Compensation Accounts. These accounts are "system[s] of accounting for wetland loss and compensation" that "reconcile[s] debits and credits established as the result of Wetland Compensation Plans."[53] The Illinois Department of Transportation, for example, maintains a list of the 36 wetland restoration projects it has used for wetland compensation in compliance with the IWPA.[54]

h. Compliance and Enforcement

Illinois has neither an enforcement nor compliance program with respect to wetlands. Traditionally, the state had deferred to the Corps on § 404 enforcement and compliance issues.[55]

i. Tracking Systems

The IEPA has created two separate databases to track § 401 permits and mitigation requirements, but they are not publicly available.[56]

There are no formal tracking systems for the wetland reviews and compensation plans issued under the IWPA. However, the IDNR often publishes its correspondence with other state agencies regarding wetland reviews, which can be found on the IDNR's website with search terms such as "wetlands review," "wetlands delineation," and "wetlands impact determination."[57] Additionally, the Illinois Department of Transportation (IDOT), the state agency most often charged with complying with the IWPA, keeps a database tracking its wetlands compensation and mitigation sites.[58] To date, the agency has logged 36 wetland compensation sites and seven mitigation sites.

IV. Monitoring and Assessment

Illinois's primary wetlands monitoring and assessment program is the Critical Trends Assessment Program (CTAP), a collaboration between the Illinois Natural History Survey, IDNR, and the University of Illinois. CTAP is an ongoing statewide survey of Illinois' natural resources, including the state's forests, grasslands, streams, and wetlands. CTAP completed its most recent survey of the state's wetlands in 2019. This analysis highlighted emerging threats to

[53] 20 ILL. COMP. STAT. § 830/3-3.
[54] *Wetlands: Background*, ILLINOIS DEPARTMENT OF TRANSPORTATION, https://idot.illinois.gov/transportation-system/environment/natural-resources/wetlands.html (last visited August 27, 2024).
[55] ENVIRONMENTAL LAW INSTITUTE, STATE WETLAND PROTECTION: STATUS, TRENDS, & MODEL APPLICATIONS - ILLINOIS (2008) https://www.eli.org/sites/default/files/docs/core_states/Illinois.pdf (last visited August 27, 2024).
[56] *Id.*
[57] See e.g., Letter from Karen M. Miller to Melvyn A. Skvarla (Jan. 26, 2011) https://dnr.illinois.gov/content/dam/soi/en/web/dnr/programs/ecocat/documents/2011/1104224.pdf (last visited Aug. 27, 2024).
[58] *Wetlands: Background*, ILLINOIS DEP'T OF TRANSPORTATION, https://idot.illinois.gov/transportation-system/environment/natural-resources/wetlands.html (last visited August 27, 2024).

wetlands including the increasing spread of invasive species in Illinois wetlands, encroachment of woody species (trees and bushes) into emergent herbaceous wetlands, and changes to wetlands hydrology induced by climate change.[59]

Wetland water quality has not been individually assessed by IEPA in its recent water quality reports submitted to the EPA for § CWA 305(b) and § 303(b) compliance.[60] Illinois's most recent integrated water quality report to include a specific chapter for wetlands condition assessment was submitted in 2016.[61] In 2007, IEPA developed a comprehensive document entitled, "Wetland Monitoring and Assessment Program for the State of Illinois" (IEPA/BOW/07-020) to meet the requirements of the Clean Water Act. However, this document and its corresponding program has not been updated or mentioned in IEAP's water quality reports since 2016.[62]

V. Restoration and Partnerships

One of the primary ways the Illinois state government supports wetlands restoration is through its various stamp programs (*i.e.,* duck stamps). The purchase of Habitat Stamps and Migratory Waterfowl Stamps by Illinois hunters fund four special grant programs that support wetlands restoration projects in Illinois and outside the state (such as critical habitat in Canada). These grant programs include the Illinois Habitat Fund, the State Pheasant Fund, the State Furbearer Fund, and the Migratory Waterfowl Stamp Fund – all of which the IDNR operates. Together, they are sometimes referred to as the Special Wildlife Funds Grant Programs. Each of these funds supports projects that acquire, enhance, or manage wildlife habitat, and often include supporting wetland restoration.[63]

These grants facilitate partnerships with conservation groups focused on habitat and wetlands restoration, such as Ducks Unlimited and Pheasants Forever. For example, in 2023, the Illinois Habitat Fund awarded $667,000, including about $335,000 to Pheasants Forever for wetlands

---

[59] Edward Price, *Wetland Science and Policy*, ILLINOIS NATURAL HISTORY SURVEY (March 2019) https://www.ideals.illinois.edu/items/110210

[60] See e.g., ILLINOIS INTEGRATED WATER QUALITY REPORT AND SECTION 303(D) LIST, 2024 DRAFT, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (June 2024) https://epa.illinois.gov/content/dam/soi/en/web/epa/topics/water-quality/watershed-management/tmdls/documents/303d/2024-IR.pdf; and ILLINOIS INTEGRATED WATER QUALITY REPORT AND SECTION 303(D) LIST, 2022 DRAFT, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (June 2022) https://epa.illinois.gov/content/dam/soi/en/web/epa/topics/water-quality/watershed-management/tmdls/documents/2020-2022-ir-final-6-01-22.pdf.

[61] ILLINOIS INTEGRATED WATER QUALITY REPORT AND SECTION 303(D) LIST, 2016, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (June 2016) https://epa.illinois.gov/content/dam/soi/en/web/epa/documents/water-quality/watershed-management/tmdls/2016/303-d-list/iwq-report-surface-water.pdf

[62] "Wetland Monitoring and Assessment Program for the State of Illinois" (IEPA/BOW/07-020)

[63] *Special Wildlife Funds Grant Programs*, ILLINOIS DEP'T OF NATURAL RESOURCES, https://dnr.illinois.gov/grants/special-wildlife-funds-grant-program.html (Aug. 27, 2024).

restoration and habitat improvements.[64] Also in 2023, the Migratory Waterfowl Stamp Fund awarded $500,000 for habitat restoration and preservation in Canadian breeding grounds – mostly to Ducks Unlimited.[65]

The IDNR's Conservation Stewardship Program (CSP) is another important state restoration initiative that impacts wetlands. The CSP program allows private landowners with at least five acres of undeveloped land to earn reduced property tax burdens in exchange for implementing voluntary conservation measures on their lands. Wetlands conservation and restoration are among the CSP program's primary goals.

The program's accepted management practices for wetlands include fish stocking, fish and wildlife structure construction, invasive species control, aquatic vegetation control, and desired vegetation establishment.[66] As of 2018, there were 2,800 active CSP enrollments across the state. These enrollments accounted for more than 96,000 acres with approximately 56,000 acres of forestland, 16,200 acres of grassland, 11,600 acres of wetlands, and 8,600 acres of ponds.[67]

Last, The Nature Conservancy (TNC) has also been a crucial partner in wetlands restoration in Illinois. TNC supports various wetland restoration projects around the state, most notably the 6,000-acre Emiquon Nature Preserve.[68] TNC purchased the Emiquon in 2000, which had been completely drained for agricultural usage in 1924. By 2008, TNC had completed most of the restoration project, and Emiquon became one of the largest restored wetland areas in the Midwest.[69]

VI. Education and Outreach

The ENTICE (Environment and Nature Training Institute for Conservation Education) program, managed by the Illinois Department of Natural Resources (IDNR), offers specialized training for

---

[64] *Seven organizations awarded nearly $667,000 in grant funds from IDNR for wildlife habitat restoration*, ILLINOIS DEP'T OF NATURAL RESOURCES (Nov. 13, 2023) https://www2.illinois.gov/IISNews/27277-Seven_organizations_awarded_nearly_%24667000_in_grant_funds_from_IDNR_for_wildlife_habitat_restoration.pdf.

[65] *IDNR awards duck stamp grants for habitat restoration & preservation in breeding grounds*, NEWS CHANNEL 20 (March 10th, 2023) https://newschannel20.com/news/local/idnr-awards-duck-stamp-grants-for-habitat-restoration-preservation-in-breeding-grounds.

[66] *Welcome to the Conservation Stewardship Program*, ILLINOIS DEP'T OF NATURAL RESOURCES, https://dnr.illinois.gov/conservation/csp.html (last visited Aug 27, 2024).

[67] Bob Caveny, *Consevation Stewardship Program: Managing Private Lands One Acre at a Time*, OUTDOOR ILLINOIS JOURNAL (Aug. 1, 2018) https://outdoor.wildlifeillinois.org/articles/conservation-stewardship-program-managing-private-lands-one-acre-at-a-time.

[68] Camryn Cutinello, *Federal repeal of wetland protections shines light on Emiquon Nature Preserve*, NPR ILLINOIS (April 15, 2024) https://www.nprillinois.org/illinois/2024-04-15/federal-repeal-of-wetland-protections-shines-light-on-emiquon-nature-preserve

[69] *Places We Protect: Emiquon*, THE NATURE CONSERVANCY, https://www.nature.org/en-us/get-involved/how-to-help/places-we-protect/emiquon/ (last visited August 27, 2024).

educators to enhance their teaching about natural resources and conservation.[70] This initiative provides hands-on, interdisciplinary workshops led by natural resources professionals and educators. Participants engage in experiences that foster effective stewardship of Illinois' natural resources. Approved by the Illinois State Board of Education, these workshops also offer Professional Development Hours for teachers.

ENTICE workshops are available statewide and are designed for teachers, home-school educators, nonformal educators, and youth-group leaders in Illinois. The program equips educators with practical resources and activities to integrate natural resources education into their curriculum. Two upcoming wetland-focused workshops highlight the program's commitment to environmental education:

1. Wetlands as Habitats Workshop: This workshop explores wetland ecosystems around the Nature Museum, emphasizing the adaptations and interactions of wetland organisms and human efforts to support biodiversity. It is tailored for educators of grades four through middle school, with supplementary materials and Professional Development Hours provided.

2. Wetland Exploration Workshop: Designed for educators of grades two through nine, this session covers wetland characteristics and the life history of wetland species. Participants will visit and sample various wetlands at The Grove, engaging in hands-on activities and receiving supplemental educational resources.[71]

These workshops aim to deepen educators' understanding of wetlands and enhance their ability to teach students about these vital ecosystems.

a. Additional Educational Materials

The Aquatic Illinois Wetlands Teacher Guide is a comprehensive resource designed to help educators teach students about wetlands in Illinois.[72] It includes detailed lesson plans, activities, and educational materials that cover wetland ecosystems, species, and conservation.
The Wetlands Campaign of the Illinois Wildlife Action Plan put out a GIS story map highlighting the makeup of Illinois wetlands and local species.[73]

---

[70] *Illinois ENTICE*, ILLINOIS DEP'T OF NATURAL RESOURCES (2024) https://dnr.illinois.gov/education/entice.html (last visited Aug. 27, 2024).
[71] *Education Workshop Information*, ILLINOIS DEP'T OF NATURAL RESOURCE, https://www.enticeworkshops.com/ (last visited Aug. 27, 2024).
[72] WETLANDS TEACHER'S GUIDE, ILLINOIS DEP'T OF NATURAL RESOURCE (2020) https://dnr.illinois.gov/content/dam/soi/en/web/dnr/education/documents/aquaticillinoiswetlandsteachguide.pdf
[73] *Illinois Wildlife Action Plan: Wetlands Campaign*, ILLINOIS DEP'T OF NATURAL RESOURCES https://idnr.maps.arcgis.com/apps/MapJournal/index.html?appid=cbddf6b4a2574a569d28a268b9909823

VII. Coordination with State and Federal Agencies

a. Interagency Wetlands Committee

Illinois's primary means of coordinating among state agencies on wetlands policy occurs through the Interagency Wetlands Committee. Established through the IWPA, the Committee is supposed to advise the IDNR on developing wetlands rules and regulations, coordinating Agency Action Plans for wetlands, and preparing periodic reports on the status of Illinois wetlands.[74] The Committee is made up of agency representatives from IDNR, IEPA, IDOT, the Illinois Department of Agriculture, the Illinois Historic Preservation Society, the Capitol Development Board, the Department of Commerce and Community Affairs.[75] Federal agencies like the Army Corps and USDA NRCS may also attend Committee meetings. While still authorized by the IWPA, it is unclear how active the Committee is today.

b. State Wetland Conservation Plan

IDNR maintains the Illinois Wildlife Action Plan (IWAP), which coordinates the state's various conservation and environmental protection strategies. The IWAP is organized into seven "campaigns," one of which is devoted to wetlands. IDNR published the first IWAP in 2005 and the second in 2015. The 2015 version was revised in 2022, and a third IWAP may come out in 2025.[76]

The IWAP wetlands campaign seeks to coordinate wetlands conservation and restoration efforts across the state with overarching goals of increasing wetland acreage, interconnectedness, and quality.[77] The 2015 wetlands campaign identifies some specific goals such as achieving a net gain of 20 percent of marsh wetland types and 40 percent of combined wetland types through restoration efforts.[78] The campaign next identifies six primary action categories to improve Illinois wetlands and tracks projects, policies, and partnerships that fit within each category.

The six primary categories are listed below along with corresponding actions identified in the 2015 wetlands campaign:

---

[74] 20 ILL. COMP. STAT. § 830/2-1.
[75] Id.
[76] *Illinois Wildlife Action Plan*, ILLINOIS DEP'T OF NATURAL RESOURCES (2024) https://dnr.illinois.gov/conservation/iwap.html (last visited Aug. 27, 2024).
[77] ILLINOIS DEPARTMENT OF NATURAL RESOURCES, WILDLIFE ACTION PLAN – WETLANDS CAMPAIGN 223 (2015) https://dnr.illinois.gov/content/dam/soi/en/web/naturalheritage/speciesconservation/illinois-wildlife-action-plan/campaign-sections-2022/WetlandsCampaign2022.pdf
[78] Id. at 224.

1) Improving the condition of existing natural and artificial wetlands:
    i. The 2015 wetlands campaign notes the role of the U.S. Department of Agriculture's Wetland Reserve Program, which enrolled 16,000 acres of Illinois wetlands between 2005 and 2015.[79]
    ii. The campaign also notes the work of Ducks Unlimited, which restored 8,000 acres of existing wetlands from 2005 to 2015.[80]

2) Developing and managing additional wetlands habitat:
    i. The 2015 wetlands campaign notes Ducks Unlimited's role in developing 1,250 acres of additional wetland habitat across the state from 2005 to 2015, in partnership with IDNR and federal agencies.[81]

3) Filling information gaps and developing conservation actions to address stresses:
    i. The 2015 wetlands campaign notes an IDNR-initiated academic review of wetland wildlife habitat requirements throughout the state. The study indicated that palustrine forested wetlands have the greatest wetland habitat requirements (meaning they require the greatest levels of intervention and restoration to support native plant and animal life).[82]

4) Facilitating inter-agency cooperation and coordination to ensure wetland programs do not have conflicting objectives:
    i. The 2015 wetlands campaign simply notes that "numerous conservation entities representing federal, state, local government and nonprofit organizations are working together in formal, or informal, partnerships to conserve vital wetland habitats through coordinated strategic action." Examples included the Cache River Joint Venture and the Middle Mississippi River Partnership.[83]

5) Emphasizing multiple resource benefits of wetlands conservation:
    i. No examples provided.

6) Increasing water quality education efforts in areas under high development pressure, and/or within fragile geographic zones:
    i. The 2015 wetlands campaign notes the North American Waterfowl Management Plan was conducting a nationwide evaluation of the public's wetland knowledge and attitudes.[84]

[79] Id. at 227
[80] Id.
[81] Id. at 228.
[82] Id.
[83] Id. at 229.
[84] Id. at 230.

c. Upper Mississippi River Restoration (UMRR) Program

A crucial partnership for wetlands preservation throughout the Mississippi River watershed comes from the Upper Mississippi River Restoration (UMRR) Program. Established in 1986 by the Water Resources Development Act, UMRR is a federal program focused on preserving and enhancing the ecosystem of the Upper Mississippi River System (UMRS). [85] A significant initiative, the UMRR program has been appropriated $703.82M from its inception in 1986 through FY 21.[86]

While a federal program, UMRR is an important funder of state initiatives to further wetland restoration. The program aims to address ecological degradation caused by human activities like navigation, dam construction, and agricultural runoff. UMRR projects typically restore vital habitats, improve water quality, and maintain biodiversity across the 1,200-mile stretch of the river, which extends through five states: Minnesota, Wisconsin, Iowa, Illinois, and Missouri.

The program implements two types of projects: habitat restoration and monitoring. Habitat restoration projects restore wetlands, backwaters, and islands that provide critical habitats for migratory birds, fish, and other wildlife. Monitoring efforts collect data on water quality, vegetation, and species diversity to track long-term ecological health. These projects are coordinated by the Army Corps in partnership with other federal agencies, state agencies, and non-profit organizations.

Since its inception, UMRR has successfully completed over 63 habitat projects, benefitting more than 121,000 acres of floodplains and aquatic habitats across the five-state area.[87] Illinois has been the largest beneficiary of these projects, with a majority of them taking place along Illinois' border with the Mississippi River and along the Illinois River.[88]

VIII. Legislative Proposal – The Wetlands Protection Act

The main legislative proposal to respond to the *Sackett* decision in Illinois is SB 771, the Wetlands Protection Act. While the bill has passed in committee, the full General Assembly has yet to vote on it. The General Assembly will likely consider the bill again during its November veto session.[89]

The bill's primary effect would be reinstating most pre-*Sackett* CWA protections for wetlands by giving the IDNR authority to operate a § 404-style program – requiring permits before any

[85] U.S. ARMY CORPS OF ENGINEERS ROCK ISLAND DISTRICT, 2022 REPORT TO CONGRESS UPPER MISSISSIPPI RIVER RESTORATION PROGRAM (2022), https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll11/id/6930.
[86] Id. at 15.
[87] Id. at v.
[88] Id at 9.
[89] Jennifer Bamberg, *Illinois lawmaker's attempt to reinstate wetland protections fails as legislative session ends*, ILLINOIS ANSWERS PROJECT (Jul. 1, 2024) https://illinoisanswers.org/2024/07/01/wetlands/

developers discharge dredged or fill material into wetlands. However, the bill also creates a mitigation program for wetlands permits (effectively creating another no-net-loss policy), authorizes the creation of mitigation banks, and authorizes a new Wetlands Protection Fund to advance wetlands restoration independent of required mitigation and compensation projects.

a. Application and Definitions

The bill employs a broad definition of wetlands, defining them as "those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."[90] The bill, however, is specifically designed only to regulate those wetlands that the federal CWA or the IWPA would not already protect. It clarifies that if a wetland area "becomes subject to regulation under the federal Clean Water Act, it shall no longer be subject to the provisions of this Act."[91] The bill also explicitly exempts "any activity covered by the Interagency Wetland Policy Act of 1989."[92]

a. Delineation and Classification

The bill makes permit seekers responsible for procuring wetland delineations and classifications. It instructs permit seekers to make wetland delineations in accordance with the Army Corps' 1987 Wetland Delineation Manual.

Section 55, however, spells out an additional three-tiered classification system for wetlands. These classifications determine the mitigation and compensation required if the wetland is filled or degraded (see subsection d, "Mitigation Policy").

- Class I wetlands are defined as "top tier wetland[s] as indicated by type (such as bog, bottomland hardwood forest, or panne), designation (such as Ramsar wetland of international importance), or function (such as threatened or endangered species habitat or important flood protection)."
- Class II applies to wetlands larger than 0.5 acres (including its contiguous area) that are not Class I wetlands.
- Class III applies to wetlands smaller than 0.5 acres (including its contiguous area) and are not Class I wetlands.

b. Prohibitions and Permits

The bill's central prohibition reemploys § 404's core mandate and applies it specifically to wetlands. The bill mandates that "No person may discharge dredged or fill material into a

[90] Wetlands Protection Act, Amendment to S.B. 771, § 10.
[91] Wetlands Protection Act, Amendment to S.B. 771, § 20.
[92] Wetlands Protection Act, Amendment to S.B. 771, § 15.

wetland protected by this Act except in accordance with the terms of an individual or general permit issued by the [IDNR] under this Section or Section 40 of this Act."[93]

The bill states the IDNR may not issue a permit "unless the Agency has certified that the proposed activity will not cause or contribute to a violation of a State water quality standard." Additionally, it instructs IDNR to use the permit process to minimize wetlands impacts by using the following sequence:

- First, IDNR must determine if the impacts on wetlands can be avoided through a practicable alternative.
- Second, INDR must evaluate measures to minimize the unavoidable impacts of the project (such as by reducing the footprint of the fill).
- Third, the Department must evaluate the compensatory mitigation measures for any remaining impacts on wetlands.[94]

c. Use of General Permits

Section 30 of the bill allows IDNR to issue general permits for common activities affecting wetlands. The bill specifically directs the IDNR to issue general permits for 1) construction and maintenance of access roads for utility lines, substations, bridges, and other key infrastructure, 2) activities that preserve and enhance aviation safety, and 3) conservation activities, such as voluntary aquatic habitat restoration and fish passage.[95] Any project using a general permit is still subject to the bill's compensatory mitigation requirements.[96]

The bill also adopts the nationwide general permits issued by the Army Corps for all its regulated activities. Projects using national permits, however, still must include a predischarge notification requirement and compensatory mitigation.[97]

d. Mitigation Policy

The bill requires compensatory mitigation for "all regulated activities regardless of the type of permit."[98] The scale of the required mitigation depends on the class of wetland impacted.

- Projects impacting Class I wetlands require mitigation measures that restore "to the maximum degree practicable…the type and functions of the wetland that will be affected." These mitigation measures may take place on-site or off-site at approved

[93] Wetlands Protection Act, Amendment to S.B. 771, § 25
[94] Wetlands Protection Act, Amendment to S.B. 771, § 25 (e).
[95] Wetlands Protection Act, Amendment to S.B. 771, § 30(d).
[96] Wetlands Protection Act, Amendment to S.B. 771, § 30(f).
[97] Wetlands Protection Act, Amendment to S.B. 771, § 30(b).
[98] Wetlands Protection Act, Amendment to S.B. 771, § 25(c).

mitigation banks. These mitigation measures are also subject to a mitigation ratio of at least 5:1.
- Projects impacting Class II wetlands require the same mitigation measures as those impacting Class I wetlands. However, these mitigation measures are subject to a lower mitigation ratio of 3:1.
- Projects impacting Class III wetlands only require mitigation through "an approved wetland mitigation bank or an approved in-lieu fee program."[99] The required mitigation ratio is only 1.5:1 if using mitigation banks, and 2:1 if using an approved in-lieu fee program.

The bill also authorizes regulated entities such as state agencies, municipalities and other units of local governments, and private companies or non-profits to create mitigation banks. Any mitigation bank must include a mitigation bank instrument, long-term management and protection plan, monitoring requirements, remedial action procedures, reporting requirements, and financial assurances such as performance bonds.[100] The bill authorizes IDNR to issue regulations regarding the approval of mitigation banks.[101]

e. Restoration Policy

The bill also mandates that any penalties collected by the IDNR from the wetlands program be deposited into a newly created Wetlands Protection Fund. This Fund will be housed in the state treasury, separate and distinct from the General Revenue Fund. No monies from the Fund may be used to pay for compensatory mitigation requirements under the bill. The bill identifies approved uses of the Fund, such as:

- providing technical assistance and grant funding to restore, preserve, enhance, protect, or maintain wetlands, streams, and upland buffers, particularly Class I areas or wetlands,
- supplementing other State, local, or private funding for non-compensatory wetlands and small streams restoration, and
- providing matching funds for wetland and stream inventories, mapping, watershed planning, and wetland program development grants.[102]

IX. Conclusion - How *Sackett* Will Impact the State's Wetlands Programs

Most observers expect the *Sackett* decision to place a significant proportion of Illinois' wetlands outside federal Clean Water Act protections. While the exact proportion is unknown, some of the most informative early data comes from EDF's database tracking federal wetlands jurisdictional

[99] Wetlands Protection Act, Amendment to S.B. 771, § 25(c)(3).
[100] Wetlands Protection Act, Amendment to S.B. 771, § 35.
[101] Wetlands Protection Act, Amendment to S.B. 771, § 40.
[102] Wetlands Protection Act, Amendment to S.B. 771, § 60.

determinations pre- and post-*Sackett*. This tracking tool shows a 12 percent decline in the proportion of Illinois wetlands deemed within federal jurisdiction since the *Sackett* decision.

For Illinois wetlands newly outside of federal jurisdiction because of the *Sackett* decision, the only ones that currently retain some level of protection at the state level are 1) wetlands potentially impacted by a state-funded project (due to the IWPA) and 2) those within 100-year floodplains (due to the Rivers, Lakes, and Streams Act). The *Sackett* decision will not affect the existing programs under these statutes.

Still, the *Sackett* decision will impact some other state programs, namely the state's § 401 water quality certification program. Water quality certifications directly rely on the federal definition of "waters of the United States," and they are only required for applications for federal licenses or permits. Given the decrease in jurisdictional wetlands after Sackett, fewer geographical areas will require federal CWA permits, which may result in a corresponding decrease in required state water quality certifications.

Illinois' General Assembly will consider a bill to fill the gaps in wetlands regulation left by *Sackett* in its November veto session. That bill, the Wetlands Protection Act, would give the IDNR authority similar to the Army Corps' § 404 authority and apply it to all wetlands in the state using a state-specific and broad definition of wetlands. If the Wetlands Protection Act passes and is sufficiently funded, the *Sackett* decision's impact on Illinois would be mostly void, barring the increased burden on state agencies.