As the Silt Settles: State Wetlands Programs After *Sackett*

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I. INTRODUCTION

As the United States passes the second anniversary of the Supreme Court's landmark *Sackett v. United States Environmental Protection Agency* opinion, the proverbial silt is just beginning to settle at the state

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level. In redefining the jurisdictional hook—"waters of the United States" (WOTUS)—for several Clean Water Act (CWA) programs, the Court drastically disturbed the federal-state division of responsibilities in protecting, among other waters, wetlands that do not have a continuous surface connection to a body of water that is jurisdictional in its own right.[1] Several states without independent or comprehensive programs for these formerly jurisdictional waters must confront a colossal undertaking to restore the protection lost.

While the full extent of the on-the-ground impacts of *Sackett* will continue to unfold in years to come, a brief digest of several state actions provides valuable insight into evolving substantive responses. This essay discusses state action that has either been enacted or proposed in direct or indirect response to the *Sackett* decision, focusing only on wetland-specific initiatives. Where appropriate, this essay also describes the general applicability of post-*Sackett* actions for states seeking to create or strengthen programs for former WOTUS wetlands.

II. ENACTED SAFEGUARDS FOR STATE WETLAND PROTECTION

A. Colorado

Four days after the Court issued its *Sackett* opinion, the governor of Colorado signed into law a bill, House Bill 24-1379, establishing Colorado's first dredge-and-fill program for state waters.[2] Prior to *Sackett*, Colorado had neither a permitting regime for the discharge of dredged and fill material into state waters nor a definition of "state waters" that expressly included wetlands.[3] House Bill 24-1379 established both, earning Colorado first place among all states without dredge-and-fill programs to enact legislation that protects some former WOTUS following *Sackett*.

Recognizing that the newly restricted federal regime has created regulatory uncertainty for projects involving the discharge of dredged and fill material, the Colorado legislature directed the state Department of Public Health and the Environment (CDPHE) to promulgate regulations

1. Sackett v. United States Env't Prot. Agency, 598 U.S. 651, 678-79 (2023).

2. H.B. 24-1379, 74th Gen. Assemb., Reg. Sess. (Colo. 2024) (codified at COLO. REV. STAT. § 25-08-205.1 (2024)).

3. *Id.* (explaining that the state has relied on the Corps' CWA section 404 permitting program for the authorization of dredged and fill material into state waters and it is in the interest of the state to expressly include "wetlands" in the definition of "state waters"); *but see* 5 COLO. CODE REGS. § 1002-31 (2024) (demonstrating the understanding of the state agency responsible for certifying CWA section 404 applications to broadly, but only impliedly, include wetlands in the definition of "state waters").

implementing a state dredge-and-fill program that are "at least as protective as the guidelines developed pursuant to section 404(b)(1) of the [CWA]."[4] Thus, the CWA section 404(b)(1) guidelines will largely apply to some wetlands in Colorado that were previously subject to federal jurisdiction.[5]

States without dredge-and-fill programs, particularly those with a significant presence of intermittent waters like Colorado, may look to Colorado's approach as a potential legislative model. In doing so, states can develop frameworks that adapt elements of the former federal regime where appropriate while extending jurisdiction over state waters as necessary. This strategy can allow states to tailor the protection of their unique water resources while maintaining continuity with familiar regulatory frameworks.

House Bill 24-1379 also requires CDPHE to issue a statewide general authorization specifically for discharges to isolated state waters, meaning "isolated wetlands, isolated ponds and impoundments, and ordinary highwater mark reaches."[6] Under the bill, for example, the "isolated wetlands" that may fall under the statewide general authorization must be "wholly surrounded by uplands" and within neither the 100-year floodplain nor 1,500 feet of the ordinary high water mark of other state waters.[7] While dischargers to isolated state waters under the general authorization are not required to submit preconstruction notifications, the general authorization must "identify best management practices to protect" the receiving waters.[8] This requirement—though far from a strict command-and-control-type lever—is another avenue through which Colorado can protect some former WOTUS.

4. COLO. REV. STAT. § 25-08-205.1(4)(a)(IV) (2024); Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 C.F.R. pt. 230 (2024) (detailing the EPA's evaluation criteria used in making determinations under section 404 of the CWA).

5. *Draft Rule Notes from the Division—12-02-2024*, COLO. DEP'T OF PUB. HEALTH & ENV'T, https://docs.google.com/document/d/1ldpUbttBvmmXbZ4JpABOpt1qVedfirTpHDTnjN74hjw/edit?tab=t.0#heading=h.5g9gfhg5oude (last visited Jan. 31, 2025) (CDPHE has signaled in stakeholder meetings that the regulations likely will not incorporate subpart J of the 404(b)(1) guidelines regarding compensatory mitigation requirements. CDPHE "believe[s] there is flexibility in implementation that will benefit [Colorado's] program while still resulting in equivalent protection.").

6. COLO. REV. STAT. § 25-08-205.1(5)(b)(III)(A) (2024).

7. COLO. REV. STAT. § 25-08-205.1(3)(p) (2024).

8. COLO. REV. STAT. § 25-08-205.1(5)(b)(III)(C) (2024).

B. New Mexico

As of this essay, New Mexico is one of three states without delegated authority from the U.S. Environmental Protection Agency (EPA) to issue National Pollution Discharge Elimination System (NPDES) permits. However, in 2023, Governor Lujan Grisham approved the transfer of seven million dollars from the state general fund to the water quality management fund for the state Environment Department (NMED) to develop and administer state surface water and groundwater permitting programs.[9] In accordance with this appropriation, NMED has initiated processes to: 1) receive CWA section 402 delegation to administer the NPDES program on behalf of EPA, and 2) establish "a new state permitting program to fill [*Sackett* gap waters] and control the discharge of pollutants, including dredged and fill materials, into surface waters of the state" under existing statutory authority.[10]

The establishment of either program will take several years to complete.[11] In the interim, New Mexico surface waters that are no longer WOTUS are at greater risk of contamination and degradation. Despite its new obligations, New Mexico is uniquely situated as the first state in the process of developing both a robust surface water permitting regime and a state-level dredge-and-fill program in the wake of *Sackett*. States, like New Mexico, that are confronting similarly onerous legislative and regulatory undertakings can draw insights from New Mexico's lessons learned and successes won.

C. Maryland

Maryland, a state with a fairly comprehensive wetland permitting program, has taken additional, post-*Sackett* steps to improve elements of its water quality protection strategies.[12] Approximately one year after

9. H.B. 2, 56th Leg., First Reg. Sess. (N.M. 2023); *see also* OFFICE OF THE GOVERNOR MICHELLE LUJAN GRISHAM, 50-YEAR WATER ACTION PLAN 16 (2024) (explaining that an "immediate next step" for New Mexico is to "fund the [NMED]'s five-year plan to build the surface water discharge permitting program," and to "enact legislation to remove any statutory barriers to full program development and assumption of federal program authorization" by 2025).

10. *Surface Water Quality State Permitting Program*, N.M. ENV'T DEP'T, https://www.env.nm.gov/surface-water-quality/spp/ (last visited Jan. 31, 2025).

11. *See* N.M. ENV'T DEP'T, SURFACE WATER ADVISORY PANEL (SWAP) FINAL REPORT (2025) (available at https://www.env.nm.gov/surface-water-quality/wp-content/uploads/sites/18/2025/01/Final-SWAP-Report-full-2025-01-09.pdf) (detailing the steps that, as of January 2025, the SWAP has taken to establish the state surface water quality permitting program).

12. *See* Jim McElfish, *State Protection of Nonfederal Waters: Turbidity Continues*, 52 ENV'T. L. REP. 10,679, 10,686 (2022) (citing Maryland's nontidal wetlands and freshwater resources permitting regime).

Sackett, Maryland passed the Clean Water Justice Act (CWJA).[13] The CWJA does not amend the definition of Maryland "state waters," but rather authorizes persons with standing to file civil lawsuits for violations of Maryland's wetlands and waterways protection laws.[14]

Because the scope of WOTUS has been drastically reduced, the ability of injured plaintiffs to initiate civil actions under the CWA against polluters illegally discharging into WOTUS has similarly narrowed. By enshrining a state-level citizen suit provision, Maryland has ensured injured members of the public can still be made whole in the event the state government fails to fulfill its environmental enforcement obligations. Measures like the CWJA help supplement and drive accountability in governmental enforcement.

D. California

Generally recognized as a state with a comprehensive regulatory program for state waters, California took additional action following *Sackett* to strengthen its wetlands protection strategy. In 2024, California codified a policy of "no net loss of and long-term gain in the quality, quantity, and permanence of wetlands acreage and values . . ." that first originated from a 1993 gubernatorial executive order.[15] Notably, the state legislature's intent in implementing this policy "is not measured on a permit-by-permit basis," but rather "will take efforts on multiple scales to achieve."[16] The codification of the no net loss policy serves as a model for states seeking to leverage existing or dormant policies that strengthen protection for wetlands and other state waters.

III. ENACTED REDUCTIONS OF STATE WETLAND PROTECTION

A. Indiana

Indiana is one of several states that enacted an isolated wetlands regulatory program following the Supreme Court's *Solid Waste Agency of Northern Cook County* decision in a bid to, among other objectives,

13. H.B. 1101, 446th Gen. Assemb., Reg. Sess. (Md. 2024) (codified at MD. CODE ANN., ENV'T §§1-901-1-904 (West 2024)).

14. *Id.*

15. A.B. 2875, 2024 Leg., Reg. Sess. (Cal. 2024) (codified at CAL. WATER CODE §§ 16,200-16,201 (West 2025)).

16. *Id.* (describing such efforts as "thoughtful project design and implementation, conservation of wetlands, restoration of wetlands, and landscape scale conservation planning.").

"promote a net gain in high[-]quality isolated wetlands."[17] Through this program, Indiana's wetlands are organized into one of three classes with varying levels of permitting requirements associated with each class. In 2024, however, the state legislature signed into law House Bill 1383, amending the statutory provisions that define the classes of and permitting requirements for the state's isolated wetlands.[18]

Class III isolated wetlands are intended to receive the highest degree of the state's protection from development activities.[19] A Class II designation refers to isolated wetlands that meet certain criteria, such as whether the wetland generally does not support habitat for rare, threatened, or endangered species.[20] Impacts to Class II wetlands are exempt from permitting requirements if the receiving wetland is equal to or less than three-fourths of an acre, if located within a municipality, or three-eighths of an acre, if located outside of a municipality.[21] Through House Bill 1383, the General Assembly redesignated many Class III wetlands as Class II wetlands. Together with the impacts of an earlier law that reduced permitting requirements for Class II wetlands, House Bill 1383 reduced the level of protection for high-quality wetlands that had been intended to fill gaps in coverage between the federal and state permitting regimes.[22]

17. IND. CODE ANN. §§ 13-18-22-1–13-18-22-12 (2024); Solid Waste Agency of Northern Cook Cty. v. United States Army Corps of Eng'rs, 531 U.S. 159 (2001) (determining that the Corps' asserted jurisdiction over an isolated sand and gravel pit with seasonal ponds located wholly within one state exceeded the agency's delegated authority under the CWA); H.B. 1798, 114th Gen. Assemb., Second Reg. Sess. (Ind. 2004) (establishing the "goal[s] of the permitting program for wetland activities in state regulated wetlands [are] to: (1) promote a net gain in high quality isolated wetlands; and (2) assure that compensatory mitigation will offset the loss of isolated wetlands allowed by the permitting program") (provision regarding the permitting goals repealed by S.B. 389, 122nd Gen. Assemb., First Reg. Sess. (Ind. 2021)).

18. H.B. 1383, 123rd Gen. Assemb., Second Reg. Sess. (Ind. 2024) (codified, in part, at IND. CODE ANN. § 13-11-2-25.8 (West 2024)).

19. *See* IND. CODE ANN. § 13-11-2-25.8(a)(3) (West 2024) (Class III wetlands must satisfy one of fourteen enumerated "ecologically important [wetland] types" or one of six enumerated "rare and ecologically important [wetland] types." Rare and ecologically important wetland types must also be undisturbed or minimally disturbed by human activity and support non-*de minimis* species habitat or hydrological function).

20. *Id.* at § 13-11-2-25.8(a)(2) (Class II wetlands either: 1) support moderate habitat or hydrological functions but generally do not have the presence of, or habitat for, rare, threatened, or endangered species; or 2) satisfy Class III wetland criteria and either support less than minimal wildlife or aquatic habitat or hydrological function or are minimally disturbed by human activity or development).

21. *Id.* at § 13-11-2-74.5(a)(6).

22. *See* S.B. 389, 122nd Gen. Assemb., First Reg. Sess. (Ind. 2021) (excluding Class I and Class II wetlands from certain permitting requirements).

These changes—though seemingly less severe in isolation—have chipped away at a program intended to fill gaps in coverage between federal and state jurisdiction over isolated wetlands.

B. North Carolina

In 2023, the North Carolina legislature included within its 2023 Farm Act a provision that inseparably bound the definition of state wetlands to the federal WOTUS definition, as defined in the CWA implementing regulations.[23] After his executive veto over this provision was overridden by the legislature, Governor Cooper activated a similar policy objective to protect the state's wetlands through an executive order. Executive Order 305 directs cabinet-level agencies to "permanently conserve one million new acres of [state] lands," with a particular focus on wetlands, and to "restore or reforest one million new acres of North Carolina's forests and wetlands."[24] Notably, Executive Order 305 expressly uses a common scientific definition of wetlands that "does not depend on state or federal law and is intended to be broader in scope than current law" for purposes of the order.[25]

The post-*Sackett* example in North Carolina offers other states a distinctive example of how gubernatorial executive authority can be exercised to counter the loss of state-level wetlands protection.

C. Tennessee

In May 2025, Tennessee amended its Water Quality Control Act, modifying the regulation of the state's isolated wetlands.[26] Under the new law, an "isolated wetland" is 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."[27] The new law also creates a tiered regulatory system for such isolated wetlands, classifying them into one of four separately defined categories—artificial, low-quality,

23. S.B. 582, 2024 Leg., Reg. Sess. (N.C. 2024) (referencing 33 C.F.R. § 328.3 and 40 C.F.R. § 230.3).

24. N.C. Exec. Order No. 305 (Feb. 12, 2024), https://governor.nc.gov/executive-order-no-305/open.

25. *Id.*

26. S.B. 670, 114th Gen. Assemb., Reg. Sess. (Tenn. 2025); H.B. 541, 114th Gen. Assemb., Reg. Sess. (Tenn. 2025).

27. S.B. 670, 114th Gen. Assemb., Reg. Sess. (Tenn. 2025) (amending Tenn. Code Ann. § 69-3-103).

moderate-quality, and high-quality—that correspond to different permitting and mitigation requirements.[28]

For example, there are no permitting or mitigation requirements for alterations to low-quality isolated wetlands that are equal to or less than one acre in size, moderate-quality isolated wetlands that are equal to or less than one-quarter of an acre in size, or artificial isolated wetlands of any size, provided that certain conditions are met.[29] Coverage under the state's general permits for aquatic resource alterations is required for alterations of low-quality isolated wetlands that are greater than one acre and up to two acres in size and moderate-quality isolated wetlands that are greater than one-fourth of an acre and up to two acres in size.[30] Coverage under the state's preexisting permitting regime for alterations to low- and moderate-quality isolated wetlands is required when the affected wetland is greater than two acres.[31]

Certain mitigation requirements "may be required" for alterations of low-quality and moderate-quality isolated wetlands depending on the acreage of the affected wetland; however, the new rule does not explain when this requirement would apply.[32] Additionally, "isolated wetlands and artificial isolated wetlands must not be considered when determining the cumulative impact of a project for purposes of a permit even if the project contains other wetlands that [the U.S. Army Corps of Engineers] deems are jurisdictional."[33]

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28. *Id.* (defining "artificial isolated wetlands" to mean, generally, wetlands that are formed as a result of human alterations or those intentionally constructed for an engineered use; "low-quality isolated wetland" to mean "an isolated wetland that only provides minimal ecological, hydrologic, and biogeochemical functions, as measured by the [Tennessee Department of Environment and Conservation's (TDEC)] wetland resource assessment tool; "moderate-quality isolated wetland" to mean "an isolated wetland that provides only modest ecologic, hydrologic, and biochemical functions as measured by the [TDEC's] wetland resource assessment tool;" and "high-quality isolated wetland" to mean "an isolated wetland that provides a high degree of ecologic, hydrologic, and biogeochemical functions, as measured by the [TDEC's] wetland resources assessment tool").

29. *Id.* (stating that such alterations must not result in the discharge of any toxic pollutants, petroleum products, or other chemical pollution into waters of the state and that "sediment must be prevented from entering a stream or other surface water").

30. *Id.*

31. *Id.*

32. *Id.* (prescribing that if the low-quality isolated wetland is greater than one acre, the compensatory mitigation requirement cannot exceed a 1:1 ratio. A 1:1 compensatory mitigation ratio "may" apply for alterations to moderate-quality isolated wetlands if the acreage is between one-fourth of acre to one acre, and a 2:1 ratio "may" apply for alterations to moderate-quality isolated wetlands that are greater than one acre and up to two acres.).

33. *Id.*

Some groups have estimated that a large percentage of Tennessee's total isolated wetlands are less than two acres in size.[34] Under the new statutory scheme, these smaller, low- and moderate-quality isolated wetlands will now be subject to little to no regulatory oversight. While the full extent of the impacts of this new regime will continue to unfold in years to come, Tennessee will likely lose invaluable, often irreplaceable, wetland resources and their economic and ecological functions.

IV. LEGISLATIVE GRAVEYARD OF PROPOSED WETLAND SAFEGUARDS

A. Virginia

In early 2024, House Bill 357 was introduced in Virginia and proposed to require the state Department of Environmental Quality to convene a working group to develop strategies and plans for wetland protection in the Commonwealth.[35] Specifically, the working group would have been directed to conduct a comparative analysis of state wetland conservation strategies, identify locations for tidal wetland adaptation, and study the impacts of climate change and anthropogenic activities on the Commonwealth's wetlands.[36] While House Bill 357 ultimately died in committee, it signaled support from some state lawmakers to continue strengthening the state's waters and wetlands program via nonregulatory means.[37]

B. Delaware

Legislation was introduced in 2024 in Delaware—a state reliant on the federal WOTUS regime to protect freshwater and nontidal wetlands—that would have amended the state's Wetlands Act. The existing Wetlands Act requires a permit for "[a]ny activity [meaning, among other activities, dredging and filling] in the [state] wetlands," unless otherwise

34. *See* Cassandra Stephenson, *Environmentalists: Second Attempt at Wetlands Bill Would Leave 80% Vulnerable to Development*, TENN. LOOKOUT (Mar. 20, 2025), https://tennesseelookout.com/2025/03/20/environmentalists-second-attempt-at-wetlands-bill-would-leave-80-vulnerable-to-development/ (citing George Nolan, Tennessee director of the Southern Environmental Law Center, who said that an estimated eighty percent of Tennessee's wetlands are smaller than one acre, and the Harpeth River Conservancy, which stated that ninety-four percent of Tennessee's individual isolated wetlands are smaller than two acres).

35. H.B. 357, 2024 Leg., 405th Sess. (Va. 2024).

36. *Id.*

37. *See* McElfish, *supra* note 12, at 10,684 (describing Virginia's nontidal wetlands and freshwater resources program as fairly comprehensive); VA. CODE. ANN. §§ 62.1-44.5, 62.1-44.15 (2022); 9 VA. ADMIN. CODE §§ 25-210-10–25-210-260 (2022).

exempted.[38] Under this Act, the term "wetlands" generally only includes tidal wetlands.[39] Senate Bill 287 proposed to establish a state nontidal wetlands program within the Wetlands Act to protect the approximate "75,000 acres" of newly non-WOTUS wetlands in the state following *Sackett*.[40] The Delaware General Assembly has considered, but failed to pass, similar legislation to establish a nontidal wetlands program six times since 1988.[41] Like its predecessors, Senate Bill 287 died in committee.

C. Illinois

In 2024, Illinois lawmakers introduced companion pieces of legislation, House Bill 5386 and Senate Bill 3669 (collectively, the Wetlands and Small Streams Protection Act), that sought to create a permitting regime for the dredge and fill of non-WOTUS waters. The Wetlands and Small Streams Protection Act, in part, would have supplemented the state's existing permitting regime for impacts to non-WOTUS wetlands resulting only from state-funded activities by extending the permitting requirements to apply to impacts resulting from any development activity, regardless of relationship to state funds. This Act did not pass in the 2024 legislative session; however, a similar bill may be reintroduced in forthcoming legislative sessions.

V. LEGISLATIVE GRAVEYARD OF PROPOSED REDUCTIONS IN WETLAND PROTECTION

A. Florida

Companion bills filed in late 2023 in Florida sought to require counties and municipalities to purchase buffer zones for land or water delineations that exceed the delineations made by the state Department of Environmental Protection (FDEP) or by water management districts.[42]

38. DEL. CODE ANN. tit. 7, §§ 6603(a), 6604 (2024).

39. DEL. CODE ANN. tit. 7, § 6603(h) (also including in the wetlands definition "those lands not currently used for agricultural purposes containing 400 acres or more of contiguous nontidal swamp, bod, much, or marsh . . . which contribute significantly to ground water recharge, and which would require intensive artificial drainage . . .").

40. S.B. 290, 152nd Gen. Assemb., Reg. Sess. (Del. 2024).

41. Zöe Read, *Delaware Lawmakers Revise Wetland Legislation amid Concerns from Farmers and Developers*, WHYY (May 17, 2024), https://whyy.org/articles/delaware-wetland-nontidal-legislation-farming-clean-water-act/.

42. S.B. 664, 2024 Leg., Reg. Sess. (Fla. 2024) (also prohibiting the county or municipality from using the power of eminent domain to purchase such buffer zones); H.B. 527, 2024 Leg., Reg. Sess. (Fla. 2024) (requiring the county or municipality from using the power of eminent domain to purchase such buffer zones).

Both bills also "preempted the regulation of all dredge and fill activities to FDEP."[43] If either bill passed, it would have presumably limited the ability of local governmental authorities to protect wetlands and other natural areas from pollution.

B. Missouri

Legislation was introduced in 2024 in Missouri that would have amended the statutory definition of "waters of the state."[44] Among other amendments, Senate Bill 981 would have adopted a functionally identical definition of wetlands as mandated by the *Sackett* Court and included subsurface aquifers as "waters of the state" only if they had surface connections to "relatively permanent, standing, or continuously flowing rivers and streams."[45] By removing coverage for many surface and subsurface waters in Missouri, Senate Bill 981 would have had far-reaching implications. Included among them would have been the deregulation of the primary source of the state's drinking water.[46]

VI. LEGISLATIVE LIMBO OF SAFEGUARDS FOR WETLAND PROTECTION

A. Delaware

As previously discussed, the Delaware General Assembly has made several attempts over the past few decades to protect nontidal wetlands.[47] While none of these efforts has yet resulted in the expansion of the permitting program to include nontidal wetlands, the efforts are far from extinguished. As recently as 2023, the General Assembly required the state Department of Natural Resources and Environmental Conservation (DNREC) to study what authorizations would be needed for the creation of a state nontidal wetlands program, with express attention paid to the federal-state legal landscape following *Sackett*.[48] DNREC's post-*Sackett* recommendation for the state legislature is to amend the existing tidal wetland program to expressly include federally unregulated wetlands and

43. S.B. 664, 2024 Leg., Reg. Sess. (Fla. 2024); H.B. 527, 2024 Leg., Reg. Sess. (Fla. 2024).

44. S.B. 981, 102nd Gen. Assemb., Second Reg. Sess. (Mo. 2024).

45. *Id.*

46. Therese Wilkerson, Sackett *and Stitching Together of Nonfederal Environmental Law*, THE ENV'T. FORUM (July/Aug. 2023).

47. Read, *supra* note 41.

48. S. Con. Res. 86, 152nd Gen. Assemb., Reg. Sess. (Del. 2023).

seek additional state programmatic general permits for activities in priority wetlands.[49]

B. Navigating the Future

The full impacts of *Sackett* will continue to emerge as states and federal agencies adapt to the new regulatory landscape. States seeking to restore the former federal regime's protections will need political will, substantial and sustained financing, experienced personnel, and legal expertise to determine whether and how they can address the regulatory voids created by the *Sackett* decision.[50] As states develop new wetland protection strategies, they can act as both participants and observers in the collective laboratory of ideas, learning from and contributing to each other's emerging approaches and creative solutions.

49. OPTIONS FOR A NONTIDAL WETLAND PERMITTING PROGRAM, SJR 2—REPORT TO THE GOVERNOR AND LEGISLATURE, DEL. DEP'T OF NAT. RES. & ENV'T CONTROL (Sept. 29, 2023) (on file with the author).

50. *See* McElfish, *supra* note 12, at 10,687-92 (inventorying state stringency and qualified stringency limitations that may affect states' abilities to develop or strengthen their wetlands programs).