

## Introduction to the 2026 Edition

This edition of *The Law of Wetlands Regulation* describes the Corps and Environmental Protection Agency issuing a proposed regulation interpreting the 2023 United States Supreme Court case *Sackett v. EPA*. (2:9)

Other highlights of this Release include:

- A district court applying *Sackett* rejected the Corps' wetlands determination on the basis that intermittent flow was not sufficient to meet the minimum requirement of at least three months flow during the year and because the Corps did not set forth factual findings as to the amount of flow. (4:18)
- Another district court rejected jurisdiction under *Sackett* because the plaintiff's allegations amounted to no more than conclusory recitals of an element of a Clean Water Act violation and thereby failed to prove a continuous water connection. (4:18)
- The Fifth Circuit upheld the Corps' public interest determination, ruling that the Corps could assess benefits broadly under the public interest standard but not discount them by costs that are determined in the NEPA process. (6:11)
- The Sixth Circuit ruled that mitigation required after a permit issuance can be used to satisfy the Section 404(b)(1) Guidelines that the proposed activity is the least damaging alternative. (6:20)
- A district court rejected a challenge to the notice which went to the wrong recipient, finding that the defendant's response to the notice demonstrated the notice had been received. (8:17)
- A district court dismissed a challenge to a wetlands jurisdictional determination made before the Supreme Court's *Sackett* which established new criteria for wetlands jurisdiction under which the area would not be classified as jurisdictional wetlands. (9:7)