

JUNE 2023  
2ND QUARTER



**EXECUTIVE DIRECTOR**

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**WEBSITE**

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**TNSA Regional Chairs**

South East

Autumn Friday

North East

Amanda McMullen

East

Maddy Johnson

Middle

Don Green

West

Chris Masin

North West

Tom Lawrence

# TNSA Times

Tennessee Stormwater Association  
Quarterly Newsletter

## A Message From the Executive Director

PAGE 1

**Summer came, winter went,  
Snow is melting  
I am thirsty to drink,  
Without water we cannot live,  
Every drop is precious.**

Flower Prince

Hello TNSA Members,  
Summer has arrived! It's a time to enjoy the fruit of your labor and hard work. Most of us spend time in the water cooling off and enjoying time with family and friends. While boating, camping, fishing or swimming remember how you contribute to the health of our waters. You all are working towards a common goal and it is so important to our livelihood and future.



I hope you will find this newsletter, as well as the stormwater materials we have available, useful in your local river, lake and wetland protection work. Because stormwater is everywhere, it touches every aspect of our life in one way or another. Stay positive and keep going. When you see an obstacle go around or through it, those are your only choices.

Thank you for all of the wonderful work you are doing throughout Tennessee. I look forward to seeing and hearing from you this year.

*Best wishes,*

*Charlene DeSha  
Executive Director*

## 2023 TNSA ANNUAL CONFERENCE

“Back 2 Basics”

OCTOBER 24-26, 2023

MONTGOMERY BELL STATE PARK

Conference Fees:

TNSA Member Early Bird: \$300 (Regular \$350)

Non-Member Early Bird: \$350 (Regular \$400)

Early Bird Ends September 30, 2023

<https://www.tnstormwater.org/tnsa-conference>

Save the Date: October 22-24, 2024



We have booked Montgomery Bell State Park for the next 2 years.

October 24-26, 2023, Workshop October 23, 2023

Rooms are ready to reserve with Group Code 2543

If you are interested in a cabin call ASAP. The state will no longer hold cabins with a group code.

Call or book rooms online with group code 1-888-867-2757

October 22-24, 2024, Workshop October 21, 2024

**DO YOU HAVE TOPICS FOR TDEC YOU WOULD LIKE COVERED AT CONFERENCE?  
EMAIL THEM TO CHARLENE BY SEPTEMBER 1.**

## Upcoming Regional Meetings

Regional meetings are held each quarter. You do not have to be a TNSA member to attend a meeting. Region meetings are a great way to keep updated within your area and the state. Meet like-minded professionals, network, learn about statewide events and new ideas within the stormwater community.

Available agendas are posted in Club Express Document Library: <https://tnsa.clubexpress.com/>

**East:** Friday, September 8 (Alcoa) & December 1 (Knoxville). Networking 8:30am, Meeting 9:00am-11:30am.  
Region Chair: Maddy Johnson

**West:** Tuesday, September 5 & December 5 1:00pm-3:00pm. Region Chair: Chris Masin  
International Harvester Park 4523 Canada Rd Lakeland, TN 38002

**North West:** Wednesday, September 6 (Brownsville), December 6 (Martin). 11am. Region Chair: Tom Lawrence

**Middle:** Thursday, September 7, December 7, 10am-12pm. Region Chair: Don Green

**South East:** September 13 & December 12 Region Chair: Autumn Friday  
10:30 am. Enterprise South Nature Park 190 South Hollow Loop Chattanooga, TN 37416

**North East:** September 15 & December 13. 1pm-3pm. Region Chair: Amanda McMullen  
Kingsport Water Services Operation Center 1113 Konnarock Rd, Kingsport, TN 37664

Region chairs are always looking speakers at the meetings. If you are interested in speaking please contact the region chairs. The chairs arrange the meetings and set the agendas.

For updated meeting information visit our website event calendar.

**\*\* Meeting Dates/Locations are subject to change \*\*** Email the region chair if you would like to be added to a specific region email list.

## Committee Updates

**Public Outreach:** Creates Education Resources

**Chair: Tom Lawrence, Thomas Lawrence Engineering**

The TNSA Public Education and Outreach Committee has continued to move forward, completing several important milestones. At the moment the Homeowners Association brochure and 1-page pdf are at the final stages. TNSA currently sells the Homeowner Guide to Clean Water & EPA "After the Storm" brochures and TENS! the Turtle Children's Activity booklet/stickers. To purchase visit: <https://www.tnstormwater.org/ed>

**Education:** Manages and Creates Educational Training and Resources

**Chair: Tim Gangaware, UT Water Resources Research Center**

### UPCOMING EVENTS

TNSA Talk: TDEC's ARP Competitive Grants

Thursday, July 13, 2023, 4pm Eastern Time Free to attend on Zoom.

Registration Required: <https://www.tnstormwater.org/tnsatalks>

We are interested in continuing TNSA Talks this year. TNSA Talks are one hour and hosted on Zoom. PDH's are included. Please let Charlene know if you are interested in speaking. Schedule and times are flexible.

The committee is exploring the next workshop series. Keep a lookout for a short survey in order to help the education committee determine the new initiative. If you have any ideas please send them to Charlene DeSha. They are also looking for at least one (1) committee member from each region. Let us know if you would like to serve. Committee meetings are on Zoom.

## Committee Updates Continued...

**INTERESTED IN BEING MORE INVOLVED? CONSIDER PARTICIPATING IN A COMMITTEE. POLICY, CONFERENCE, EDUCATION, COMMUNICATION, SCM AND PUBLIC OUTREACH CONTACT THE COMMITTEE CHAIR.**

**SCM:** Standardizes Device Evaluation and Develops SCM Toolkit.

**Chair: Jacob Dorman, Contech**

The committee finalized the *Designing for SCM Maintenance Guide* in February 2023. This can be accessed through the TNSA website on the Newsletter/Library page or with the Club Express document library. An abstract has been submitted for the TNSA Annual Conference regarding the document. The committee is exploring their options for future projects.

**Communication:** Goal is to work on communication within and outside of the organization

**Chair: Aaron Rogge, CDM Smith**

Did you know that the Communication Committee now provides editing and proofreading for your public-facing materials? If you have graphics or other informational materials that need a read-through, contact Aaron Rogge and the committee can help with everything from basic spelling to technical research. Don't know where to start? The committee is also developing a bank of material to help you produce content that will meet your MCMs. Contact the committee today if you need images, video, or print material. Be on the lookout for TNSA Talks on Youtube! Sessions from the past few years are now available on the world's most popular streaming site. This will allow for easier sharing and simpler searches for high-quality material that is relevant to your program.

The videos can be found under TNSA's channel: <https://www.youtube.com/@tnsa>

**Policy:** Works with TDEC to share and update members on state and EPA regulations and policies;

**Chair: David Mason, CDM Smith**

John Chlarson with MTAS has completed the Model Ordinance for the new Small MS4 Permit. It has been submitted to the MTAS legal department and once approved will be sent to TDEC for final approval.

## TNSA TIPS AND UPDATES

### MEMBERSHIP RENEWAL UPDATE

It's TNSA Membership time! Membership runs from July 1-June 30 each year. Renewal is through the main contact on your Club Express account. Reminder emails were sent June 1 for those who would like to pay early. If you are not sure who your main contact is, you can look up this information in Club Express when you login to your account. If there has been a change in leadership please let Charlene know so we can update the contact information, please do not change the main contact yourself, Charlene needs to make this change. Memberships are lapsed after August 31, 2023. You must renew your membership in order to receive conference membership price.

### SOCIAL MEDIA CAMPAIGN

I am happy to announce this program has been extremely successful! We are just finishing up year 3 and starting year 4. The TNSA social media ad campaign is an annual subscription based program offered to TNSA members in order to help them achieve their public education outreach permit goals. The campaign is hosted on Facebook, Instagram and Twitter. The campaign consists of 24 ads which change bi-weekly, related to the season and activities for that month. MS4 participants have a link on the new TNSA Social Media website page where residents can access local information with their area. The ads are featured in the Facebook feed, when clicked it is linked to the TNSA website where participating MS4's will have a link to their Facebook page or website. We will be able to track clicks from Facebook as well as the clicks on our website. MS4 participants will receive the number results at the end of the year. The program has been approved by TDEC. The program runs from July 1-June 30 and can be renewed through Club Express when you renew membership. Prices are based on your MS4 population. For prices and additional information visit the website: <https://www.tnstormwater.org/ed>.

### CLUB EXPRESS TIPS

One of the best things about Club Express is being able to find contact information for members at your fingertips 365 days of the year. You must login to your account then click on Membership Directory on the menu. You can search by name, region MS4 name and more!!

## River flooding exposes deep problems with US infrastructure

by Jessica Goldstein, wsws.org via IECA News Brief

This week, the Mississippi River crested in the upper Midwest states of Illinois, Iowa, Minnesota and Wisconsin after days of rapid overflow and flooding from the end of April to the first week of May. Although the floods did not top the record-setting disaster of 2019, which saw water levels peak at 98.2 feet, millions of residents were affected and nearly completely devastated. The threat is not over, with meteorologists predicting major floods in the region through mid-May.

Most areas saw peaks in the top five flood levels for the area, and the peak of the river crest hit 22.8 feet, less than three feet below the record. Around Dubuque, Iowa, the river reached one of its top three flood levels ever recorded since the nineteenth century.

Floodwaters spilled into basements and submerged backyards in Iowa before the flooding peaked. On April 27, the National Weather Service issues 58 flood warnings across Illinois, Iowa, Minnesota, Missouri, and Wisconsin. But many residents had to deal with problems before that, and with some who have lived along the riverfront for years, the floods have become a chaotic and more regular feature of life as flood planning still remains disorganized and decentralized after decades of near-record and record crests amid the growing impact of the man-made climate change.

Residents who lived along the riverfront and whose homes were not protected from the flooding were evacuating as early as the beginning of April in Davenport, Iowa. To mitigate damage to property, many Iowans and others along the flooded riverfront have been left on their own to place sandbags around their homes or find shelter elsewhere. Janine Buckley, a Buffalo, Iowa, resident described the threat she and many working class people in the area faced to AccuWeather News: “We’re on our own little island, but it’s not fun. First, it was a little scary. Now, I’m just ready for it to be over...The biggest challenge is just getting out to the car and getting groceries.”

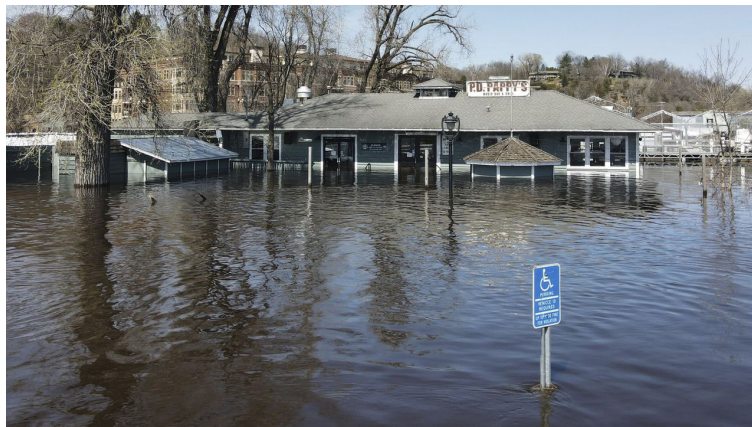
Iowa Republican Governor Kim Reynolds issued a disaster proclamation for Allamakee, Clayton, Clinton, Des Moines, Dubuque, Jackson, Lee, Louisa, Muscatine and Scott counties in late April, which allows state resources to be utilized for response and recovery from flood impacts. Another proclamation issued activated the Iowa Individual Assistance Grant Program and the Disaster Case Management Program for Clayton, Clinton, Dubuque, Jackson and Scott counties. These measures amount to too little, too late.

One of the main reasons that the flood did not surpass record levels was last year’s drought in Iowa, which nearly set a record and scorched crops in the state whose economy is heavily dependent on industrialized production of corn and soy. The dryer grounds soaked up much of the moisture caused by the record snow melt, highlighting the extent of the overall infrastructure crisis and how much more devastating it could have been.

The immediate cause of the flooding was the annual snow melt at the Mississippi River’s upper basin, which causes it to rise each year as air temperature warms. But this year, Minnesota and Wisconsin experienced record-setting snowfalls. The snow on the ground was especially heavy and wet, combined with a rash of unusually warm days in April that led to a faster and more intense melt than the affected areas were prepared to handle. Parts of the upper Mississippi also recorded up to four inches above average rainfall this season, exacerbating the overflow.

The more general causes of the devastating Mississippi River floods in the US Midwest over the past several decades—the record-breaking flood in 1993, [and floods in 2011](#), 2019 and now 2023—include climate change. According to the US National Oceanic and Atmospheric Association, “the Earth’s temperature has risen by an average of 0.14° Fahrenheit (0.08° Celsius) per decade since 1880, or about 2° F in total. The rate of warming since 1981 is more than twice as fast: 0.32° F (0.18° C) per decade.”

The US Environmental Protection Agency has long made the connection between rising global temperatures and the way in which these conditions increase the intensity and frequency of floods. It states, “As warmer temperatures cause more water to evaporate from the land and oceans, changes in the size and frequency of heavy precipitation events may in turn affect the size and frequency of river flooding.” Another important factor behind the cause of major flooding is human activity, including a lack of centralized planning and organization to mitigate damage from floods and for resident safety. The city of Davenport only has temporary flood barriers and does not have a permanent flood wall or levee system, unlike the neighboring cities of Bettendorf and Rock Island, despite having nine miles of riverfront prone to flooding.



P.D. Pappy's Music Bar and Grill is flooded by the rising St. Croix River in Stillwater, Minn., Tuesday, April 18, 2023. [AP Photo/Abbie Parr]

## **River flooding exposes deep problems with US infrastructure (continued)**

Davenport Mayor Mike Matson summed up the attitude of the ruling class in the area, stating to the Quad City Times, "It isn't a cost-effective solution now ... Where would you like us to get this money?" Davenport's website states that it received about \$41 million in federal COVID-19 relief funding through the American Rescue Plan Act in 2021, which was stated to be used "to improve quality of life for Davenport residents, to provide for immediate recovery needs, and to create a long-term investment for Davenport's future."

Even with the disastrous impact of the 2019 floods fresh in the memories of residents, little to none of this money appears to have been devoted to protecting them from environmental disasters. According to the Quad City Times, a survey conducted by the city showed that a majority of residents desire a permanent solution to the more frequent flooding along the Mississippi.

The refusal to provide flood protection for Davenport's mainly working class residents is part of a decades-long process of deliberate assault on social programs and infrastructure by the US ruling class. In Davenport alone, the US Army Corps of Engineers first proposed a flood control plan in 1969 after the devastating 1965 flood. The plan was reported to cost \$16.5 million, with the city's share at \$3 million, according to the Quad City Times archives, but it was not implemented.

The city decided against subsequent proposals in the following decade. In 1984, a proposal was made to build a \$34-million floodwall between the Government Bridge and Interstate 280 with the support of the Army Corps of Engineers. The permanent floodwall would have protected the city from floods up to 26.9 feet, higher than the recent crest, but it was withdrawn from the City Council and never funded.

For decades, Democratic and Republican lawmakers alike have given tax breaks to major corporations and stripped away regulations and social infrastructure spending to satisfy the private profit needs of corporate management and financiers, all at the expense of the working class. This has not only resulted in environmental damage produced by carbon emissions and rapacious business practices which have led to the rise in global temperature, but lifted any responsibility from the ruling class to take adequate measures to protect the population from natural disasters.

According to the 2021 Infrastructure Report Card issued by the American Society of Civil Engineers, US infrastructure for levees and stormwater management received a "D" grade, the second-lowest possible, which indicates "poor, at risk." Drinking water, wastewater and stormwater needs for the US as a whole require over \$1 trillion, and levees alone require \$80 billion.

## **2023 STORMWATER AND ENVIRONMENTAL CONFERENCES**

Tennessee Municipal League Conference July 22-25, 2023, Nashville  
 KY/TN Water Professionals Conference July 30-August 3, Memphis  
 TN Association of Floodplain Managers August 14-16, 2023, Franklin  
 StormCon August 28-30, 2023, Dallas, TX  
 TN Engineers Conference September 17-19, 2023, Franklin  
 SESWA October 4-6, 2023  
 TNSA Annual Conference October 24-26, 2023, Montgomery Bell State Park  
 Sustainability Solutions Symposium (Formerly TN Environmental Conference)  
 October 23-25, 2023, Kingsport  
 TCAPWA/SWANA Annual Conference November 13-15, Nashville



The Tennessee Stormwater Association is Tennessee's premier membership organization for stormwater professionals. TNSA's mission is to assist members with their local efforts to comply with State and Federal clean water laws; including stormwater regulations through EPA and TDEC (Tennessee Department of Environment and Conservation). TNSA's goal is to protect and improve the quality of the waters of Tennessee through the exchange of information and knowledge regarding design, construction, maintenance, administration and operation of stormwater facilities.

## **Georgia couple awarded \$135.5M for Polluted Land and Water**

COLUMBUS, Ga. (AP) — A federal jury has awarded a Georgia couple \$135.5 million for damages to their property by a Tennessee-based solar company and its contractor.

The award against Silicon Ranch Corp. and its contractor, IEA Inc., was announced Friday by James E. Butler, attorney for plaintiffs Shaun and Amie Harris who live near Lumpkin, Georgia, south of Columbus, WRBL-TV reported. According to the lawsuit, Silicon Ranch Corp. has developed more than 160 solar panel facilities across the country, many of which were built by IEA. At “Lumpkin Solar,” IEA cleared and mass-graded about 1,000 acres of timberland, farmland and land near the Harris couple that was previously used for recreational hunting and fishing — without installing adequate measures for erosion and sediment control, Butler said in a news release.

“The result was what one would expect — when it rained, pollution poured downhill and downstream onto the neighbors’ property, inundating wetlands with silt and sediment, and turning a 21-acre trophy fishing lake into a mud hole,” Butler said.

The companies “created, operated and maintained a nuisance ... that caused sedimentation to pollute plaintiffs’ wetlands, streams and lake. The court further finds that this nuisance has continued for approximately two years unabated,” U.S. District Judge Clay D. Land said in the order.

The jury returned a compensatory damage verdict of \$10.5 million.

In the punitive phase, where jurors consider an amount that would punish the companies for their actions, the panel found that SRC, IEA and an IEA subsidiary — IEA Constructors, LLC — acted with specific intent to cause harm. The jury imposed \$25 million in punitive damages against SRC, \$50 million against IEA Inc., and \$50 million against IEA Constructors, LLC, the news release said.

Westwood Professional Services Inc., the engineering firm that designed the erosion and sediment control plan for SRC and IEA, was released from any liability, the law firm said.

“The SRC/IEA litigation and trial strategy was to blame everyone else and deny responsibility,” said plaintiffs’ counsel, Dan Philyaw. “They blamed Westwood, they blamed Shaun and Amie, they blamed too much rain, and they blamed ‘erodible soils.’”

“Meanness is not neighborly,” Butler said in summarizing the case, “and it is a terrible litigation and trial strategy.” Silicon Ranch, located in Nashville, Tennessee, said in a statement emailed to The Associated Press that it would appeal the verdicts.

“We relied on our contractor to carry out this scope of work in compliance with applicable law and in keeping with industry best management practices, as specified by the appropriate regulatory bodies in the state of Georgia,” the company said.

“As the long-term owner of this facility, Silicon Ranch remains committed to the continued success of Stewart County and the surrounding region,” the company continued. “While we sincerely regret the unintentional damage to our neighbor’s property, Silicon Ranch does not believe the verdict in this trial is supported by the facts in this case.”

Source: <https://apnews.com/article/solar-company-land-pollution-verdict-7f04778f08e43fe11a30a517958de9a4>

### **Mid-South Clean Water Expo Update April 13, 2023 Shelby Park Farms in Memphis**

Morning sessions with TDEC and MS4 Panels. After lunch attendees were able to visit several clean water field demos. 85 attendees, 5 vendor/10 demos



### **West Trail Run, Lakeland May 6, 2023**

Inaugural trail race in West Region.  
48 runners and 15 WQ Booths



# KEEP TENNESSEE BEAUTIFUL AWARDS OF EXCELLENCE

Applications for the myTDOT/ KTnB 2023 Awards of Excellence grants are open. TDOT will be presenting 16 grants totaling \$47,000 to environmental leaders across the state of Tennessee at our biennial conference September 27-28, 2023 IN Chattanooga.

Visit [www.keeptnbeautiful](http://www.keeptnbeautiful) to apply.



## Apply for 2023 Awards of Excellence

### 2023 Annual Conference

August 23-24, 2023  
Florence, Alabama



Registration Now Open!

We are excited to have you join us to **network, exchange information and ideas, and celebrate success** in the conservation of aquatic life in the most biologically diverse region in our nation, the Tennessee River Basin!

In addition to networking opportunities, this year's conference will include informational and working sessions on the following topics:

**A Holistic Approach to Aquatic Life Conservation**  
(agriculture, forestry, water protection...)

**Inform your Network: Lightning Talks** - sign up!

**Freshwater Mussel Conservation Success in Partnership**

#### 2023 Keynote



William Finch  
Founding Director  
Paint Rock Forest Research Center

More details at:  
[www.trbnetwork.org](http://www.trbnetwork.org)

11th ANNUAL



**& WATER QUALITY FESTIVAL**

Registration and Festival begin at 6:30 AM  
Race starts at 7:30 AM  
Saturday, July 29, 2023  
Shelby Bottoms Park 1900 Davidson St. Nashville, TN  
For more information and to register visit our website  
<https://www.tnstormwater.org/urban-runoff-5k>



Tennessee Stormwater Association  
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## TDEC UPDATES

### Municipal Stormwater

#### Small MS4 Monitoring Programs

- It's not too late for Small MS4s programs to develop an Option 2 jurisdiction-specific monitoring plan as an alternative to the plan identified in Option 1 of the 2022 Permit. The deadline to submit an Option 2 plan to the Division is September 1, 2024.

#### Small MS4 Annual Reports

- Small MS4 Annual Reports must be submitted on or before September 30th of each calendar year. The Small MS4 Annual Reports will be received and processed electronically through the MyTDEC Forms portal.
- **Upcoming Virtual MyTDEC Small MS4 Annual Report Form Training Sessions.** The Division will be hosting five (5) virtual training sessions to help familiarize the MS4 Programs with the new MyTDEC Small MS4 Annual Report form. The dates, times, descriptions, and links to the Microsoft Teams appointments for each training session are below and also available on the Division's NPDES Municipal Separate Storm Sewer System (MS4) Program webpage. **Please note that each session is unique. All sessions have been recorded and click here for link.**

Session 1: Overview on how to use the MyTDEC form portal.

Session 2: Minimum Control Measure 1: Public Education

Minimum Control Measure 2: Public Involvement & Participation.

Session 3: Minimum Control Measure 3: Illicit Discharge Detection & Elimination (IDDE)

Minimum Control Measure 6: Pollution Prevention/Good Housekeeping for Municipal Operations.

Session 4: Minimum Control Measure 4: Construction Site Stormwater Runoff Pollutant Control

Minimum Control Measure 5: Post Construction/Permanent Stormwater Management.

Session 5: Stormwater Management Program Modification, Summary of Enforcement Actions, Results of Information, Collected and Analyzed (Monitoring), Legal Authority & Stormwater Management Program Evaluation

### **Urban Waters Report Card (UWRC)**

The Tennessee Water Resources Research Center is developing an Urban Waters Report Card (UWRC) in coordination with a working group of MS4s. The goal for use of the UWRC is to provide MS4s a means to track improvements in streams from their stormwater management and stream rehabilitation efforts. The UWRC Working Group will meet this June to review draft materials to meet the established goals.

### **American Rescue Plan (ARP)**

The Tennessee Department of Environment and Conservation (TDEC) is excited to announce that we are now accepting applications for the ARP competitive grant program! The competitive grant program involves the allocation of \$200 million towards three project types: regionalization (\$100 million), water reuse (\$50 million), and resource protection (\$50 million). The application solicitation period for these three grants opens today, May 9th, and will close on August 8th, 2023. Competitive grant applications shall be submitted through TDEC's Grants Management System (GMS). Each competitive grant has its own application. Applicants should create an account through GMS and search for the following applications for each program:

- DWR-ARP Regionalization Grants State Water Infrastructure Grants (SWIG)
- DWR-ARP Water Reuse Grants State Water Infrastructure Grants (SWIG)
- DWR-ARP Resource Protection Grants State Water Infrastructure Grants (SWIG)

TDEC has resources and information about using the GMS available at the weblink below. Please direct any GMS-specific questions, such as creating an account or navigating the system, to [TDEC.Grants@tn.gov](mailto:TDEC.Grants@tn.gov).

[Click here for Grants Management System \(GMS\) Resource Page](#)

[Click here for Competitive Grant Management Page](#)





## **EPA Invites Youth to Serve on Agency's First-Ever National Environmental Youth Advisory Council**

**WASHINGTON (June 22, 2023)** – Today, the U.S. Environmental Protection Agency (EPA) announced the formal establishment of the agency's first-ever National Environmental Youth Advisory Council (NEYAC). The NEYAC will provide independent advice and recommendations to Administrator Michael S. Regan on how to increase EPA's efforts to address a range of environmental issues as they relate to youth communities. The NEYAC will provide a critical perspective on how the impacts of climate change and other environmental harms affect youth communities. The Administrator announced his intent to launch the youth council last June at the Austrian World Summit.

EPA is soliciting applications for youth to fill 16 vacancies on the NEYAC. Selected applicants will contribute to a balance of perspectives, backgrounds, and experience of the council and will be appointed by the Administrator. As a first-of-its-kind committee, all members of NEYAC will be between the ages of 16 and 29.

As part of the agency's commitment to centering environmental justice communities, at least 50% of the overall membership of NEYAC will come from, reside primarily in, and/or do most of their work in disadvantaged communities as defined by the Climate and Economic Justice Screening Tool (CEJST) as part of Justice40.

"We can't tackle the environmental challenges of our time without input from our younger communities, who've long been at the forefront of social movements," **said EPA Administrator Michael S. Regan.** "This committee will help ensure that the voices and perspectives of our youth are included and valued in EPA's decision-making as we continue to advance President Biden's commitment to ensuring everyone in this country has access to clean air, safe water and healthy land, now and for generations to come."

Applications to the NEYAC are due by August 22, 2023 at 11:59PM ET. To apply for appointment to the council, the below information is required:

- Contact information
- Resume **OR** short biography **OR** qualification essay
- Statement of interest
- Media Project

Visit the [EPA NEYAC webpage](#) for more information on the council and to apply.

**EPA will be hosting virtual application webinars where the public can ask EPA staff questions live. The webinars will be on Zoom and will be hosted at the following times:**

Friday, June 30, 2023 @ 3PM – 4PM ET // [Register here](#)

Monday, August 7, 2023 @ 12PM – 1PM ET // [Register here](#)

## **EPA Publishes Final Rule Clarifying Phase II Stormwater Regulations Related to Census Bureau Urban Area Designations**

On June 7, 2023, the EPA Administrator signed its final rule, NPDES Small MS4 Urbanized Area Clarification, to clarify the designation criteria for small MS4s following the Census Bureau's recent urban area mapping revisions. EPA provided notice of the final rule's promulgation in the Federal Register on June 12, 2023. The effective date for the final rule is July 12, 2023.

The final rule clarifications are necessary due to the Census Bureau's March 24, 2022 publication of final program criteria (pdf) (286.6 KB) that discontinued its practice of publishing the location of "urbanized areas" along with the 2020 Census and future censuses. The clarifications in this final rule replace the term "urbanized area" in the Phase II regulations with the phrase "urban areas with a population of at least 50,000," which is the Census Bureau's longstanding definition of the term urbanized areas. This change allows NPDES permitting authorities to use 2020 Census and future Census data in a manner that is consistent with existing longstanding regulatory practice.

For any questions related to this announcement, please contact [Huddle.Heather@epa.gov](mailto:Huddle.Heather@epa.gov).

## Supreme Court rules against EPA in dispute over regulating wetlands

**Washington** — The Supreme Court on Thursday curtailed the Environmental Protection Agency's authority to regulate certain wetlands that qualify as "waters of the United States" under the Clean Water Act, curbing what has long been seen as a key tool to protect waterways from pollution.

The high court ruled against the agency in a long-running dispute with Idaho landowners known as *Sackett v. EPA*. In an opinion authored by Justice Samuel Alito, the court found that the agency's interpretation of the wetlands covered by the Clean Water Act is "inconsistent" with the law's text and structure, and the law extends only to "wetlands with a continuous surface connection to bodies of water that are 'waters of the United States' in their own right."

While the majority acknowledged that weather and climate events like low tides and dry spells can cause "temporary interruptions" between bodies of waters covered by the law, the court said that wetlands protected under the Clean Water Act should be otherwise "indistinguishable" from other regulated waters.

The Supreme Court's ruling reverses a decision by the U.S. Court of Appeals for the 9th Circuit, which sided with the EPA.

The court ruled unanimously in favor of the Idaho couple, Michael and Chantell Sackett, that brought the case, but split 5-4 in its reasoning. Joining Alito's majority opinion were Chief Justice John Roberts and Justices Clarence Thomas, Neil Gorsuch and Amy Coney Barrett. Justices Brett Kavanaugh, Sonia Sotomayor, Elena Kagan and Ketanji Brown Jackson concurred in the judgment.

In a concurring opinion authored by Kavanaugh and joined by the three liberal justices, Kavanaugh argued the "continuous surface connection" test adopted by the majority "departs from the statutory text, from 45 years of consistent agency practice, and from this court's precedents."

By narrowing the scope of Clean Water Act, Kavanaugh warned some long-regulated wetlands will no longer be covered by the law, which will have "significant repercussions for water quality and flood control" throughout the nation.

Wetlands separated by levees along the Mississippi River would not be subject to regulation under the Clean Water Act, Kavanaugh said, and federal protection of the Chesapeake Bay "might be less effective if fill can be dumped into wetlands that are adjacent to (but not adjoining) the bay and its covered tributaries."

"Put simply, the Court's atextual test — rewriting 'adjacent' to mean 'adjoining' — will produce real-world consequences for the waters of the United States and will generate regulatory uncertainty," Kavanaugh wrote.

The decision from the conservative court is the latest to target the authority of the EPA to police pollution. On the final day of its term last year, the high court limited the agency's power to regulate greenhouse gas emissions from power plants, dealing a blow to efforts to combat climate change.

That dispute involved the Clean Air Act, and the Supreme Court now has addressed the EPA's authority under the Clean Water Act, which regulates discharges of pollutants into what the law defines as "waters of the United States." Under regulations issued by the U.S. Army Corps of Engineers, "waters of the United States" is defined to include "wetlands" that are "adjacent" to traditional navigable waters.

President Biden criticized the Supreme Court's decision as "disappointing" and pledged to work with the Justice Department and relevant federal agencies to use their legal authority to protect the nation's waters. Mr. Biden said the ruling puts wetlands and connecting bodies of water at risk of "pollution and destruction."

"Today's decision upends the legal framework that has protected America's waters for decades," he said in a statement. "It also defies the science that confirms the critical role of wetlands in safeguarding our nation's streams, rivers, and lakes from chemicals and pollutants that harm the health and wellbeing of children, families, and communities."

The long-running case dates back to 2007, when the Sacketts began building a home on a lot in a residential neighborhood near Priest Lake, Idaho. After the Sacketts obtained local building permits and started placing sand and gravel fill on the lot, the EPA ordered the work to stop and directed the couple to restore the property to its natural state, asserting the land contained wetlands subject to protection under the Clean Water Act.

Facing thousands of dollars in penalties, the Sacketts sued the EPA in 2008, arguing the agency's jurisdiction under the law did not extend to their property.



A diagram by the Pacific Legal Foundation showing the property in Idaho at the center of the Supreme Court case *Sackett v. EPA*.  
Pacific Legal Foundation/Flickr/Creative Commons 2.0

## EPA Wetlands (continued)

The agency moved to dismiss the suit, and a federal district court in Idaho granted the request. The U.S. Court of Appeals for the 9th Circuit affirmed, but the Supreme Court revived the suit and sent the dispute back to the lower courts.

On its second round through the lower courts, the district court ruled for the EPA, finding that the agency had the authority to regulate the wetlands purported to be on the Sacketts' lot under a test laid out by Justice Anthony Kennedy in a 2006 case involving the Clean Water Act.

In the 2006 case, *Rapanos v. United States*, the court laid out two competing tests for determining whether wetlands can be regulated under the Clean Water Act. Under Kennedy's standard — applied by the lower courts in the Sacketts' legal fight — a wetland may be covered by the Clean Water Act if it bears a "significant nexus" with traditional navigable waters.

The 9th Circuit affirmed the district court's ruling, finding that the EPA has power over the wetlands. In its decision, the appeals court found the agency has jurisdiction over the Sacketts' property, which it described as a "soggy residential lot," because the wetlands on it were adjacent to a tributary that, together with another wetland complex, had a significant nexus to Priest Lake. The wetlands, the 9th Circuit found, "significantly affect the integrity of Priest Lake."

But Alito warned that the EPA's interpretation of the Clean Water Act, "nearly all waters and wetlands are potentially susceptible to regulation under this [significant nexus] test, putting a staggering array of landowners at risk of criminal prosecution for such mundane activities as moving dirt."

Wetlands make up 5.5% of land in the continental U.S., according to the EPA, and are considered some of "the most productive ecosystems in the world, comparable to rain forests and coral reefs."

Along with providing habitat to various plants and microbes, they are also vital in buffering flooding and erosion — a factor growing in importance as storms become more frequent and severe amid the deepening climate crisis. Humans modifying



An aerial view of Priest Lake, Idaho, and the property at the center of the Supreme Court case *Sackett v. EPA*.

Brian Feuner/Pacific Legal Foundation/Flickr/Creative Commons 2.0

wetlands through construction and pollution are major stressors and can drastically change their ability to function or survive.

Jon Devine, director of federal water policy for the Natural Resources Defense Council, warned that the court's decision to narrow the EPA's authority over wetlands "could be catastrophic."

"Tens of millions of acres of wetlands that are currently protecting communities from flooding, helping to make sure that their drinking water supplies are cleaner, would be at risk of being filled in or polluted without any kind of environmental review beforehand," he told CBS News in an interview ahead of the decision.

Protecting these waterways, he said, is only becoming more pressing as climate change makes flooding, drought and other issues more intense.

"These things are small individually, but their impact is huge collectively," he said. "And that's why we need to prevent the kind of death-by-a-million-cuts that could be unleashed by an adverse decision here."

Source: <https://www.cbsnews.com/news/supreme-court-epa-clean-water-act/>

### Third Quarter Newsletter Deadline: August 18, 2023

Please share any interesting stories, articles, successful events and/or projects we can share with our members in the September issue!

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