



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, PHILADELPHIA DISTRICT  
1650 ARCH STREET  
PHILADELPHIA, PENNSYLVANIA 19103-2004

CENAP-OPR

May 28, 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023) ,<sup>1</sup> 2024-00738-96 Northeast Water Pollution Control Plant (PWD) PH.<sup>2</sup>

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.<sup>3</sup> AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.<sup>4</sup>

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>5</sup> the 2023 Rule as amended,

---

<sup>1</sup> While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

<sup>2</sup> When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

OPR

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), 2024-00738-96 Northeast Water Pollution Control Plant (PWD) PH

as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
  - i. Wetland 01 (bound by flags 01 through 37), non-jurisdictional.

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023)
- c. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area is located on the property at 3899 Richmond Street, City of Philadelphia, Philadelphia County Pennsylvania; on the parcel identified from the Office of Property Assessments number 786456805 totaling 162-acres. The review area is focused on the area identified as Lagoon C, which is approximately 8-acres.

OPR

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), 2024-00738-96 Northeast Water Pollution Control Plant (PWD) PH

Figure 1. Review Area for Northeast Water Pollution Control Plant



4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is Frankford Creek, however, according to United States Geological Survey (USGS) the property resides within Petty Island-Delaware River watershed (HUC 12 020402020405).<sup>6</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The identified aquatic resource on site is an isolated feature and does not have a continuous surface connection to a downstream TNW.

---

<sup>6</sup> This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

OPR

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), 2024-00738-96 Northeast Water Pollution Control Plant (PWD) PH

6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>8</sup> N/A
  
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
  - a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
  - b. The Territorial Seas (a)(1)(ii): N/A
  - c. Interstate Waters (a)(1)(iii): N/A
  - d. Impoundments (a)(2): N/A
  - e. Tributaries (a)(3): N/A
  - f. Adjacent Wetlands (a)(4): N/A
  - g. Additional Waters (a)(5): N/A

---

<sup>7</sup> 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

<sup>8</sup> This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

OPR

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), 2024-00738-96 Northeast Water Pollution Control Plant (PWD) PH

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).<sup>9</sup> Wetland 01 would not meet the definition of Waters of the United States under 33 CFR 328.3(b)(1). Wetland 01 is a man-made lagoon (Lagoon C) as part of a water treatment facility. Water from Wetland 01 drains to Lagoon A, which then gets treated at the facility.
- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).
  - i) Wetland 01 is a depression, palustrine emergent wetland that is dominated by common reed (*Phragmites australis*). It resides within a water treatment basin. Water from precipitation and runoff accumulates in the depression. The feature is isolated, residing within the earthen berm water treatment basin, known as Lagoon C. Wetland 01 does not meet the definition of Waters of the United States under 33 CFR 328.3, as it is an isolated resource.

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. USACE Site Visit. March 4, 2025. Wetland Data Point Map PWD Northeast WPCP 3950 N Delaware Ave Philadelphia County, Pennsylvania.
- b. American Engineers Group, LLC. Wetland Delineation Report titled “Wetland Delineation PWD Northeast Effluent Pump Station Philadelphia, Pennsylvania”; dated January 2025.
- c. American Engineers Group, LLC. Wetland Data Point Map PWD Northeast WPCP 3950 N Delaware Ave Philadelphia County, Pennsylvania. Job Number

---

<sup>9</sup> 88 FR 3004 (January 18, 2023)

OPR

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), 2024-00738-96 Northeast Water Pollution Control Plant (PWD) PH

20021. Drawn by MEL. Checked by JDO. Date: January 24, 2025. Revised March 5, 2025.

- d. USGS. 2024. The National Map Viewer. Available at: <https://apps.nationalmap.gov/viewer/>. Accessed March 6, 2025.

10. OTHER SUPPORTING INFORMATION

- a. Northeast Water Pollution Control Plant Facilitation and Restoration of Drainage at Sludge Lagoons A, B, C, & D. Sheet 1 of 3. City of Philadelphia Water Department. Work Number SD-736-NE. Date January 31, 1994.

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



### WETLAND DATA POINT MAP

PWD NORTHEAST WPCP  
 3950 N DELAWARE AVE  
 PHILADELPHIA COUNTY, PENNSYLVANIA

|             |           |
|-------------|-----------|
| JOB NUMBER: | 20021     |
| FILE NAME:  | MEL       |
| DRAWN BY:   | JDO       |
| CHECKED BY: | 1/24/2025 |
| DATE:       | 3/19/2025 |
| REVISED:    |           |

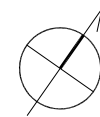
  
 SCALE  
 1"=100'

FIGURE  
**X**

  
**American Engineers Group, LLC**  
*A Certified MBE/DBE/SBE Firm*  
 5095 RITTER ROAD,  
 SUITE 110  
 MECHANICSBURG, PA 17055  
 1-800-733-1102  
 WWW.AEGROUP-LLC.COM  
 ENGINEERS • SURVEYORS • GEOLOGISTS • ENVIRONMENTAL CONSULTANTS

| Wetland 01           |                          |                     |                 |                         |                         |
|----------------------|--------------------------|---------------------|-----------------|-------------------------|-------------------------|
| Flag #               | State Plane Coordination |                     | Location        |                         |                         |
| Point Number         | Easting                  | Northing            | Point Elevation | Longitude               | Latitude                |
| WLO1 DP01            | 2717173.8027'            | 249103.7082'        | 103.125'        | W075° 04' 40.21"        | N039° 59' 09.78"        |
| WLO1 DP02            | 2717201.4100'            | 249125.7250'        | 104.466'        | W075° 04' 39.85"        | N039° 59' 09.99"        |
| WLO1 DP03            | 2717231.7711'            | 249157.2968'        | 103.995'        | W075° 04' 39.44"        | N039° 59' 10.29"        |
| WLO1 DP04            | 2717246.1299'            | 249148.1712'        | 105.112'        | W075° 04' 39.26"        | N039° 59' 10.20"        |
| WLO1 DP05            | 2717257.3730'            | 249136.9077'        | 105.310'        | W075° 04' 39.12"        | N039° 59' 10.09"        |
| WLO1 DP06            | 2717272.9611'            | 249144.6785'        | 104.994'        | W075° 04' 38.92"        | N039° 59' 10.16"        |
| WLO1 DP08            | 2717290.1982'            | 249157.9240'        | 104.934'        | W075° 04' 38.69"        | N039° 59' 10.28"        |
| WL01 DP09            | 2717330.5452'            | 249181.7824'        | 104.006'        | W075° 04' 38.17"        | N039° 59' 10.51"        |
| WL01 DP10            | 2717350.8448'            | 249216.0317'        | 104.130'        | W075° 04' 37.89"        | N039° 59' 10.84"        |
| WL01 DP11            | 2717370.4999'            | 249251.2088'        | 102.678'        | W075° 04' 37.63"        | N039° 59' 11.18"        |
| <b>WL01 DP11*</b>    | <b>2717376.2400'</b>     | <b>249243.0203'</b> | N/A             | <b>W075° 04' 37.55"</b> | <b>N039° 59' 11.10"</b> |
| WL01 DP12            | 2717397.4746'            | 249279.8022'        | 104.040'        | W075° 04' 37.27"        | N039° 59' 11.45"        |
| WL01 DP13            | 2717425.0589'            | 249301.3503'        | 104.493'        | W075° 04' 36.91"        | N039° 59' 11.66"        |
| WL01 DP14            | 2717510.7548'            | 249315.8015'        | 104.236'        | W075° 04' 35.80"        | N039° 59' 11.78"        |
| <b>WL01 DP15**</b>   | <b>2717599.1260'</b>     | <b>249288.7312'</b> | <b>104.919'</b> | <b>W075° 04' 34.67"</b> | <b>N039° 59' 11.48"</b> |
| WL01 DP16            | 2717595.0158'            | 249327.9359'        | 104.457'        | W075° 04' 34.71"        | N039° 59' 11.87"        |
| WL01 DP17            | 2717598.2369'            | 249370.5148'        | 104.908'        | W075° 04' 34.65"        | N039° 59' 12.29"        |
| <b>WL01 DP17*</b>    | <b>2717590.0367'</b>     | <b>249364.7915'</b> | N/A             | <b>W075° 04' 34.76"</b> | <b>N039° 59' 12.24"</b> |
| WL01 DP18            | 2717545.5353'            | 249446.0240'        | 105.004'        | W075° 04' 35.30"        | N039° 59' 13.05"        |
| <b>WL01 DP 18*</b>   | <b>2717537.4000'</b>     | <b>249440.2076</b>  | N/A             | <b>W075° 04' 35.41"</b> | <b>N039° 59' 13.00"</b> |
| WL01 DP19            | 2717487.8815'            | 249524.7585'        | 105.087'        | W075° 04' 36.01"        | N039° 59' 13.85"        |
| <b>WL01 DP19*</b>    | <b>2717479.8094'</b>     | <b>249518.8559'</b> | N/A             | <b>W075° 04' 36.12"</b> | <b>N039° 59' 13.79"</b> |
| WL01 DP20            | 2717437.4474'            | 249593.8268'        | 105.337'        | W075° 04' 36.63"        | N039° 59' 14.54"        |
| <b>WL01 DP20*</b>    | <b>2717429.371</b>       | <b>249587.9296</b>  | N/A             | <b>W075° 04' 36.74"</b> | <b>N039° 59' 14.49"</b> |
| WL01 DP21            | 2717391.8733'            | 249624.0535'        | 102.581'        | W075° 04' 37.21"        | N039° 59' 14.86"        |
| <b>WL01 DP21*</b>    | <b>2717391.8733'</b>     | <b>249624.0535'</b> | N/A             | <b>W075° 04' 37.21"</b> | <b>N039° 59' 14.86"</b> |
| WL01 DP22            | 2717337.8694'            | 249646.5147'        | 105.028'        | W075° 04' 37.89"        | N039° 59' 15.10"        |
| WL01 DP23            | 2717266.3927'            | 249596.0742'        | 104.492'        | W075° 04' 38.83"        | N039° 59' 14.62"        |
| WL01 DP24            | 2717199.3331'            | 249545.9349'        | 104.208'        | W075° 04' 39.71"        | N039° 59' 14.14"        |
| WL01 DP25            | 2717173.6359'            | 249502.6330'        | 103.834'        | W075° 04' 40.06"        | N039° 59' 13.72"        |
| WL01 DP26            | 2717124.5522'            | 249496.5650'        | 104.148'        | W075° 04' 40.69"        | N039° 59' 13.68"        |
| WL01 DP27            | 2717076.7018'            | 249458.8229'        | 104.155'        | W075° 04' 41.32"        | N039° 59' 13.32"        |
| WL01 DP28            | 2717070.9358'            | 249428.3648'        | 104.822'        | W075° 04' 41.40"        | N039° 59' 13.02"        |
| WL01 DP 29           | 2717031.8015'            | 249391.7809'        | 105.035'        | W075° 04' 41.92"        | N039° 59' 12.67"        |
| WL01 DP 30           | 2716993.3609'            | 249355.4873'        | 105.505'        | W075° 04' 42.43"        | N039° 59' 12.32"        |
| WL01 DP 31           | 2716974.1392'            | 249322.7486'        | 103.960'        | W075° 04' 42.69"        | N039° 59' 12.01"        |
| WL01 DP 32           | 2716944.3771'            | 249263.5654'        | 102.714'        | W075° 04' 43.09"        | N039° 59' 11.43"        |
| <b>WL01 DP32A***</b> | <b>2716933.6209'</b>     | <b>249280.4267'</b> | N/A             | <b>W075° 04' 43.22"</b> | <b>N039° 59' 11.60"</b> |
| <b>WL01 DP32B***</b> | <b>2716862.6209'</b>     | <b>249234.9733'</b> | N/A             | <b>W075° 04' 44.16"</b> | <b>N039° 59' 11.17"</b> |
| WL01 DP 33           | 2716873.1247'            | 249218.1120'        | 102.244'        | W075° 04' 44.03"        | N039° 59' 11.00"        |
| WL01 DP 34           | 2716916.0349'            | 249164.4722'        | 102.761'        | W075° 04' 43.49"        | N039° 59' 10.46"        |
| WL01 DP 35           | 2716972.1624'            | 249119.5996'        | 103.573'        | W075° 04' 42.79"        | N039° 59' 10.00"        |
| WLO1 DP36            | 2717030.4692'            | 249075.6159'        | 104.616'        | W075° 04' 42.06"        | N039° 59' 09.55"        |
| WLO1 DP37            | 2717104.7458'            | 249124.6646'        | 104.868'        | W075° 04' 41.09"        | N039° 59' 10.01"        |

\* Boundary flag that have been adjusted following Jurisdictional Determination Fieldview

\*\* Boundary flag that have been removed following Jurisdictional Determination Fieldview

\*\*\* Boundary flag that has been added following Jurisdictional Determination Fieldview