



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
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VESTAVIA HILLS, ALABAMA 35216

CESAM-RD-N

August 28, 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322
(2023),¹ SAM-2009-00081-CTM, MFR #1 of #1²

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.³ 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.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court’s decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as

¹ While the Supreme Court’s decision in *Sackett* 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.

² 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, interstate water, or territorial seas 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.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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.

amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Mississippi due to litigation.

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).

Waters_Name	Latitude	Longitude	Waters Size	Type Of Aquatic Resource	Geographic Authority
DD-1	32.80877	-88.56628	2840 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
EPH-1	32.80503	-88.56871	282 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
EPH-2	32.80826	-88.56958	1214 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
EPH-3	32.80502	-88.56549	479 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
INT-1	32.80623	-88.56154	165 FEET	A5.TRIB-404	Section 404
INT-2	32.80579	-88.56388	1072 FEET	A5.TRIB-404	Section 404
PER-1	32.80664	-88.56095	87 FEET	A5.TRIB-404	Section 404
PER-2	32.80652	-88.56121	196 FEET	A5.TRIB-404	Section 404
PND-1	32.80863	-88.5646	.21 ACRES	NON-JD - PREAMBLE - ART.LAKE.POND	None
PND-2	32.80855	-88.56278	1.45 ACRES	NON-JD - PREAMBLE - ART.LAKE.POND	None
PND-3	32.8073	-88.56229	6.13 ACRES	A4.IMPDT-404	Section 404
PSS-1	32.80516	-88.56813	.39 ACRES	NON-WOTUS- WETL.NEGATIVE-A7	None

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).

- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area is an approximately 127-acre parcel in Dekalb, Kemper County, Mississippi and is centered at latitude 32.807048, longitude -88.566332. The property currently operates as a landfill and was issued a NWP 39 verification letter in 2009 for the discharge of fill material into 0.112 acre of wetlands.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is Noxubee River, which is on the Mobile District's Section 10 list and is therefore a TNW.⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS The aquatic resources flow east from the review area approximately 1.6 miles to Big Scooba Creek, which flows approximately 13 miles to Bodka Creek, which flows 15 miles to the Noxubee River, TNW.

6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ N/A

⁶ 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.

⁷ 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.

⁸ 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.

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 pre-2015 regulatory regime and 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 pre-2015 regulatory regime. 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. TNWs (a)(1): N/A
- b. Interstate Waters (a)(2): N/A
- c. Other Waters (a)(3):N/A
- d. Impoundments (a)(4):

PND-3 is a 6.13-acre pond that is an impoundment of a relatively permanent tributary. The USGS topographic map depicts a dotted blue line stream, which typically indicates seasonal flow, traversing the property and in the current location of the pond. The tributary continues to Big Scooba Creek, which flows to Bodka Creek, which flows into the Noxubee River (TNW). The NWI and NHD also depict a stream in the location of PND-3, suggesting a tributary was present before the pond was constructed and that the pond was constructed by impounding the stream. Google Earth aerial photography from 1985 does not depict PND-3, but the 1997 aerial does depict PND-3, so the pond was constructed sometime between 1985 and 1997. Because PND-3 was constructed in a jurisdictional tributary, PND-3 is a jurisdictional impoundment.

- e. Tributaries (a)(5):
PER-1 drains through a culvert from PND-3 and flows 87 feet before exiting the eastern boundary of the review area where it continues to Big Scooba Creek. Based on a review of the agent's site photos from April 1, 2025, PER-1 appears to have continuous bed and banks, lack of vegetation in the channel, water flowing in the channel, moderate sinuosity, and bent vegetation in the floodplain indicating water overtops the banks and into the floodplain. All of these characteristics indicate relatively permanent flow regime; therefore, PER-1 is a jurisdictional tributary.

PER-2 drains through a culvert from PND-3 and flows 164.78 linear feet before converging with PER-1 before flowing outside of the review area. Based on a review of the agent's site photos from April 1, 2025, PER-2 appears to have continuous bed and banks, lack of vegetation in the channel, water flowing in the channel, moderate sinuosity, and bent vegetation in the floodplain indicating water overtops the banks and into the floodplain. All of these characteristics indicate relatively permanent flow regime; therefore, PER-2 is a jurisdictional tributary.

INT-1 enters the review area along the southeastern review area boundary and flows for 164.78 linear feet before converging with PER-2. Based on a review of the agent's site photos from April 1, 2025, INT-1 appears to have continuous bed and banks, lack of vegetation in the channel, water flowing in the channel, and moderate sinuosity. All of these characteristics indicate seasonal, relatively permanent flow regime; therefore, INT-1 is a jurisdictional tributary.

INT-2 enters the review area along the southern review area boundary and flows 1,071 linear feet before draining into PND-3. Based on a review of the agent's site photos from April 1, 2025, INT-2 appears to have continuous bed and banks, lack of vegetation in the channel, water flowing in the channel, and moderate sinuosity. All of these characteristics indicate seasonal, relatively permanent flow regime; therefore, INT-2 is a jurisdictional tributary.

f. The territorial seas (a)(6): N/A

g. Adjacent wetlands (a)(7): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. Describe aquatic resources and other features within the review area identified as "generally non-jurisdictional" in the preamble to the 1986 regulations (referred to as "preamble waters").⁹ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water.

The preamble to the 1986 regulations states the following waters are generally not considered waters of the U.S.: Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.

⁹ 51 FR 41217, November 13, 1986.

PND-1 is a 0.21-acre pond. A review of the soil survey map indicates the pond was constructed in Wilcox silty clay loam soils, which is not a hydric soil. There is not feature flowing into or out of PND-1 and it is completely surrounded by uplands. These factors indicated PND-1 was created in uplands. The pond was constructed as a settling basin by the landfill to capture runoff. For these reasons PND-1 is not jurisdictional.

PND-2 is a 1.45-acre pond. A review of the soil survey map indicates the pond was constructed partially in Wilcox silty clay loam soils, which is not a hydric soil, and partially in Wilcox-Sweatman soils, which has some hydric inclusions. There is not feature flowing into or out of PND-2 and it is completely surrounded by uplands. These factors indicated PND-2 was created in uplands. The pond was constructed as a settling basin by the landfill to capture runoff. For these reasons PND-2 is not jurisdictional.

- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A
- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A
- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “SWANCC,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with SWANCC. N/A
- f. 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 pre-2015 regulatory regime consistent with the Supreme Court's decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

EPH-1 is 281 linear feet in length and drains west to east into PSS-1. EPH-1 has a discontinuous ordinary high water mark, narrow channel, and appears to flow only after rainfall events; therefore, it was determined to have non-relatively permanent flow regime and is not jurisdictional.

EPH-2 is 1,214 linear feet in length and drains to the north where it exits the review area. EPH-2 has a discontinuous ordinary high water mark, narrow channel, and appears to flow only after rainfall events; therefore it was determined to have non-relatively permanent flow regime and is not jurisdictional.

EPH-3 is approximately 479 linear feet in length and flows east into INT-2. EPH-3 has a discontinuous ordinary high water mark, narrow channel, and appears to flow only after rainfall events; therefore it was determined to have non-relatively permanent flow regime and is not jurisdictional.

PSS-1 is a scrub shrub wetland 0.39 acre in area and abuts a non-relatively permanent tributaries (EPH-1 and DD-1). Because PSS-1 does not abut a TNW, interstate water, territorial seas, relatively permanent tributary or relatively permanent impoundment, it does not have a continuous surface connection to those waters and is therefore not jurisdictional.

DD-1 is a 2,840 linear-foot drainage ditch that was created during the landfill construction. This feature drains PSS-1 and therefore cannot be considered non-jurisdictional pursuant to the *Rapanos* guidance. Based on a review of the agent's photographs, DD-1 appears to contain upland vegetation and lacks indicators of ordinary high water marks, indicating non-relatively permanent flow regime, and for this reason DD-1 is not jurisdictional.

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. Wetlands and other Waters of the U.S. Delineation report, April 2025, prepared by Allen Engineering and Science, Inc.
 - b. National Regulatory Viewer maps including NWI, NHD, Lidar, USGS topo accessed on August 27, 2025.

- c. NRCS websoil survey accessed August 27, 2025:
<https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>
- d. Google Earth imagery
- e. Shapefiles provided by Allen Engineering and Science, Inc.

10. OTHER SUPPORTING INFORMATION. "Memorandum to the Field Between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency Concerning the Proper Implementation of 'Continuous Surface Connection' Under the Definition of 'Waters of the United States' Under the Clean Water Act", March 12, 2025.

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.



Disclaimer:
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LEGEND

- Approximate Survey Review Area (127.40 Ac. +/-)
- Data Point Identification and Location
- Approximate Scrub/Shrub Wetlands (PSS) (0.39 Ac. +/-)
- Approximate Perennial Channel (PER) (283.27 LF. +/-)
- Approximate Intermittent Channel (INT) (1,236.59 LF. +/-)
- Approximate Ephemeral Channel (EPH) (1,975.61 LF. +/-)
- Approximate Artificial Drainage Ditch (DD) (2,840.60 LF. +/-)
- Approximate Other Water (PND) (7.79 Ac. +/-)

Basemap: AllenES Drone Aerial (03/12/25)

KEMPER COUNTY LANDFILL
21211 HIGHWAY 16 WEST
DEKALB, KEMPER County, MISSISSIPPI

ALLEN ENGINEERING AND SCIENCE

Scale:	DRAWN BY: OB	DATE: 04/22/25
1" = 575'	CHKD BY: BY	DATE: 04/22/25

PROJECT NO.	CAD FILE:
24150	24150 FIG04 D ESCM 042225

EXISTING SITE CONDITIONS MAP

FIGURE 4