



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 11/25/2020
 ORM Number: LRH-2020-652-TUS-Stillwater Creek
 Associated JDs: N/A
 Review Area Location¹: State/Territory: Ohio City: Village of Freeport County/Parish/Borough: Harrison
 Center Coordinates of Review Area: Latitude 40.210027 Longitude -81.266873

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size		§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³				
(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
Stillwater Creek	231.2	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stillwater Creek contributes perennial flow to a downstream (a)(1) water in a typical year and is considered a water of the United States per 33 CFR 328.3(a)(2) (reference Section III B of this AJD form).

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination 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. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):				
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination	
N/A.	N/A.	N/A.	N/A.	

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination	
N/A.	N/A.	N/A.	N/A.	

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination	
Wetland A	0.140 acre(s)	(b)(1) Non-adjacent wetland.	The lateral limits of jurisdiction for Wetland A were established by the 1987 Corps Delineation Manual and applicable Regional Supplement. The closest jurisdictional stream is Stillwater Creek, which is located approximately 395 linear feet south of Wetland A. Wetland A does not meet the definition of an adjacent wetland (33 CFR 328.3(c)(1)(i)-(iv)), is not considered a water of the United States per 33 CFR 328.3(b)(1), and is not subject to regulation under Section 404. Reference Section III B of this AJD form for typical year assessments.	

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

- Information submitted by, or on behalf of, the applicant/consultant: [Surface Water Delineation Report, Freeport Sanitary Improvement, Freeport, Ohio dated July 2020](#)

This information is sufficient for purposes of this AJD.

Rationale: [The information provided by or on behalf of the applicant accurately reflects the district's conclusions on the AJD.](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial and Other: Appendix B - Photographs \(Freeport Sanitary Improvement JD, July 2020\), HistoricalAerials.com \(2015, 2013, 2011, 2010, 2009, 2007, 2004, 1994, 1983, 1960, 1959\), Google Earth \(2017, 2015, 2013, 2012, 2011, 2010, 2009, 2006, 2005, 2004, 1994\).](#)
- Corps site visit(s) conducted on: [N/A](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [N/A](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Figure 3 – Soils Map \(Freeport Sanitary Improvement JD, July 2020\)](#)
- USFWS NWI maps: [Figure 4 – National Wetland Inventory Map \(Freeport Sanitary Improvement JD, July 2020\)](#)

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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USGS topographic maps: [Figure 1 – Project Area Location Map \(Freeport Sanitary Improvement JD, July 2020\)](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	Appendix C and D - Field Data Sheets (USACE Wetland Data Forms and ORAM Forms) in referenced report.

B. Typical year assessment(s): A typical year occurs over a rolling thirty year period and includes the analysis of precipitation and other climatic variables to establish a normal period range (seasonally or annually) for a specific geographic region where the aquatic resource occurs. One (1) Google Earth aerial image dated 16 May 2012, with a corresponding antecedent precipitation tool (APT) report, is included in the evaluation of the features listed above, where applicable. According to the APT report for 16 May 2012, normal conditions were observed during the WebWIMP wet season. Although the aerial photo depicted the occurrence of a flooding event, the site was experiencing normal conditions within the typical year range. The 30-day rolling total for precipitation was within the 30-year normal range. Wetland A is located within the 100-year floodplain of Stillwater Creek. Wetlands are not considered adjacent simply because a hydrologic connection between a jurisdictional water and a wetland is possible by flooding once every 100 years. After a review of aerial imagery, it has been determined no indicators are visible of inundation by flooding from Stillwater Creek to Wetland A. Wetland A does not abut a water identified in 33 CFR 328.3(a)(1), (2), or (3), is not inundated by flooding from a water identified in 33 CFR 328.3(a)(1), (2), or (3) in a typical year, is not physically separated from a water identified in 33 CFR 328.3(a)(1), (2), or (3) only by a natural berm, bank, dune, or similar natural feature, and is not physically separated from a water identified in 33 CFR 328.3(a)(1), (2), or (3) only by an artificial dike, barrier, or similar artificial structure. Therefore, Wetlands A is not a jurisdictional water of the United States per 33 CFR 328.3(b)(1).

During the 16 May 2020, Stillwater Creek exhibited flow within the stream channel which corresponds with the APT report conditions. Stillwater Creek is depicted on the USGS topographic map, NWI map, and the NHD. Field indicators of perennial flow were also observed. Stillwater Creek included a clearly defined bed and bank, coarse bed material (cobble and gravel), riffles, and low sinuosity. Based on the submitted information, Stillwater Creek contributes perennial flow downstream indirectly to the Tuscarwas River, an (a)(1) water, in a typical year. Therefore, Stream 1 is an (a)(2) water.

C. Additional comments to support AJD: The project is located within the FEMA 100-year floodplain; however, Wetland A is not normally inundated within a typical year.