



**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): 3/18/2021

ORM Number: LRH-2016-00139-OHR

Associated JDs: N/A

Review Area Location¹: State/Territory: West Virginia City: Toll Gate County/Parish/Borough: Doddridge

Center Coordinates of Review Area: Latitude 39.263 Longitude -80.903

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
- 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.

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.

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.

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.

a

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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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Stream 19m	131 linear feet	(b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year.	<p>Per a field investigation conducted by the U.S. Army Corps of Engineers (Corps) on 25 June 2019 and review remote sensing tools, which are documented in Section IIIA and Section IIIC, Stream 19m has been determined to be a surface water channel that does not contribute surface flow directly or indirectly to an (a)(1) water in a typical year (33 CFR 328.3(b)(1)). Stream 19m is a natural feature that has experienced severed hydrology as a result of the construction of an existing landfill. 33 CFR 328.3(b)(1) excludes waters that do not satisfy any of the paragraph (a)(1) through (4) conditions. An (a)(1) through (3) assessment is provided below:</p> <p>33 CFR 328.3(a)(1): Stream 19m is not an (a)(1) traditional navigable water or a water subject to the ebb and flow of the tide. Stream 19m is not on the Huntington District Section 10 list, has not been determined by a federal court to be navigable under federal law, and does not meet the legal definition of navigable-in-fact. Stream 19m has not been used, is not currently being used, and is not susceptible of being used (with or without reasonable improvements), as a highway for commerce over which trade and travel are, or may be conducted in the customary modes of trade and travel on water. The construction of the existing landfill severed hydrology/surface flow of Stream 19m; therefore, the intermittent surface water channel does not convey surface water flow to any (a)(1) water.</p> <p>33 CFR 328.3 (a)(2): The term tributary means a river, stream, or similar naturally occurring surface water channel that contributes surface water flow to a water identified in paragraph (a)(1) in a typical year either directly or through one or more waters identified in paragraph (a)(2), (3), or (4). Stream 19m does not contribute surface water flow to an (a)(1) through (4) water in a typical year as the stream channel has experienced severed hydrology as a result of the construction of the existing landfill. Available evidence (e.g., aerial imagery, topographic mapping, and the 25 June 2019 Corps site visit) documented the construction of the existing landfill severed the hydrology/surface water flow to any downstream (a)(1) through (4) water.</p> <p>33 CFR 328.3 (a)(3): The term lakes and ponds, and impoundments of jurisdictional waters means standing bodies of open water that contribute surface water flow to a water identified in paragraph (a)(1) through (4). Stream 19m is not a lake, pond, or an impoundment. Stream 19m does not contribute surface water flow to an (a)(1) through (4) water in a typical year as the stream channel has experienced severed hydrology as a result of the construction of the existing landfill. Stream 19m does not contribute surface water flow in a typical year through any type of channelized non-jurisdictional surface water features, through a culvert, dike, spillway, or similar artificial feature. Stream 19m is not inundated by flooding from a water identified in paragraph (a)(1), (2), or (3) in a typical year.</p> <p>Therefore, Stream 19m is an intermittent surface water channel that is excluded under 33CFR328.3(b)(5) as it does not contribute surface flow directly or indirectly to an (a)(1) water in a typical year. Therefore, it is not a water of the U.S. subject to regulation under</p>

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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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination	
				Section 404 of the Clean Water Action (Section 404).
Stream 16m	108	linear feet	(b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year.	See rational for Stream 19m.
Stream 9m	104	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	It has been determined that this is an ephemeral stream and meets the definition of “ephemeral” in paragraph 33 CFR 328.3 (c)(3). Reference Section III B of this AJD form for the typical year assessment. Refer to Section III C for additional documentation for the ephemeral stream determination.
Stream 65c	102	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	See rational for Stream 9m.
Wetland 1m	0.01	acre	(b)(1) Non-adjacent wetland.	<p>The subject wetland, Wetland 1m, has been determined to not be “adjacent” to a paragraph (a)(1), (2), or (3) water (33 CFR 328.3(c)(1)(i)-(iv)). An assessment of each adjacency criteria are provided below:</p> <p>(i) The subject wetland does not abut a paragraph (a)(1), (2), or (3) water as evidenced by the submitted AJD Request and a review of remoting sensing resources. The wetland does abut an intermittent surface water channel but that channel, as previously discussed, is not an (a)(1), (2), or (3) water (Refer to the Stream 19m and 16m discussion above). The subject wetland persists in a hillside landform and formed as the result of a seep in the hillside. No (a)(1)-(3) waters were observed within the immediate vicinity of the perimeter of the subject wetland or the AJD boundary, therefore, the subject wetland is not abutting a paragraph (a)(1)-(3) water.</p> <p>(ii) No evidence of inundation by flooding from a paragraph (a)(1), (2), or (3) water was documented in the delineation report. Based on remoting sensing, no potential (a)(1)-(3) waters were observed within the immediate vicinity of the subject wetland. Based on a review of mapping resources and aerial photographs, the nearest potential mapped (a)(1)-(3) water is a tributary approximately 1,325 feet east of the subject parcel and is separated from the wetland by an existing landfill. Additionally, the subject parcel is located outside of the Federal Emergency Management Agency 500-year floodplain. The remoting sensing resources do not indicate the subject wetlands are prone to being inundated by flooding from a paragraph (a)(1)-(3) water, the subject wetlands have been determined to not meet adjacency criteria (ii).</p> <p>(iii) The subject wetland persists in a hillside landform in the landscape. The subject wetland is not separated from a paragraph (a)(1)-(3) water by a natural berm, bank, dune, or similar natural feature and, therefore, does not meet adjacency criteria (iii).</p> <p>(iv) The subject wetland persists in a hillside landform. Based on remote sensing resources and the AJD mapping, there were no artificial dikes, barriers, or similar artificial structures documented around the perimeter of the subject wetlands nor were there any artificial features (e.g., culverts) documented within or stemming from the subject wetland. The subject wetland is not separated from a paragraph (a)(1)-(3) water by an artificial dike, barrier, or similar artificial structure and, therefore, does not meet adjacency criteria (iv).</p>

III. SUPPORTING INFORMATION



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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: “Request for Approved Jurisdictional Determination for the Clearwater Landfill (DA 2016-139),” received 12 March 2021 and the Wetland Delineation and Stream Identification Report for the Antero Landfill Project (dated 21 January 2016).

This information is sufficient for purposes of this AJD.

Rationale: The information provided accurately reflects the district’s conclusions on the five (5) aquatic features within the geographic boundary of the AJD Review Area.

- Data sheets prepared by the Corps: N/A
- Photographs: Aerial and Other: Aerial imagery accessed on Global Enhanced GEOINT Delivery (G-EGD) dated: 19 Jan 2019; 12 Dec 2020; 17 Oct 2020; 4 May 2020; 4 June 2019; 1 Nov 2016 (dates are those listed in Diglal Globe);
- Corps site visit(s) conducted on: Site visited conducted on 25 June 2019
- Previous Jurisdictional Determinations (AJDs or PJDs): N/A
- Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- USDA NRCS Soil Survey: Title(s) and/or date(s).
- USFWS NWI maps: Huntington District Regulatory Viewer – NWI Mapping
- USGS topographic maps: 7.5-minute Series: Pennsboro, West Virginia accessed in the OMBIL Regulatory Module (ORM)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	National Hydrography Dataset (NHD) accessed in the Huntington District Regulatory Viewer
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	National Flood Hazard Layer and Lidar Aerial Imagery accessed in the Huntington District Regulatory Viewer

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 resources occur. One (1) point-in-time data source, 25 June 2019, with a corresponding APT report, was included in the evaluation for the excluded ephemeral streams 9m and 65c as listed in Section II D. According to the APT report for 25 June 2019, wetter than normal conditions were observed during the dry season with a Palmer Drought Severity Index (PDSI) of normal. The antecedent precipitation condition with a score of 15 is considered “wetter than normal” for that point in time. The periodic range used for this typical assessment was the three (3) 30-day periods preceding the observation date and the nearest available weather stations (Middlebourne 3 ESE, W Union 2, Pennsboro 1.2 ESE, and Harrisville) within the Upper Ohio-Little Kanawha River watershed in the Hydrologic Unit Code (HUC) 05030201. This geographic range is appropriate because it is the same 8-digit HUC as the aquatic resources within the geographic boundary of the AJD Review Area.



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C. Additional comments to support AJD: Ephemeral Streams 9m and 65c33 CFR 328.3(b)(3) - In June, during wetter than normal conditions of the dry season, no flow was observed in Streams 9m or 65c supporting the determination that the ephemeral streams do not meet the flow requirements of a jurisdictional tributary. It has been determined that the ephemeral streams listed in Section II D above exhibit ephemeral flow, are not waters of the U.S. per 33 CFR 328.3(b)(3), and are not subject to regulation under Section 404.