



**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): 7/13/2020  
 ORM Number: LRH-2019-852-HOC-Sunday Creek  
 Associated JDs: N/A  
 Review Area Location<sup>1</sup>: State/Territory: Ohio City: Millfield Township County/Parish/Borough: Athens  
 Center Coordinates of Review Area: Latitude 39.448014 Longitude -82.106233

**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)<sup>2</sup>**

§ 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): <sup>3</sup>			
(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.

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

<sup>2</sup> 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.

<sup>3</sup> 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)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Wetland 1	0.21 acre(s)	(b)(1) Non-adjacent wetland.	Wetland 1 does not abut an (a)(1), (a)(2), or (a)(3) water, is not inundated by flooding from an (a)(1), (a)(2), or (a)(3) water in a typical year, and is not physically separated from an (a)(1), (a)(2), or (a)(3) water by a natural or artificial barrier.
Wetland 2	0.59 acre(s)	(b)(1) Non-adjacent wetland.	Wetland 2 does not abut an (a)(1), (a)(2), or (a)(3) water, is not inundated by flooding from an (a)(1), (a)(2), or (a)(3) water in a typical year, and is not physically separated from an (a)(1), (a)(2), or (a)(3) water by a natural or artificial barrier.
Wetland 3	0.45 acre(s)	(b)(1) Non-adjacent wetland.	Wetland 3 does not abut an (a)(1), (a)(2), or (a)(3) water, is not inundated by flooding from an (a)(1), (a)(2), or (a)(3) water in a typical year, and is not physically separated from an (a)(1), (a)(2), or (a)(3) water by a natural or artificial barrier.
Wetland 4	0.41 acre(s)	(b)(1) Non-adjacent wetland.	Wetland 4 does not abut an (a)(1), (a)(2), or (a)(3) water, is not inundated by flooding from an (a)(1), (a)(2), or (a)(3) water in a typical year, and is not physically separated from an (a)(1), (a)(2), or (a)(3) water by a natural or artificial barrier.
Wetland 5	0.19 acre(s)	(b)(1) Non-adjacent wetland.	Wetland 5 does not abut an (a)(1), (a)(2), or (a)(3) water, is not inundated by flooding from an (a)(1), (a)(2), or (a)(3) water in a typical year, and is not physically separated from an (a)(1), (a)(2), or (a)(3) water by a natural or artificial barrier.
Wetland 6	0.23 acre(s)	(b)(1) Non-adjacent wetland.	Wetland 6 does not abut an (a)(1), (a)(2), or (a)(3) water, is not inundated by flooding from an (a)(1), (a)(2), or (a)(3) water in a typical year, and is not physically separated from an (a)(1), (a)(2), or (a)(3) water by a natural or artificial barrier.
Wetland 7	0.03 acre(s)	(b)(1) Non-adjacent wetland.	Wetland 7 does not abut an (a)(1), (a)(2), or (a)(3) water, is not inundated by flooding from an (a)(1), (a)(2), or (a)(3) water in a typical year, and is not physically separated from an (a)(1),

<sup>4</sup> 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.

<sup>5</sup> 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)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
			(a)(2), or (a)(3) water by a natural or artificial barrier.
Tributary A	963	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. Tributary A is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Truetown Mine Ditch	605	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1). Truetown Mine Ditch is not an (a)(1) or (a)(2) water nor was it constructed in an (a)(4) water. According to the information provided, this feature is a man-made feature, constructed in uplands and conveys mine waste water.

**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: [Ohio Department of Natural Resources](#), submitted an Identification of Potential Jurisdictional Waters of the U.S. for the Truetown AMD Paint Pigment Production AML Pilot Project dated 24 June 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: [Other: Site Photographs in addendum dated 1 July 2020.](#)
- Corps site visit(s) conducted on: [9 October 2019](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\)](#).
- Antecedent Precipitation Tool: [\*provide detailed discussion in Section III.B.\*](#)
- USDA NRCS Soil Survey: [Title\(s\) and/or date\(s\)](#).
- USFWS NWI maps: [ORM - USFWS Wetland Layer](#)
- USGS topographic maps: [Ohio 1:24K - Jacksonville](#)

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
<a href="#">USGS Sources</a>	<a href="#">N/A</a>
<a href="#">USDA Sources</a>	<a href="#">N/A</a>
<a href="#">NOAA Sources</a>	<a href="#">N/A.</a>
<a href="#">CorpsMap ORM Map Layers</a>	<a href="#">N/A</a>
<a href="#">State/Local/Tribal Sources</a>	<a href="#">N/A.</a>
<a href="#">Other Sources</a>	<a href="#">Historic Aerial Photos and Topographic Maps</a>



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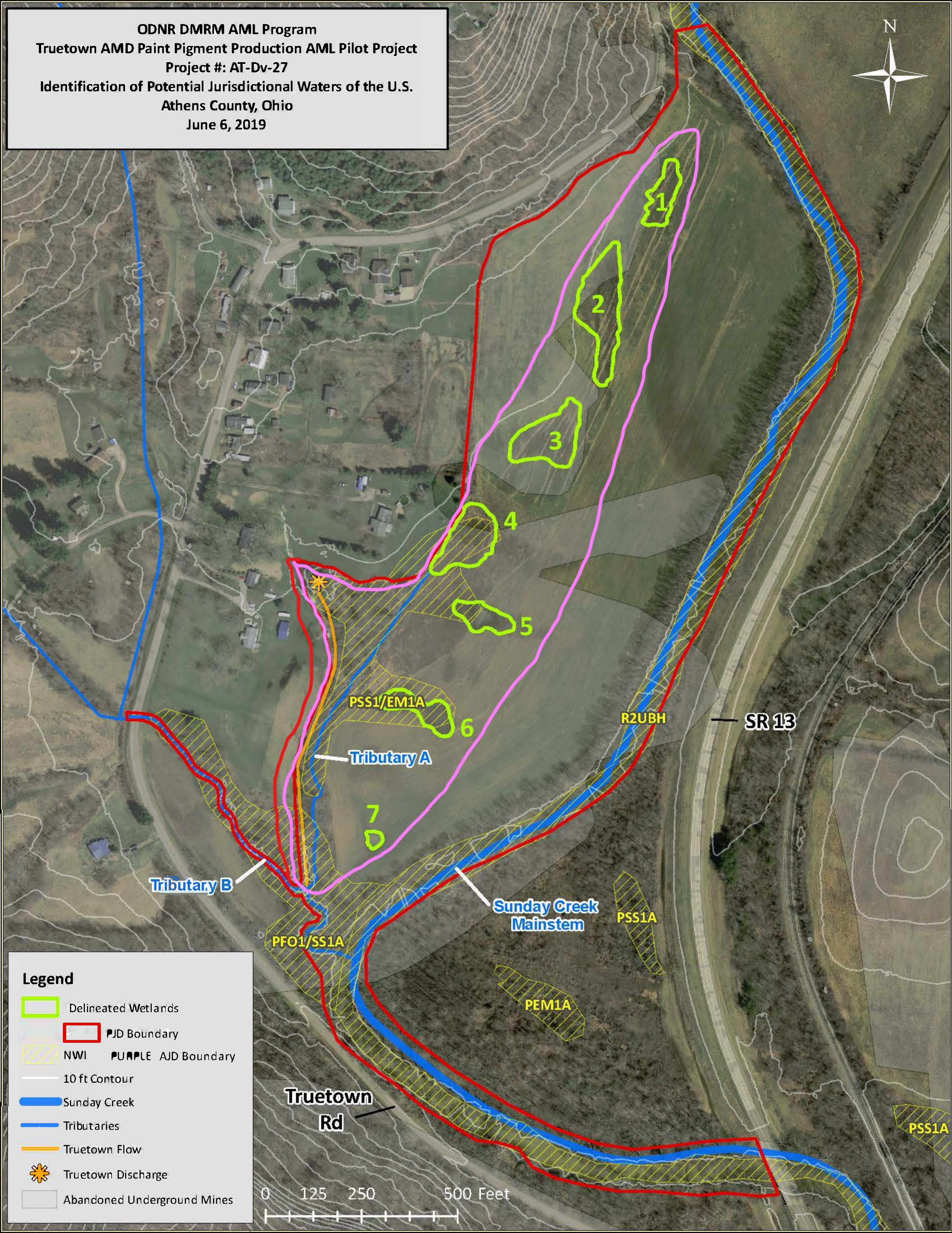
**B. Typical year assessment(s):** A typical year occurs over a rolling thirty year period and includes the analysis of precipitation and other climatic variables to establish a normal period range (seasonally or annually) for a specific geographic region where the aquatic resource occurs. Two point-in-time data sources, one for 12 May 2012 and one for 9 October 2019, with a corresponding APT report, were included in the evaluation for the excluded ephemeral stream and wetlands listed in Section II D (Tributary A, and Wetlands 1-7). According to the APT report for October 2019, normal conditions were observed during the wet season with a PSDI Value of 3.87 (severe wetness) and an ARC score of 10. The antecedent precipitation condition is considered “wetter than normal” for that point in time. According to the APT report of May 2012, wetter than normal conditions were observed during the wet season with a PSDI Value of 1.15 (mild drought) and an ARC score of 12. The antecedent precipitation condition is considered “wetter than normal” for that point in time. Additionally, during the October 2019 site visit, during wetter than normal conditions in the wet season, little to no flow was observed, supporting the fact that the ephemeral stream does not meet the flow requirements of a jurisdictional tributary. It has been determined that the ephemeral stream listed in Section II D, above, exhibits ephemeral flow, and is not a water of the United States per 33 CFR 328.3(b)(3), and are not subject to regulation under Section 404.

Additionally, it has been determined that Truetown Mine Ditch is not a water of the United States per 33 CFR 328.3(a)(1) or (2), nor was it constructed in an adjacent wetland, per 33 CFR 328.2 (a)(4), is not considered a water of the United States per 33 CFR 328.3(b)(5), and is not subject to regulation under Section 404. The Truetown Mine Ditch was constructed in 1984 by the Ohio Department of Natural Resources to convey acid mine discharge (AMD) from an abandoned underground coal mine to Sunday Creek.

**C. Additional comments to support AJD:** During a site investigation, it was determined the aforementioned excluded waters in Section II D, above, were observed to be ephemeral streams and/or ditches, and non-adjacent wetlands respectively. The previous site investigation was conducted on 9 October 2019. Based on the information provided and the APT assessment, the waters in Section D are not waters of the United States under 33 CFR 328.3(b)1, (b)(3) and (b)(5), respectively, and are not subject to regulation under Section 404.



ODNR DMRM AML Program  
 Truetown AMD Paint Pigment Production AML Pilot Project  
 Project #: AT-Dv-27  
 Identification of Potential Jurisdictional Waters of the U.S.  
 Athens County, Ohio  
 June 6, 2019



**Legend**

- Delineated Wetlands
- PJD Boundary
- AJD Boundary
- NWI
- 10 ft Contour
- Sunday Creek
- Tributaries
- Truetown Flow
- ✱ Truetown Discharge
- Abandoned Underground Mines

