



US Army Corps of Engineers

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The Department of the Army, acting through the U.S. Army Corps of Engineers (Corps), has authority to permit work and the placement of structures in navigable waters of the U.S. under Sections 9 and 10 of the Rivers and Harbors Act of 1899 (RHA), and to permit the discharge of dredged or fill material in waters of the U.S. under Section 404 of the Clean Water Act (CWA).

The identification and location of jurisdictional Waters of the United States, including wetlands, regulated by the Corps under Section 404 of the CWA and Sections 9 and 10 of the RHA is determined through a process known as a Jurisdictional Determination (JD). The Corps uses a multi-parameter approach defined in Technical Report Y-87-1, Corps of Engineers Wetlands Delineation Manual, dated January 1987, and supplemental guidance when making jurisdictional determinations. It generally requires positive evidence of hydrophytic vegetation, hydric soils, and wetlands hydrology for some portion of the growing season for a determination that an area is a Federally-regulated wetland. The initial step in the permit application process is to identify and delineate those waterbodies and wetlands that are subject to CWA and RHA jurisdiction. The JD process provides important information to a landowner or investor for planning purposes or carrying out certain activities on a given parcel of land. Accurately identifying waters and wetlands is essential in making an application for a permit from the Corps to determine if work would occur in regulated waters of the United States.

There are two types of JD procedures used by the Philadelphia District. Preliminary JDs are advisory in nature and may not be appealed. A landowner, permit applicant, or other "affected party" may elect to use a preliminary JD to voluntarily waive or set aside questions regarding CWA/RHA jurisdiction over a particular site, usually in the interest of allowing the landowner or other "affected party" to move ahead expeditiously to obtain a Corps permit authorization where the party determines that is in his or her best interest to do so. We encourage permit applicants to submit a completed, signed copy of the Preliminary JD Form and copies of the referenced supporting data with your permit application or JD request.

An approved JD is an official Corps determination that jurisdictional waters of the United States are either present or absent on a particular site. An approved JD is valid for five years and can be appealed through the Corps' administrative appeal process set out at 33 CFR Part 331. The information on the Philadelphia District Approved JD Information Checklist is recommended for all approved JD requests and will assist Corps staff in delineating waters of the U.S. and completing accurate JDs. This documentation must allow for a reasonably accurate replication of the delineation or determination at a future date. An Approved JD Form is also required. In order to help further streamline the JD procedures, we encourage applicants to consider the use of consultants to perform the delineation.

Public Notices

Reference Materials

Regulations and Guidance

Wetlands

Wind Turbines

WRDA

Regulatory Guidance Letter 16-01, Subject: Jurisdictional Determinations

On Oct. 31, 2016, the Corps issued Regulatory Guidance Letter 16-01, Subject: Jurisdictional Determinations. RGL 16-01 explains the differences between approved and preliminary JDs and provides guidance to the field and the regulated public on when it may be appropriate to issue an approved jurisdictional determination (AJD) as opposed to a preliminary jurisdictional determination (PJD), or when it may be appropriate to not prepare any JD whatsoever. The purpose of this RGL is to encourage communication between Corps districts and JD requestors. This will help ensure a common understanding of the different options for addressing geographic jurisdiction, so the Corps can provide the appropriate JD, if any, that best satisfies the requestor's needs and circumstances. The Corps reaffirms its commitment to continue its current practice of providing an AJD if the JD requestor still believes that an AJD is needed after understanding the various options. The RGL also provides additional guidance regarding documentation of PJDs and AJDs. The Corps will set reasonable priorities based on workload and available regulatory resources. For example, it may be reasonable to give higher priority to a JD request when it accompanies a permit request. Both RGL 07-01 and 08-02 are superseded by RGL 16-01.

Clean Water Act Guidance

- Revised Guidance on Clean Water Act Jurisdiction Following the Supreme Court Decision in *Rapanos v. U.S. and Carabell v. U.S.* - 2 December 2008
- Revised Rapanos-Carabell Guidance, Response to Comments - 2 December 2008
- Revised Rapanos-Carabell Guidance, Questions and Answers - 2 December 2008
- Modified Process for Coordinating Jurisdictional Determinations - 28 January 2008
- SPECIAL PUBLIC NOTICE: Extension of the June 5, 2007 Joint USEPA and USACE Guidance regarding Clean Water Act Jurisdiction after Rapanos and Comment Period on the Joint Guidance
- EPA and Army Corps of Engineers Federal Register Notice Regarding Comment Period Extension for Rapanos Guidance
- Memorandum Re: CWA Jurisdiction Following U.S. Supreme Court discussion in *Rapanos v. United States*
- Memorandum for the Field: Coordination on JDs under CWA Section 404 in Light of SWANCC and Rapanos Supreme Court Decisions
- Federal Register Notice for *Rapanos* and *Carabell* Decision
- Press Release for *Rapanos* and *Carabell* Decision
- Key Points for *Rapanos* and *Carabell* Decision
- Guidance Highlights for *Rapanos* and *Carabell* Decision
- Questions & Answers for *Rapanos* and *Carabell* Decision
- CWA Jurisdiction Power Point Presentation

Forms & Materials

Jurisdictional Boundaries

- Section 10 and Section 404 for freshwater rivers, streams, lakes, ponds, and wetlands.
- Section 10, Section 404, and Section 103 for the outer continental shelf, territorial seas, navigable waters, tidal flats, and tidal, fresh, and brackish wetlands.
- List of Navigable Waters within Philadelphia District

Guidance

- Local Processing Procedures for Jurisdictional Determinations
- JD Guidebook

Forms & Materials

- Jurisdictional Determination Application
- JD Checklist
- Approved JD Form
- Preliminary JD Form - must be signed & included with your jurisdictional determination application, if you are requesting a preliminary (rather than an approved)
- Questions and Answers for RGL 16-01
- Quick Reference Chart for RGL 16-01
- Sample Questions for Requestors

Wetland Delineation Forms

- Wetland Delineation Forms and Materials
- Regional Supplements to the 1987 USACE Wetland Delineation Manual



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