

## Draft Operational Guidance for WOTUS Changes

This page serves as an NCDOT resource to provide information and guidance for WOTUS changes.

### 8/29/2023 Release from the EPA

On August 29, 2023, the U.S. Environmental Protection Agency (EPA) and Department of the Army (the agencies) issued a final rule to amend the final "[Revised Definition of 'Waters of the United States'](#)" rule, published in the *Federal Register* on January 18, 2023.

[Link to EPA Amendment to the 2023 Rule Page.](#)

[Fact Sheet](#)

[Waters Rule Amendments](#)

### 6/27/2023 Release from the EPA and ACOE:

The Environmental Protection Agency and the U.S. Department of the Army (agencies) are in receipt of the U.S. Supreme Court's May 25, 2023, decision in the case of *Sackett v. Environmental Protection Agency*. In light of this decision, the agencies are interpreting the phrase "waters of the United States" consistent with the Supreme Court's decision in *Sackett*.

**The agencies are developing a rule to amend the final "Revised Definition of 'Waters of the United States'" rule, published in the Federal Register on January 18, 2023, consistent with the U.S. Supreme Court's May 25, 2023 decision in the case of *Sackett v. Environmental Protection Agency*. The agencies intend to issue a final rule by September 1, 2023.**

### 6/27/2023 Update:

AJD's can now be performed on a limited basis to remove areas such as artificial lakes and ponds, etc. Contact your Corps Representative to discuss these features and how best to handle them.

### 6/9/2023 Update:

Based on the *Sackett vs EPA Ruling* ([https://www.supremecourt.gov/opinions/22pdf/21-454\\_4g15.pdf](https://www.supremecourt.gov/opinions/22pdf/21-454_4g15.pdf)) the 2023 WOTUS rule training will no longer occur.

### General information/ recommendations:

The Corps will honor, continue to conduct, and permit projects based on Preliminary Jurisdictional Determinations (PJD's).

For Projects nearing Permitting (letting now – 2024)

- Reach out to your Corps Representative for recommendations on how to proceed with the features on your project. Pay special attention to those areas where an AJD may be required to remove non-jurisdictional features.

**For Projects in design and early stages (NRTR):**

- As Resource Jurisdictionality/ Regulatory Responsibility may change, Jurisdictional Determinations should be postponed if the project schedule allows, until regulatory guidance is provided.
- A Jurisdictional Determination visit with the Agencies should NOT be an automatic component of the Natural Resources Technical Report (NRTR). We continue to recommend that NCDOT Environmental staff review the resources delineated and consider factors such as the likelihood of feature avoidance, and project schedule before requesting a JD.
- If possible/feasible, it may be beneficial to have delineators describe wetland connections to nearby waterbodies through notes or photographs. This could assist/ prioritize future visits when guidance is provided.

**For Projects requiring Merger Meetings in the next year:**

- Reach out to the Environmental Policy Unit. This ruling may have implications / circumstances that should be considered.