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# Coordination Process Update: U.S. Army Corps of Engineers/Environmental Protection Agency Joint Coordination Memoranda Addressing Jurisdictional Determinations

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The United States Army Corps of Engineers (“Corps”) and United States Environmental Protection Agency (“EPA”) issued on April 25th document titled:

*Coordination Process Update: Joint Coordination Memoranda to the Field Between the U.S. Department of the Army, U.S. Army Corps of Engineers (CORPS) and the U.S. Environmental Protection Agency (EPA) (“Memorandum”).*

The Memorandum provides an update on the coordination process between EPA and the Corps in issuing Jurisdictional Determinations.

The Memorandum was necessitated by the United States Supreme Court decision in *Sackett v. EPA*.

*Sackett* addressed the scope of the Clean Water Act’s definition of Waters of the United States (“WOTUS”). The majority Opinion significantly narrowed the scope of what constitutes a WOTUS for purposes of the Clean Water Act. Further, because of *Sackett*, EPA and the Corps issued a final rule on August 29, 2023, that revised the Clean Water Act definition of WOTUS to conform to the decision.

The April 25th Memorandum referenced both the *Sackett* decision and the 2023 final rule. However, it also notes that the 2023 rule is not currently operative in certain states and for certain parties due to litigation.

As a result, the memorandum states that where the 2023 rule is not operative, the pre-2015 regulatory regime is in effect. The pre-2015 regulatory regime refers to the Corps and EPA’s pre-2015 definition of WOTUS.

The Memorandum also discusses:

- Definition of a Jurisdiction Determination (i.e., a document provided by the Corps stating the presence or absence of WOTUS on a parcel or written statement and a map identifying the limits of WOTUS on a parcel)

- Prior joint coordination memorandum between the Corps and EPA coordinating on Clean Water Act geographic jurisdictional matters
- Outlines Corps and EPA procedures when Jurisdictional Determinations are elevated to headquarters under the 2023 final rule/pre-2015 WOTUS regime
- Addresses categories of waters that require coordination
- Notes resolution of 73 of the elevated draft approved Jurisdictional Determinations as of April 23, 2024

A copy of the Memorandum can be downloaded [here](#).