

April 30, 2025

Mrs. Carrie Barefoot, PE
401/Stormwater Branch Manager
Environmental Permits Division
MS Department of Environmental Quality
Office of Pollution Control
P.O. Box 2261
Jackson, MS 39225-2261

Re: **Large Construction Storm Water Major Modification**
Skyline Steel, LLC
Yard Two Expansion (3.22-acre expansion)
Iuka, Mississippi (Tishomingo County)
Permit No.: MSR109323

Dear Mrs. Barefoot:

Skyline Steel, LLC (Skyline) retained the services of Trinity Consultants (Trinity) to submit a Major Modification (Major Mod) and updated Storm Water Pollution Prevention Plan (SWPPP) for the above-referenced facility. Skyline was issued coverage under MSR109323 for development of a 5.84-acre site at the end of County Road 351, Iuka, Mississippi on October 10, 2024. This modification is requesting an expansion of 3.22 acres to include the acquisition of a building and its surrounding area in the southwest portion of the property. Construction will include the clearing, grading, and depositing of gravel for preparation of a steel pipe storage yard for the facility. The Major Mod form and updated pages of the SWPPP for this project are attached.

If you have any questions or concerns regarding the attachments, please feel free to contact me at (662) 840-5945.

Sincerely,



Jennifer Deignan
Consultant

Attachments: Attachment 1 – Major Modification Form
Attachment 2 – SWPPP Updated Pages

ATTACHMENT 1
MAJOR MODIFICATION FORM



**MAJOR MODIFICATION FORM
FOR LARGE CONSTRUCTION GENERAL PERMIT**
Coverage No. MSR10 9 3 2 3 County Tishomingo

INSTRUCTIONS

Coverage recipients shall notify the Mississippi Department of Environmental Quality (MDEQ) at least 30 days in advance of the following activities (check all that apply). This form should be submitted with a modified Storm Water Pollution Prevention Plan (SWPPP), updated USGS topographic map, Corps of Engineers Section 404 documentation and wastewater collection and treatment information, as appropriate.

SWPPP details have been developed and are being submitted for MDEQ review for subsequent phases of an existing project.

"Footprint" identified in the original LCNOI is proposed to be changed.

This form must be signed by the current coverage recipient under Mississippi's Large Construction General Permit. A different developer of new phases of existing subdivisions must apply for separate permit coverage through the submittal of a new complete LCNOI package. Coverage recipients are authorized to discharge storm water associated with proposed expansions of existing subdivisions or subsequent phases, under the conditions of the General Permit, only upon receipt of written notification of approval by MDEQ. All other modifications, such as changes of erosion and sediment controls used, must be in accordance with ACT6, S-1 (6) and S-2 (7) of the General Permit.

ALL INFORMATION MUST BE COMPLETED (indicate "N/A" where not applicable)

CURRENT COVERAGE RECIPIENT INFORMATION

COVERAGE RECIPIENT CONTACT NAME: Donald Barney PHONE # (803) 620-8502
COMPANY NAME: Skyline Steel, LLC
STREET OR P.O. BOX: 300 Technology Center Way, Suite 450
CITY: Rock Hill STATE: SC ZIP: 29730 E-MAIL: don.barney@nucorskyline.com
IS THE APPLICANT DIFFERENT FROM THE CURRENT COVERAGE HOLDER? YES NO

PREPARER/CONSULTANT INFORMATION
(Complete if prepared by someone other than applicant.)

PREPARER/CONSULTANT CONTACT NAME: Jennifer Deignan PHONE # (662) 840-5945
COMPANY NAME: Trinity Consultants
STREET OR P.O. BOX: P.O. Box 356
CITY: Sherman STATE: MS ZIP: 38869 E-MAIL: jennifer.deignan@trinityconsultants.com
MAY MDEQ CORRESPOND DIRECTLY WITH THE PREPARER / CONSULTANT REGARDING THE PROPOSED PROJECT / MODIFICATION? YES NO

SITE INFORMATION

PROJECT NAME: Yard Two Extension
CITY: luka TRIBAL LAND ID (N/A If not applicable): N/A
Latitude / Longitude Collected at Project Entrance or Construction Start Point:
LATITUDE: 34 degrees 58 minutes 8.93 seconds LONGITUDE: 88 degrees 14 minutes 3.81 seconds
LAT & LONG COLLECTION METHOD (e.g., GPS, Map Interpolation): Google Earth
REDUCTION IN ACREAGE: -- ADDITIONAL ACREAGE TO BE DISTURBED: 3.22
TOTAL PROJECT ACREAGE: 9.06 ESTIMATED CONSTRUCTION END DATE: 04/30/2026

IS THE PROJECT REROUTING, FILLING OR CROSSING A WATER CONVEYANCE OF ANY KIND? (If yes, contact the U.S. Army Corps of Engineers' Regulatory Branch for permitting requirements.) YES NO

IF THE PROJECT IS A SUBDIVISION OR A COMMERCIAL DEVELOPMENT, HOW WILL SANITARY SEWAGE BE DISPOSED? Check one of the following and attach the pertinent documents.

- Existing Municipal or Commercial System. Please attach plans and specifications for the collection system and the associated "Information Regarding Proposed Wastewater Projects" form or approval from County Utility Authority in Hancock, Harrison, Jackson, Pearl River and Stone Counties. If the plans and specifications cannot be provided at the time of LCNOI submittal, MDEQ will accept written acknowledgement from official(s) responsible for wastewater collection and treatment that the flows generated from the proposed project can and will be transported and treated properly. The letter must include the estimated flow.
- Collection and Treatment System will be Constructed. Please attach a copy of the cover of the NPDES discharge permit from MDEQ or indicate the date the application was submitted to MDEQ (Date: _____.)
- Individual Onsite Wastewater Disposal Systems for Subdivisions Less than 35 Lots. Please attach a copy of the Letter of General Acceptance from the Mississippi State Department of Health or certification from a registered professional engineer that the platted lots should support individual onsite wastewater disposal systems.
- Individual Onsite Wastewater Disposal Systems for Subdivisions Greater than 35 Lots. A determination of the feasibility of installing a central sewage collection and treatment system must be made by MDEQ. A copy of the response from MDEQ concerning the feasibility study must be attached. If a central collection and wastewater system is not feasible, then please attach a copy of the Letter of General Acceptance from the State Department of Health or certification from a registered professional engineer that the platted lots should support individual onsite wastewater disposal systems.

INDICATE ANY LOCAL STORM WATER ORDINANCE WITH WHICH THE PROJECT MUST COMPLY:

N/A

NEAREST NAMED RECEIVING STREAM: Yellow Creek to Pickwick Lake

IS RECEIVING STREAM ON MISSISSIPPI'S 303(d) LIST OF IMPAIRED WATER BODIES? (The 303(d) list of impaired waters and TMDL stream segments may be found on MDEQ's web site: <https://www.mdeq.ms.gov/water/surface-water/tmdl/>) YES NO

HAS A TMDL BEEN ESTABLISHED FOR THE RECEIVING STREAM SEGMENT? YES NO

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.


Signature (must be signed by coverage recipient)

6/19/2025
Date

Donald Barney
Printed Name

President/General Manager
Title

Please submit this form to: Chief, Environmental Permits Division
Office of Pollution Control
MS Department of Environmental Quality
P.O. Box 2261
Jackson, Mississippi 39225

Electronically: <https://www.mdeq.ms.gov/construction-stormwater/>

ATTACHMENT 2
SWPPP UPDATED PAGES

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APPENDICES:

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Appendix B: Storm Water and Erosion Controls Change Form

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Appendix D: Employee Training Log
Appendix E: Wetland Delineation Report and Corps Documents
Appendix F: MS Secretary of State Certificate of Good Standing
Appendix G: Large Construction Storm Water General Permit

1.0 LARGE CONSTRUCTION STORM WATER POLLUTION PREVENTION PLAN (SWPPP) CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.


Signature

Donald Barney
Name (Printed)

Skyline Steel, LLC
Company

6/19/2025
Date

President/General Manager
Title

The Large Construction Storm Water Pollution Prevention Plan (SWPPP) was prepared in accordance with sound engineering practices and identifies potential sources of pollution, which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. The SWPPP describes and ensures the implementation of best management practices, which will reduce pollutants in storm water discharges and assure compliance with the terms and conditions of the Large Construction Storm Water General Permit. The information presented herein constitutes a true and accurate representation of the information, findings, and observations made during the site investigation and preparation of the plan.



Brian S. Ketchum, P.E.
Principal Consultant
Trinity Consultants

04/30/2025
Date

State of Mississippi
Registration No. 13372



2.0 SWPPP OVERVIEW

2.1 Introduction

The Large Construction General Permit requires that construction activities disturbing more than five (5) acres develop a Large Construction Storm Water Pollution Prevention Plan (SWPPP). The Construction SWPPP is used to identify practices and controls that will be utilized to prevent erosion of disturbed soils and to manage potentially contaminated storm water runoff from the construction site.

Skyline Steel, LLC plans to develop a 9.06-acre site located at the end of County Road 351, Iuka, Mississippi. This development will be named Yard Two Extension, and the site will function as a steel pipe storage yard. The construction activities that will take place include clearing, installation of sediment erosion controls including the implementation of a 25-foot undisturbed natural buffer around Waters of the United States, grading, and implementing a clay-gravel cover across the disturbance area. In addition to the 25-foot undisturbed natural buffer, Skyline Steel, LLC will install a double layer of silt fencing along the perimeter of the wetlands. Facility operations fall within Standard Classification Code (SIC) 3317, Steel Pipe and Tubes. Based on this SIC Code, the facility is considered to be engaging in “industrial activity” under 40 CFR 122.26(b)(14)(ii) and has the potential to discharge storm water associated with industrial activities; therefore, the facility is subject to the requirements to obtain an NPDES permit and prepare a Large Construction Storm Water Pollution Prevention Plan (SWPPP).

Skyline Steel, LLC has prepared this SWPPP for construction activities located at the end of County Road 351, Iuka, Mississippi. This SWPPP was developed and will be implemented in accordance with the requirements of the Mississippi Department of Environmental Quality (MDEQ) Large Construction Storm Water General Permit under the NPDES Wastewater Program. The SWPPP follows the guidelines presented in the MDEQ *SWPPP Guidance Manual for Construction Activities*.

The SWPPP identifies potential sources of pollution that may affect the quality of storm water discharges associated with construction activity, evaluates the risk of storm water discharges from these sources, and presents the management practices that will be used at the facility for minimization of pollutants in storm water discharges. All reports and certifications required by the Large Construction Storm Water General Permit will be signed by a responsible corporate officer or duly authorized representative who has responsibility for the overall facility operations or overall responsibility for environmental matters. The SWPPP will be retained onsite at all times and made available upon request to an authorized representative of the MDEQ and/or United States Environmental Protection Agency (EPA). The SWPPP will be amended whenever there is a change in construction, operation, maintenance, or footprint of the facility that may affect the discharge of storm water.

2.2 General Information

| | | | | | |
|--|----------------|--|--|-------------------|------------------------------|
| Site Name: | | Skyline Steel, LLC | | | |
| Mailing and Physical Address: | | 77 County Road 315, Iuka, Mississippi 38852 | | | |
| Location (GPS): | | Latitude: | 34° 58' 22.08" N | Longitude: | 88° 14' 5.52" W |
| Site Response Contact: | | Chris Price, Plant Engineer | | | |
| Office: | (662) 346-8370 | Cell: | (662) 202-6496 | Email: | chris.price@nucorskyline.com |
| Closest Water Body and Route of Entry: | | Drainage ditches along the central and eastern perimeter of the project site to Storm Water Outfall to Yellow Creek and Pickwick Lake. | | | |
| Is the receiving stream identified on the Section 303(d) List of Impaired Water Bodies? | | No | Has a TMDL been completed for the receiving stream? | No | |
| Discharge to Municipal Separate Storm Sewer System (MS4)? | | No | If yes, name MS4: | N/A | |

2.3 SWPPP Objectives

The EPA published regulations in November 1990 under the National Pollutant Discharge Elimination System (NPDES) program with the objective of controlling water pollution associated with storm water discharges. The goal of the storm water program was to improve water quality by reducing the number of pollutants contained in storm water runoff. Construction operations subject to the requirement of a NPDES storm water discharge permit must prepare and implement a SWPPP. Construction projects disturbing more than five (5) acres of land must obtain a large construction storm water general permit. In addition, MDEQ has published a *SWPPP Guidance Manual for Construction Activities* that specifies methods for temporarily and permanently controlling sediment erosion for construction activities. MDEQ addresses storm water management through the implementation of site-specific SWPPP to address pollutants and sources associated with storm water runoff. The MDEQ requires structural and nonstructural best management practices (BMPs) to manage and reduce pollutants carried in storm water. The objectives of the Construction SWPPP are as follows:

- Identify potential sources of pollution and associated risk, which may affect the quality of storm water discharges.
- Allow on-site managers to make field decisions as to the viability and number of controls to be implemented.
- Establish procedures to amend the SWPPP whenever there is a change in construction, operation, or maintenance which may potentially affect the discharge of pollutants to state waters; or if the SWPPP proves to be ineffective in controlling storm water pollutants.
- Establish procedures to inspect and maintain erosion and sediment controls and other protective measures.

2.4 SWPPP Elements

In order to meet the requirements of the Large Construction Storm Water General Permit, the subsequent sections of the SWPPP contain the following elements:

- ❑ **Section 3.0: Project Information** – Describes project and site characteristics.
- ❑ **Section 4.0: Erosion and Sediment Controls** – Describes controls for construction activities as well as the procedures for implementing such controls.
- ❑ **Section 5.0: Control Implementation and Inspections** – Explains sedimentation and erosion controls during on-going construction activities and the sequence in which construction activities occur.
- ❑ **Figures:** Includes Site Location Map, Aerial Map, and Erosion and Sediment Control Plan with site control measures, BMPs, outfall locations, etc.
- ❑ **Appendices:** Provides documents and tools to assist with implementing and managing the SWPPP.

2.5 Allowable Non-Storm Water Discharges

The Mississippi Large Construction Storm Water General Permit contains provisions for allowable non-storm water discharges. Listed below are non-storm water discharges allowed by the permit:

- ❑ Discharges from fire-fighting activities;
- ❑ Fire hydrant flushing;
- ❑ Water used to control dust;
- ❑ Potable water sources including uncontaminated water line flushing;
- ❑ Routine external building wash down that does not use detergents;
- ❑ Pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used;
- ❑ Uncontaminated air conditioning or compressor condensate;
- ❑ Uncontaminated ground water or spring water;
- ❑ Foundation or footing drains where flows are not contaminated with process materials;
- ❑ Landscape irrigation; and
- ❑ Water used to wash vehicles, wheel wash water and other wash waters where detergents are not used.

2.6 Prohibited Non-Storm Water Discharges

The Mississippi Large Construction Storm Water General Permit contains provisions for prohibited non-storm water discharges. The non-storm water discharges prohibited by the Permit are listed below:

- ❑ Wastewater from washout of concrete (unless managed by an appropriate control);
- ❑ Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
- ❑ Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
- ❑ Soaps or solvents used in vehicle and equipment washing;
- ❑ Wastewater from sanitary facilities, including portable toilets; and
- ❑ Dewatering activities, including discharges from dewatering of trenches and excavations unless managed by BMPs.

2.7 Impact on Wetlands

A wetland delineation was performed on January 8, 2024 by Burns & McDonnell on approximately 7.3 acres of the project area where potential jurisdictional waters were a concern. The delineation resulted in identifying two potential wetland areas: one in a central ditch area (Wetlands 01) and one northeast of the project area (Offsite Wetland 02). The initial 5.84-acre LCNOI submission avoided these areas with proper required vegetational buffers and controls installed. However, an approved Jurisdictional Determination and letter from the U.S. Army Corps of Engineers (USACE) dated January 3, 2025 shows no USACE permit is required for the construction activities within the project area. The original wetland delineation and relative Corps documents can be found in **Appendix E**. The 3.22 acre expansion is not located in a potential wetland area.

3.0 PROJECT INFORMATION

3.1 Project Description

The project scope consists of the development of a 9.06-acre site located at the end of County Road 351, Iuka, Mississippi. This project consists of a steel pipe laydown area and warehouse building, where the facility will store excess steel pipe once construction is complete.

3.2 Site Drainage

The proposed site topography consists of relatively flat property, which lies along a watershed boundary with a gradual slope toward a central and eastern portions of the property. Storm water that falls on the property will flow south and east and exit the site via SW006 and SW007. Topographical and aerial maps of the site are provided as **Figure 1 – Site Location Map** and **Figure 2 – Aerial Map**, respectively. **Figure 3 – Erosion and Sediment Control Plan** contains a drawing with site specific details including storm water flows, outfall locations, and erosion and sediment controls. **Figure 4 – Topographical Survey** contains four (4) initial elevations of the project area prior to any land disturbing activities. The proposed construction activities will take place along a watershed boundary. Most of the property will drain to Yellow Creek and Pickwick Lake. The storm water that falls on the area will be discharged through outfalls located at the end of existing drainage ditches that run along the eastern perimeter and central portion of the project site. The water discharged through SW006 will be discharged after flowing through a series of wattles and rock check dams.

FIGURES

FIGURE 3

EROSION AND SEDIMENT CONTROL PLAN



Skyline Steel, LLC
 County Road 351
 Iuka, MS 38852

Erosion and Sediment Control Plan

Figure 3

Legend:

- Stormwater Outfalls 25 ft. Buffer Zone
- Wetlands Property Boundary
- Topsoil Stockpile Construction Entrance/Exit
- Material Storage Area Drainage Ditch
- Wattles
- Rock Check Dams
- Silt fence
- Double Silt Fence

Scale: 1:1,600

Drawn By: JAD

Date: 08/13/2024 Revised: 04/30/2025

APPENDICES

APPENDIX E

WETLAND DELINEATION REPORT AND CORPS DOCUMENTS



DEPARTMENT OF THE ARMY
NASHVILLE DISTRICT, CORPS OF ENGINEERS
REGULATORY DIVISION
3701 BELL ROAD
NASHVILLE, TENNESSEE 37214

January 3, 2025

SUBJECT: File No.LRN-2024-00861, Hoyt Hayes Construction; Approved Jurisdictional Determination, Yellow Creek, Pickwick Lake, Iuka, Mississippi (34.9686°N, -88.2340°W)

Hoyt Hayes Construction
C/O Hoyt Hayes
75 Miller Avenue
Jackson, Tennessee 38305

Dear Mr. Hayes:

This letter is in regard to your jurisdictional determination request (JD Report) dated November 8, 2024, which documented potential waters of the United States on a review area of approximately 7.3 acres. This project has been assigned File No. LRN-2024-00861, please refer to this number in any future correspondence.

The U.S. Army Corps of Engineers (USACE) has regulatory responsibilities pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). Under Section 10, the USACE regulates any work in, or affecting, navigable waters of the U.S. It appears the review area does not include navigable waters of the U.S. and would not be subject to the provisions of Section 10. Under Section 404, the USACE regulates the discharge of dredged and/or fill material into waters of the United States, including wetlands.

Based on our review of the JD Report and a field inspection on December 10, 2024, I have determined that the review area contains no waters of the United States subject to USACE jurisdiction. Therefore, you are not required to obtain Department of the Army authorization to discharge dredged or fill material within this area. The rationale for this determination is provided in the attached Approved Jurisdictional Determination form. This approved jurisdictional determination expires five years from the date of this letter, unless new information warrants revision of the determination before the expiration date, or the District Engineer identifies specific geographic areas with rapidly changing environmental conditions that merit re-verification on a more frequent basis. This approved jurisdictional determination is only valid for the review area as shown on the enclosed map labeled as "File No. LRN-2024- 00861: Figure 2 of 2".

If you object to this decision, you may request an administrative appeal under

USACE regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeals Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this decision you must submit a completed RFA form to the Great Lakes and Ohio River Division, Division Office at the following address:

Regulatory Appeal Review Officer
ATTN: Ms. Katie McCafferty
Army Engineer Division
550 Main Street, Room 10-780
Cincinnati, OH 45202-3222
TEL (513) 684-2699

In order for an RFA to be accepted by the USACE, the USACE must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the date listed on the RFA form. Should you decide to submit an RFA form, it must be received at the above address by March 4, 2025. **It is not necessary to submit an RFA form to the Division Office if you do not object to the decision in this letter.**

The delineation included herein has been conducted to identify the location and extent of the aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of an NRCS Certified Wetland Determination with the local USDA service center, prior to starting work.

We appreciate your awareness of the USACE regulatory program. If you have any questions, you may contact myself or Thomas Giordano at (256) 350-5620 or by e-mail at thomas.v.giordano@usace.army.mil.

Sincerely,

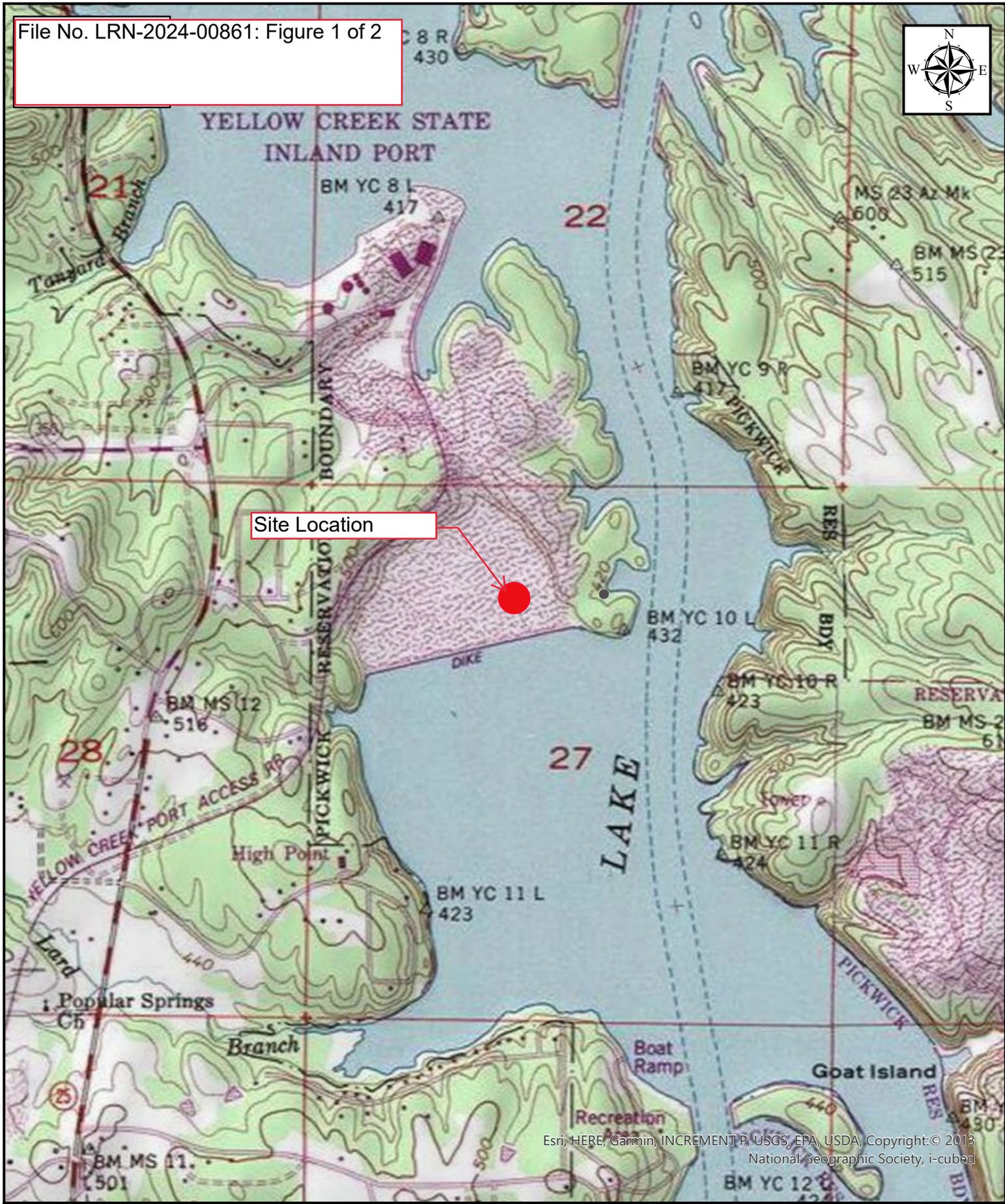


Eric Sinclair
Project Manager, West Branch
Regulatory Division
U.S. Army Corps of Engineers

Encls

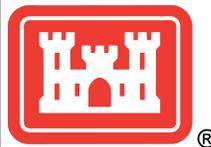
1. File No. LRN-2024-00861: Figure 1 of 2
2. File No. LRN-2024-00861: Figure 2 of 2

3. LRN-2024-00861_20241231_AJD-MFR
4. Appeal Form

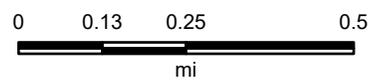


Site Location

Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA, Copyright:© 2013 National Geographic Society, i-cubed



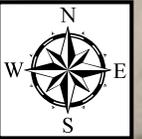
LRN-2024-00861



Map Center: 88.234243°W 34.968383°N

Map Created by: Thomas Giordano
Date: 12/31/2024

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere

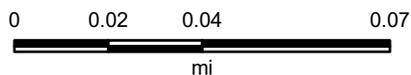


Review Area



Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA, Maxar, Microsoft, Esri, HERE, Garmin, IPC

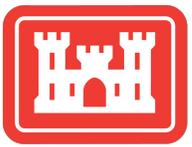
LRN-2024-00861



Map Center: 88.234713°W 34.968672°N

Map Created by: Thomas Giordano
Date: 12/30/2024

Coordinate System: WGS 1984 Web
Mercator Auxiliary Sphere



®



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NASHVILLE DISTRICT
3701 BELL ROAD
NASHVILLE TENNESSEE 37214

CELRN-RD

January 3, 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023),¹ LRN-2024-00861

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.² AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court’s decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Mississippi due to litigation.

1. SUMMARY OF CONCLUSIONS.

¹ While the Supreme Court’s decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

CELRN-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), LRN-2024-00861

- a. The review area is comprised entirely of dry land. (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area).

Based on the offsite/onsite review of the site, a review of offsite resources, and the information provided by the consultant, the project area did not satisfy all three wetland parameters (i.e. hydrology, hydrophytic vegetation, hydric soils) identified at 33 CFR 328.3(c)(16) and does not lie below the ordinary high-water mark or the high tide line of a jurisdictional water. Resources used to determine this can be found in this document under Section 9 and 10.

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. 651 (2023)

3. REVIEW AREA. The AJD review area is limited to the specified review area depicted on the attached figure and is located near. The site has been recently graded. No previous jurisdictional determination requests are associated with the site.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A

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6. SECTION 10 JURISDICTIONAL WATERS⁵: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁶ N/A

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
 - a. TNWs (a)(1): N/A
 - b. Interstate Waters (a)(2): N/A
 - c. Other Waters (a)(3): N/A
 - d. Impoundments (a)(4): N/A
 - e. Tributaries (a)(5): N/A
 - f. The territorial seas (a)(6): N/A
 - g. Adjacent wetlands (a)(7): N/A

⁵ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁶ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).⁷ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A
- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A
- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A
- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*. N/A
- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water). N/A

⁷ 51 FR 41217, November 13, 1986.

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9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Consultant report dated November 8, 2024
 - I. Field photos (consultant field visit conducted August 26, 2024)
 - II. Wetland Delineation Sheets
 - III. Feature Description Narratives
 - IV. USGS Topo Map
 - V. Soils Map
 - b. USACE field visit conducted December 10, 2024
 - I. Field Verification Photos
 - II. Site Visit Notes
 - III. Antecedent Precipitation Tool for December 30, 2024
 - c. National Regulatory Viewer Layers accessed December 30, 2024
 - I. 3DEP Digital Elevation Model (DEM)
 - II. 3DEP Hill Shade
 - d. Historicaerials.com accessed December 9, 2024
10. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.