

REGULATORY PROGRAM UPDATE

New York State Wetlands Forum
2024 Annual Conference
Saratoga Springs, New York

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New York District
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US Army Corps
of Engineers®



AGENDA



- 1. Regulatory Program Overview**
- 2. Program Goals**
- 3. Innovation**
- 4. Sackett Decision and WOTUS**
- 5. Mitigation Banking and In Lieu Fee Programs**



REGULATORY MISSION



To protect the Nation's aquatic resources, while allowing reasonable development through fair and balanced decisions.



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NEW YORK DISTRICT PROGRAM DETAILS



- Regulatory authorities for Waters of the United States in New York and New Jersey.
 - Section 10 Rivers & Harbors Act of 1899
 - Section 404 of the Clean Water Act
 - Section 103 of the Marine Protection, Research, & Sanctuaries Act of 1972 (Ocean Placement)
- Lead Regulatory District in New York State (Buffalo District)
- Regulatory Branch consists of two (2) geographic sections (Northern and Southern)
- Average Regulatory Action Results
 - 98 Jurisdictional Determinations/Year
 - 1123 General Permit Decisions/Year
 - 229 Individual Standard Permit Decisions/Year
 - 111 Compliance/Enforcement Actions/Year
 - 48,384 person-hours of effort/Year



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PROGRAM GOALS

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1. **Modernization of District Website**
2. **Online Payment of Permit Fees**
3. **Regulatory Request System**
4. **Transition to Paperless Office**
5. **Optimization of Online Documents**
6. **Interactive Navigable Waters List**
7. **Development of Wetland Assessment Methods**





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INNOVATION

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MODERNIZATION OF DISTRICT WEBSITE



Regulatory Links

- [Pay Permit Fee Online](#)
- [Applicant Information Guide](#)
- [Commonly Requested Issued Permits and Nationwide Permit Verifications](#)
- [Navigable Waters List for New York State](#)
- [Regulatory Main](#)
- [Boundaries](#)
- [Forms and Documents](#)
- [Contacts](#)
- [Section 408](#)
- [Wetlands Identification](#)
- [Jurisdictional Determination](#)
- [Recent Jurisdictional Determinations](#)
- [Compensatory Mitigation](#)
- [Conservation Easements](#)
- [Nationwide Permits](#)
- [Regional General Permits and State](#)
- [Programmatic General Permits](#)
- [Obtaining a Permit](#)
- [Customer Survey](#)
- [Regulatory Public Notices](#)

Regulatory Branch

Regulatory Branch





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ONLINE PAYMENT OF PERMIT FEES



Pay.gov Sign In

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Department of the Army Permit Fees

- 1** Before You Begin
- 2 Complete Agency Form
- 3 Enter Payment Info
- 4 Review & Submit
- 5 Confirmation

About this form

Use this form to make a Department of the Army Permit Fee payment.

Accepted Payment Methods:

- Bank account (ACH)
- Amazon account
- PayPal account
- Debit or credit card

With an account you can:

- See the payments you made since you created an account.
- Store payment information so you don't have to re-enter it.
- Copy a form you already submitted the next time you need to make a payment.

To take advantage of these benefits, you can [Sign In](#). If you don't have an existing account, you will have the option to create an account on the sign-in page. To continue as a guest user, click the 'Continue to the Form' button.

[Preview Form](#) [Cancel](#) [Continue to the Form](#)



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REGULATORY REQUEST SYSTEM (RRS)



The U.S. Army Corps of Engineers Regulatory Program launches initial beta version of the Regulatory Request System (RRS).

The Regulatory Request System (RRS).
Stay tuned for updates!



DIGITAL RESOURCES

WEBPAGES

<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/>

New Online Application Portal and Management Platform

1. Goal of RRS is to create a modern public interface and permitting process by utilizing a web-based platform to achieve greater efficiency, improve transparency, and provide automated responses for certain requests.
2. Creates an efficient process for public to:
 - a. Upload project information
 - b. Receive automated project numbers, points of contact, and status update
3. Provides applicants with a more efficient and transparent review of their permit requests.
4. Removes the burden associated with the preparation and mailing of paper applications.
5. Intended to provide a one-stop shop for Regulatory permitting requests.



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REGULATORY REQUEST SYSTEM (RRS)



NOTICE: The Regulatory Request System (RRS) is currently operating within a beta version providing an avenue for the public to submit requests for both pre-application meetings and jurisdictional determinations. Additional capabilities, such as the submission of permit application requests, are slated to be incorporated by Spring 2024.



Login

Welcome to the Regulatory Request System

Apply Online • Learn about the Regulatory Program • Track Request Status

Get Started >>>



Regulatory Program Information

Learn the basics about the Regulatory Program, including recent announcements.



Jurisdiction

Does the property in question contain wetlands/waters? If so does the Corps have jurisdiction?



Permitting

Do you need a permit? Need to schedule a pre-application meeting?



Mitigation

Discover how we help avoid and minimize impacts to aquatic resources.



Report Violations

Submit a report of unauthorized activity or permit non-compliance.



RRS Support

Get general system support, district contact information, submit feedback, and login.gov help.



Public Notices

UNDER CONSTRUCTION
Visit the HQ Regulatory website to find your district and get local public notices.



Apply for a Permit

UNDER CONSTRUCTION
If you're ready to apply for a permit, click here to login.



Supported by Civil Works Business Intelligence

Privacy & Legal Help RRS v1.0.6

Highest Possible Classification is CUI





REGULATORY REQUEST SYSTEM (RRS)



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Login

[Home](#) > [Permitting](#)

Permitting

Jump To

- [Regulatory Program Information](#)
- [Permit Process Guide](#)
- [Jurisdiction](#)
- [Permitting](#)**
- [Regulatory Announcements](#)
- [Mitigation](#)

Do I need a permit?

The U.S. Army Corps of Engineers (USACE) Regulatory Program administers and enforces Section 10 of the Rivers and Harbors Act of 1899; Section 404 of the Clean Water Act of 1972, as amended; and Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972.

- [Expand to Learn More About Section 10 of the Rivers and Harbors Act](#)
- [Expand to Learn More About Section 404 of the Clean Water Act](#)
- [Expand to Learn More About Section 103 of the Marine Protection, Research, and Sanctuaries Act](#)

If your project area contains waters of the United States and your project would impact these waters, you may need a permit. The size/extent of proposed project impacts to waters of the United States and the type of work you're conducting determines whether you need permit and the type of permit (general or standard) that is required.

Read more about how the USACE determines the location of waters of the United States by visiting the [Jurisdiction page](#).

All USACE permit decisions are subject to various other federal laws applicable to federal actions, such as the Endangered Species Act, the National Historic Preservation Act, tribal treaties, and the Magnuson-Stevens Fisheries Conservation and Management. Additional permits, licenses, variances, or similar authorization may be required by other federal, state, and local laws for the proposed activity.

What types of permits are available?

The USACE has two types of permits, **general** and **standard** permits:

- [Expand to Learn More About General Permits](#)
- [Expand to Learn More About Individual Permits](#)

Unsure of what type of permit you need?

If you're unsure of what type of permit you need, you can request a pre-application meeting with the USACE by signing up/logging in.

[Login Here](#)





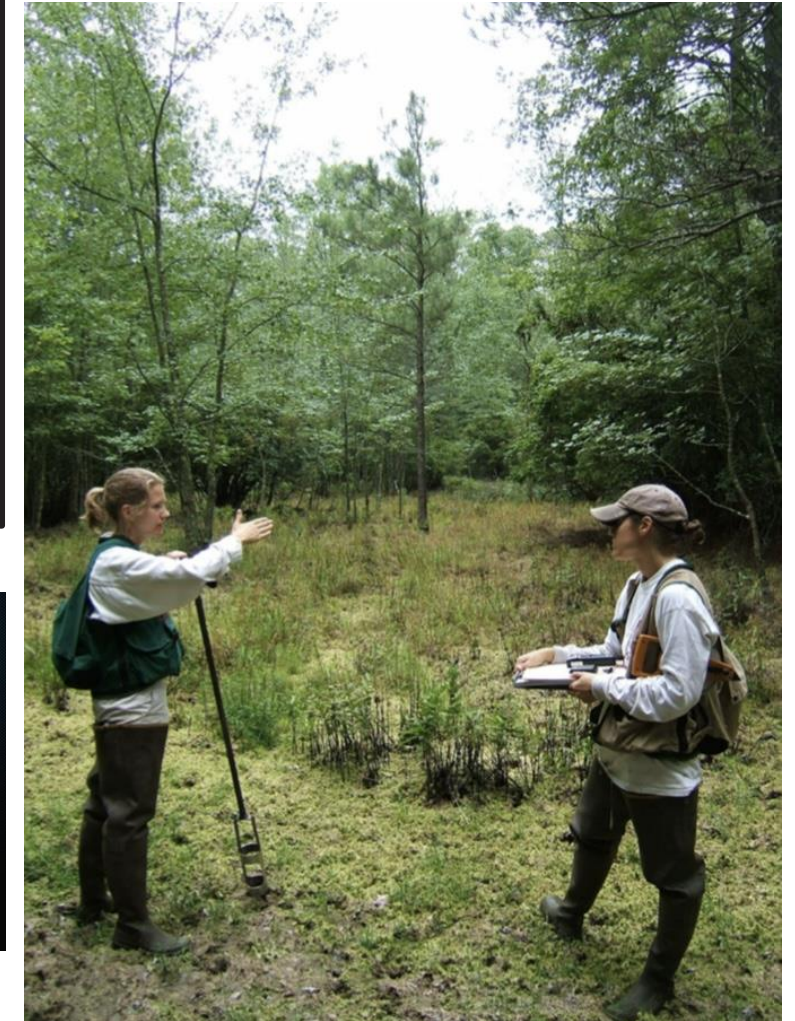
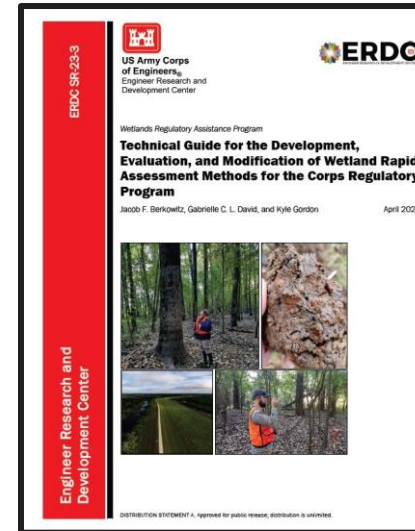
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DEVELOPMENT OF WETLAND ASSESSMENT METHODS

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- ERDC/New York and Buffalo Districts initiate development of method to evaluate and assess the functions of freshwater, non-tidal wetlands throughout the entire state of New York
- Functional assessment approach will quantify both potential impacts to wetland resources associated with proposed projects.
- Establish and evaluate compensatory mitigation sites, conducting alternatives analysis, and addressing other USACE Regulatory priorities



WOTUS REGULATORY REGIMES



- **Pre-2015 Rule:** WOTUS definition consistent with relevant case law and longstanding practice and applicable guidance.
- **2015 Obama-Era Rule**
- **2019 Trump-Era Rule:** Repealed 2015 Rule
- **2020 Trump-Era Rule:** Replaced WOTUS with Navigable Waters Protection Rule
- **2021 Federal Court Decision:** Vacated 2020 Navigable Waters Protection Rule resulting in return to implementation of the pre-2015 regulatory regime.
- **2023 Biden-Era Rule:** replaced the pre-2015 regulatory regime
- **2023 Rule Amended** (SEP 2023) due to Sackett Decision (MAY 2023).

SCOTUS *SACKETT* DECISION

While the 2023 Rule was not directly before the Court, the Court considered the jurisdictional standards set forth in the rule.

Conclusions:

- Significant nexus standard was inconsistent with the Court’s interpretation of the CWA.
- CWA’s use of “**waters**” encompasses **only those relatively permanent, standing or continuously flowing** bodies of water forming geographical features. (ie streams, oceans, rivers, and lakes).
- The Court agreed that **adjacent wetlands** are WOTUS when the wetlands have a continuous surface connection to water bodies that are also WOTUS in their own right, so that there is no clear demarcation between “waters” and wetlands.



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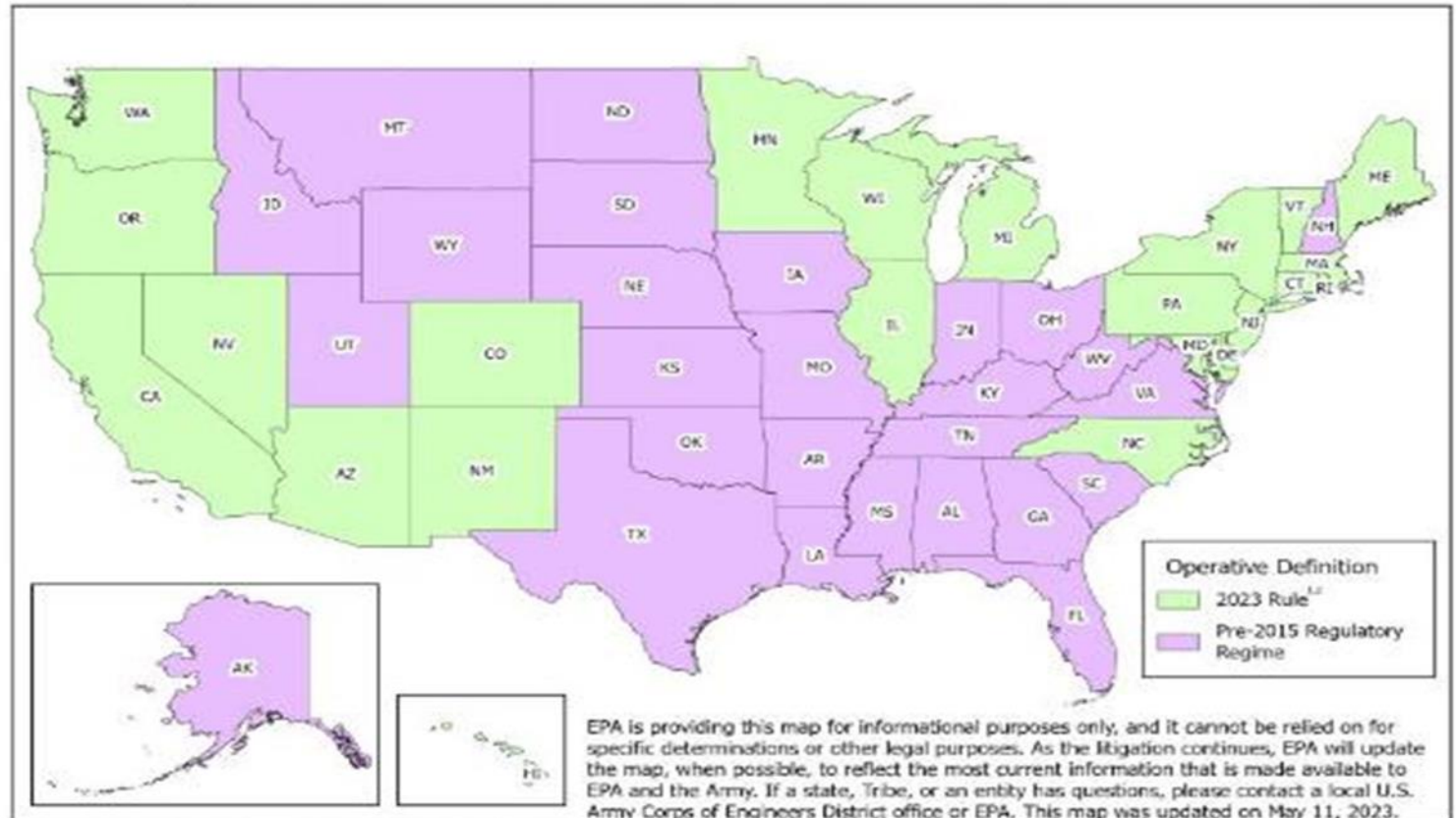


IMPLEMENTATION OF WOTUS FOLLOWING SACKETT

The court's decision in *Sackett* did not repeal any regulation defining WOTUS.

- 23 States - January 2023 Rule
- The Amended 2023 Rule specifically conforms the January 2023 Rule
- 27 States - "Pre-2015 regulatory regime" (pre-2015 definition of "waters of the United States," as informed by the 2003 SWANCC and 2008 *Rapanos* guidance documents).

Operative Definition of "Waters of the United States"



¹ Also operative in the U.S. territories and the District of Columbia
² The pre-2015 regulatory regime is operative for the Commonwealth of Kentucky and Plaintiff-Appellants in *Kentucky Chamber of Commerce, et al. v. EPA* (No. 23-5345) and their members (Kentucky Chamber of Commerce, U.S. Chamber of Commerce, Associated General Contractors of Kentucky, Home Builders Association of Kentucky, Portland Cement Association, and Georgia Chamber of Commerce).



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CURRENT JURISDICTIONAL WATERS

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Categories of Jurisdictional Waters

(a)(1)

- (i) Traditional Navigable Waters
- (ii) Territorial Seas
- (iii) Interstate Waters

(a)(2) Impoundments of Jurisdictional Waters

(a)(3) Tributaries

(a)(4) Adjacent Wetlands

(a)(5) Intrastate lakes and ponds that do not fall within (a)(1) – (a)(4)





TWO IMPORTANT CHANGES FROM NEW RULE

1. Removal of the “Significant Nexus Test.”
 - a. EPA and USACE can no longer evaluate waters and wetlands by whether they had “material influence on the chemical, physical or biological integrity of WOTUS”.
 - b. Without this test, some prior jurisdictional wetlands may no longer be regulated under CWA unless they qualify as Adjacent Wetlands.

2. Revised “Adjacent Wetlands” definition from a broader scope to instead only wetlands “having a continuous surface connection.”

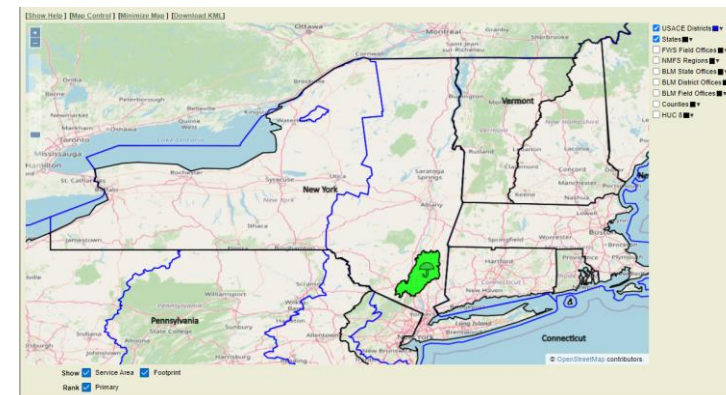
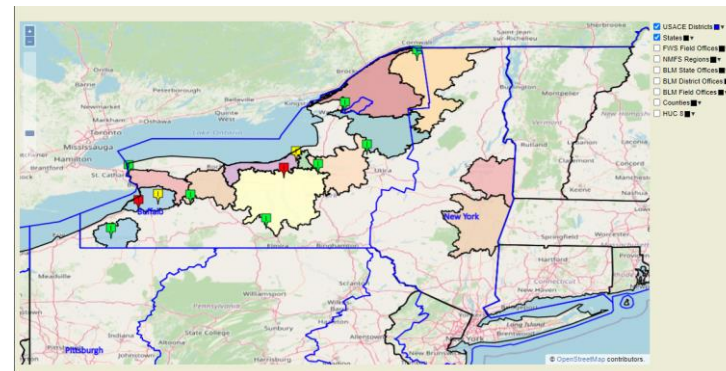


MITIGATION BANKING AND IN LIEU FEE



MITIGATION BANKING IN NEW YORK DISTRICT AOR

Bank Name	Location	STATUS
Evergreen MR13 Mitigation Bank	Meadowlands, NJ	ACTIVE
Richard P. Kane Bank	Meadowlands, NJ	ACTIVE
Fort Drum Wetland Mitigation Bank	Fort Drum, NY	ACTIVE
Saw Mill Creek Bank	New York City	ACTIVE
Hudson River Basin Umbrella Mitigation Bank	Dutchess County, NY	ACTIVE
Marshes Umbrella Bank	Bush Piers Park, Brooklyn, NY	PENDING APPLICATION REVIEW
Upper Penhorn Creek Bank	Meadowlands, NJ	PENDING APPLICATION REVIEW
Saw Mill Creek Bank Expansion	New York City	ACTIVE
Mill Creek Point Wetland Mitigation Bank	Meadowlands, NJ	PROPOSED PRE-APPLICATION
Arthur Kill Mitigation Bank	Staten Island, Arthur Kill, NYC	PROPOSED PRE-APPLICATION
Ducks Unlimited Long Island ILF program proposal	Long Island	PROPOSED PRE-APPLICATION
Evergreen-Whale Creek Bank	Middlesex County, NJ	INACTIVE PRE-APPLICATION
Monmouth County Wetland Mitigation Bank at Waackaack Creek	Monmouth, NJ	INACTIVE PRE-APPLICATION





MITIGATION BANKING AND IN LIEU FEE



Challenges

- Difficulties in establishment of a successful bank due to limits in site selection and pre-existing contamination as well as recontamination after planting
- General limited availability of mitigation credits (NYC, NJ Meadowlands)
- Costs of mitigation banking implementation and credit valuation
- Selection of suitable functional assessment methods and consideration of limits of each method
- Limited demand presently for credits in some specific upstate service areas

Success

- Availability of credits for continuing projects specific to Fort Drum
- Availability of credits for specific transportation agencies in Meadowlands (Kane)
- Availability of credits for developers in many areas of NY State (DU and TWT ILF's with broad service areas)



Questions and Comments