



AMENDMENT TO WOUS RULE

On August 29, 2023, the U.S. Environmental Protection Agency (EPA) and the Department of the Army announced a final rule that amends the January 2023 definition of “waters of the United States” (WOTUS). The amendments conform the January 2023 definition to the U.S. Supreme Court’s decision in *Sackett* and will take effect immediately upon publishing in the Federal Register (likely to happen within two weeks). To read the pre-publication version of the revised final rule, go to [Pre-publication Version of the Final Rule - Amendments to the Revised Definition of Waters of the United States \(epa.gov\)](#).

As a result of ongoing litigation on the January 2023 Rule, the agencies will implement the January 2023 Rule, as amended by the conforming rule, in 23 states, the District of Columbia, and the U.S. Territories. In the other 27 states and for certain parties, the agencies are interpreting “waters of the United States” consistent with the [pre-2015 regulatory regime](#) and the Supreme Court’s decision in *Sackett* until further notice. **South Carolina is one of the 27 states that will work under the pre-2015 regulatory regime consistent with the *Sackett* decision.**

Since the *Sackett* decision in May 2023, the U.S. Army Corps of Engineers (Corps) paused issuing approved jurisdictional determinations (AJDs). When the revised final rule is published and takes effect, the Corps will resume processing applications for AJDs and discharge permits consistent with the revised rule.

AJDs issued under the 2020 NWPR as well as those issued under the January 2023 Rule or the pre-2015 regulatory regime prior to the *Sackett* decision could be reopened if the recipient requests that a new AJD be provided pursuant to the current regulatory regime (*i.e.*, the pre-2015 regulatory regime implemented consistent with *Sackett*).

Permit decisions that relied on an AJD completed under the January 2023 Rule or the pre-2015 regulatory regime will not be reconsidered.

Key Take-Aways

The amendment changes the following:

- 1) Definition of adjacent from “bordering, contiguous or neighboring. Wetlands separated from other waters of the United States by man made dikes or barriers, natural river berms, beach dunes and the like are ‘adjacent wetlands’ ” to “having a continuous surface connection”.
- 2) Removes significant nexus test which defined features that significantly affect the chemical, physical or biological integrity of traditionally navigable waters as WOUS.

These changes will not go into effect until they are published and the USACE receives necessary procedural guidance.