

Summary of Final Navigable Waters Protection Rule

On January 23, 2020, EPA and the Corps released the pre-publication version of the final WOTUS “Step 2” rule, titled the “Navigable Waters Protection Rule.” The rule should become effective 60 days after publication in the *Federal Register*. Until then, the pre-2015 definition of WOTUS will remain in effect.

What Is Jurisdictional?

Category	Scope
(a)(1) Territorial seas and Traditional Navigable Waters (TNWs)	<ul style="list-style-type: none"> • Territorial seas and waters currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide.
(a)(2) Tributaries	<ul style="list-style-type: none"> • River, stream, or similarly naturally occurring surface water channel that contributes surface water flow to an (a)(1) water in a typical year either directly or through one or more (a)(2) through (a)(4) waters. • Tributaries must be perennial (flowing continuously year-round) or intermittent (flowing continuously during certain times of the year and more than in direct response to precipitation) in a typical year (precipitation and other climatic variables are within normal periodic range for the geographic area based on a rolling 30-year period). • Alteration or relocation of a tributary does not remove jurisdiction so long as it continues to meet the conditions of this definition. • Does not lose jurisdictional status if it contributes surface water flow to a downstream WOTUS through any of the following: <ul style="list-style-type: none"> ○ <i>Channelized</i> non-jurisdictional surface water feature; ○ Subterranean river; ○ Culvert, dam, tunnel, or similar artificial feature; ○ Debris pile, boulder field, or similar natural feature. • Includes a ditch that either relocates a tributary, is constructed in a tributary, or is constructed in an adjacent wetland so long as the ditch meets the flow requirements of this definition.
(a)(3) Lakes, ponds, and impoundments	<ul style="list-style-type: none"> • Standing bodies of open water that contribute surface water flow to an (a)(1) water in a typical year either directly or through one or more (a)(2) through (a)(4) waters. • Does not lose its jurisdictional status if it contributes surface water flow in a typical year through any of the following: <ul style="list-style-type: none"> ○ Channelized non-jurisdictional surface water feature; ○ Culvert, dike, spillway, or similar artificial feature; ○ Debris pile, boulder field, or similar natural feature. • Lakes, ponds, or impoundments are also jurisdictional if they are inundated by flooding from an (a)(1) through (a)(3) water in a typical year.
(a)(4) Adjacent wetlands	<ul style="list-style-type: none"> • Wetlands are jurisdictional if they: <ul style="list-style-type: none"> ○ Abut (touch at least one point or side of) an (a)(1) through (a)(3) water; ○ Are inundated by flooding from an (a)(1) through (a)(3) water in a typical year; ○ Are separated from an (a)(1) through (a)(3) water only by a <i>natural</i> berm, bank, dune, or similar natural feature; or ○ Are physically separated only by an <i>artificial</i> dike, barrier, or similar structure so long as there is a direct hydrologic surface connection between the wetland and the (a)(1) through (a)(3) water in a typical year (e.g., through a culvert, flood or tide gate, pump, or similar artificial feature). • Adjacent wetland is jurisdictional in its entirety when a road or similar artificial structure divides the wetland, so long as that structure allows for a direct hydrologic surface connection through or over that structure in a typical year.

What Is Not Jurisdictional?

Category	Scope
(b)(1) Features not identified in (a)	<ul style="list-style-type: none"> Any water or water feature not identified in (a)(1) through (4) is excluded from jurisdiction.
(b)(2) Groundwater	<ul style="list-style-type: none"> Includes groundwater drained through subsurface drainage systems.
(b)(3) Ephemeral features	<ul style="list-style-type: none"> Includes ephemeral streams, swales, gullies, rills, and pools.
(b)(4) Diffuse stormwater runoff	<ul style="list-style-type: none"> Includes diffuse stormwater runoff and directional sheet flow over upland.
(b)(5) Ditches	<ul style="list-style-type: none"> This exclusion covers ditches <i>unless</i> they are: <ul style="list-style-type: none"> (a)(1) TNWs; (a)(2) tributaries; or Constructed in (a)(4) wetlands and satisfy the conditions of the new “adjacent wetlands” definition.
(b)(6) Prior converted cropland	<ul style="list-style-type: none"> Any area that, prior to Dec. 23, 1985, was drained or otherwise manipulated for the purpose, or having the effect, or making production of an agricultural product possible. Area is no longer PCC is it is abandoned <i>and</i> has reverted to wetlands. Abandonment occurs when PCC is not used for, or in support of, agricultural purposes at least once in the immediately preceding five years.
(b)(7) Artificially irrigated areas	<ul style="list-style-type: none"> Includes fields flooded for agricultural production, that would revert to upland should application of irrigation water cease.
(b)(8) Artificial lakes and ponds	<ul style="list-style-type: none"> Includes water storage reservoirs and farm, irrigation, stock watering, and log cleaning ponds. Must be constructed or excavated in upland or in non-jurisdictional waters. Cannot be impoundments of jurisdictional waters that meet the conditions in the lakes, ponds, and impoundment category.
(b)(9) Water-filled depressions and sand, gravel, and fill pits	<ul style="list-style-type: none"> Covers depressions incidental to mining or construction activity and pits excavated for the purpose of obtaining fill, sand, or gravel. Must be constructed or excavated in upland or in non-jurisdictional waters.
(b)(10) Stormwater control features	<ul style="list-style-type: none"> Must be constructed or excavated in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater runoff.
(b)(11) Groundwater recharge, water reuse, and wastewater recycling structures	<ul style="list-style-type: none"> Must be constructed or excavated in upland or in non-jurisdictional waters. Includes detention, retention, and infiltration basins and ponds.
(b)(12) Waste treatment systems	<ul style="list-style-type: none"> Includes all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge).