



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 11/16/2020

ORM Number: LRB 2002-02138

Associated JDs: N/A.

Review Area Location¹: State/Territory: New York City: Angelica County/Parish/Borough: Allegany

Center Coordinates of Review Area: Latitude 42.28747 Longitude -78.00899

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³			
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
Streams 3a and 7	719 and 4299	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
			Onsite observations indicate that Streams 3a and 7 are perennial a(2) tributaries. Water was observed flowing within these stream channels during the September 2 and 28, 2020 site visits. The Antecedent Precipitation Tool (See Typical Year Assessment below) indicates that the September 2 site visit was conducted during a period of normal precipitation and the September 28 site visit was conducted during a period of drier than normal precipitation. In addition, fish and/or macro invertebrates were observed within these stream

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
				channels. Based on the above it was determined that these streams are perennial a(2) tributaries.
See Sheets 16-18 of 18 for list of a(2) intermittent tributaries identified as "Jurisdictional"	See Sheets 16-18 of 18	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Onsite observations indicate that the streams listed as "Intermittent" on Sheets 16-18 of 18 are intermittent a(2) tributaries. Water was observed pooled within these stream channels, but none was observed flowing at the surface. Water was observed flowing a few inches below the surface when the substrate was excavated with a shovel. Therefore, it was determined that these streams have groundwater influence. Since the site visits were conducted during a period of normal and drier than normal precipitation it was determined that the streams flow intermittently (see Typical Year Assessment below).

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):				
(a)(3) Name	(a)(3) Size		(a)(3) Criteria	Rationale for (a)(3) Determination
Pond C	2.16	acre(s)	(a)(3) Lake/pond or impoundment of a jurisdictional water contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Pond C was observed to be an impoundment of Stream 15, an intermittent a(2) jurisdictional water. As such, it was determined that Pond C is a jurisdictional a(3) water.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
See Sheets 14-16 of 18 for list of a(4) abutting wetlands identified as "Jurisdictional"	See Sheets 14-16 of 18	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Onsite observations indicate that the wetlands identified as "Jurisdictional" on Sheets 14-16 of 18 directly abut at least one of the streams identified above as a(2) waters. Therefore, they are Clean Water Act Section 404 a(4) waters.

D. Excluded Waters or Features



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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination	
Pond B	0.29	acre(s)	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff.	Pond B is part of the stormwater control features associated with the active landfill. It was not constructed in wetlands nor does it impound a jurisdictional stream channel. The pond is man-made as evidenced by its horseshoe shape with uniform slope and grade. It is fed by roadside ditches located outside the study area and has a water control outlet structure. Therefore, based on the above Pond B is determined to be an excluded b(10) water.
See Sheets 16-18 of 18 for a list of excluded ephemeral streams identified as “Non-Jurisdictional”	See Sheets 16-18 of 18	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	These streams were observed to be ephemeral stream channels. This was based on a combination of the following - channel size, lack of flow, watershed size, and absence of groundwater. The channels were all approximately between 2-3 feet in width, which can be evidence of infrequent flow. There was no observed flow nor standing pools of water. The substrate was completely dry at the surface and also dry when excavated several inches. This lack of water below the surface distinguishes these stream channels from the intermittent channels discussed in Section C above. There were also no observed oxidized rhizospheres on vegetation present within the channels nor other indicators of hydrology that would indicate presence of prolonged periods of water flowing within the channel. Moreover, while onsite, Corps staff walked the length of the stream channels looking for evidence of groundwater influence - there were no observed seeps or springs. In addition, vegetation (i.e. skunk cabbage, royal fern) that are most commonly observed in areas of groundwater influence were not observed onsite. Therefore, it was determined there is no groundwater influence and hydrology is strictly from precipitation. Additionally, it was determined that the entire watershed size for each of these streams is approximately 1-5 acre in size; so, unless groundwater is present there is an insufficient amount of precipitation to make the

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			stream intermittent or perennial. In addition, to confirm onsite observations the Angelica, NY 7.5 min USGS Quad was reviewed to determine presence/absence of onsite stream channels. The USGS quad does not identify any stream channels onsite corresponding to the location of these streams. Thus, based on the above, it was determined that the stream channels identified as “Ephemeral” and “Non-Jurisdictional” on Sheets 16-18 of 18 are excluded ephemeral streams.
See Sheets 14-16 of 18 for a list of excluded b(1) wetlands identified as “Non-Jurisdictional.”	See Sheets 14-16 of 18	acre(s)	(b)(1) Non-adjacent wetland.
			Onsite observations indicate that the wetlands identified as “Non-Jurisdictional” on Sheets 16-18 of 18 are non-adjacent b(1) waters. These wetlands do not meet any of the four criteria that would make an (a)(4) adjacent water subject to jurisdiction under Section 404 of the Clean Water Act. These wetlands were circumnavigated during the site visit. No defined channels/tributaries/ditches were observed flowing from these wetlands to any (a)(1-3) water. Based on site observations the nearest a(1-3) waters would not flood any of the wetland area at least once during a typical year. The nearest evidence of typical year flow (i.e. debris, leaf wracking) is located approximately 1-10 feet from the onsite a(2) tributaries. These wetlands are all located further than 10 feet from the nearest a(2) tributaries. Also, there are no natural berms or the like located between the a(2) onsite waters and these wetlands. Based on the above it has been determined that these wetlands are b(1) excluded waters.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

- Information submitted by, or on behalf of, the applicant/consultant: [Wetland and Waterbodies Delineation Report for Proposed Hyland Landfill Expansion, Town of Angelica, Allegany County, New York for Hyland Facility Associates, prepared by Earth Dimension, Inc., August 3, 2020.](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A.](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Select. Title\(s\) and/or date\(s\).](#)
- Corps site visit(s) conducted on: [September 2 and 28, 2020](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\).](#)



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- Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- USDA NRCS Soil Survey: Title(s) and/or date(s).
- USFWS NWI maps: Title(s) and/or date(s).
- USGS topographic maps: Angelica, NY 7.5 min

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): The subject parcel’s latitude/longitude was entered into the Antecedent Precipitation Tool (APT) which was used to determine average precipitation, total precipitation over the 90 days preceding the Corps’ site visits, and whether the site visits were conducted under dry, normal or wet conditions. The APT pulled precipitation data from the nearest four weather stations – Angelica, West Almond 3.6 SW, Alfred, and Wellsville 4 NNW. The APT shows that normal precipitation at the location of the site for the September 2, 2020 site visit is between the 30th (2.7”) and 70th (5.1”) percentiles and for September 28, 2020 is between the 30th (2.9”) and the 70th (4.6”). The APT indicates that 0-30 days prior to the September 2nd site visit precipitation was 2.2” which is below the 30th percentile and for the 0-30 days prior to the September 28th site visit precipitation was 1.3”. Thirty to 60 days prior to the September 2nd site visit the APT indicates that precipitation was 5.6” and 30-60 days prior to the September 28th site visit precipitation was 2.2” which is above and below the 30th and 70th percentiles, respectively. Sixty to 90 days prior to the September 2nd site visit precipitation was 1.7” which is below the 30th percentile, and for the September 28th site visit precipitation was 5.5” which is above the 70th percentile. Therefore, one month prior to the September 2nd site visit rainfall was below normal precipitation, two months prior precipitation was above normal and three months prior precipitation was below normal. For the September 28th site visit, one to two months prior to the site visit rainfall was below normal precipitation and three months prior precipitation was considered to be above normal for that time of year.

The APT, using a weighted approach, indicates that the September 2nd site visit was conducted during a period of normal precipitation, and that the September 28th the site visit was conducted during a period of drier than normal precipitation.

C. Additional comments to support AJD: Streams 12 and 15 flow approximately 1 mile north into Angelica Creek, an a(2) perennial tributary, which flows west approximately 5 miles into the Genesee River, an a(2) water, which flows approximately 3 miles to the north before turning into an a(1) navigable waterway. The remaining a(2) tributaries generally flow west approximately 3-5 miles before emptying into the Angelica River, an a(2) water, which flows approximately 0.5 miles west into the Genesee River, an a(2) water, which flows approximately 3 miles to the north before turning into an a(1) navigable waterway.