

**Now, on with the
presentation ...**

**Adjacent Wetlands or
Waters**

Adjacent Wetlands

Adjacent. The term *adjacent* means bordering, contiguous, or neighboring a water identified in paragraphs (a)(1) through (6) of this section, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like.

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Wetlands are adjacent where they meet the **2008 Rapanos Guidance** via the Relatively Permanent Water (RPW) or Significant Nexus (SN) method.

The language in the final preamble and rule controls and should be used for purposes of understanding the scope and requirements of the final rule.

Proposed Rule Definitions for Adjacent Waters

Adjacent. The term *adjacent* means bordering, contiguous, or neighboring a water identified in paragraphs (a)(1) through (5) of this section, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like.

Neighboring defined to mean waters located within the riparian area or floodplain of a water or waters with a shallow subsurface hydrologic connection or confined surface hydrologic connection to such a jurisdictional water. Proposed definitions for both “riparian area” and “floodplain”.

Proposal also requested public input on definitions.

Comment Summary.

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Clean Water Rule Adjacent Waters

(c) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et. seq.* and its implementing regulations, subject to the exclusions in paragraph (t) of this section, the term **“waters of the United States”** means:

(5) All waters adjacent to a water identified in paragraphs (a)(1) through (a)(5) of this section, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

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Clean Water Rule

Adjacent Waters

(2) ***Neighboring.*** (2) *Neighboring.* The term *neighboring* means:

- (i) All waters located within 100 feet of the ordinary high water mark of a water identified in paragraphs (a)(1) through (5) of this section. The entire water is neighboring if a portion is located within 100 feet of the ordinary high water mark;
- (ii) All waters located within the 100- year floodplain of a water identified in paragraphs (a)(1) through (5) of this section and not more than 1,500 feet from the ordinary high water mark of such water. The entire water is neighboring if a portion is located within 1,500 feet of the ordinary high water mark and within the 100-year floodplain;
- (iii) All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of this section, and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. The entire water is neighboring if a portion is located within 1,500 feet of the high tide line or within 1,500 feet of the ordinary high water mark of the Great Lakes.

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Adjacent Waters

| Regulatory Definition of WOUS and 2003/2008 Guidance | Clean Water Rule Paragraph (a) of the Rule |
|--|--|
| <p>Adjacent wetlands, where adjacent means bordering, contiguous, or neighboring, including wetlands separated by constructed dikes or barriers, natural river berms, beach dunes, and the like.</p> <p>Includes wetlands adjacent to traditional navigable waters, interstate waters, the territorial seas, impoundments, or tributaries.</p> <p>Wetlands determined jurisdictional based on Rapanos Guidance – RPW or SN method.</p> <p>The language in the final preamble and rule controls and should be used for purposes of understanding the scope and requirements of the final rule.</p> | <p>Adjacent waters, where adjacent means bordering, contiguous, or neighboring, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like. Waters include wetlands, ponds, lakes, oxbows, impoundments, and similar waters.</p> <p>Includes waters adjacent to jurisdictional waters within a minimum of 100 feet and within the 100-year floodplain to a maximum of 1500 feet of the ordinary high water mark.</p> <p>If waters are determined to be adjacent, no case-specific significant nexus evaluation is required.</p> |

Illustrations

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Additional Details On Adjacent Waters from CWR Preamble

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When Part of a Water is Bordering, Contiguous, or Neighboring

- Preamble:
 - The entire water is adjacent if any part of the water is bordering, contiguous, or neighboring.
 - For example, if a tributary has a 1,000-foot floodplain, then a water located within 1,000 feet of the tributary's OHWM that extends to 2,000 feet is jurisdictional in its entirety as "neighboring."

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When an Artificial Feature Divides a Water

- Preamble:
 - Artificial features such as roads do not divide a water. For purposes of adjacency, the water is treated as one entire water.

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When FEMA 100-year Floodplain Maps are Unavailable

- Preamble:

- Much of the US has not been mapped by FEMA, or a particular map may be out of date or inaccurate existing circumstances.
- In absence of accurate maps, agencies will rely on other available tools to identify the 100-year floodplain, such as other Fed/State/Local floodplain maps, NRCS soil surveys, and site-specific modeling.

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Measuring Adjacency Distances

Preamble:

- Distance line is drawn perpendicular to the OHWM or high tide line.
- If there are breaks in the OHWM, the line should be extrapolated from the point where the OHWM is observed on the downside to the point where the OHWM is lost on the upstream side.
 - Example: tributary temporarily flowing underground.

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Questions and Answers

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Questions

- **Q:** Do any of the numeric distances provide a set buffer zone from waters, or are they just for determining adjacency?
- **Q:** What is regulated as “adjacent” within distance thresholds?

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Questions

- **Q:** Are distances always calculated from the OHWM or High Tide Line? Might distances ever be calculated from the 100-year floodplain?
- **Q:** Moving from upstream to downstream, when does the determination be made using 100-feet versus the 100-year floodplain and 1500 feet?

Questions

- **Q:** How will manmade structures bisecting a water within the 1500-foot floodplain affect whether the water is adjacent? Any difference if part of the water is outside 1500 foot?
- **Q:** What does the 100-year floodplain refer to? Federal FEMA? Ecological? How does this impact application of the CWR?

More Qs?



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Thank You for Participating!



Waters Where Established Normal Farming Activities Occur

- Preamble:
 - Waters used for established normal farming, ranching, and silviculture activities are not adjacent.
 - These waters continue to be subject to case-specific review (as they were under the old rule)

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