



**US ARMY CORPS OF ENGINEERS (USACE)  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
2023 RULE**

**OMB Control Number: 0710-0024  
Expiration Date: 09/30/2023**

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**I. ADMINISTRATIVE INFORMATION**

Completion Date of Approved Jurisdictional Determination (AJD): [8/23/2023](#)

ORM Project Name: [City of Duluth Atlas Cement Plant](#)

ORM Identification Number: [MVP-2008-00149-ARC](#)

☐ Other sites (e.g., offsite mitigation sites, disposal sites or other review areas, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form(s).

Associated JD Names and Numbers: [N/A or List Associated AJDs or PJDs](#)

Review Area Location: State/Territory: Minnesota City: [Duluth](#)

County/Parish/Borough: [St. Louis County](#)

Center Coordinates of Review Area: Latitude: [46.68338°N](#), Longitude: [-92.22435°W](#)

Limits of review area: [See Attached Map](#)

**II. SUMMARY<sup>2</sup>**

Check all that apply. At least one box from the following list **MUST** be selected. Complete the corresponding tables in Section III., summarize data sources in Section IV., and attach completed Appendices A and/or B when specified.

☐ The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area). Rationale: [Provide Rationale for Dry Land Determination](#)

☐ There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete the table in Section III.A.).

☐ There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section III.B. and complete and attach appendices as appropriate).

☒ Potentially jurisdictional waters and/or features were assessed within the review area and determined to be non-jurisdictional (complete appropriate tables in Section III.C. and complete and attach appendices as appropriate).

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<sup>1</sup> The final rule “Revised Definition of ‘Waters of the United States’” (2023 Rule) was published in the *Federal Register* on 18 January 2023 and the effective date is 20 March 2023. See <https://www.federalregister.gov/documents/2023/01/18/2022-28595/revised-definition-of-waters-of-the-united-states>.

<sup>2</sup> Map(s)/figure(s) or descriptions of the review area and any jurisdictional waters are attached to the AJD provided to the requestor.



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**III. FINDINGS IN THE REVIEW AREA**

**A. Jurisdictional under the Rivers and Harbors Act of 1899<sup>3</sup> (Section 10)<sup>4</sup>**

Section 10 Waters			
Section 10 water name	Section 10 size in review area		Type of Section 10 water
N/A	N/A	N/A	N/A.
Rationale for determination: N/A			

**B. Jurisdictional under the Clean Water Act**

<b>Paragraph (a)(1) waters:</b> <sup>5</sup> Waters which are: (i) Currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide (Traditional Navigable Waters); (ii) The territorial seas; or (iii) Interstate waters, including interstate wetlands			
(a)(1) water name	(a)(1) size in review area		Type of paragraph (a)(1) water
N/A	N/A	N/A	N/A.
Rationale for determination: N/A			

<b>Paragraph (a)(2) waters:</b> Impoundments of waters otherwise defined as waters of the United States under this definition, other than impoundments of waters identified under paragraph (a)(5)			
(a)(2) water name	(a)(2) size in review area		Type of paragraph (a)(2) water
N/A	N/A	N/A	N/A.
Rationale for determination: N/A			

<sup>3</sup> If the navigable water of the United States is not subject to the ebb and flow of the tide and not included on the district's list of Rivers and Harbors Act (RHA) Section 10 navigable waters of the United States list do NOT use this form to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedure outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the Rivers and Harbors Act.

<sup>4</sup> USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this AJD form, jurisdiction under RHA will be referred to as Section 10.

<sup>5</sup> A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of RHA 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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**Paragraph (a)(3) waters:** Tributaries of waters identified in paragraph (a)(1) or (2): (i) That are relatively permanent, standing or continuously flowing bodies of water; or (ii) That either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1)

(a)(3) water name	(a)(3) size in review area	Type of paragraph (a)(3) water
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N/A	N/A	N/A	N/A
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Rationale for determination: N/A

**Paragraph (a)(4) waters:** Wetlands adjacent to the following waters: (i) Waters identified in paragraph (a)(1); or (ii) Relatively permanent, standing or continuously flowing bodies of water identified in paragraph (a)(2) or (a)(3)(i) and with a continuous surface connection to those waters; or (iii) Waters identified in paragraph (a)(2) or (3) when the wetlands either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1)

(a)(4) water name	(a)(4) size in review area	Adjacency criteria
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N/A	N/A	N/A	N/A
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Type of paragraph (a)(4) water	N/A
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Rationale for determination: N/A

**Paragraph (a)(5) waters:** Intrastate lakes and ponds, streams, or wetlands not identified in paragraphs (a)(1) through (4): (i) That are relatively permanent, standing or continuously flowing bodies of water with a continuous surface connection to the waters identified in paragraph (a)(1) or (a)(3)(i); or (ii) That either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1).<sup>6</sup>

(a)(5) water name	(a)(5) size in review area	Type of paragraph (a)(5) water
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N/A	N/A	N/A	N/A
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Rationale for determination: N/A

<sup>6</sup> In implementing the significant nexus standard, the agencies generally intend to analyze waters under paragraph (a)(5) individually to determine if they significantly affect the chemical, physical, or biological integrity of a paragraph (a)(1) water.



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**C. Waters or features that are not jurisdictional under the Clean Water Act**

**Waters analyzed under paragraph (a)(3)(ii), (a)(4)(iii), or (a)(5)(ii) and determined non-jurisdictional:** Tributaries of waters identified in paragraph (a)(1) or (2); and/or wetlands adjacent to waters identified in paragraph (a)(2) or (3); and/or intrastate lakes and ponds, streams, or wetlands not identified as (a)(1) through (4) waters; that either alone or in combination with similarly situated waters in the region, do not significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1).

Water name	Water size in review area	Type of water for which significant nexus was not met:
N/A	N/A	N/A
Rationale for determination: N/A		

**(b)(1) – (b)(8) Excluded Features<sup>7</sup>**

Excluded feature name	Excluded feature size in review area	Exclusion <sup>8</sup>
Wetland 1	0.94	Acre(s)
Wetland 2	0.1	Acre(s)
Stormwater Pond 1	0.17	Acre(s)
Western Ditch	0.26	Acre(s)

Rationale for determination: The Atlas Cement plant site was historically upland prior to being converted into a cement plant facility in the 1930's. The site stopped producing cement in the late 1970's and the buildings were removed and remedial activities began. The site was then purchased by the DEDA in 2003 and remedial activities commenced until present day. Between 2003 and 2005, a berm was constructed on the east side of the property which backed up hydrology in the depressional areas. These depressional areas are now labeled as Wetland 1 and Wetland 2. The site was never completely abandoned due to the ongoing remedial and preparation work for potential future construction. Stormwater Pond 1 was a constructed wastewater treatment facility constructed in uplands designed to meet the requirements in the Clean Water Act. The Western Ditch was excavated in dry land, drains only dry land, and does not carry relatively

<sup>7</sup> Transient features on the landscape that are difficult to document due to their non-permanent nature, such as rills and gullies, may not be specifically identified on the AJD form unless a requestor specifically asks a USACE district to do so. USACE districts may, in case-by-case instances, elect to document any such feature on a case-by-case basis, such as when the feature is relevant to analysis of the jurisdictional status of another water.

<sup>8</sup> Note the full text of the exclusions for (b)(1)-(6) and (b)(8) are included in the dropdown list, while the text for the (b)(7) exclusion is truncated due to space limitations. The full text of the (b)(7) exclusion is as follows: (b)(7) Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States



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**(b)(1) – (b)(8) Excluded Features<sup>7</sup>**

Excluded feature name	Excluded feature size in review area	Exclusion <sup>8</sup>
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permanent flow. Therefore, the 4 features listed above meet the exclusions and are not considered Waters of the US.

**IV. SUPPORTING INFORMATION**

**A. Paragraph (a)(1) water that is outside the review area:**

- Provide the name of the paragraph (a)(1) water: [Lake Superior](#)
- Type of paragraph (a)(1) water: [\(a\)\(1\)\(i\) Water is currently used, was used in the past, or may be susceptible to use in interstate or foreign commerce, including waters subject to the ebb and flow of the tide](#)
- Provide the rationale for jurisdiction of the paragraph (a)(1) water: [Lake Superior is a Section 10 Navigable Water and is currently used for interstate and foreign commerce.](#)

**B. Significant nexus analyses**

- ☐ Appendix A is attached and includes the significant nexus analysis for any waters in the review area that were evaluated under paragraph (a)(3)(ii) and/or paragraph (a)(4)(iii).
- ☐ Appendix B is attached and includes the significant nexus analyses for any waters in the review area that were evaluated under paragraph (a)(5)(ii).
- ☐ There are no waters in the review area that require evaluation under the significant nexus standard. Therefore, neither Appendix A nor Appendix B are included with this form

**C. Data, models, and other relevant methods** Select/enter all resources that were used to support this determination and include data/maps and/or references/citations in the administrative record, as appropriate.

☒ Aquatic resources delineation submitted by, or on behalf of, the requestor: [Barr Engineering Co. Delineation 2023](#)

The aquatic resources delineation submitted by or on behalf of the requestor is sufficient for purposes of this AJD [Yes](#)

Rationale: [Site visit conducted August 7th and confirmed the delineated boundaries.](#)

- ☐ Aquatic resources delineation prepared by the USACE: [Title\(s\) and Date\(s\)](#)
- ☐ Wetland field data sheets prepared by the USACE: [Title\(s\) and Date\(s\)](#)
- ☐ OHWM data sheets prepared by the USACE: [Title\(s\) and Date\(s\)](#)
- ☒ USACE site visit: Date(s) of site visit(s): [August 7, 2023, August 7<sup>th</sup> Site visit photos](#)
- ☐ Previous Jurisdictional Determinations (AJDs or PJDs) addressing the same (or portions of the same) review area: [ORM Number\(s\) and Date\(s\)](#)
- ☐ Photographs: [Source\(s\), Title\(s\) and Date\(s\)](#)
- ☒ Aerial Imagery: [National regulatory Viewer Aerial Imagery](#)
- ☐ LiDAR: [Source\(s\), Title\(s\) and Date\(s\)](#)
- ☒ USDA NRCS Soil Survey: [WebSoilSurvey](#)
- ☒ USFWS NWI maps: [Data from National Regulatory Viewer](#)
- ☐ USGS topographic maps: [Title\(s\) and Date\(s\)](#)
- ☐ USGS NHD data/maps: [Title\(s\) and Date\(s\)](#)
- ☐ USGS Dynamic Surface Water Extent: [Title\(s\) and Date\(s\)](#)



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☐ Section 10 navigability resource used: [Title\(s\) and Date\(s\)](#)

Other data sources or models used to aid in this determination:

Data source or model (Select)	Name, date, and other relevant information
<a href="#">USGS Sources</a>	N/A
<a href="#">USEPA Sources</a>	N/A
<a href="#">USDA Sources</a> <sup>9</sup>	<a href="#">WebSoilSurvey</a>
<a href="#">NOAA Sources</a>	N/A
<a href="#">USACE Sources</a>	<a href="#">National Regulatory Viewer</a>
<a href="#">State/Local/Tribal Sources</a>	<a href="#">DNR NWI Update – MN, 2015</a>
<a href="#">Other Sources</a>	N/A

**D. Additional comments to support AJD:** [N/A or Provide Additional Discussion as Appropriate.](#)

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<sup>9</sup> Including Certified Wetland Determination from the NRCS.