

K&L GATES


2026 PAPA Environmental Seminar  
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# New Pennsylvania Permitting Reforms and Federal/State Wetland Permit Program Updates

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# Outline

- PA permit reforms in Nov. 2025 budget bill
  - Transparency requirements
  - SPEED program expansion
  - Deemed approvals
  - RGGI rule repeal
- Federal/State wetland permit program updates
  - Proposed WOTUS rule
  - PASPGP-7
  - NWP reissuance

The image features a central white rectangular area containing text, set against a background of overlapping, semi-transparent blue shapes in various shades of cyan and blue. The text is centered and reads:

PA Permit Reforms in  
2025 Budget Bill

# Transparency Requirements

Each state agency must:

(1) within 90 days, list on its website all permits it issues (including the average timeframe for issuance)

(2) within 6-18 months, establish a permit tracking system on its website

The screenshot shows the Pennsylvania Department of Environmental Protection (PA DEP) website. The header includes the PA DEP logo and the text 'Commonwealth of Pennsylvania'. There is a 'Translate' button and a search bar. The navigation menu includes 'Services', 'Agency Directory', 'Your Government', 'Visit PA', and 'News'. The breadcrumb trail is 'Agencies > Department of Environmental Protection > Data and Tools > Track a permit'. The main heading is 'Search DEP Permit Applications'. Below the heading, it says 'Track the status of permit applications submitted to the Department of Environmental Protection (DEP). Search by authorization ID, permit type, or other details. You can also filter your results.' There is a search bar with the placeholder text 'Search' and a search icon.

# SPEED Program

- Established in 2024 Budget Bill
- Allows applicants for certain DEP permits to choose to have a DEP-verified “qualified professional” conduct the initial application review and make recommendations to DEP
- Applicant pays cost of third-party review
- Initially applied to:
  - air permit plan approvals (25 Pa. Code Ch. 127)
  - earth disturbance permits (25 Pa. Code Ch.102)
  - water obstruction and encroachment permits (25 Pa. Code Ch. 105)

# SPEED Program Expansion

2025 Budget Bill > New SPEED-Eligible Permits:

- Storage tank site specific installation permits (25 Pa. Code Ch. 245)
- Short-term construction mining general permit (25 Pa. Code Ch. 77)
- Concentrated Animal Feeding Operation (CAFO) permits (25 Pa. Code § 92A.49)

# Deemed Approvals

- New “deemed approval” deadlines for certain DEP permits
  - Air quality general plan approvals and general permits
    - Includes GP-13 (Hot Mix Asphalt Plants)
  - Renewals of coverage under certain National Pollutant Discharge Elimination System (NPDES) general permits
    - Discharges of stormwater associated with industrial activities;
    - Discharges from small-flow treatment facilities;
    - Discharges from petroleum product contaminated groundwater remediation systems; and
    - Wet weather overflow discharges from combined sewer systems.

# Deemed Approvals

- DEP must identify any technical deficiencies within specified time periods
  - Air quality general permits
    - DEP must identify technical deficiencies within **20 days**
    - If applicant addresses each deficiency within **25 days** of submission, DEP must issue final determination within **30 days** of submission
    - Applicant can agree to max 5-day extension
  - NPDES general permit renewals
    - Same as above, but 40 / 50 / 60 days, and unlimited extension
- If DEP does not meet specified deadlines, the application is deemed approved.

# RGGI Rule Abrogation

- In 2022, the Environmental Quality Board (EQB) issued a rule implementing the Regional Greenhouse Gas Initiative (RGGI) in Pennsylvania
- In 2023, Commonwealth Court declared the RGGI rule to be an unconstitutional tax adopted without legislative authorization and enjoined the rule's implementation.
- The Shapiro administration appealed the Commonwealth Court decisions to the Pennsylvania Supreme Court – oral argument held May 2025
- **The 2025 Budget Bill repeals the RGGI rule**
- January 2026 – Pa. Supreme Court dismisses appeals, vacates Commonwealth Court decisions

# What's Next?



EQB Petition for Economywide Greenhouse Gas (GHG) Program



DEP Spill Policy



2026 Budget Bill

More permit reform?  
EHB reform?



Data Center Legislation?

# Proposed WOTUS Rule

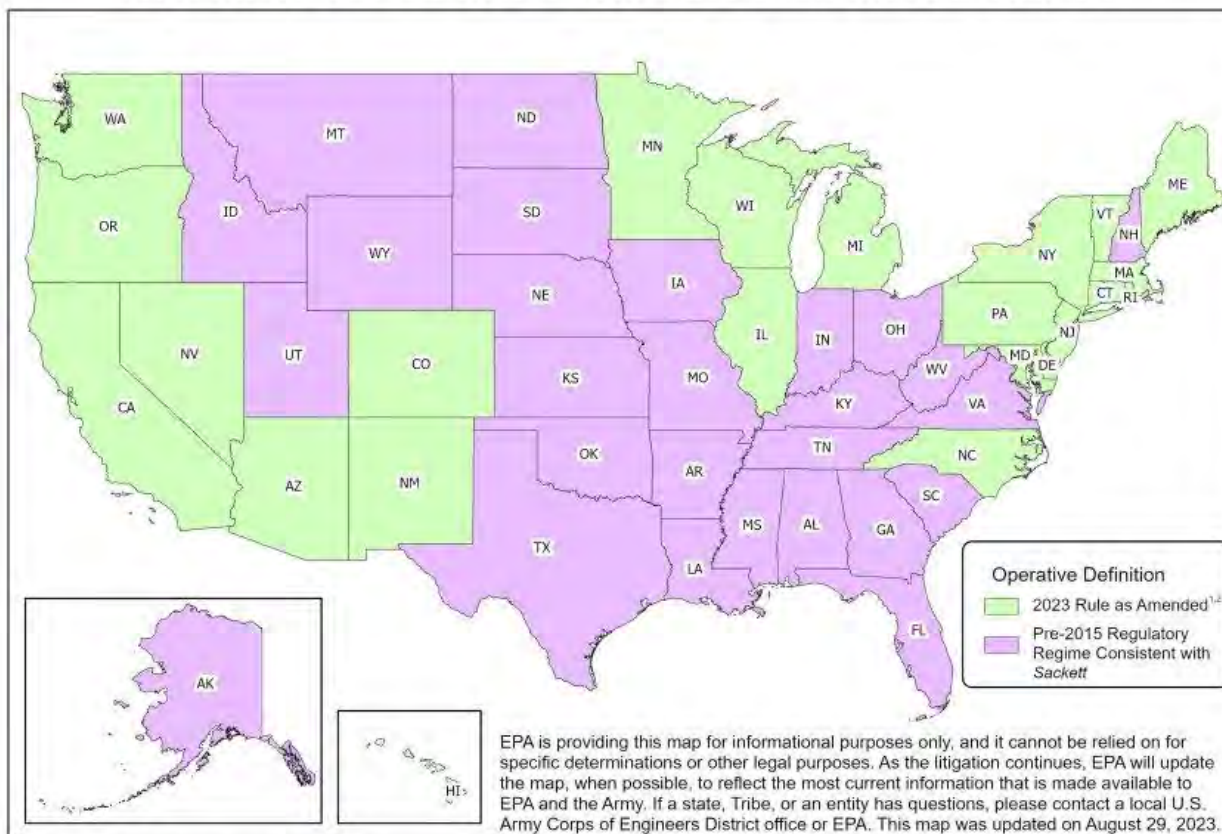


“[W]e hold that **the CWA extends to only those wetlands that are ‘as a practical matter indistinguishable from waters of the United States.’** This requires the party asserting jurisdiction over adjacent wetlands to establish ‘first, that the adjacent [body of water constitutes] ... “water[s] of the United States,” (i.e., a **relatively permanent body of water connected to traditional interstate navigable waters**); and second, that **the wetland has a continuous surface connection with that water**, making it difficult to determine where the ‘water’ ends and the ‘wetland’ begins.” *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023) .



# Current Waters of the US Rule

## Operative Definition of "Waters of the United States"

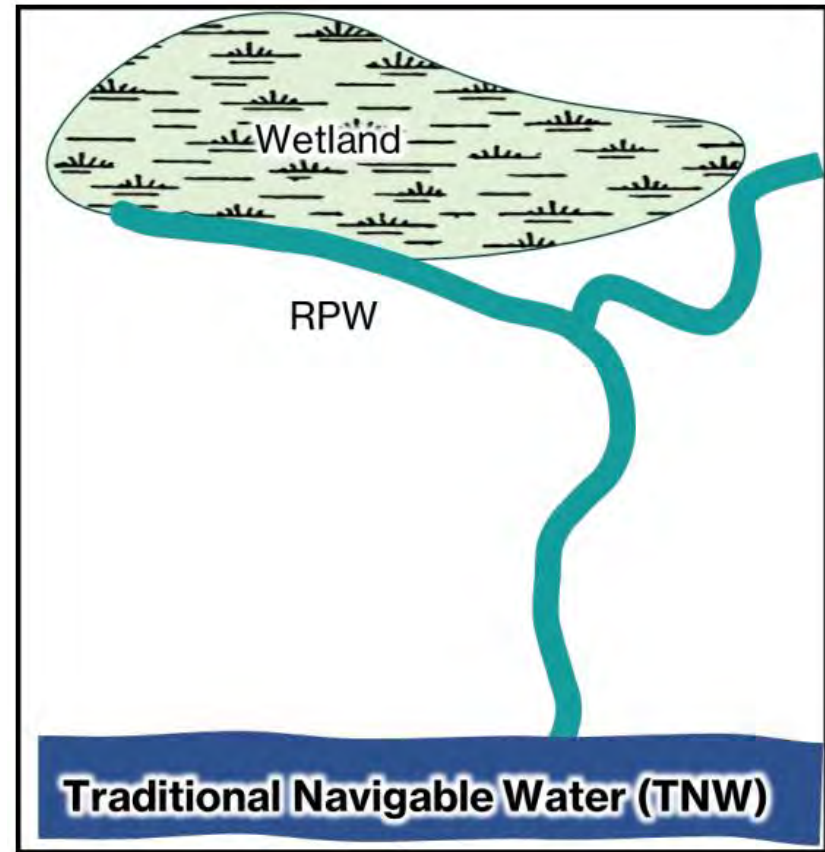


<sup>1</sup>Also operative in the U.S. territories and the District of Columbia

<sup>2</sup>The pre-2015 regulatory regime implemented consistent with Sackett is operative for the Commonwealth of Kentucky and Plaintiff-Appellants in Kentucky Chamber of Commerce, et al. v. EPA (No. 23-5345) and their members (Kentucky Chamber of Commerce, U.S. Chamber of Commerce, Associated General Contractors of Kentucky, Home Builders Association of Kentucky, Portland Cement Association, and Georgia Chamber of Commerce).

# Continuous Surface Connection Guidance

- Rejects 2023 rule's "discrete feature" connection
- Wetlands meet the CSC requirement when they abut (or touch) waters that are WOTUS in their own right
- Explains what case law and guidance no longer apply post-*Sackett*



## Example 1

Background: Wetland -> RPW ditch.

**Is the feature a “water of the United States” in its own right?**

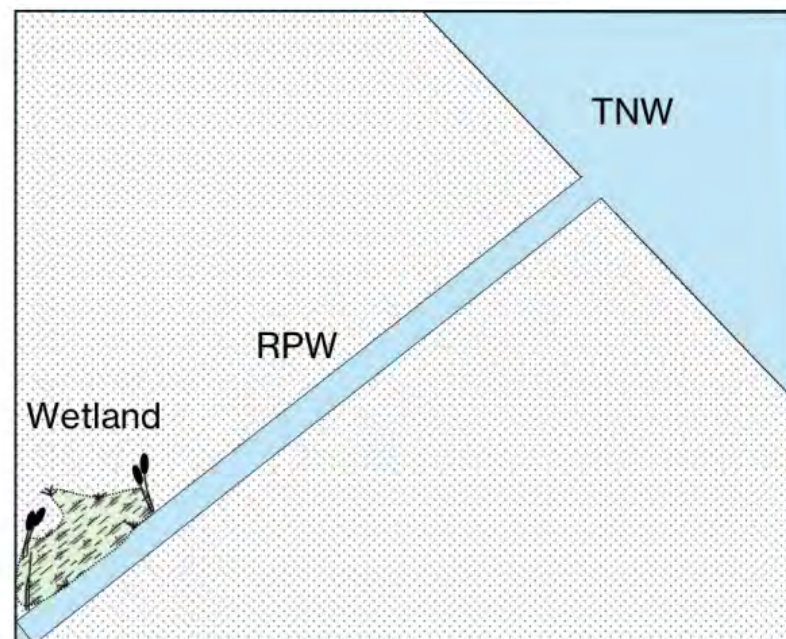
Yes, the ditch does not meet any of the exclusions (or generally non-jurisdictional categories) and is a relatively permanent water (RPW) that is connected to a traditional navigable water (TNW). A tributary includes natural, man-altered, or man-made water bodies that carry flow directly or indirectly into a TNW, the territorial seas, or an interstate water. Relatively permanent tributaries are jurisdictional.

**Is the wetland abutting a “water of the United States”?**

Yes.

**Does the wetland meet the CSC requirement and is thus an adjacent wetland?**

Yes.



## Example 3

Background: Wetland -> RPW1. Majority of RPW1 passes through a culvert.

**Is the feature a “water of the United States” in its own right?**

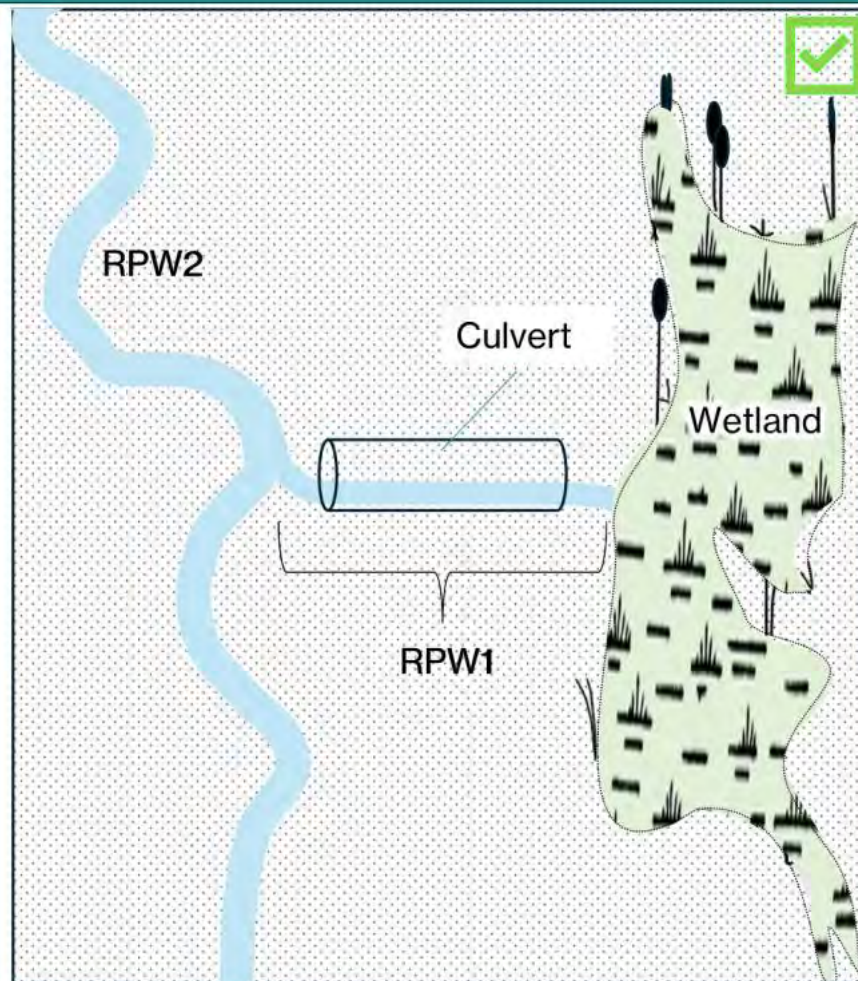
Yes, RPW1 is an RPW that connects to a TNW; the culvert has an observable ordinary high water mark and thus is treated as part of the relatively permanent tributary.

**Is the wetland abutting a “water of the United States”?**

Yes, RPW1 and the wetland touching (i.e., not separated).

**Does the wetland meet the CSC requirement and is thus an adjacent wetland?**

Yes.



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# Key post-*Sackett* rulings

- *Lewis v. United States* (5<sup>th</sup> Cir. 2023)
- *Glynn Env'tl. Coalition v. Sea Island Acquisition* (11<sup>th</sup> Cir. 2025)
- *United States v. Andrews* (2<sup>nd</sup> Cir. 2025)



## Proposed WOTUS Rule – Key Parts

- “Relatively permanent” = continuous flow during wet season
  - “Continuous surface connection” = continuous flow during wet season + abutment
  - “Ditches” exempt if built in uplands
  - “Interstate waters” removed
  - Other defined terms such as “tributary,” “continuous surface connection,” “excluded ditches,” excluded “prior converted cropland,” and excluded “waste treatment systems.”
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# Comparison to prior rules

2025 proposal compared to 2023 rule:

- Requiring continuous surface *water* connection
- “Relatively permanent” defined

2025 proposal compared to 2020 rule:

- Wetlands authority narrowed

2025 proposal compared to pre-2020 rules:

- Significant nexus and hydrological connection tests nixed
- Loose definition of wetlands adjacency substantially tightened



# Final WOTUS Rule



EPA took comments on the proposal until January 5, 2026



Final rule will likely come some time in 2026

The background consists of a white horizontal band in the center, flanked by two blue abstract sections. The blue sections feature overlapping, semi-transparent geometric shapes in various shades of blue, creating a dynamic, layered effect.

# PASPGP-7 and NWP Reissuance

# PASPGP-7

**PASPGP-6** is the U.S. Army Corps of Engineers (USACE) current state programmatic general permit for Pennsylvania (expires June 2026)

In December 2024, the USACE released a draft of **PASPGP-7** for public comment

- Includes as reporting activities federally regulated permanent impacts greater than 0.03-acre (keeping existing 250-linear-foot threshold)
- Removed table of waterways potentially occupied by federally listed, proposed, or candidate species of mussels and/or fishes from Reporting Activities

## PASPGP-7

- Added that all regulated work within the Delaware Canal is a Reporting Activity to ensure compliance with the Wild and Scenic Rivers Act.
- Added ability for District Engineer to waive eligibility threshold for emergency activities, as defined in the PASPGP-7, on a case-by-case basis.
- Added a general or project specific 401 Water Quality Certificate as a type of eligible state authorization for PASPGP coverage

# NWP Reissuance – Pittsburgh District

- Given the issuance of PASPGP, the USACE typically suspends issuance of most NWPs in Pennsylvania
- However, NWPs are **not** suspended in the Army Corps' Pittsburgh district
- Projects should consider whether PASPGP or NWPs are more advantageous in Pittsburgh District

B. This suspension of the NWPs listed in Part I.A of this Special Public Notice is **not applicable** within the Commonwealth of Pennsylvania geographic boundaries for the following:

1. Areas within Pittsburgh District's area of responsibility in the Commonwealth of Pennsylvania. Please see the website below for the Regulatory boundaries of the Pittsburgh District. [https://geospatial-lrp.usace.army.mil/PDFs/District/lrpmap\\_c1\\_regulatory\\_letter\\_20240426.pdf](https://geospatial-lrp.usace.army.mil/PDFs/District/lrpmap_c1_regulatory_letter_20240426.pdf)  
The Pittsburgh District can be reached at the following email and phone numbers for more information.

Pittsburgh Regulatory Branch email: [regulatory.permits@usace.army.mil](mailto:regulatory.permits@usace.army.mil)

Phone: (412) 395-7155

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