

3745-32-05

Criteria for decision by director.

(A) The director shall not issue a section 401 water quality certification unless ~~he~~the director determines that the applicant has demonstrated that the discharge of dredged or fill material to waters of the state or the creation of any obstruction or alteration in waters of the state will not do the following:

- (1) ~~Not prevent~~ Prevent or interfere with the attainment or maintenance of applicable water quality standards;
- (2) ~~Not result~~ Result in a violation of any applicable provision of the following sections of the Federal Water Pollution Control Act ~~including~~:
 - (a) Effluent limitations as described in section 301;
 - (b) Water quality related effluent limitations as described in section 302;
 - (c) Water quality standards and implementation plans as described in section 303;
 - (d) National standards of performance as described in section 306;
 - (e) Toxic and pretreatment effluent standards as described in section 307.

(B) Except as provided in paragraph (C) of this rule, the director shall not issue a section 401 water quality certification for any harbor or navigation maintenance activities proposing to deposit dredged material in any part of Lake Erie that is within the territorial boundaries of this state or in the direct tributaries of Lake Erie within this state unless the director has determined the following:

- (1) The dredged material will not result in a modeled increase in "bioaccumulation" of a "bioaccumulative chemical of concern" as those terms are defined in 3745-1-02 of the Administrative Code. Dredged material found to be unsuitable for the deposit of dredged material pursuant to this paragraph shall be placed in a confined disposal facility or an upland location determined to be protective of public health and the environment.
- (2) The placement of the dredged material will not violate any international treaties or interstate compacts regarding any bioaccumulative chemical of concern as defined under those treaties or compacts.

(C) The preclusions set forth in paragraph (B) of this rule shall not apply to placing the material into a confined disposal facility that is located in Lake Erie or the direct tributaries or the discharge of de minimus dredged material associated with

dewatering operations necessary to facilitate placement of the dredged material in a confined disposal facility or upland location.

~~(B)~~(D) Notwithstanding an applicant's demonstration of the criteria in ~~paragraph~~ paragraphs (A) and (B) of this rule 3745-32-05 of the Administrative Code, the director may deny an application for a section 401 water quality certification if the director concludes that the discharge of dredged or fill material or obstructions or alterations in waters of the state will result in adverse long or short term impact on water quality.

~~(C)~~(E) The director may impose such terms and conditions as part of a section 401 water quality certification as are appropriate or necessary to ensure compliance with the applicable laws and to ensure adequate protection of water quality.

~~(D)~~(F) Prior to the issuance of a section 401 water quality certification or prior to, during, or after the discharge of dredged or fill material to waters of the state or the creation of any obstruction or alteration in waters of the state to ensure adequate protection of water quality, the director may require that the applicant perform various environmental quality tests including, but not limited to, chemical analyses of water, sediment or fill material, and bioassays.

[Comment: "Federal Water Pollution Control Act" (commonly referred to as the "Clean Water Act"), means the "Federal Water Pollution Control Act Amendments of 1972", 86 Stat. 886, 33 U.S.C. 1251 as amended through July 1, 2014. This act can generally be found in Ohio public libraries and the state library of Ohio, and electronically at <http://www.gpo.gov/fdsys>. Information and copies may be obtained by writing to: "U.S. Government Bookstore, 732 N. Capitol Street NW, Washington, DC 20401."]

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CERTIFIED ELECTRONICALLY

Certification

06/01/2015

Date

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