

3745-599-400 Harbor sediment authorization.

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, test methods, federal rules, and federal statutory provisions referenced in this rule, see rule 3745-599-03 of the Administrative Code titled "Beneficial use and harbor sediment authorization - incorporation by reference."]

- (A) Upon consideration of the criteria set forth in rule 3745-599-410 of the Administrative Code, the director may issue or renew a harbor sediment authorization for lake Erie dredge that is not a hazardous waste and that is unlikely to create a nuisance or adversely affect public health, safety, or the environment. Lake Erie dredge that is covered by and managed in accordance with an effective harbor sediment authorization is neither a solid waste nor an other waste for the purposes of Chapters 3734. and 6111. of the Revised Code, except to the extent that earthen materials are regulated pursuant to those chapters. A harbor sediment authorization may include but is not limited to the following:
- (1) Requirements pertaining to the management and storage of lake Erie dredge during handling of the lake Erie dredge, including setbacks and isolation distances. At a minimum, the director may consider the following in determining appropriate requirements:
 - (a) Ohio environmental protection agency's "Rainwater and Land Development Manual."
 - (b) United States environmental protection agency's internet-based resources relating to BMPs for erosion and sedimentation, including the sector specific "Industrial Storm Water Fact Sheet Series."
 - (c) United States environmental protection agency's "National Menu of Best Management Practices (BMPs) for Stormwater."
 - (d) United States environmental protection agency's "National Management Measures to Control Nonpoint Source Pollution from Urban Areas, EPA-841-B-05-004."
 - (e) Ohio hydrologic soil groups.
 - (f) Precipitation forecasts.
 - (g) Soil temperatures.
 - (h) Other BMPs listed in Chapter 3745-40 of the Administrative Code.
 - (2) Testing and sampling requirements.
 - (3) Record keeping and reporting requirements.
 - (4) The identification of the lake Erie dredge covered under the harbor sediment authorization, including the geographic location and timeframe during which the lake Erie dredge is excavated.
 - (5) Expiration procedures.
 - (6) Renewal procedures.
- (B) Administrative change. The director may make an administrative change to a harbor sediment authorization to correct typographical errors.

- (C) Modification. The director may modify a harbor sediment authorization in response to changes in applicable laws, rules, or other factors affecting compliance with the terms and conditions of the harbor sediment authorization.
- (D) Suspension or revocation.
- (1) Suspension. The director may suspend a harbor sediment authorization if the director determines that an emergency exists requiring immediate action to protect the public health or safety or the environment. The director may issue an emergency order, without notice or hearing, reciting the existence of the emergency and requiring that such action be taken as necessary to meet the emergency. The emergency order shall take effect immediately. Any person to whom the emergency order is directed shall comply immediately, but on application to the director shall be afforded a hearing as soon as possible and not later than thirty days after application. On the basis of the hearing, the director shall continue the emergency order in effect, revoke, or modify the emergency order. No emergency order shall remain in effect for more than one hundred twenty days after issuance.
 - (2) Revocation. The director may revoke a harbor sediment authorization during the authorization's term if any of the following occur:
 - (a) A change in applicable laws, rules, or other factors affecting compliance with the terms and conditions of the harbor sediment authorization.
 - (b) The director finds that the relevant data and available information no longer supports issuance of a harbor sediment authorization for the lake Erie dredge.
 - (c) The director determines that a nuisance or an adverse impact to public health, safety, or the environment has occurred or is likely to occur from the lake Erie dredge covered by the harbor sediment authorization.
 - (d) A constituent of concern is identified that has not been evaluated when issuing or renewing the harbor sediment authorization.
 - (e) If at any time the lake Erie dredge to which the harbor sediment authorization applies no longer meets the criteria set forth in rule 3745-599-410 of the Administrative Code. If revocation occurs pursuant to this paragraph, evaluation of the lake Erie dredge is required prior to issuance of a new harbor sediment authorization.
 - (3) If the director proposes to revoke a harbor sediment authorization, the director shall public notice the proposed revocation in accordance with Chapter 3745-49 of the Administrative Code.
 - (4) Except as provided in paragraph (E) of this rule, if the director suspends or revokes a harbor sediment authorization, any lake Erie dredge identified in the harbor sediment authorization shall be considered a solid waste or an other waste as provided in Chapters 3734. and 6111. of the Revised Code and the rules adopted thereunder.
- (E) Lake Erie dredge that has been land applied or removed from a sediment processing facility for distribution or use while covered under an effective harbor sediment authorization may be regulated pursuant to Chapter 3734. or 6111. of the Revised Code only to the extent that earthen materials are regulated pursuant to those chapters.

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Certification

02/13/2019

Date

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