

3745-599-01 Beneficial use and harbor sediment authorization - applicability.

(A) Beneficial use.

(1) This chapter authorizes the beneficial use of the following wastes, including instances where the waste is commingled with other materials, that are placed on land or burned unless otherwise excluded as provided in rule 3745-599-05 of the Administrative Code:

(a) Foundry sands that are a solid waste, industrial waste, or other waste.

(b) Material resulting from the treatment of a public water system's source water supply for drinking or industrial purposes that are a solid waste, industrial waste, or other waste.

(c) Solid waste, industrial waste, or other waste for use as fuel or as an ingredient in a combustion unit.

(d) Lake Erie dredge that is a solid waste or an other waste.

(e) Sewage sludge incinerator ash.

(2) When a beneficial use byproduct has been managed and beneficially used in accordance with this chapter, the beneficial use byproduct that has been beneficially used is not a solid waste under Chapter 3734. of the Revised Code.

(B) Harbor sediment authorization. This chapter authorizes the director to issue a harbor sediment authorization for lake Erie dredge that the director determines is neither a solid waste nor an other waste. A harbor sediment authorization issued in accordance with this chapter does not authorize the placement of any material into waters of the state.

[Comment: Placement of materials into waters of the state may require an authorization pursuant to Chapter 6111. of the Revised Code.]

(C) Compliance with this chapter, or permits authorized hereunder, does not relieve any person of obligations under state or federal laws and rules.

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3745-599-02 Beneficial use and harbor sediment authorization - definitions.

As used in this chapter, terms are defined as follows:

- (A)
- (1) "Agronomic benefit" means the promotion or enhancement of plant growth and includes but is not limited to increases in soil fertility and moisture retention.
 - (2) "Asphalt" means a brown-black solid or semisolid mixture of bitumens obtained from native deposits or as a petroleum byproduct that is used in paving, roofing, and waterproofing.
 - (3) "Asphalt concrete" means a composite material consisting of asphalt binder and mineral aggregate that is mixed together then laid down in layers and compacted.
- (B)
- (1) "Beneficial use" means the use of a beneficial use byproduct as an ingredient, as a product, or in a manner that contributes to a manufacturing process or product that does not constitute disposal or cause pollution of any waters of the state. A beneficial use may include but is not limited to the following:
 - (a) Use for agronomic benefit; as a replacement of a raw material; as a soil amendment, fertilizer, or structural fill; or as a fuel.
 - (b) Use as a replacement of a raw material.
 - (c) Use as a soil amendment.
 - (d) Use as a fertilizer.
 - (e) Use as structural fill.
 - (f) Use as a fuel.
 - (2) "Beneficial use byproduct" means a solid waste, industrial waste, or other waste having properties necessary or preferred for beneficial use.
 - (3) "Best management practices" or "BMPs" means activities, prohibitions or practices, maintenance procedures, and other management practices intended to prevent or reduce the pollution of waters of the state. BMPs also include treatment, operating procedures, and practices intended to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material and beneficial use byproduct storage.
- (C)
- (1) "Cement" means a pozzolanic material that can bind other materials together, is a powder, and to which both of the following apply:
 - (a) Includes a mixture of calcined limestone and clay.
 - (b) Sets and hardens independently.
 - (2) "Cement concrete" means a construction material that solidifies and hardens independently after mixing with water and that includes cement mixed with any of the following:

- (a) Cementitious materials such as fly ash or slag cement.
- (b) Aggregate (generally a coarse aggregate such as gravel, limestone, or granite, plus a fine aggregate such as sand).
- (c) Chemical admixtures.

- (3) "Chip and seal pavement" means a pavement surface treatment that combines a layer of asphalt with a layer of fine aggregate, constructed by evenly distributing a thin base of asphalt onto an existing pavement and then embedding finely graded aggregate into the pavement.
- (4) "Controlled low-strength material" means a self-consolidating cementitious mixture that is intended to result in a compressive strength of twelve hundred pounds per square inch or less.
- (5) "Cyanobacteria" means photosynthesizing bacteria, also called blue-green algae, which naturally occur in marine and fresh water ecosystems and may produce cyanotoxins that at sufficiently high concentrations can pose a risk to public health.
- (6) "Cyanotoxin" means a toxin produced by cyanobacteria, which include liver toxins, nerve toxins, and skin toxins.

(D)

- (1) "Director" means the director of environmental protection or the director's authorized representative.
- (2) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any beneficial use byproduct into or on any land or ground or surface water or into the air, except if the disposition or placement constitutes storage, treatment, or beneficial use in accordance with this chapter.
- (3) "Distributor" means a person that provides a beneficial use byproduct to another person for beneficial use.
- (4) "Drinking water source protection area for a public water system using ground water" means the surface and subsurface area surrounding a public water system's supply well that will provide water to the well within five years as delineated or endorsed by Ohio EPA under the wellhead protection program and the source water assessment and protection program.

- (E) "Emergency management zone" or "EMZ" means the surface and subsurface area in the immediate vicinity of a public water system intake as delineated or endorsed by the Ohio EPA under the source water assessment and protection program within which the public water supply owner or operator has little or no time to respond to potential contamination from a spill, release, or weather related event. The standard emergency management zone boundary consists of a semi-circle that extends five hundred feet upstream of the intake and one hundred feet downstream of the intake, except as modified due to local conditions.

(F) [Reserved.]

(G)

- (1) "Generator" means a person who generates a beneficial use byproduct.
- (2) "Ground water" means any water below the surface of the earth in a zone of saturation.
- (3) "Grout" means a construction material used to embed rebar in masonry walls, connect sections of pre-cast concrete, fill voids, or seal joints. Grout is generally composed of a mixture of water, cement, sand, and sometimes fine gravel.

- (H) "Hazardous waste" means waste that is listed specifically as hazardous waste or exhibits one or more characteristics of hazardous waste as defined in rule 3745-51-03 of the Administrative Code.
- (I) "Industrial waste" has the same meaning as in section 6111.01 of the Revised Code.
- (J) [Reserved.]
- (K) [Reserved.]
- (L)
- (1) "Lake Erie dredge" means material excavated or dredged from either a federal navigation channel during harbor or navigation maintenance activities or from adjacent or connected commercial maritime port facilities.
 - (2) "Liquid waste" means industrial waste or other waste that contains free liquids as determined by the paint filter liquids test in accordance with method 9095B of the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW-846)" as described in rule 3745-599-03 of the Administrative Code.
- (M)
- (1) "Masonry unit" means manufactured building product that includes but is not limited to materials composed of burned clay, concrete, stone, glass, gypsum, sand, or other residuals.
 - (2) "Material change" means the composition of the beneficial use byproduct has changed such that either of the following occurs:
 - (a) The concentration of a known constituent exceeds the concentration limits established in the general or individual beneficial use permit issued pursuant to this chapter.
 - (b) A new constituent is present in the beneficial use byproduct that was not present or known at the time of the previous characterization.
- (N) "Nuisance" means anything which is injurious to human health or offensive to the senses; interferes with the comfortable enjoyment of life or property; and affects a community, neighborhood, or any considerable number of persons (although the extent of annoyance or damage inflicted upon individual persons may be unequal).
- (O)
- (1) "Ohio EPA" means Ohio environmental protection agency.
 - (2) "Open burning" has the same meaning as in section 3734.01 of the Revised Code.
 - (3) "Open dumping" has the same meaning as in section 3734.01 of the Revised Code.
 - (4) "Other waste" has the same meaning as in section 6111.01 of the Revised Code.
- (P)
- (1) "Permittee" means any person covered under an effective permit issued pursuant to this chapter.
 - (2) "Person" means an individual, the state, any political subdivision of the state or other state or local body, the United States and any agency or instrumentality thereof, and any legal entity or organization defined

as a person under section 1.59 of the Revised Code, or other entity.

(Q) [Reserved.]

(R) "Representative sample" means a sample of a universe or whole that can be expected to exhibit the average properties of the universe or whole.

(S)

(1) "Sediment processing facility" means a site or location to which lake Erie dredge is transferred and at which the lake Erie dredge is dewatered, blended, amended, or otherwise managed prior to distribution or use.

(2) "Solid waste" has the same meaning as in Chapter 3734. of the Revised Code. As used in the definition of solid waste for the purposes of this chapter, "unwanted" means discarded by the generator or used in a manner that shows the generator no longer reasonably needs or desires the beneficial use byproduct. Unwanted does not include beneficially used in accordance with this chapter.

(T) [Reserved.]

(U) [Reserved.]

(V) [Reserved.]

(W) "Waters of the state" has the same meaning as in section 6111.01 of the Revised Code.

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3745-599-03 Beneficial use and harbor sediment authorization - incorporation by reference.

Incorporation by reference. The text of the incorporated materials is not included in the rules contained in this chapter. The materials are hereby made a part of this chapter. For materials subject to change, only the specific version specified in this rule is incorporated. Any amendment or revision to a referenced document is not incorporated unless and until this rule has been amended to specify the new version.

(A) Availability. The materials incorporated by reference are available as follows:

- (1) Code of federal regulations (C.F.R.). Information and copies may be obtained by writing to: "U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000." The full text of the C.F.R. is also available in electronic format at <https://www.ecfr.gov>. The C.F.R. compilations are also available for inspection and copying at most public libraries and "The State Library of Ohio."
- (2) Federal statutes. The full text is available in electronic format at <https://www.govinfo.gov/>. These laws are also available for inspection and copying at most public libraries and "The State Library of Ohio."
- (3) Specifications of the "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods, third edition, including Volume IV, Field Manual (SW-846)." Information and copies may be obtained by writing to: "National Technical Information Service, U.S. Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312." The full text is also available in electronic format at <https://www.epa.gov/hw-sw846/sw-846-compendium>. These test methods are also available for inspection and copying at most public libraries and "The State Library of Ohio."
- (4) Specifications of the "American Society for Testing and Materials" (ASTM). Information and copies may be obtained by writing to: "ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, Pennsylvania 19428-2959." These documents are available for purchase at <http://www.astm.org>.
- (5) Other publications. The availability of these documents is provided in paragraph (B)(4) of this rule. However, many of the documents are also available for inspection and copying at most public libraries and "The State Library of Ohio."

(B) Incorporated materials.

- (1) Appropriate "Code of Federal Regulations," the regulations listed in this rule are those effective on October 18, 2018 and include 40 C.F.R. Part 241, "Solid Wastes Used as Fuels or Ingredients in Combustion Units."
- (2) Appropriate "Federal Statutes," the statutes listed in this rule are those versions of the laws amended through September 28, 2018, including "Permits for dredged or fill material, 33 U.S.C. 1344."
- (3) Appropriate "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW-846)," as amended through July 2018 including the following:
 - (a) Method 1311, "Toxicity Characteristic Leaching Procedure."
 - (b) Method 1312, "Synthetic Precipitation Leaching Procedure."

- (c) Method 3050B, "Acid Digestion of Sediments, Sludges, and Soils."
 - (d) Method 3500C "Organic Extraction and Sample Preparation."
 - (e) Method 6010D, "Inductively Coupled Plasma-Optical Emission Spectrometry."
 - (f) Method 7000B or 7010, "Flame Atomic Absorption Spectrophotometry," or "Graphite Furnace Atomic Absorption Spectrophotometry."
 - (g) Method 8081B, "Organochlorine Pesticides by Gas Chromatography."
 - (h) Method 8082A, "Polychlorinated Biphenyls (PCBs) by Gas Chromatography Guidance."
 - (i) Method 8260D, "Volatile Organic Compounds by Gas Chromatography/ Mass Spectrometry (GC/MS)."
 - (j) Method 8270E, "Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS)."
 - (k) Method 9095B, "Paint Filter Liquids Test."
- (4) ASTM D3987-12, "Standard Practice for Shake Extraction of Solid Waste with Water;" adopted November 1, 2012.
- (5) Other publications as follows:
- (a) American Public Health Association, American Water Works Association, and Water Environment Federation "Standard Methods for the Examination of Water and Wastewater;" 23rd Edition, 2017. The full text of this document is available in electronic format at: www.standardmethods.org/.
 - (b) Battelle Memorial Institute, "Visual Sample Plan Version 7.11 User's Guide;" October, 2018. The full text is also available in electronic format at: <https://vsp.pnnl.gov>.
 - (c) Ohio environmental protection agency, "Rainwater and Land Development Manual;" April 25, 2018. The full text is available in electronic format at: https://epa.ohio.gov/dsw/storm/technical_guidance.
 - (d) Ohio environmental protection agency, "Total (Extracellular and Intracellular) Microcystins - ADDA by ELISA Analytical Methodology Version 2.2," November 2015. The full text is available in electronic format at: <https://epa.ohio.gov/Portals/28/documents/labcert/Ohio%20EPA%20DES%20701.0%20Version%202.2.pdf>.
 - (e) Ohio hydrologic soil groups. A listing of these soils can be found on the United States department of agriculture, natural resources conservation services web site at: <https://www.nrcs.usda.gov/wps/portal/nrcs/main/oh/soils/>.
 - (f) Soil temperatures. The Ohio agricultural research and development center at the Ohio state university provides daily site specific data at several sites around Ohio for soil temperatures at the following internet address: <http://www.oardc.ohio-state.edu/weather1/>.
 - (g) United States environmental protection agency, "Beneficial Use Compendium: A Collection of

Resources and Tools to Support Beneficial Use Evaluations, EPA 530-R-16-009," June 2016. The full text is available in electronic format at:

https://www.epa.gov/sites/production/files/2016-06/documents/ben_use_compendium_062216.pdf.

- (h) United States environmental protection agency, "Determination of microcystins and nodularin in drinking water by solid phase extraction and liquid chromatography/tandem mass spectrometry (LC/MS/MS) (EPA Method 544)," September 8, 2015. The full text is available in electronic format at: https://cfpub.epa.gov/si/si_public_record_report.cfm?Lab=NERL&dirEntryId=306953.
- (i) United States environmental protection agency, "Determination of Total Microcystins and Nodularins in Drinking Water and Ambient Water by ADDA Enzyme-Linked Immunosorbent Assay (EPA Method 546)," August 2016. The full text is available in electronic format at: <https://www.epa.gov/sites/production/files/2016-09/documents/method-546-determination-total-microcystins-nodularins-drinking-water-ambient-water-adda-enzyme-linked-immunosorbent-assay.pdf>.
- (j) United States environmental protection agency, "Ecological Soil Screening Levels for Aluminum," November 2003. The full text is available in electronic format at: https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_aluminum.pdf.
- (k) United States environmental protection agency, "Ecological Soil Screening Levels for Antimony," February 2005. The full text is available in electronic format at: https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_antimony.pdf.
- (l) United States environmental protection agency, "Ecological Soil Screening Levels for Arsenic," March 2005. The full text is available in electronic format at: https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_arsenic.pdf.
- (m) United States environmental protection agency, "Ecological Soil Screening Levels for Barium," February 2005. The full text is available in electronic format at: https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_barium.pdf.
- (n) United States environmental protection agency, "Ecological Soil Screening Levels for Beryllium," February 2005. The full text is available in electronic format at: https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_beryllium.pdf.
- (o) United States environmental protection agency, "Ecological Soil Screening Levels for Cadmium," March 2005. The full text is available in electronic format at: https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_cadmium.pdf.
- (p) United States environmental protection agency, "Ecological Soil Screening Levels for Chromium," April 2008. The full text is available in electronic format at: https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_chromium.pdf.
- (q) United States environmental protection agency, "Ecological Soil Screening Levels for Cobalt," March 2005. The full text is available in electronic format at: https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_cobalt_.pdf.
- (r) United States environmental protection agency, "Ecological Soil Screening Levels for Copper," February 2007. The full text is available in electronic format at: https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_copper.pdf.
- (s) United States environmental protection agency, "Ecological Soil Screening Levels for DDT and_

- Metabolites," April 2007. The full text is available in electronic format at:
https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_ddt.pdf.
- (t) United States environmental protection agency, "Ecological Soil Screening Levels for Dieldrin," April 2007. The full text is available in electronic format at:
https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_dieldrin.pdf.
- (u) United States environmental protection agency, "Ecological Soil Screening Level for Iron," November 2003. The full text is available in electronic format at:
https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_iron.pdf.
- (v) United States environmental protection agency, "Ecological Soil Screening Levels for Lead," March 2005. The full text is available in electronic format at:
https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_lead.pdf.
- (w) United States environmental protection agency, "Ecological Soil Screening Levels for Manganese," April 2007. The full text is available in electronic format at:
https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_manganese.pdf.
- (x) United States environmental protection agency, "Ecological Soil Screening Levels for Nickel," March 2007. The full text is available in electronic format at:
https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_nickel.pdf.
- (y) United States environmental protection agency, "Ecological Soil Screening Levels for Pentachlorophenol," April 2007. The full text is available in electronic format at:
https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_pcp.pdf.
- (z) United States environmental protection agency, "Ecological Soil Screening Levels for Polycyclic Aromatic Hydrocarbons (PAHs)," June 2007. The full text is available in electronic format at:
https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_pah.pdf.
- (aa) United States environmental protection agency, "Ecological Soil Screening Levels for Selenium," July 2007. The full text is available in electronic format at:
https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_selenium.pdf.
- (bb) United States environmental protection agency, "Ecological Soil Screening Levels for Silver," September 2006. The full text is available in electronic format at:
https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_silver.pdf.
- (cc) United States environmental protection agency, "Ecological Soil Screening Levels for Vanadium," April 2005. The full text is available in electronic format at:
https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_vanadium.pdf.
- (dd) United States environmental protection agency, "Ecological Soil Screening Levels for Zinc," June 2007. The full text is available in electronic format at:
https://www.epa.gov/sites/production/files/2015-09/documents/eco-ssl_zinc.pdf.
- (ee) United States environmental protection agency, "Integrated Risk Information System," August 30, 2018. The full text is available in electronic format at: <https://www.epa.gov/iris>.
- (ff) United States environmental protection agency internet-based resources relating to BMPs for erosion and sedimentation, including the sector specific "Industrial Storm Water Fact Sheet Series;" July

2017. The full text is available in electronic format at:
<https://www.epa.gov/npdes/industrial-stormwater-fact-sheet-series>.
- (gg) United States environmental protection agency, "Background Information for the Leaching Environmental Assessment Framework (LEAF) Test Methods," November 2010. The full text is available in electronic format at: https://clu-in.org/download/remed/EPA_LEAF_P1009TQ9.pdf.
- (hh) United States environmental protection agency, "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, EPA-821-R-02-012;" Fifth Edition, October 2002. The full text is available in electronic format at:
<https://www.epa.gov/cwa-methods/acute-toxicity-wet-methods>.
- (ii) United States environmental protection agency, "Methods for Chemical Analysis of Water and Wastes, EPA 600/4-79/020;" March 1983. The full text is available in electronic format at:
<http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=30000Q10.txt>.
- (jj) United States environmental protection agency, "Methodology for Evaluating Beneficial Uses of Industrial Non-Hazardous Secondary Materials, EPA 530-R-16-011;" April 2016. The full text is available in electronic format at: https://www.epa.gov/sites/production/files/2016-07/documents/-methodology_for_evaluating_beneficial_use_of_secondary_materials_4-14-16.pdf.
- (kk) United States environmental protection agency, "National Management Measures to Control Nonpoint Source Pollution from Urban Areas, EPA-841-B-05-004;" November 2005. The full text is available in electronic format at:
https://www.epa.gov/sites/production/files/2015-09/documents/urban_guidance_0.pdf.
- (ll) United States environmental protection agency, "National Menu of Best Management Practices (BMPs) for Stormwater;" July 2018. The full text is available in electronic format at:
<https://www.epa.gov/npdes/national-menu-best-management-practices--bmps-stormwater#edu>.
- (mm) United States environmental protection agency, "RCRA Waste Sampling Draft Technical Guidance, Planning, Implementation, and Assessment, EPA 530-D-02-002;" as amended through August 2002. Information and copies may be obtained by writing to "U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue N.W., Washington, DC 20460." The full text is also available in electronic format at:
https://www.epa.gov/sites/production/files/2015-10/documents/rwsdtg_0.pdf.
- (nn) United States environmental protection agency, "Regional Screening Levels," May 2018. The full text is available in electronic format at:
<https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables>.
- (oo) United States environmental protection agency, "Regional Screening Levels - User's Guide," May 2018. The full text is available in electronic format at:
<https://www.epa.gov/risk/regional-screening-levels-rsls-users-guide>.
- (pp) United States environmental protection agency, "Risk Assessment of Spent Foundry Sands In Soil-Related Applications, EPA-530-R-14-003;" October 2014. The full text is available in

electronic format at:

https://www.epa.gov/sites/production/files/2016-03/documents/risk_assessment_sfs_in_soil.pdf.

- (qq) United States environmental protection agency, technical support center for monitoring and site characterization, "Statistical Software ProUCL 5.1 for Environmental Applications for Data Sets with and without Nondetect Observations, EPA-600-R-07-041;" June 2016. The full text is available in electronic format at: <https://www.epa.gov/land-research/proucl-software>.
- (rr) United States environmental protection agency, "Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens," March 2005. The full text is available in electronic format at: <https://www.epa.gov/risk/supplemental-guidance-assessing-susceptibility-early-life-exposure-carcinogens>.

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3745-599-05 Beneficial use and harbor sediment authorization - general exclusions.

General exclusions. This chapter is not applicable to the following materials, including instances when a beneficial use byproduct or lake Erie dredge is commingled with the material:

- (A) Agricultural additives regulated pursuant to Chapter 905. of the Revised Code and rules adopted thereunder.
- (B) Compost regulated pursuant to Chapter 3734. of the Revised Code and rules adopted thereunder.
- (C) Hazardous waste regulated pursuant to Chapter 3734. of the Revised Code and rules adopted thereunder.
- (D) Liquid wastes regulated pursuant to Chapter 6111. of the Revised Code and rules adopted thereunder other than liquid wastes resulting from the treatment of source water for drinking or industrial purposes from a public water system.
- (E) Sewage, sewage sludge, sludge, sludge materials, and biosolids for which an authorization has been issued under Chapter 6111. of the Revised Code and rules adopted thereunder.
- (F) Waste from oil and gas exploration and production operations including brine, regulated pursuant to Chapter 1509. of the Revised Code and rules adopted thereunder.
- (G) Material used for activities specified in division (C) of section 6111.32 of the Revised Code and that have received a 401 water quality certification pursuant to Chapter 3745-32 of the Administrative Code.
- (H) Materials injected into a well pursuant to Chapter 6111. of the Revised Code and rules adopted thereunder.
- (I) Used oil regulated pursuant to Chapter 3745-279 of the Administrative Code.

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3745-599-10 Beneficial use byproduct incorporated into certain construction materials or used as a fuel or as an ingredient in a combustion unit.

(A) The beneficial use of a beneficial use byproduct as an ingredient in any of the construction materials listed in paragraph (B) of this rule is an authorized beneficial use under this beneficial use program chapter when the following are true:

- (1) The construction materials are produced by a facility meeting the appropriate activity code under the "North American Industry Classification System" (NAICS) or "Standard Industrial Classification" (SIC).
- (2) The beneficial use byproduct is legitimately managed in accordance with rule 3745-599-35 of the Administrative Code.
- (3) The beneficial use of the beneficial use byproduct as an ingredient results in a construction material that meets generally accepted industry specifications for the construction material.

(B) Construction materials:

- (1) Asphalt concrete.
- (2) Cement concrete.
- (3) Chip and seal pavement.
- (4) Controlled low-strength material.
- (5) Grout.
- (6) Glass.
- (7) Masonry unit.

(C) The beneficial use of a beneficial use byproduct in accordance with 40 C.F.R. Part 241, as described in rule 3745-599-03 of the Administrative Code, as a fuel or as an ingredient in a combustion unit is an authorized beneficial use under this beneficial use program chapter if the beneficial use byproduct is legitimately managed in accordance with rule 3745-599-35 of the Administrative Code.

(D) Nothing in this rule limits the applicability of Chapter 3734., 6111., or 3704. of the Revised Code or rules adopted thereunder, or any other applicable environmental laws and regulations.

[Comment: Management and storage of a beneficial use byproduct prior to incorporation as an ingredient into construction materials is subject to the legitimacy criteria in rule 3745-599-35 of the Administrative Code.]

3745-599-20 Beneficial use and harbor sediment authorization - prohibitions.

(A) Beneficial use prohibitions.

- (1) No person shall beneficially use a beneficial use byproduct except as authorized in accordance with this chapter.
 - (2) Except in accordance with an effective national pollutant discharge elimination system permit, no person shall place or cause to be placed a beneficial use byproduct in a location where it results in a discharge to waters of the state.
 - (3) Except as authorized by section 6111.32 of the Revised Code and in accordance with a water quality certification issued under Chapter 3745-32 of the Administrative Code, and a permit issued under 33 U.S.C. 1344, as described in rule 3745-599-03 of the Administrative Code, if applicable, no person shall beneficially use a beneficial use byproduct by placing the beneficial use byproduct into waters of the state.
 - (4) No person shall beneficially use, manage, or store a beneficial use byproduct in a manner or location where the beneficial use may endanger public health, safety, or the environment.
 - (5) No person shall beneficially use, manage, or store a beneficial use byproduct in a manner or in a location that creates a nuisance, or causes or contributes to water pollution or air pollution.
 - (6) No person shall conduct, permit, or allow disposal of a beneficial use byproduct unless authorized by this chapter or by Chapter 3704., 3734., or 6111. of the Revised Code. In the event that any of these activities occur, or have occurred at a property, the person responsible for the activity, the owner of the property, or the person who allows or allowed the activity to occur, shall promptly remove and dispose or otherwise manage the beneficial use byproduct in accordance with Chapters 3734. and 6111. of the Revised Code, and shall submit verification to Ohio EPA that the beneficial use byproduct has been properly managed.
- (B) No person shall use, manage, or place lake Erie dredge in any location except in accordance with this chapter or as authorized under section 6111.33 of the Revised Code.

Effective: 2/25/2019

Five Year Review (FYR) Dates: 11/29/2018 and 02/25/2024

CERTIFIED ELECTRONICALLY

Certification

02/13/2019

Date

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Rule Amplifies: 3734.02, 3734.03, 6111.03, 6111.035, 6111.04, 6111.32, 6111.33, 6111.34
Prior Effective Dates: 03/31/2017

3745-599-25 Beneficial use - signatures.

- (A) When a document is required to be signed in accordance with this rule, the person signing that document shall be one of the following:
- (1) In the case of a corporation, a principal executive officer of at least the level of vice president or a duly authorized representative.
 - (2) In the case of a partnership, a general partner.
 - (3) In the case of a limited liability company, a manager, member, or other duly authorized representative of the limited liability company.
 - (4) In the case of sole proprietorship, the owner.
 - (5) In the case of a municipal, state, federal, or other governmental facility, the principal executive officer, the ranking elected official, or other duly authorized employee.
- (B) The signature on the document signed in accordance with this rule shall constitute personal affirmation that all statements and all assertions of fact made in the document to the best of the signatory's knowledge and belief are true, accurate, include all required information, and comply fully with applicable state requirements and shall subject the signatory to liability under section 2921.13 of the Revised Code.
- (C) Unless an alternate certification is specifically required, a document signed in accordance with this rule shall include the following certification statement:
- "By signing this document I hereby certify that all statements and all assertions of fact made in the document to the best of my knowledge and belief are true and accurate, include all required information, and comply fully with applicable rules."

Effective: 03/31/2017

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Certification

10/21/2016

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Rule Amplifies: 3734.02, 6111.03, 6111.035, 6111.32

3745-599-30 Beneficial use - relationships among authorizing documents, rules, and the authority of the director and board of health.

- (A) When direct conflict occurs between a requirement of this chapter and an authorizing document approved prior to the establishment of that requirement in this chapter, the owner or operator shall comply with the authorizing document until the obligation in the authorizing document ceases. After the obligation ceases, the owner or operator shall comply with this chapter.
- (B) When a direct conflict occurs between a requirement of this chapter and an order issued by the director, approved board of health, or court having competent jurisdiction prior to the establishment of that requirement in this chapter, the owner or operator shall comply with the order until the order is terminated or until the obligation in the order ceases. After the obligation in the order has ceased, the owner or operator shall comply with this chapter.
- (C) Nothing in this chapter is intended nor shall be construed to limit or infringe upon any authority granted by statute to the director or a board of health, including but not limited to issuing orders, conducting inspections, and enforcing the standards and requirements of statutes and rules adopted thereunder.

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Rule Amplifies: 3734.02, 6111.03, 6111.035, 6111.32

3745-599-35 Beneficial use - legitimacy criteria.

Any person engaging in beneficial use in accordance with this chapter shall engage in only legitimate beneficial use of the beneficial use byproduct. Upon request by Ohio EPA, a person shall demonstrate legitimate beneficial use of a beneficial use byproduct by providing evidence of the following:

- (A) The beneficial use byproduct is managed and stored as a valuable commodity and is appropriately managed to prevent releases to the environment.
- (B) The beneficial use byproduct is not accumulated speculatively. As used in this rule, a beneficial use byproduct is not accumulated speculatively by the person accumulating the beneficial use byproduct if all of the following are true:
 - (1) The beneficial use byproduct has a feasible means of being beneficially used in accordance with a general beneficial use permit or an individual beneficial use permit, or in a manner excluded under rule 3745-599-10 of the Administrative Code.
 - (2) The beneficial use byproduct will be beneficially used in such quantities and over such time frames specified in the beneficial use permit. If the permit does not specify time frames or quantities, upon request by Ohio EPA, the person shall demonstrate that during the preceding calendar year, commencing January first, the amount of beneficial use byproduct that is beneficially used, or transferred to a different site for beneficial use, equals at least seventy-five per cent by weight or volume of the amount of that beneficial use byproduct that was accumulated at the beginning of the calendar year. In calculating the percentage of turnover, the seventy-five per cent requirement is to be applied to beneficial use byproduct of the same type that is beneficially used in the same way (i.e., from which the same material is recovered or that is beneficially used in the same way).

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Rule Amplifies: 3734.02, 3734.03, 6111.03, 6111.035, 6111.32

3745-599-60 Approved sampling and characterization procedures for the beneficial use of a beneficial use byproduct.

[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 - incorporation by reference."]

- (A) A characterization required by a permit issued pursuant to this chapter shall be conducted in accordance with the permit.
- (B) A characterization required by this chapter to determine whether a beneficial use byproduct can be beneficially used shall be conducted in accordance with one or a combination of the following applicable methods or other methods deemed acceptable by the director:
 - (1) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW-846)," including the following:
 - (a) Method 1311, "Toxicity Characteristic Leaching Procedure."
 - (b) Method 1312, "Synthetic Precipitation Leaching Procedure."
 - (c) Method 3050B, "Acid Digestion of Sediments, Sludges, and Soils."
 - (d) Method 3500C "Organic Extraction and Sample Preparation."
 - (e) Method 6010D, "Inductively Coupled Plasma-Optical Emission Spectrometry."
 - (f) Method 7000B or 7010, "Flame Atomic Absorption Spectrophotometry," or "Graphite Furnace Atomic Absorption Spectrophotometry."
 - (g) Method 8081B, "Organochlorine Pesticides by Gas Chromatography."
 - (h) Method 8082A, "Polychlorinated Biphenyls (PCBs) by Gas Chromatography Guidance."
 - (i) Method 8260D, "Volatile Organic Compounds by Gas Chromatography/ Mass Spectrometry (GC/MS)."
 - (j) Method 8270E, "Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS)."
 - (k) Method 9095B, "Paint Filter Liquids Test."
 - (2) Methods described in the following publications:
 - (a) "Standard Methods for the Examination of Water and Wastewater."
 - (b) "Methods for Chemical Analysis of Water and Wastes (EPA 600/4-79/020)."
 - (c) "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, (EPA-821-R-02-012)."
 - (3) Other United States environmental protection agency methods or other methods that demonstrate to the satisfaction of the director that the results of the analysis adequately represent constituent concentrations in the beneficial use byproduct.

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02/13/2019

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Prior Effective Dates: 03/31/2017

3745-599-200 General beneficial use permit.

[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 - incorporation by reference."]

- (A) The director may issue or renew a general beneficial use permit without application. A general beneficial use permit may address the following:
- (1) A specific category or categories of beneficial use byproducts and beneficial uses by persons conducting similar activities.
 - (2) Establishment of general beneficial use permit eligibility criteria, which may include but are not limited to the identification of the following:
 - (a) Activities such as generation, processing, distribution, or placement of the beneficial use byproducts.
 - (b) Persons including but not limited to generators, processors, distributors, or landowners.
 - (3) Establishment of requirements pertaining to the characterization of the beneficial use byproducts.
 - (4) Establishment of restrictions or standards for the beneficial uses of beneficial use byproducts. The director may consider established screening levels, restrictions or standards, and site specific standards that include but are not limited to the following:
 - (a) United States environmental protection agency "Regional Screening Levels."
 - (b) United States environmental protection agency "Risk Assessment of Spent Foundry Sands In Soil-Related Applications."
 - (c) Chapter 3745-1 of the Administrative Code ("Aquatic Toxicity" standards and "Water Quality" criteria).
 - (d) Chapter 3745-40 of the Administrative Code ("Sewage Sludge Program Limits").
 - (e) Chapter 3745-300 of the Administrative Code ("Voluntary Action Program" standards).
 - (f) Information regarding ambient background concentrations.
 - (5) Establishment of requirements, including BMPs pertaining to the beneficial use, management, and storage of beneficial use byproducts, including setbacks and isolation distances. The director may consider at a minimum the following in determining appropriate BMPs:
 - (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) "National Menu of Best Management Practices (BMPs) for Stormwater."
 - (d) "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.
- (6) Establishment of record keeping and reporting requirements.
- (7) Establishment of requirements specific to the type of beneficial use byproduct, locations of the beneficial use, and the beneficial uses authorized under the general beneficial use permit.
- (8) Establishment of a general beneficial use permit expiration date and general beneficial use permit renewal procedures.
- (9) Notification requirements upon distribution of the beneficial use byproduct.
- (10) Establishment of requirements for land use restrictions including but not limited to deed restrictions and environmental covenants.
- (11) A demonstration of legitimacy in accordance with rule 3745-599-35 of the Administrative Code.
- (B) Criteria for issuance of a general beneficial use permit. The director shall not issue a general beneficial use permit unless the following are determined:
- (1) Beneficial use of the beneficial use byproduct as authorized by the general beneficial use permit is unlikely to create a nuisance or adversely affect public health, safety, or the environment.
 - (2) Beneficial use of the beneficial use byproduct as authorized by the general beneficial use permit is unlikely to cause pollution of waters of the state.
 - (3) Beneficial use of the beneficial use byproduct as authorized by the general beneficial use permit is unlikely to cause air pollution.
 - (4) The issuance of the general beneficial use permit complies with division (M) of section 3734.02 of the Revised Code.
- (C) A person may apply for coverage under a general beneficial use permit by submitting a notice of intent to obtain coverage in accordance with rule 3745-599-210 of the Administrative Code.
- (D) Revocation or non-renewal of general beneficial use permits.
- (1) The director may revoke a general beneficial use permit during its term if the director determines that the criteria contained in paragraph (B) of this rule have not been met.
 - (2) The director may renew a general beneficial use permit.
 - (3) If the director proposes to revoke a general beneficial use permit or if the general beneficial use permit expires without renewal, the director shall send notice of the proposed revocation or non-renewal in writing to each permittee covered under the general beneficial use permit.
 - (4) Termination of coverage under the general beneficial use permit shall occur upon the effective date of a final revocation or the expiration date of a general beneficial use permit that is not renewed.

3745-599-210 Notice of intent to obtain coverage under a general beneficial use permit.

- (A) A person eligible for coverage as specified in a general beneficial use permit may apply for coverage under the general beneficial use permit prior to the anticipated date of commencing beneficial use of the beneficial use byproduct by submitting the following to the director in accordance with this rule:
- (1) A complete and accurate notice of intent to obtain coverage under a general beneficial use permit on forms prescribed by the director. The forms shall be signed in accordance with rule 3745-599-25 of the Administrative Code. At a minimum, such notice of intent shall contain the following:
 - (a) The general beneficial use permit number under which authorization to beneficially use a beneficial use byproduct is requested.
 - (b) The name, address, and telephone number of the applicant, and the name, address, telephone number, and title of the applicant's contact person.
 - (c) If different than the applicant, the name, address, and telephone number of the generator of the beneficial use byproduct proposed to be beneficially used under the general beneficial use permit, and the name, address, telephone number, and title of the generator's contact person.
 - (d) If different than the applicant, the name, address, and telephone number of every intended distributor of the beneficial use byproduct, and the name, address, telephone number, and title of each distributor's contact person.
 - (e) Each location of the proposed beneficial use and storage of the beneficial use byproduct, unless otherwise specified in the general beneficial use permit.
 - (f) A description of the beneficial use byproduct and a representation that the beneficial use byproduct complies with the general beneficial use permit.
 - (g) Any additional information specified in the general beneficial use permit or requested by the director.
 - (2) A nonrefundable application fee of two hundred dollars.
- (B) Any notice of intent or other documentation required to be submitted by this rule that fails to provide Ohio EPA with information needed to ascertain compliance with the applicable provisions of this chapter may be considered incomplete. Ohio EPA shall notify the applicant of the necessary information to ascertain compliance with the applicable provisions of this chapter and may request submittal of the necessary information within a specified time frame. Failure to provide the requested information may result in Ohio EPA returning the notice of intent application to the applicant as an incomplete application. An incomplete application will not be considered.

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3745-599-220 Coverage under a general beneficial use permit.

(A) General beneficial use permit coverage.

- (1) Upon receipt of a complete notice of intent that demonstrates that the criteria for general beneficial use permit eligibility have been satisfied, the director may authorize coverage of the applicant under the general beneficial use permit.
- (2) No person is authorized to beneficially use a beneficial use byproduct under authority of a general beneficial use permit until the director issues a written notification or order to that person stating that the beneficial use of the beneficial use byproduct is authorized by a general beneficial use permit.
- (3) Any person authorized to beneficially use a beneficial use byproduct under authority of a general beneficial use permit shall comply with the general beneficial use permit and this chapter.
- (4) Any person authorized to beneficially use a beneficial use byproduct under authority of the general beneficial use permit shall only beneficially use a beneficial use byproduct at a location that has been specified in a general beneficial use permit or identified in a written notification or order stating that the beneficial use is authorized by a general beneficial use permit.
- (5) Coverage under a general beneficial use permit is non-transferable.
- (6) Except as provided in paragraph (G) of this rule, coverage under general beneficial use permit expires upon the expiration date of the general beneficial use permit.

(B) Record keeping. Unless otherwise specified in the general beneficial use permit, the permittee shall maintain and make available the following to Ohio EPA for a period of five years after beneficial use of the beneficial use byproduct has last occurred:

- (1) Records of the annual volume of the beneficial use byproduct that is managed and the amounts beneficially used under the general beneficial use permit.
- (2) Any beneficial use byproduct characterization information required by the general beneficial use permit.
- (3) Any other information required to be maintained by the general beneficial use permit or by the notice or order from the director stating that the beneficial use of the beneficial use byproduct is authorized by the general beneficial use permit.

(C) Administrative change. The director may make an administrative change to the order or written notification specified in paragraph (A)(2) of this rule. An administrative change may include changes to do either of the following:

- (1) Update or correct administrative information including but not limited to the telephone number, address, or name of the contact person of the permittee, generator, or distributor.
- (2) Correct typographical errors.

(D) Change in beneficial use byproduct characteristics.

- (1) The permittee shall notify the director prior to a change in the generating process or when the permittee anticipates a change in the feedstock, input materials, or raw materials used in the generating process and shall include information regarding the following:
 - (a) Whether the beneficial use byproduct is anticipated to continue to meet the specifications of the

general permit.

(b) Whether the change constitutes a material change.

(2) If a change in the generating process, feedstock, input materials, or raw materials constitutes a material change, the director may require the permittee to conduct and submit an additional characterization of the beneficial use byproduct in accordance with rule 3745-599-60 of the Administrative Code.

(3) If at any time the beneficial use byproduct has undergone a material change or does not meet the requirements of the general permit, the permittee shall cease beneficial use and distribution of the beneficial use byproduct and provide written notice to Ohio EPA not later than three days after ceasing beneficial use of the beneficial use byproduct. Beneficial use and distribution of the beneficial use byproduct shall cease until the permittee does one of the following:

(a) Not later than sixty days prior to re-commencing beneficial use and distribution of the beneficial byproduct, the permittee shall perform and submit the following to Ohio EPA:

(i) A characterization of the beneficial use byproduct as required in the general beneficial use permit. The characterization shall include sufficient samples as necessary for a statistical analysis.

(ii) A statistical analysis that demonstrates compliance with the general beneficial use permit.

(iii) An explanation of how re-commencing beneficial use and distribution of the beneficial use byproduct will meet the specifications of the general beneficial use permit and this chapter.

(b) Submits an application for an individual beneficial use permit and obtains an authorization pursuant to this chapter.

(E) Denial of coverage under a general beneficial use permit.

(1) The director shall deny coverage under a general beneficial use permit when information, including but not limited to the notice of intent that is required to be submitted under this chapter, demonstrates non-compliance with this chapter or with any requirements in the general beneficial use permit.

(2) The director may deny coverage for the beneficial use of a beneficial use byproduct at any location where the director determines that the beneficial use may endanger public health, safety, or the environment or if the director determines the beneficial use may create a nuisance or cause or contribute to water pollution or air pollution. In making a determination to deny coverage, the director shall at a minimum consider the following locations:

(a) Within a drinking water source protection area for a public water system using ground water.

(b) Within five hundred feet of a well that provides potable drinking water for human or livestock consumption.

(c) Within an emergency management zone.

(d) Within a flood plain.

(e) Within a location prohibited under division (M) of section 3734.02 of the Revised Code.

(3) The director may deny coverage for the beneficial use of a beneficial use byproduct in the construction of facilities used to treat, store, or convey potable water for human or livestock consumption.

- (4) If coverage under a general beneficial use permit is denied, an applicant may apply for an individual beneficial use permit in accordance with rule 3745-599-310 of the Administrative Code.
- (F) Revocation of coverage under a general beneficial use permit. The director may revoke coverage under a general beneficial use permit if any of the following occur:
- (1) The director finds that there has been a violation of a law, rule, or an authorization issued pursuant to Chapter 3704., 3734., or 6111. of the Revised Code or the rules adopted thereunder, or any other applicable environmental laws and regulations.
 - (2) The director has determined that a nuisance, or an adverse impact to public health, safety, or the environment has been caused by the beneficial use of the beneficial use byproduct.
 - (3) The director has determined that information submitted as the basis for the director's determination to authorize coverage was incomplete, incorrect, or is no longer valid.
 - (4) The director has determined that the beneficial use byproduct or the beneficial use no longer meets the criteria for coverage under the general beneficial use permit.
 - (5) The permittee requests that the director revoke the permittee's coverage under a general beneficial use permit.
- (G) Renewal notice of intent. Unless otherwise specified in the general beneficial use permit, a permittee with coverage under a preceding expired or expiring general permit who seeks coverage under a renewed general beneficial use permit may submit to the director a notice of intent and associated fees in accordance with the requirements specified in rule 3745-599-210 of the Administrative Code. The notice of intent shall be submitted not later than forty-five days after the effective date of the renewed general beneficial use permit. If a notice of intent is submitted in accordance with this paragraph, then the applicant shall be deemed to have temporary coverage under the renewed general beneficial use permit until the director notifies the permittee in writing that coverage under the renewed general beneficial use permit has been authorized or denied.

[Comment: If a notice of intent is not submitted in accordance with paragraph (G) of this rule, coverage under a general beneficial use permit will expire upon the expiration date that was specified in the general beneficial use permit.]

[Comment: If coverage under a notice of intent submitted in accordance with paragraph (G) of this rule is denied, an applicant may apply for coverage under an alternative general beneficial use permit or submit an application for an individual beneficial use permit.]

3745-599-310 Application for an individual beneficial use permit.

A person applying for an individual beneficial use permit shall submit the following to the director:

- (A) A complete and accurate application for an individual beneficial use permit on forms prescribed by the director, signed by the applicant in accordance with rule 3745-599-25 of the Administrative Code, that includes the following:
- (1) The name, address, and telephone number of the applicant and the name, address, telephone number, and title of the applicant's contact person.
 - (2) If different than the applicant, the name, address, and telephone number of the generator of the beneficial use byproduct, and the name, address, telephone number, and title of the generator's contact person.
 - (3) If different than the applicant, the name, address, and telephone number of each intended distributor of the beneficial use byproduct and the name, address, telephone number, and title of each distributor's contact person.
 - (4) A description of the beneficial use byproduct proposed for beneficial use as generated, including a description of the following:
 - (a) The process through which the beneficial use byproduct is generated, including the feedstock, input materials, and raw materials used to generate the beneficial use byproduct.
 - (b) A physical and chemical description, including leaching characteristics, of the beneficial use byproduct proposed for beneficial use as generated.
 - (5) A description of the manner in which the beneficial use byproduct is intended to be managed and beneficially used in accordance with rule 3745-599-35 of the Administrative Code. In addition, the description shall address any of the following:
 - (a) How the beneficial use byproduct will provide a useful contribution to the commercial, production, or manufacturing process. For the purposes of this rule, the beneficial use byproduct provides a useful contribution if the beneficial use byproduct does any of the following:
 - (i) Contributes a valuable ingredient to a product.
 - (ii) Acts as an effective substitute for a commercial product.
 - (b) How the beneficial use byproduct will be beneficially used to produce a valuable product.
 - (c) How the beneficial use byproduct will be beneficially used as an effective substitute for a commercial product, a soil additive or amendment, or as an ingredient.
 - (6) If the beneficial use byproduct is being proposed to be beneficially used for agronomic benefit, a demonstration of the agronomic benefit.
 - (7) A description of the BMPs that will be used when transporting, storing, and handling the beneficial use byproduct to minimize loss, including the activities necessary to ensure that the beneficial use byproduct is not released to the environment.
 - (8) A description of the expected chemical characteristics, including the leaching characteristics, of runoff from the beneficial use byproduct if the beneficial use byproduct will be applied to the land.

- (9) A description of the location and environs of each location of the proposed beneficial use and each location proposed for storage of the beneficial use byproduct.
 - (10) The volume of the beneficial use byproduct estimated to be managed and stored annually by the permittee.
 - (11) A description of any other permits or authorizations that have been issued for the site where the beneficial use byproduct will be beneficially used.
 - (12) Any additional information requested by Ohio EPA.
- (B) A copy of the applicant's initial beneficial use byproduct characterization demonstration developed in accordance with rule 3745-599-340 of the Administrative Code.
- (C) The proposed compliance demonstration as required by rule 3745-599-345 of the Administrative Code for each beneficial use byproduct intended for beneficial use.
- (D) A nonrefundable application fee of three hundred fifty dollars.

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3745-599-320 Issuance of an individual beneficial use permit.

[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 - incorporation by reference."]

- (A) If the director determines that an individual beneficial use permit application is deficient or other documentation required to be submitted by this chapter does not provide Ohio EPA with information necessary to ascertain compliance with the applicable provisions of this chapter, Ohio EPA shall notify the applicant of the deficiencies in the application. If the applicant fails to submit a complete revised application not later than one hundred eighty days after the date of the notice that the application is deficient, the director may deny the application. If the applicant fails to provide any response not later than one hundred and eighty days after the date of the notice that the application is deficient, the director may return the deficient application to the applicant. An incomplete application will not be considered.
- (B) An individual beneficial use permit is non-transferable.
- (C) Upon receipt of a complete application for an individual beneficial use permit and a determination that the criteria for an individual beneficial use permit have been met, the director may issue an individual beneficial use permit to the applicant. The individual beneficial use permit may include conditions to prevent nuisance or adverse impacts to public health, safety, and the environment, including but not limited to conditions related to the following:
 - (1) Establishment of restrictions and requirements pertaining to management of and persons responsible for management of the beneficial use byproduct proposed for beneficial use including but not limited to the following:
 - (a) Activities such as generation, processing, distribution, or placement of the beneficial use byproduct.
 - (b) Persons such as generators, processors, distributors, or landowners.
 - (2) Establishment of requirements pertaining to the characterization of the beneficial use byproducts proposed for beneficial use.
 - (3) Establishment of restrictions or standards for the beneficial use of beneficial use byproducts. The director may consider restrictions or standards that include but are not limited to the following:
 - (a) United States environmental protection agency "Regional Screening Levels."
 - (b) United States environmental protection agency "Risk Assessment of Spent Foundry Sands In Soil-Related Applications."
 - (c) Chapter 3745-1 of the Administrative Code ("Aquatic Toxicity" standards and "Water Quality" criteria).
 - (d) Chapter 3745-40 of the Administrative Code ("Sewage Sludge Program Limits").
 - (e) Chapter 3745-300 of the Administrative Code ("Voluntary Action Program" standards).
 - (f) Information regarding ambient background concentrations.
 - (4) Establishment of requirements, including BMPs pertaining to the beneficial use, management, and storage of beneficial use byproducts, including setbacks and isolation distances. The director may consider at a

minimum the following in determining appropriate BMPs:

- (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) "National Menu of Best Management Practices (BMPs) for Stormwater."
 - (d) "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.
- (5) Establishment of record keeping and reporting requirements.
- (6) Establishment of requirements specific to the type of beneficial use byproduct, locations of the beneficial use, and the beneficial uses authorized under the individual beneficial use permit.
- (7) Establishment of an individual beneficial use permit expiration date and individual beneficial use permit renewal procedures.
- (8) Notification requirements upon distribution of the beneficial use byproduct.
- (9) Establishment of requirements for land use restrictions including but not limited to deed restrictions and environmental covenants.
- (10) Establishment of requirements for the permittee to sample for constituents in addition to those identified in the initial beneficial use byproduct characterization demonstration and proposed compliance demonstration.
- (11) Additional terms and conditions as authorized under Chapter 3734. or 6111. of the Revised Code.
- (12) A demonstration of legitimacy in accordance with rule 3745-599-35 of the Administrative Code.
- (D) Criteria for issuance of an individual beneficial use permit. The director shall not issue an individual beneficial use permit unless the following are determined:
- (1) The permittee has submitted a complete application for an individual beneficial use permit.
 - (2) Beneficial use of the beneficial use byproduct in accordance with the permit is unlikely to create a nuisance or adversely affect public health, safety, or the environment.
 - (3) Beneficial use of the beneficial use byproduct in accordance with the permit is unlikely to cause pollution of waters of the state.
 - (4) Beneficial use of the beneficial use byproduct as authorized by the individual beneficial use permit is unlikely to cause air pollution.

(5) The issuance of the individual beneficial use permit complies with division (M) of section 3734.02 of the Revised Code.

(E) Expiration of an individual beneficial use permit. An individual beneficial use permit shall be effective for five years from the effective date of the permit unless otherwise stated in the permit, or if the permit is revoked in accordance with rule 3745-599-370 of the Administrative Code.

3745-599-330 Notice and information for distribution - individual beneficial use permits.

- (A) Unless otherwise specified in the individual beneficial use permit, any permittee who distributes a beneficial use byproduct to another person under an individual beneficial use permit for beneficial use shall provide the person receiving the beneficial use byproduct with the beneficial use byproduct's notice of necessary information prior to or with the initial distribution. The notice of necessary information shall include the following:
- (1) The name, address, and telephone number of the generator of each beneficial use byproduct, and the name, address, telephone number, and title of the generator's authorized contact person.
 - (2) The type and number of each applicable individual beneficial use permit.
 - (3) A statement that the material being distributed is or contains a beneficial use byproduct that meets the constituent limits established in the individual beneficial use permit.
 - (4) A summary of results from any characterization required in accordance with rule 3745-599-340 of the Administrative Code or required by the individual beneficial use permit.
 - (5) A copy of the individual beneficial use permit issued for the beneficial use of the beneficial use byproduct.
- (B) Upon request by a person receiving the beneficial use byproduct, the permittee shall provide to that person the following:
- (1) A copy of the initial beneficial use byproduct characterization demonstration required by rule 3745-599-310 of the Administrative Code.
 - (2) A copy of any compliance demonstrations for the beneficial use byproduct.
- (C) The permittee shall provide updates to the notice of necessary information to the person receiving the beneficial use byproduct for beneficial use annually on the anniversary of the first notice of necessary information and whenever a beneficial use byproduct being beneficially used undergoes a material change.

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3745-599-334 Generator obligations for record keeping and reporting - individual beneficial use permits.

- (A) Unless otherwise specified in the individual beneficial use permit, a permittee who is a generator shall submit to Ohio EPA an annual report signed in accordance with rule 3745-599-25 of the Administrative Code. The annual report shall be submitted on or before April first of each year for the previous calendar year on forms prescribed by the director and shall include at a minimum the following:
- (1) A list of all persons and locations that received the beneficial use byproduct from the generator and the quantity of beneficial use byproduct distributed annually to each person and location expressed in dry tons or by volume.
 - (2) Any documentation demonstrating legitimacy of the beneficial use required under rule 3745-599-35 of the Administrative Code.
 - (3) Information required to be submitted by rule 3745-599-345 or 3745-599-350 of the Administrative Code.
 - (4) The following information, if the information has changed since the submittal of the previous annual report:
 - (a) The updated information as specified in paragraph (A) of rule 3745-599-310 of the Administrative Code.
 - (b) A copy of the compliance demonstration developed in accordance with rule 3745-599-345 of the Administrative Code.
 - (c) The results of any re-characterization of the beneficial use byproduct, including laboratory results and statistical analyses of the beneficial use byproduct, if performed by the generator.
 - (5) Any other information required by the individual beneficial use permit.
- (B) The permittee shall maintain all of the records required to be reported pursuant to paragraph (A) of this rule for a minimum of five years after distribution of the beneficial use byproduct ceases, and shall make them available to Ohio EPA upon request.

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3745-599-335 Distributor obligations for record keeping and reporting - individual beneficial use permits.

- (A) Unless otherwise specified in the individual beneficial use permit, the permittee who is a distributor shall submit to Ohio EPA an annual report signed in accordance with rule 3745-599-25 of the Administrative Code. The annual report shall be submitted on or before April first of each year for the previous calendar year on forms prescribed by the director and shall include at a minimum the following:
- (1) A list of all persons and locations that received the beneficial use byproduct and the quantity of beneficial use byproduct distributed annually to each person and location expressed in dry tons or by volume.
 - (2) The name, address, and telephone number of each generator of a beneficial use byproduct distributed by the permittee.
 - (3) Any documentation demonstrating legitimacy of the beneficial use required under rule 3745-599-35 of the Administrative Code.
 - (4) Information required by to be submitted by rule 3745-599-345 or 3745-599-350 of the Administrative Code.
 - (5) The following information, if the information has changed since the submittal of the previous annual report:
 - (a) The updated information as specified in paragraph (A) of rule 3745-599-310 of the Administrative Code.
 - (b) A copy of the compliance demonstration developed in accordance with rule 3745-599-345 of the Administrative Code.
 - (c) The results of any re-characterization of the beneficial use byproduct, including laboratory results and statistical analyses of the beneficial use byproduct, if performed by the distributor.
 - (6) Any other information required by the individual beneficial use permit.
- (B) The permittee shall maintain all of the records required to be reported pursuant to paragraph (A) of this rule for a minimum of five years after distribution of the beneficial use byproduct ceases, and make them available to Ohio EPA upon request.

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3745-599-340 Initial beneficial use byproduct characterization demonstration for individual beneficial use permits.

[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 - incorporation by reference."]

Initial beneficial use byproduct characterization demonstration. The initial beneficial use byproduct characterization demonstration shall include at a minimum the following:

- (A) The name, address, and telephone number of the applicant and the applicant's contact person.
- (B) The applicant's determination, if required by rule 3745-52-11 of the Administrative Code, that the beneficial use byproduct is not a hazardous waste.
- (C) A description of the physical and chemical characteristics of each beneficial use byproduct as generated, including a description of the generating process, the product generated, and a list of the feedstock, input materials, and raw materials used to generate the beneficial use byproduct.
- (D) A list of all constituents reasonably expected to be present in each beneficial use byproduct, available analytical data, and the rationale for including or excluding all reasonably expected constituents on the list. Reasonably expected constituents are all constituents that have the potential to occur at concentrations exceeding regional screening levels as published by the United States environmental protection agency. If an appropriate regional screening level for a constituent is not available, the rationale for including or excluding a constituent shall provide justification for an appropriate screening level.
- (E) An analysis for each constituent listed for each beneficial use byproduct in accordance with paragraph (D) of this rule. These listed constituents shall be the constituents of concern for the purposes of the initial beneficial use byproduct characterization demonstration required by rule 3745-599-310 of the Administrative Code and the compliance demonstration as required by rule 3745-599-345 of the Administrative Code.
- (F) The identification of the analytical methods selected and an explanation of the rationale for using each selected method. The initial beneficial use byproduct characterization demonstration shall consider the appropriate analytical methods to determine the leaching potential of constituents of concern to the environment.

[Comment: Applicants may refer to the following documents for guidance on how to choose a sampling strategy; determine the appropriate number of samples; evaluate whether a statistically significant set of samples has been acquired; and conclude that a statistically determined confidence interval (if practical) has represented the average properties of a beneficial use byproduct.

Battelle Memorial Institute, "Visual Sample Plan Version 7.7 User's Guide."

United States environmental protection agency, "Beneficial Use Compendium: A Collection of Resources and Tools to Support Beneficial Use Evaluations, EPA 530-R-16-009."

United States environmental protection agency, "Methodology for Evaluating the Beneficial Use of Industrial Non-Hazardous Secondary Materials, EPA 530-R-16-011."

United States environmental protection agency, "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, EPA-821-R-02-012."

United States environmental protection agency, "RCRA Waste Sampling Draft Technical Guidance, Planning, Implementation, and Assessment, EPA 530-D-02-002."

United States environmental protection agency "Statistical Software ProUCL 5.0 for Environmental Applications for Data Sets with and without Nondetect Observations, EPA-600-R-07-041."

United States environmental protection agency, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW-846)."]

- (G) A description of the representative sampling strategy for the initial beneficial use byproduct characterization demonstration using sampling methods in accordance with rule 3745-599-60 of the Administrative Code. The description of the sampling strategy shall include at a minimum the following:
- (1) An explanation of whether the representative sampling strategy characterizes the beneficial use byproduct by volume or characterizes the beneficial use byproduct as generated through time.
 - (2) The location and the number of all grab samples, composite samples and incremental samples taken to define the average properties of the beneficial use byproduct. The number and location of samples shall be chosen so as not to miss areas of high chemical concentration.
 - (3) A narrative explaining whether a sufficient number of samples were collected by the applicant to ensure that the collected samples truly represent the average properties of the entire beneficial use byproduct. In the case of simple random sampling using grab samples, the applicant shall perform a statistical analysis of the data. If composite or incremental samples were used for the sampling method, and a statistical analysis is not practical, the applicant shall demonstrate to the satisfaction of the director that the sampling method is valid and defensible for the purpose for which the data was collected.
- (H) A description of the sample handling techniques and shipping procedures selected to maintain the sample integrity, including sample preservation and chain of custody. The description shall also set forth the quality control procedures and sampling protocols used to obtain representative samples of the beneficial use byproduct.
- (I) A written discussion of the analytical results used to justify the beneficial use of the beneficial use byproduct for the beneficial use specified in the individual beneficial use permit application that contains at a minimum the following:
- (1) All raw data and analytical results gathered in accordance with the initial beneficial use byproduct characterization demonstration.
 - (2) A summary table of all the raw data and the data analysis included in a computerized database or electronic spreadsheet.
 - (3) The analytical report containing enough detailed information so that the reported statistical analyses are reproducible.
 - (4) A description of the statistical or empirical data evaluation methods to determine the representative average properties of the beneficial use byproduct.
 - (5) A data validation report performed by a person not employed by the laboratory performing the initial beneficial use byproduct characterization demonstration.

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3745-599-345 Compliance demonstration for individual beneficial use permits.

- (A) Compliance demonstration. An applicant shall develop and submit a proposed compliance demonstration with the individual beneficial use permit application. The proposed compliance demonstration shall describe the sampling and analysis procedures the applicant will use when performing the annual compliance demonstration required by paragraph (B) of this rule and shall include all beneficial use byproducts that the applicant is seeking to beneficially use under the individual beneficial use permit application pursuant to this chapter.
- (1) The proposed compliance demonstration shall include all components of the initial beneficial use byproduct characterization required by rule 3745-599-340 of the Administrative Code.
 - (2) If the proposed compliance demonstration proposes different sampling and analysis than what is performed for the initial beneficial use byproduct characterization demonstration, the applicant shall submit an explanation of each change. The proposed compliance demonstration shall include at a minimum the following:
 - (a) An explanation of any changes made to the list of constituents of concern.
 - (b) An explanation of any changes of the analytical method selected and of the appropriateness of the selected analytical method.
 - (c) An explanation of any changes to the sampling strategy to characterize the beneficial use byproduct by volume or as generated through time.
 - (d) An explanation of any changes to the sample handling techniques or shipping procedures.
 - (e) An explanation of any changes to the sampling strategy followed to obtain representative samples.
 - (f) An explanation of any changes of the sampling strategy including locations and number of samples.
- (B) Unless otherwise specified in an approved individual beneficial use permit and except as provided in paragraph (C) of this rule, the permittee shall annually perform a compliance demonstration for each beneficial use byproduct in accordance with the effective individual beneficial use permit.
- (C) A compliance demonstration is not required annually if the permittee has not beneficially used or distributed the beneficial use byproduct in the past year. Prior to resuming beneficial use or distribution of the beneficial use byproduct, the permittee shall conduct the compliance demonstration in accordance with this rule. If the compliance demonstration documents that the beneficial use of the beneficial use byproduct complies with the approved individual beneficial use permit, the permittee may resume beneficial use or distribution of the beneficial use byproduct.
- (D) If at any time the results of a beneficial use byproduct compliance demonstration indicate that a beneficial use byproduct has undergone a material change involving a known constituent exceeding the limits in the permit, the permittee shall comply with paragraph (A)(2) of rule 3745-599-350 of the Administrative Code.
- (E) If deemed necessary to ensure the protection of public health, safety, or the environment or to prevent a nuisance, the director may require sampling and monitoring for constituents in addition to those identified in the compliance demonstration.
- (F) Record keeping. Unless otherwise specified in the individual beneficial use permit, the permittee shall maintain and make available upon request any compliance demonstration information required by this chapter to Ohio EPA for a period of five years after beneficial use of the beneficial use byproduct has last

occurred.

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3745-599-350 Changes to the beneficial use byproduct and the individual beneficial use permit.

- (A) Material change in the raw materials or generating process of the beneficial use byproduct.
- (1) If a change in the generating process, feedstock, input materials, or raw materials constitutes a material change, the director may require the permittee to conduct and submit an additional characterization of the beneficial use byproduct in accordance with rule 3745-599-60 of the Administrative Code.
 - (2) If at any time the beneficial use byproduct has undergone a material change or does not meet the requirements of the individual beneficial use permit, the permittee shall cease beneficial use and distribution of the beneficial use byproduct and provide written notice to Ohio EPA not later than three days after cessation. The permittee may resume beneficial use or distribution of the beneficial use byproduct only after doing one of the following:
 - (a) Not later than sixty days prior to re-commencing beneficial use and distribution of the beneficial byproduct, the permittee shall perform and submit the following to Ohio EPA:
 - (i) A characterization of the beneficial use byproduct as required in the individual beneficial use permit and this chapter. The characterization shall include sufficient samples as necessary for a statistical analysis.
 - (ii) A statistical analysis that demonstrates compliance in accordance with the individual beneficial use permit.
 - (iii) An explanation of how re-commencing beneficial use and distribution of the beneficial use byproduct will meet the specifications of the individual beneficial use permit and this chapter.
 - (b) Submits an application for and obtains an authorization pursuant to this chapter.
- (B) The director may make an administrative change to an individual beneficial use permit. An administrative change to an individual beneficial use permit is an amendment that does not result in a modification. An individual beneficial use permit may be administratively changed to do the following:
- (1) To update administrative information including the telephone number, address, or contact person of the permittee, generator, or distributor.
 - (2) To correct typographical errors contained in an individual beneficial use permit.
- (C) Modification of an individual beneficial use permit.
- (1) The director may modify an individual beneficial use permit in response to changes in applicable laws, rules, or other factors affecting compliance with the terms and conditions of the individual beneficial use permit.
 - (2) The permittee may request a modification of an individual beneficial use permit. A request to modify shall at a minimum contain the following:
 - (a) A completed form prescribed by the director.
 - (b) A brief narrative explanation of the modification being requested.
 - (c) The identification of each specific permit requirements related to the requested modification.
 - (d) The rationale for the modification and an evaluation demonstrating that the modification conforms to

the following:

- (i) Maintains equivalent protection as specified in the individual beneficial use permit.
 - (ii) Does not affect any requirements in the individual beneficial use permit that are not part of the modification request.
 - (e) A non-refundable fee of three hundred fifty dollars.
- (3) The modification shall be effective on the date specified in the modified individual beneficial use permit issued by the director.

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3745-599-360 Renewal of an individual beneficial use permit.

- (A) A permittee who seeks to continue beneficial use or distribution of a beneficial use byproduct after the expiration of an individual beneficial use permit may submit to the director an application for renewal of the individual beneficial use permit not later than one hundred eighty days prior to the individual beneficial use permit's expiration date. An application for renewal shall include the items and information specified in paragraphs (A) and (B) of rule 3745-599-310 of the Administrative Code and shall be accompanied by a non-refundable application fee of three hundred fifty dollars. In addition, the application shall include a copy of the laboratory results for each compliance demonstration that has occurred since the approval of the individual beneficial use permit the permittee is seeking to renew.
- (B) If an applicant submits a complete application for renewal of an individual beneficial use permit not later than one hundred eighty days prior to the expiration date of the existing individual beneficial use permit and Ohio EPA has neither approved nor denied the application for renewal prior to the expiration of the existing individual beneficial use permit, the existing individual beneficial use permit shall be effective until the application for renewal is either approved or denied by the director.
- (C) If an applicant submits an application for renewal not later than one hundred eighty days prior to the expiration date of the existing individual beneficial use permit and the application for renewal is denied by the director, the existing individual beneficial use permit expires on the effective date of the denial of the application for renewal or the expiration date of the existing individual beneficial use permit, whichever is later.
- (D) If an applicant fails to submit an application for renewal not later than one hundred eighty days prior to the expiration date of the existing individual beneficial use permit, the existing individual beneficial use permit expires on the expiration date specified in the individual beneficial use permit and the permittee shall not continue beneficial use or distribution of the beneficial use byproduct until authorization for the beneficial use or distribution under this chapter has been obtained.
- (E) An applicant seeking renewal of an individual beneficial use permit shall submit to Ohio EPA a revised renewal application for an individual beneficial use permit not later than ninety days after the date of written notification that the application is incomplete. The director may deny an incomplete application or return the application to the applicant.
- (F) If the director concludes that additional information is necessary to determine whether an application for renewal satisfies this chapter, upon written request the applicant shall supply such additional information.
- (G) The renewal of an individual beneficial use permit is subject to the same requirements as the issuance of a new individual beneficial use permit pursuant to this chapter.

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3745-599-370 Denial and revocation of an individual beneficial use permit.

- (A) Denial of an individual beneficial use permit. The director may deny an individual beneficial use permit application or an application for renewal of an individual beneficial use permit in accordance with Chapter 119. of the Revised Code, for at a minimum any of the following reasons:
- (1) The beneficial use of a beneficial use byproduct is proposed at one or more of the following locations:
 - (a) Within a drinking water source protection area for a public water system using ground water.
 - (b) Within five hundred feet of a well that provides potable drinking water for human or livestock consumption.
 - (c) Within an emergency management zone.
 - (d) Within a flood plain.
 - (e) Within a location prohibited under division (M) of section 3734.02 of the Revised Code.
 - (2) The beneficial use byproduct is proposed to be beneficially used in the construction of facilities used to treat, store, or convey potable water for human or livestock consumption.
 - (3) The beneficial use of a beneficial use byproduct is proposed at any location where the director determines that the beneficial use may endanger public health, safety, or the environment, create a nuisance, or cause or contribute to water pollution or air pollution.
 - (4) The application is deficient or otherwise not in compliance with this chapter.
 - (5) The permittee has not demonstrated compliance with the individual beneficial use permit for which a renewal application has been submitted.
 - (6) The permit for which an application for renewal has been submitted has been revoked.
- (B) Revocation of an individual beneficial use permit. The director may revoke an individual beneficial use permit in accordance with Chapter 119. of the Revised Code, if at a minimum any of the following occur:
- (1) The director finds that there has been a violation of a law, rule, or an authorization issued pursuant to Chapter 3704., 3734., or 6111. of the Revised Code or the rules adopted thereunder, or any other applicable environmental laws and regulations.
 - (2) The director has determined that a nuisance or an adverse impact to public health, safety, or the environment has been caused by the beneficial use of the beneficial use byproduct.
 - (3) The director has determined that information submitted as the basis for the director's determination to approve the permit was incomplete, incorrect, or is no longer valid.
 - (4) An additional constituent of concern is identified that has not been evaluated under the individual beneficial use permit.
 - (5) The permittee requests that the director revoke the individual beneficial use permit.

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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3745-599-410 Criteria for issuance of a 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) When determining whether to issue a harbor sediment authorization for lake Erie dredge pursuant to rule 3745-599-400 of the Administrative Code, the director may consider at a minimum the following criteria:
- (1) The geographic area from which the lake Erie dredge was excavated.
 - (2) The extent to which the lake Erie dredge has been dewatered.
 - (3) A characterization of the lake Erie dredge through analysis of all constituents reasonably expected to be present in the lake Erie dredge and sufficient samples as necessary for a statistical analysis.
 - (4) Comparisons of constituent concentrations to established screening levels, restrictions, or standards that include but are not limited to the following:
 - (a) United States environmental protection agency, "Ecological Soil Screening Levels for Aluminum."
 - (b) United States environmental protection agency, "Ecological Soil Screening Levels for Antimony."
 - (c) United States environmental protection agency, "Ecological Soil Screening Levels for Arsenic."
 - (d) United States environmental protection agency, "Ecological Soil Screening Levels for Barium."
 - (e) United States environmental protection agency, "Ecological Soil Screening Levels for Beryllium."
 - (f) United States environmental protection agency, "Ecological Soil Screening Levels for Cadmium."
 - (g) United States environmental protection agency, "Ecological Soil Screening Levels for Chromium."
 - (h) United States environmental protection agency, "Ecological Soil Screening Levels for Cobalt."
 - (i) United States environmental protection agency, "Ecological Soil Screening Levels for Copper."
 - (j) United States environmental protection agency, "Ecological Soil Screening Levels for DDT and Metabolites."
 - (k) United States environmental protection agency, "Ecological Soil Screening Levels for Dieldrin."
 - (l) United States environmental protection agency, "Ecological Soil Screening Levels for Iron."
 - (m) United States environmental protection agency, "Ecological Soil Screening Levels for Lead."
 - (n) United States environmental protection agency, "Ecological Soil Screening Levels for Manganese."
 - (o) United States environmental protection agency, "Ecological Soil Screening Levels for Nickel."
 - (p) United States environmental protection agency, "Ecological Soil Screening Levels for Pentachlorophenol."

- (q) United States environmental protection agency, "Ecological Soil Screening Levels for Polycyclic Aromatic Hydrocarbons (PAHs)."
 - (r) United States environmental protection agency, "Ecological Soil Screening Levels for Selenium."
 - (s) United States environmental protection agency, "Ecological Soil Screening Levels for Silver."
 - (t) United States environmental protection agency, "Ecological Soil Screening Levels for Vanadium."
 - (u) United States environmental protection agency, "Ecological Soil Screening Levels for Zinc."
 - (v) Resident soil screening levels contained in the United States environmental protection agency, "Regional Screening Levels."
 - (w) United States environmental protection agency "Regional screening level (RSL) User's Guide."
 - (x) United States environmental protection agency "Integrated Risk Information System."
 - (y) United States environmental protection agency "Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens."
 - (z) Information regarding ambient background concentrations.
- (5) Information obtained from the army corps of engineers, the national oceanic and atmospheric association, Ohio EPA, the United States environmental protection agency, or any other relevant information deemed acceptable by the director.
- (6) Whether methods are being employed to ensure that the lake Erie dredge is not commingled with solid waste or other contaminants.
- (7) The concentration of cyanotoxins in the lake Erie dredge.
- (8) Any additional criteria deemed necessary by the director.
- (B) A characterization of lake Erie dredge may be conducted by means of testing and analysis in accordance with one or a combination of the following applicable methods or other methods deemed acceptable by the director:
- (1) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW-846)," including the following:
 - (a) Method 1311, "Toxicity Characteristic Leaching Procedure."
 - (b) Method 1312, "Synthetic Precipitation Leaching Procedure."
 - (c) Method 3050B, "Acid Digestion of Sediments, Sludges, and Soils."
 - (d) Method 3500C "Organic Extraction and Sample Preparation."
 - (e) Method 6010D, "Inductively Coupled Plasma-Optical Emission Spectrometry."
 - (f) Method 7000B or 7010, "Flame Atomic Absorption Spectrophotometry," or "Graphite Furnace Atomic Absorption Spectrophotometry."

- (g) Method 8081B, "Organochlorine Pesticides by Gas Chromatography."
 - (h) Method 8082A, "Polychlorinated Biphenyls (PCBs) by Gas Chromatography Guidance."
 - (i) Method 8260D, "Volatile Organic Compounds by Gas Chromatography/ Mass Spectrometry (GC/MS)."
 - (j) Method 8270E, "Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry(GC/MS)."
 - (k) Method 9095B, "Paint Filter Liquids Test."
- (2) Methods described in the following publications:
- (a) American Public Health Association, American Water Works Association, and Water Environment Federation, "Standard Methods for the Examination of Water and Wastewater."
 - (b) "Methods for Chemical Analysis of Water and Wastes (EPA 600/4-79/020)."
 - (c) Ohio environmental protection agency, "Total (Extracellular and Intracellular) Microcystins -ADDA by ELISA Analytical Methodology."
 - (d) United States environmental protection agency, "Determination of microcystins and nodularin in drinking water by solid phase extraction and liquid chromatography/tandem mass spectrometry (LC/MS/MS) (EPA Method 544)."
 - (e) United States environmental protection agency, "Determination of Total Microcystins and Nodularins in Drinking Water and Ambient Water by ADDA Enzyme-Linked Immunosorbent Assay (EPA Method 546)."
- (3) United States environmental protection agency "Leaching Evaluation Assessment Framework for inorganic constituents."
- (4) Other United States environmental protection agency methods or other methods that demonstrate to the satisfaction of the director that the results of the analysis adequately represent constituent concentrations in the lake Erie dredge.

Effective: 2/25/2019

Five Year Review (FYR) Dates: 02/25/2024

CERTIFIED ELECTRONICALLY

Certification

02/13/2019

Date

Promulgated Under: 119.03
Statutory Authority: 6111.34, 6111.33, 6111.32, 6111.03, 3734.02
Rule Amplifies: 3734.02, 3734.01, 6111.34, 6111.33, 6111.32,
6111.03, 6111.01