APPENDIX K

WETLANDS AUTHORITIES

X Ohio EPA Section 401 Certification Regulations and Review Guidelines

X State of Ohio Environmental Protection Agency Exceptions to Section 404 Nationwide Permits

X Ohio EPA Standard Wetland Mitigation Conditions

X Ohio Department of Natural Resources Policy Statement on Wetlands

X Ohio EPA Wetland Ohio Water Quality Standards

3745-32 SECTION 401 WATER QUALITY CERTIFICATIONS

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3745-32-02 Section 401 water quality certification required.
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3745-32-01 Definitions.

For the purposes of this chapter the following definitions shall apply:

(A) "Applicant" means any person required to obtain a section 401 water quality certification from the Ohio EPA.

(B) "Director" means the director of the Ohio EPA or his duly authorized representative.

(C) "Discharge of dredged material" means any addition of dredged material, in excess of one cubic yard when used in a single or incidental operation, into waters of the state. The term includes, without limitation, the addition of dredged material to a specified disposal site which is located in waters of the state, or the runoff or overflow of dredged material from a contained land or water disposal area which enters the waters of the state. Discharges of pollutants into waters of the state resulting from the subsequent onshore processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to section 402 of the Federal Water Pollution Control Act, even though the extraction of such material may require a permit from the army corps of engineers under section 10 of the Rivers and Harbors Act.

(D) "Discharge of fill material" means the addition of fill material into waters of the state for the purpose of creating fastlands, elevations of land beneath waters of the state, or for impoundments of water. The term includes, but is not limited to, the placement of the following in waters of the state: fill that is necessary to the construction of any structure; structures or impoundments requiring rock, sand, dirt, or other pollutants for its construction; site-development fills for recreational, industrial, commercial, residential, or other uses; causeways or road fills; dams and dikes; artificial islands, property protection or reclamation devices such as riprap, groins, seawalls, breakwalls, and bulkheads and fills; beach nourishment; levees; sanitary landfills; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants, and subaqueous utility lines; or artificial reefs.

(E) "Dredged material" means material that is excavated or dredged from waters of the state. The term does not include material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for production of food, fiber, and forest products.

(F) "Federal Water Pollution Control Act" means the Federal Water Pollution Control Act Amendments of 1972, 86 Stat. 886, 33 U.S.C. 1251, as amended.

(G) "Fill material" means any pollutant used to create fill to replace an aquatic area with dry land or to change the bottom elevation of a water body for any purpose. "Fill material" does not include the following:

(1) Material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for the production of food, fiber, and forest products;

(2) Material placed for the purpose of maintenance of existing structures, including emergency reconstruction of recently damaged parts of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures.

(H) "General permit" means a department of the army authorization that is issued for a category or categories of discharges of dredged or fill material that are substantially similar in nature and that cause only minimal individual and cummulative adverse environmental impact.

(I) "Nationwide permit" means a department of the army authorization that has been issued for certain specified activities nationwide.

(J) "Ohio EPA" means the Ohio environmental protection agency or its director, as the context or other law or regulations may require.

(K) "Person" means the state, any municipal corporation, political subdivision of the state, person as defined in section 1.59,1.59 of the Revised Code, interstate body created by compact, or the federal government or any department, agency, or instrumentality thereof.

(L) "Section 401 water quality certification" means certification from Ohio EPA, pursuant to section 401 of the Federal Water Pollution Control Act, Chapter 6111,6111. of the Revised Code and Chapter 3745-32 of the Administrative Code, that any discharge, as set forth in section 401, will comply with sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act.

(M) "The Rivers and Harbors Act" means the Rivers and Harbors Act of 1899, 30 Stat. 1151, 33 U.S.C. 401.

(N) "Waters of the state" means all streams, lakes, ponds, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural surface or underground waters, including those waters that are presently used, have been used or are susceptible to use to transport interstate commerce up to the head of navigation.

(O) "Wetlands" are areas where the water table is at, near, or above the land surface long enough each year to support the growth of water dependent vegetation and to result in the formation of characteristic wet soil types. These include marshes, swamps, bogs and similar areas.

HISTORY: Eff 9-15-82
Rule promulgated under: RC Chapter 119.
Rule amplifies: RC Chapter 6111.

3745-32-02 Section 401 water quality certification required.

(A) A section 401 water quality certification is required to obtain the following:

(1) A permit from the army corps of engineers pursuant to section 10 of the Rivers and Harbors Act;

(2) A permit from the army corps of engineers pursuant to section 404 of the Federal Water Pollution Control Act;

(3) A permit from the army corps of engineers pursuant to both section 10 of the Rivers and Harbors Act and section 404 of the Federal Water Pollution Control Act; and

(4) Any other federal permit or license to conduct any activity which may result in any discharge to waters of the state.

(B) No certification issued pursuant to this chapter shall be effective until all applicable fees have been paid.

HISTORY: Eff 9-15-82
Rule promulgated under: RC Chapter 119.
Rule amplifies: RC Chapter 6111.

3745-32-03 Section 401 water quality certification exemptions.
No section 401 water quality certification need be obtained if:
(A) The secretary of the army has issued a general permit pursuant to section 404(e) of the Federal Water Pollution Control Act; or
(B) The discharge of dredged or fill material is part of the construction of a federal project specifically authorized by congress, provided the effects of such discharge are included in an environmental impact statement submitted to congress prior to the actual discharge.
HISTORY: Eff 9-15-82
Rule promulgated under: RC Chapter 119.
Rule amplifies: RC Chapter 6111.

3745-32-04 Section 401 water quality certification applications.
(A) Filing an application with the army corps of engineers for any permit set forth in paragraphs (A)(1) to (A)(3) of rule 3745-32-02 of the Administrative Code constitutes application for a section 401 water quality certification from the Ohio EPA. If an application, in the judgment of the director, lacks information necessary or desirable to determine whether the applicant has demonstrated the criteria set forth in paragraph (A) of rule 3745-32-05 of the Administrative Code, the director shall inform the applicant in writing that review of the application will not proceed until the applicant has submitted additional information as described by the director.
(B) Any person filing an application for any other federal permit or license to conduct an activity which may result in a discharge to waters of the state must submit an application to the director for a section 401 water quality certification. If an application, in the judgment of the director, lacks information necessary or desirable to determine whether the applicant has demonstrated the criteria set forth in paragraph (A) of rule 3745-32-05 of the Administrative Code, the director shall inform the applicant in writing that review of the application will not proceed until the applicant has submitted additional information as described by the director. The director may waive the application requirement if, in the judgment of the director, the activity for which a federal permit or license is sought will not result in a discharge to the waters of the state.
HISTORY: Eff 9-15-82
Rule promulgated under: RC Chapter 119.
Rule amplifies: RC Chapter 6111.

3745-32-05 Criteria for decision by director.
(A) The director shall not issue a section 401 water quality certification unless he determines that the applicant has demonstrated that the discharge of dredged or fill material to waters of the state or the creation of any obstruction or alteration in waters of the state will:
(1) Not prevent or interfere with the attainment or maintenance of applicable water quality standards;
(2) Not result in a violation of any applicable provision of the following sections of the Federal Water Pollution Control Act including:
(a) Effluent limitations as described in section 301;
(b) Water quality related effluent limitations as described in section 302;
(c) Water quality standards and implementation plans as described in section 303;
(d) National standards of performance as described in section 306; or
(e) Toxic and pretreatment effluent standards as described in section 307.
(B) Notwithstanding an applicant's demonstration of the criteria in paragraph (A) of rule 3745-32-05 of the Aministrative Code, the director may deny an application for a section 401 water quality certification if the director concludes that the discharge of dredged or fill material or obstructions or alterations in waters of the state will result in adverse long or short term impact on water quality.
(C) The director may impose such terms and conditions as part of a section 401 water quality certification as are appropriate or necessary to ensure compliance with the applicable laws and to ensure adequate protection of water quality.
(D) Prior to the issuance of a section 401 water quality certification or prior to, during, or after the discharge of dredged or fill material to waters of the state or the creation of any obstruction or alteration in waters of the state to ensure adequate protection of water quality, the director may require that the applicant perform various environmental quality tests including, but not limited to, chemical analyses of water, sediment or fill material, and bioassays.
HISTORY: Eff 9-15-82
Rule promulgated under: RC Chapter 119.
Rule amplifies: RC Chapter 6111.

3745-32-06 Revocation of section 401 water quality certification.
The director may revoke a section 401 water quality certification if he concludes at any time that any applicable laws or regulations have been or are likely to be violated.
HISTORY: Eff 9-15-82
Rule promulgated under: RC Chapter 119.
Rule amplifies: RC Chapter 6111.

3745-32-07 Procedure for decision by director.
A section 401 water quality certification shall be issued, modified, revoked, or denied and may be challenged in accordance with the provisions of the rules of procedure of the Ohio EPA, Chapter 3745-47 of the Administrative Code.
HISTORY: Eff 9-15-82
Rule promulgated under: RC Chapter 119.
Rule amplifies: RC Chapter 6111.

FROM THE WATER QUALITY STANDARDS
EPR REGULATIONS

(KKK) "Water quality standards" means the rules set forth in Chapter 3745-1 of the Administrative Code establishing stream use designations and water quality criteria protective of such uses for the surface waters of the state.

(LLL) "Wetlands" mean areas of land where the water table is at, near or above the land surface long enough each year to result in the formation of characteristically wet (hydric) soil types, and support the growth of water-dependent (hydrophytic) vegetation. Wetlands include, but are not limited to, marshes, swamps, bogs, and other such low-lying areas.

3745-1-03 Analytical methods and availability of documents.
(A) Analytical methods.
(1) All methods of analysis used in applying any of the chemical-specific criteria in Chapter 3745-1 of the Administrative Code shall be in accord with those prescribed in 40 CFR part 136, as amended, "Test Procedures for the Analysis of Pollutants" and "Manual of Ohio EPA Laboratory Standard Operating Procedures, Volumes I, II and III," as cited in paragraph (B) of this rule.
(2) All methods of sample collection and preservation used in applying any of the chemical-specific criteria in Chapter 3745-1 of the Administrative Code shall be in accord with "Ohio EPA Division of Environmental Services Field Practices: Sampling Analysis and Biomonitoring" as cited in paragraph (B) of this rule.
(3) Mixing zones for thermal discharges will be determined in accordance with "Guidelines for the Submittal of Demonstrations Pursuant to Sections 316(a) and 316(b) of the Clean Water Act and Chapter 3745-1 of the Administrative Code," as cited in paragraph (B) of this rule.
(4) Methods for conducting whole-effluent toxicity tests shall be in accordance with those prescribed in "Manual of Ohio EPA Laboratory Standard Operating Procedures, Volume IV," as cited in paragraph (B) of this rule.
(5) Methods, data collection and data analysis requirements for applying the biological criteria in rule 3745-1-07 of the Administrative Code shall be in accordance with "Biological Criteria for the Protection of Aquatic Life: Volume II, Users Manual for Biological Field Assessment of Ohio Surface Waters," and "Manual of Ohio EPA Laboratory Standard Operating Procedures, Volumes I, II, III and IV," as cited in paragraph (B) of this rule.

(B) Availability of documents. The following documents, cited in Chapter 3745-1 of the Administrative Code, are available for viewing at the library of the "Ohio Environmental Protection Agency, 122 South Front street, Columbus, Ohio 43215."
(1) 40 CFR part 136, "Test Procedures for the Analysis of Pollutants."
(2) "Manual of Ohio EPA Laboratory Standard Operating Procedures, Volumes I, II and III," 1995, or any subsequent revisions.
(3) "Manual of Ohio EPA Laboratory Standard Operating Procedures, Volume IV," 1995, or any subsequent revisions.
(4) "Guidelines for the Submittal of Demonstrations Pursuant to Sections 316(a) and 316(b) of the Clean Water Act and Chapter 3745-1 of the Administrative Code," Ohio environmental protection agency, division of industrial wastewater, September 30, 1978.
(5) "Standard Methods for the Examination of Water and Wastewater," sixteenth edition, "American Public Health Association," "American Water Works Association" and the "Water Pollution Control Federation," 1985, or any subsequent revisions.
(6) "Biological Criteria for the Protection of Aquatic Life: Volume II, Users Manual for Biological Field Assessment of Ohio Surface Waters," October 30, 1987, updated January 1, 1988, amended September 30, 1989.
(7) "Ohio EPA Division of Environmental Services Field Practices: Sampling Analysis and Biomonitoring" 1995, or any subsequent revisions.
HISTORY: Eff 2-14-78; 4-4-85; 5-1-90; 7-31-99
Rule promulgated under: RC
<JL:JUMP,"119.03","1_PORC"119.03
Rule authorized by: RC
<JL:JUMP,"6111.041","1_PORC"6111.041
Rule amplifies: RC
<JL:JUMP,"6111.041","1_PORC"6111.041

R.C. Section

FROM THE WATER QUALITY STANDARDS
EPA REGULATIONS

3745-1-04 Criteria applicable to all waters.
The following general water quality criteria shall apply to all surface waters of the state including mixing zones. To every extent practical and possible as determined by the director, these waters shall be:

(A) Free from suspended solids or other substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life;

(B) Free from floating debris, oil, scum and other floating materials entering the waters as a result of human activity in amounts sufficient to be unsightly or cause degradation;

(C) Free from materials entering the waters as a result of human activity producing color, odor or other conditions in such a degree as to create a nuisance;

(D) Free from substances entering the waters as a result of human activity in concentrations that are toxic or harmful to human, animal or aquatic life and/or are rapidly lethal in the mixing zone;

(E) Free from nutrients entering the waters as a result of human activity in concentrations that create nuisance growths of aquatic weeds and algae.

The Director of the Ohio EPA adopted a revised antidegradation policy (O.A.C. 3745-1-05), effective October 1, 1996. The rule includes extensive detail regarding National Pollutant Discharge Elimination System (NPDES) permits and Permits to Install (PTIs). To obtain a copy of the rule, contact the Ohio EPA, Division of Surface Water at (614) 644-2001.

Review guidelines have been established for three major categories of projects: full projects, dredging projects and bulk commodity facilities. For ease of use, the guidelines are presented in a flowchart format. Table 1 lists the categories, the figure number . 'of'the appropriate flowchart, types of projects within these categories, and general comments.

Developing specific guidelines for site-specific projects if very difficult considering the number of variables for any given site. The purpose of these guidelines is to provide basic criteria for decision-making and for maintaining consistency of review. Consequently, user discretion is advised as to the degree to which the guidelines are followed.

Table 2: Review Categories

Project Category	Figure W.	Comments
Fill Projects	1	
• Wetland Fills	la	Diking or filling any wetland, as defined in Ohio Administrative Code (OAC) Section 3745-32
• Erosion Protection	lb	Riprap, bulkheads, groins, breakwaters
• Temporary Road Crossings, Cofferdams	1c	Haul road crossings, fills for pipeline placement, fills in connection with construction dewatering
• Oxbow Fills	1	Fills associated with channelization projects; others considered as fastland creation
• Fastland Creation	1	Any fill with the purpose of converting aquatic areas to upland
• Dredge Disposal Sites	1	In-water confined disposal areas
Dredging Projects	2	
• Wetland Projects	2a	
Bulk Commodity Facilities	3	Loading/unloading docks; Section 10 consideration only

Figure 1: Fill Projects

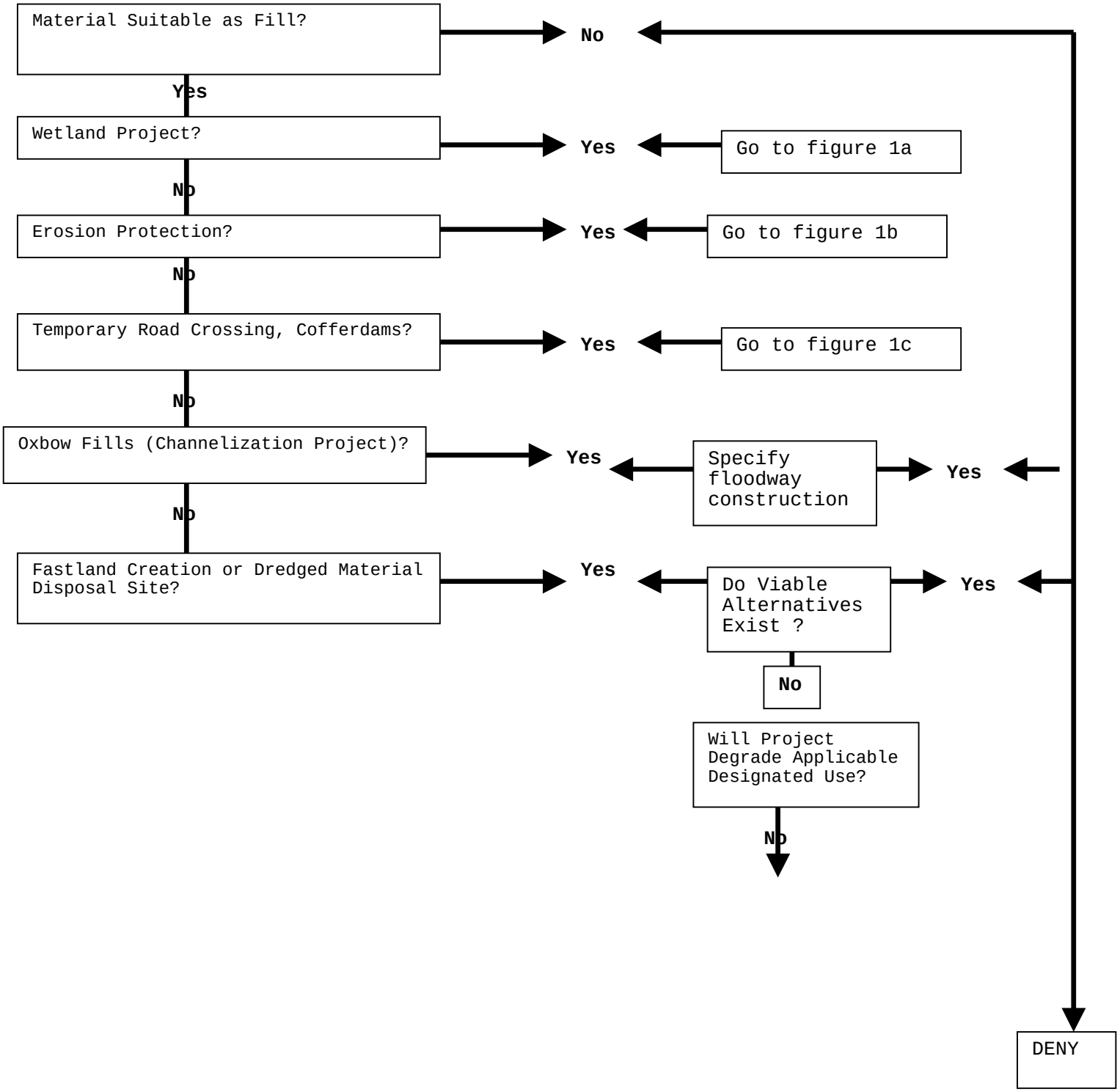
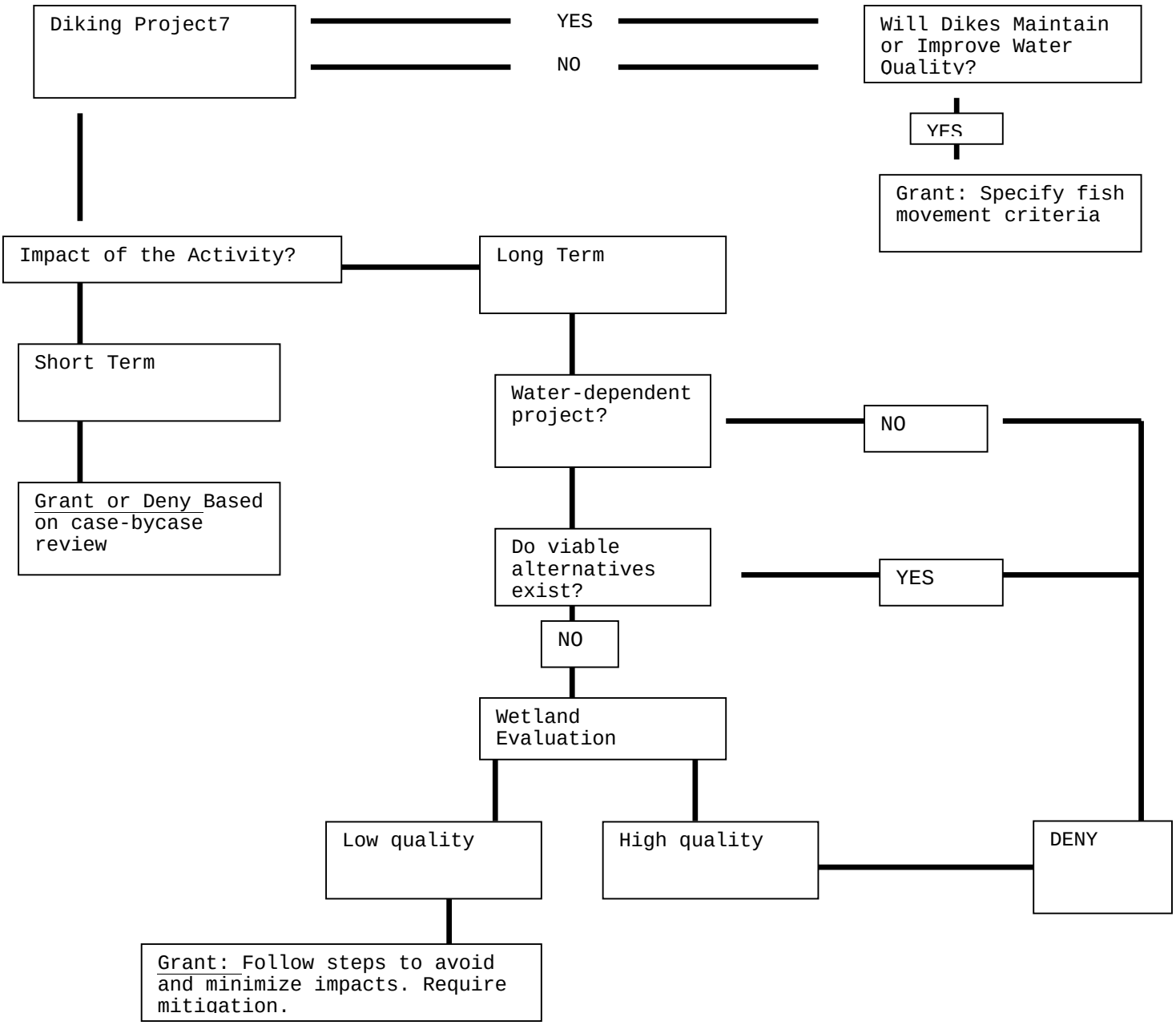


Figure 1a: Wetland Fills



Ficrure 1b: Files for Erosion Protection

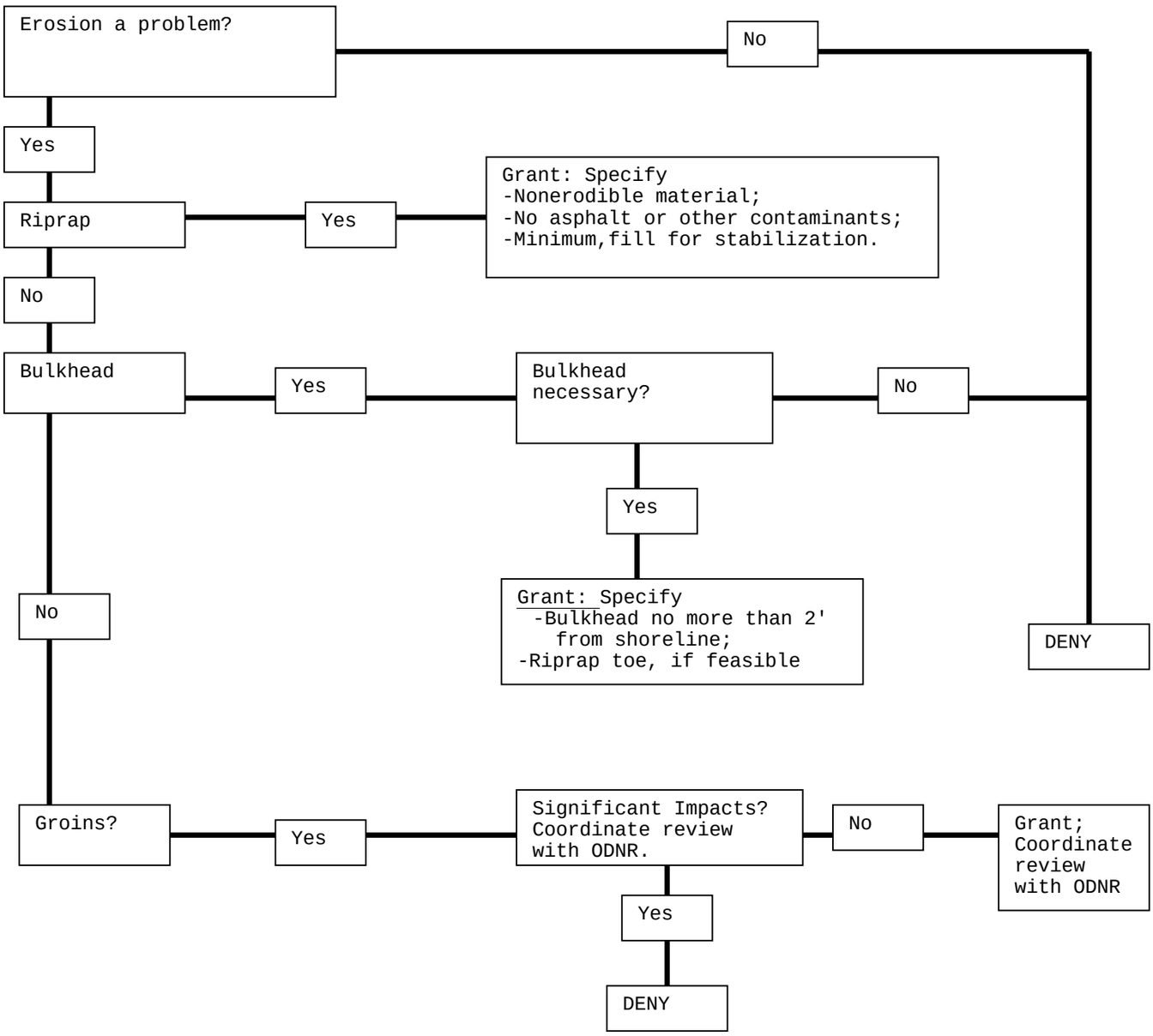
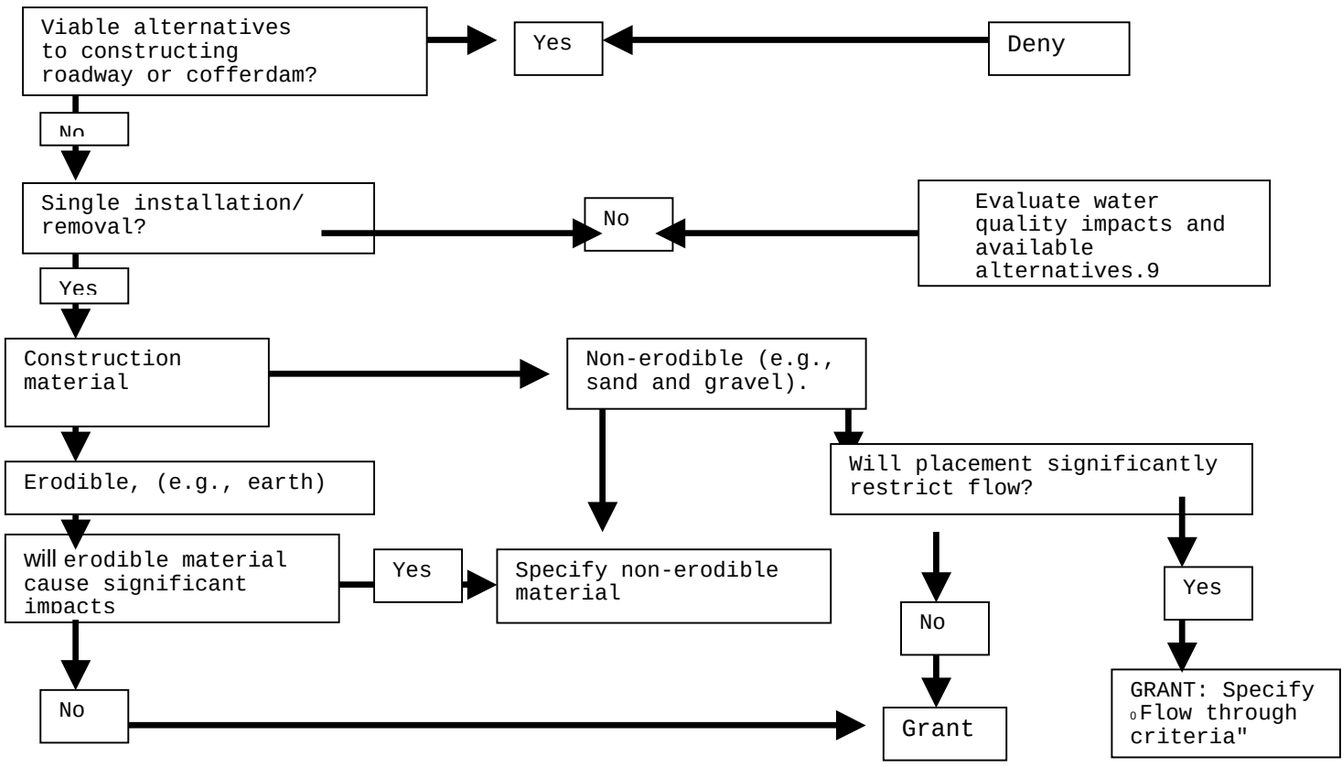


Figure 1c: FillslTemporary Road Crossings, Cofferdams



The following correspond to the numbers appearing in the Fill Projects review flowcharts (Figures 1, la, lb and 1c) : These paragraphs elaborate on the review guidelines for the activities identified.

1. **Creation of Floodways:** Channelization projects often needlessly remove oxbows from a stream as a means of improving drainage. Oxbows offer a diverse habitat for aquatic or4anisms that a new change does not, and probably will not for many years. Whenever possible, it is recommended that a floodway be created to by-pass the oxbow and facilitate drainage during floods, leaving the oxbow in its normal state for channeling the flow during non-flood periods.

2. **Alternatives:** Consider practicable alternatives to aquatic fills. If an applicant requests permission to fill for marina parking, and an upland areas is available nearby, then this alternative should be pursued. The loss of the aquatic habitat outweighs the inconvenience of a boater walking to his boat. Requiring the applicant to buy a piece of land away from the project site for this parking, however, does not represent a variable alternative.

3. **Diked Wetlands:** As a result of certain wildlife management practices, water quality in a wetland maybe degraded by diking and other management techniques. Such degradation is a result of managing a wetland for specific types of wildlife. Generally, these activities are conducted by or coordinate with the Fish & Wildlife Resource Agencies. When reviewing certification applications for such projects, close coordination with the Fish & Wildlife Resource Agencies is essential.

4. Fish Movement Criteria: Diking of wetlands isolates these systems from the associated waterbody, resulting in losses including fish spawning and nursery areas. However, by not diking some wetlands, the habitat is degraded to a point that it is no longer desirable to many species. A compromise can be reached by allowing fish to access these areas during spawning periods. Any method ' be used, as long as free movement between the waterbody and the wetland is maintained during these periods (e.g., floodgates, gated culverts or lift-board weirs) . in order to assure proper access and a workable time-table, it is recommended that this activity be coordinated with the Ohio Department of Natural Resources and the U.S. Fish & Wildlife Service.

S. **Water Dependency:** An assessment must be made to determine whether the fill needs to be located in an aquatic environment in order to fulfill its basic purpose. A fill to create a picnic area is not waterdependent since a picnic does not require water to function. Conversely, a fill coincidental to the construction of a marina would be water-dependent if it related directly to the function or maintenance of the marina, such as fills for finger docks or jetties. Nonwaterdependent fills may be allowable in specific instances where the fill is necessary to meet the overriding-public interest. Examples of such projects include construction of State highways. The applicant shall be required to avoid and minimize the amount of fill to be placed.

6. **Wetland Evaluation:** Wetland evaluation should include a plant and wildlife inventory and an evaluation of the wetland functions. High quality wetlands include, but are not limited to, those which provide habitat for threatened or endangered species and/or wetlands which are locally or regionally scare or threatened.

7. Mitigation: All wetlands in Ohio are classified as State Resource Waters in Ohio's Antidegradation Policy (OAC Section 3745-1-05(C)) and are protected from degradation. ' However, in certain instances, limited degradation is permitted provided the applicant has worked to avoid impacts due to hydromodification (including reducing the scale of the proposed project) , minimize the impacts, and agreed to mitigate for the destruction of wetland habitat.

Acceptable mitigation includes *construction of* a wetland designed to replace the wetland *functions destroyed,* and restoration or enhancement of an existing degraded wetland. Protection of an existing functional wetland is not acceptable mitigation for destruction of a wetland; however, as part of a mitigation plan, certification conditions may require protection of on-site wetlands through establishment of deed restrictions or easements.

a. Bulkhead Necessity: Look at various factors such as ice scour that would remove riprap, areas intensively bulkheaded, or any engineering constraints that necessitate the placement of a bulkhead. Vertical steel sheet-pile bulkheads provide minimal habitat for fish. If no alternatives exist, the placement of riprap at the bulkhead toe to mitigate the loss of the aquatic habitat will be required.

9. Cofferdam: Annual *installation and* removal of a cofferdam may cause long-term water quality degradation and impact the utilization of a waterbody by *spawning fish*. In many instances, less environmentally damaging alternatives to *annual cofferdam* installation are available and should be utilized.

10. Flow Through Criteria: If the? p'lgicement of the fill will reduce the flow to a point potentially causing stagnation, thus rending the water unfit for use or for receiving discharges, steps must be taken to allow an uninterrupted f low. This can be accomplished through the placement of weirs, culverts or other means.

Figure 2: Dredging Projects

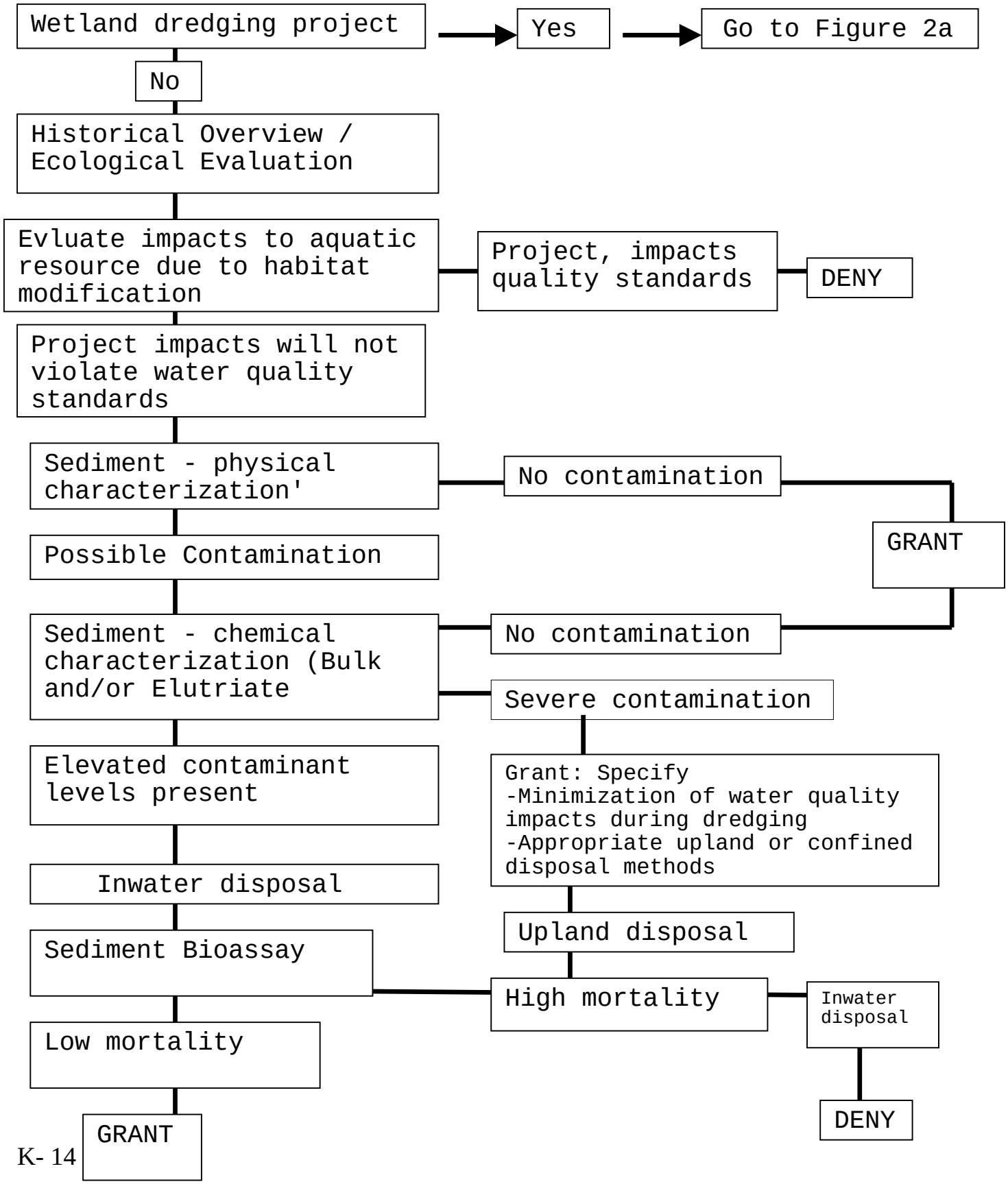
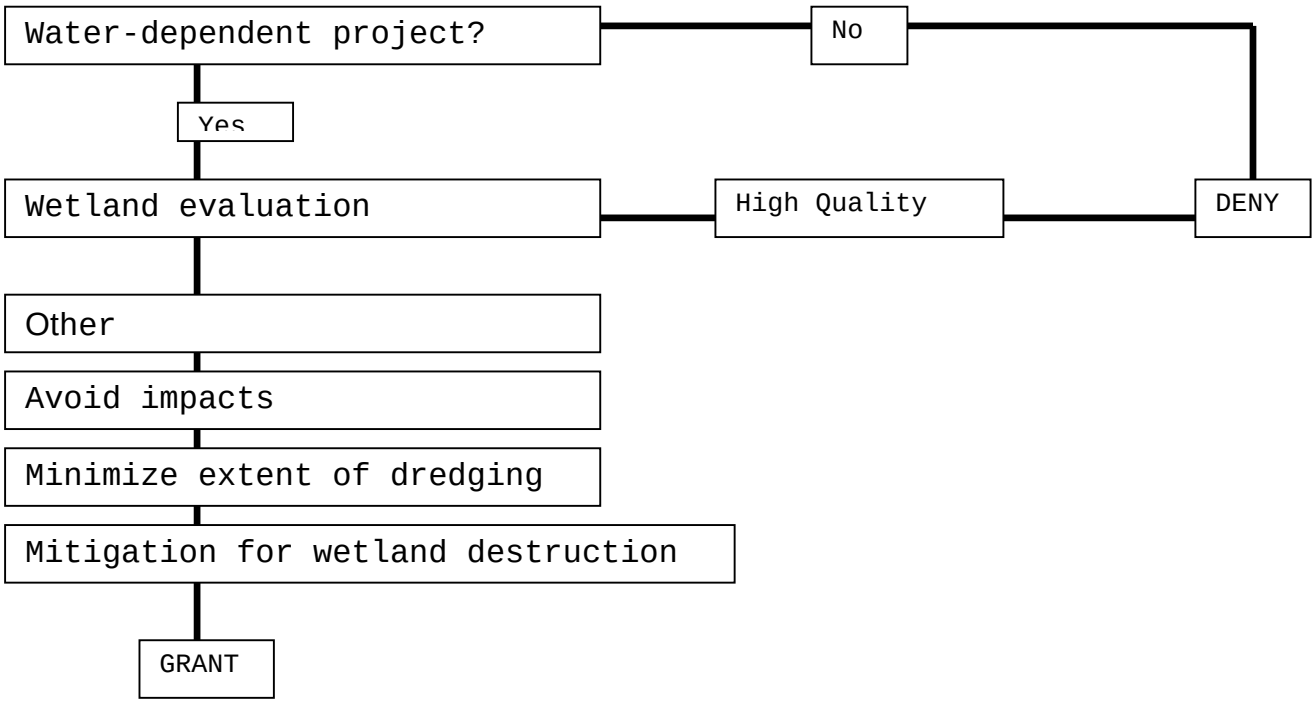


Figure 2a: Wetland Dredging Projects



The following correspond to the numbers appearing in the Dredging Projects review flowcharts (Figures 2 and 2a). These paragraphs elaborate on the review guidelines for the activities identified.

a. **Historical Overview and Ecological Evaluation:** A brief review of historical data from the area is necessary to properly evaluate a project. This review should address the following: Known or suspected pollutant sources and types of potential sediment contaminants, previous dredging activities, previous disposal methods and locations, quantity and quality of these materials and any benefits or problems associated with these activities.

   An ecological evaluation should include a review of existing inventories describing the area biota to determine local populations and if endangered species are present. Conditions that support heir well-being should be noted. The applicable beneficial use designation should be determined from the State's Water Quality Standards. (Waterbodies which are State Resource Waters, Exceptional Warmwater Habitat, Coldwater Habitat or Seasonal Salmonid Habitat are considered High Quality.) Review existing bioaccumulation studies to determine if any problems exist with the uptake of heavy metals or organics.

b. **Sediment Physical Characterization:** Characterization of the sediment particle size and composition is important in assessing potential contaminant levels. Sand and coarse-grained inorganic sediments (greater than 0.25 mm) rarely are contaminated. Conversely, fine organic sediments (less than 0.25 mm) generally retain the highest levels of contaminants. This information is helpful in determining the need for chemical analyses of the sediment. Generally, sediment-physical characterization is conducted when in-water disposal is proposed or contamination of sediment is suspected based upon the results of the Historical and Ecological Evaluation.

c. Sediment Chemical Analyses: chemical characterization of the sediment can be done in two ways: The bulk analysis determines the total levels of sediment parameters on a dry-weight basis. Suggested parameters and criteria for evaluating the results are listed below. The elutriate test is designed to simulate the dredging and disposal processes, reflecting the immediate release of contaminants to the water column. Suggested parameters and criteria for evaluating the results are listed below. In both cases, the parameter list should be modified as necessary to address site-specific concerns. If the historic overview indicates the potential presence of organics, then sediment samples must be analyzed for these compounds. A parameter list should be prepared on a site-specific basis, using the U.S. EPA priority pollutants list and the Ohio Water Quality Standards as guidance.

Bulk Sediment Analysis

Parameters (dry weight)

Ammonia (NH3-N)	Nickel (Ni)
Arsenic (As)	Oil & Grease
Cadmium (Cd)	Phosphorus (P, Total)
Chromium (Cr)	Total Kjeldahl Nitrogen
Chemical Oxygen Demand.	Volatile Solids *M*
Copper (Cu)	Total organic Carbon
Iran (Fe)	Cyanide, Total
Zinc (Zn)	Mercury (Ng)
Phenolics, Total.	

Sediment Evaluation Criteria

Guidelines. Criteria and Register for Great Lakes Dredging Projects. Report of the Dredging Subcommittee to the Water Quality Programs Committee of the Great Lakes Water Quality Board. International Joint Commission. March, 1981.

Guidelines for the Pollution Classification of Great Lakes Harbor Sediments. U.S. Environmental Protection Agency, Region V, Chicago, Illinois. April, 1977.

Evaluation of Illinois stream Sediment Data: 1974-1980: Illinois Environmental Protection Agency, Division of Water Pollution Control. 1984.

Elutriate Analysis

Parameters

Ammonia (NH3-N)	Nickel (Ni)
Arsenic (As)	Oil & Grease
Cadmium (Cd)	Phosphorus (P, Total)
Chromium (Cr)	Iron (Fe)
Copper (Cu)	Mercury (Ng)
Zinc (Zn)	'Phenolics, Total
Cyanide, Total	

Evaluation Criteria

Ohio EPA Water Ouality Standards. Chapter 3745-1 of the Ohio Administrative Code.

d. **Sediment Bioassay:** An important consideration in evaluating a dredging or disposal activity is the impact-on the aquatic organisms. Two basic types of tests can be used to evaluate this impact: Algal bioassays, which measure effects on primary production and animal bioassays, which measure acute or chronic effects. Methods and test organisms vary and it is recommended that the bioassays be coordinated with U.S. EPA and the U.S. Fish & Wildlife Service.

e. If sediment contamination levels warrant, upland disposal projects should be referred to the Ohio EPA's Division of Hazardous Waste Management for permitting. For other projects, specify conditions to minimize the adverse impacts from upland site runoff and discharge of decant water.

f. All wetlands in Ohio are designated as State Resource Waters in 0AC Section 3745-1-OS(C) and are protected from degradation. Dredging of high quality wetlands (for example, wetland types which are regionally scarce or wetlands which provide habitat for threatened or endangered species) should be prohibited.

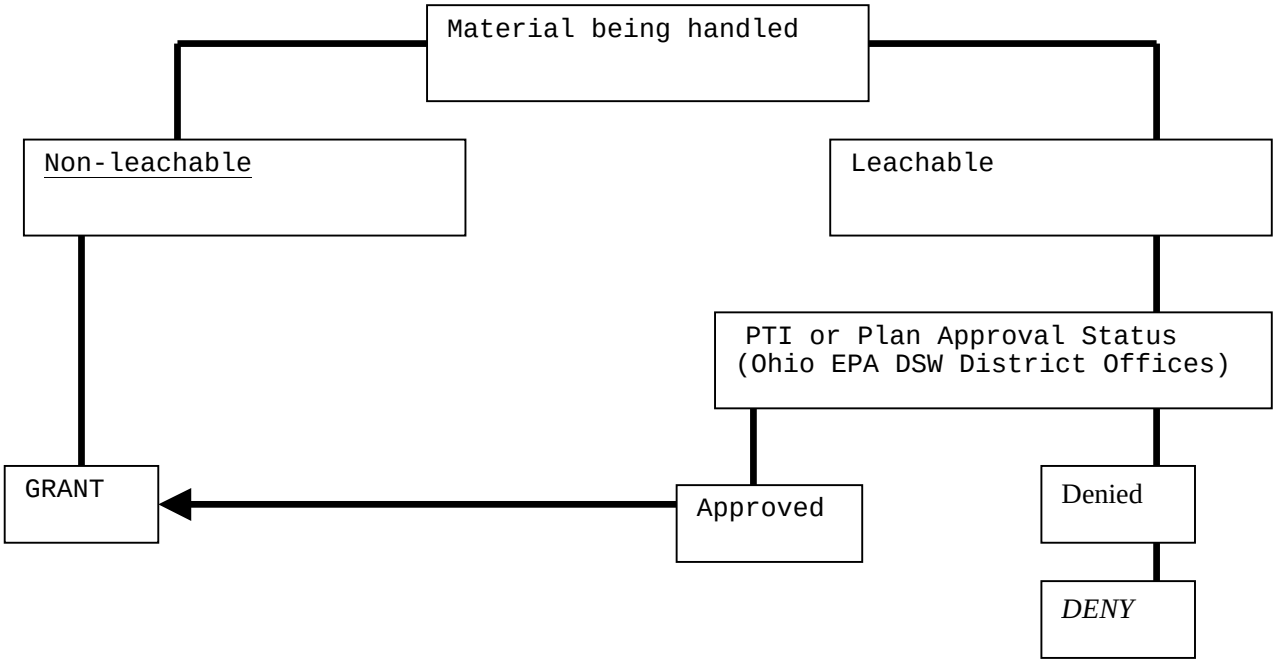
   Wetland evaluations should include a plant and wildlife inventory and an evaluation of the wetland functions. High quality wetlands include, but are not limited to, those which provide habitat for threatened or endangered species and/or wetlands which are locally or regionally scare or threatened.

g. Dredging in other wetlands should be limited to the minimum volumes. Alternatives to dredging in wetlands should include excavation of upland property and reduction in total project size.

h. Mitigation: Ail wetlands in Ohio are classified as State Resource Waters in Ohio's Antidegradation Policy (OAC Section 3745-1-0t(C)) and are protected from degradation. However, in certain instances, limited degradation is permitted provided the applicant has worked to avoid impacts due to hydromodication (including reducing the scale of the proposed project), minimize the impacts, and agreed to mitigate for the destruction of wetland habitat.

   Acceptable mitigation includes construction of a wetland designed to replace the wetland functions destroyed, and restoration or enhancement of an existing degraded wetland. Protection of an existing functional wetland is not acceptable mitigation for destruction of a wetland; however, as part of a mitigation plan, certification conditions may require protection of on-site wetlands through establishment of deed restrictions or easements.

Figure 3: Bulk Commodity Facilities



STATE OF OHIO
ENVIRONMENTAL PROTECTION AGENCY
EXCEPTIONS TO SECTION 404 NATIONWIDE PERMITS
(EXCERPTED)

The State of Ohio Environmental Protection Agency (Ohio EPA) has denied water quality certification for the following nationwide permits: nationwide permit number 17 - hydropower projects and nationwide permit number 21 - surface coal mining activities. The following general conditions apply to Nationwide Permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 25, 26, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38 and 40:

Steps shall be taken, upon completion of the projects, to ensure bank stability. This may include, but is not limited to, the placement of riprap or bank seeding.

Any damages to the immediate environment of the project by equipment needed for construction or hauling will be repaired immediately.

Care must be employed throughout the course of this project to avoid the creation of unnecessary turbidity which may degrade water quality or adversely affect aquatic life outside the project areas.

For Nationwide Permits 14, 21, 26 (1-3 acres), 29, 33, 37, 38, that require Agency coordination, in accordance with the Nationwide Permit General Condition entitled "Notification", Number 13(e)(i), the Corps shall submit a pre-construction notification to Ohio EPA for review and comment.

In addition to the general conditions listed above, the following conditions apply to the Nationwide Permits as specified:

5. Scientific Measurement Devices:

   This Nationwide Permit shall not authorize weirs and flumes.

7. Outfall Structures:

   This Nationwide Permit shall authorize outfall structures which have been authorized by a Permit-to-Install and National Pollutant Discharge Elimination System permit by Ohio EPA pursuant to Ohio Revised Code Sections 6111.44 and 6111.04, and Ohio Administrative Code Sections 3745-31 and 3745-33.

12. Utility Line Backfill and Bedding:

   The length of utility line crossings in streams and/or rivers shall not exceed twice the width of the waterbody at that location.

   This Nationwide Permit shall authorize sidecasting or stockpiling of dredged material for a maximum of 3 months.

   In wetlands, at least the top six inches of backfill over a utility line shall consist of the topsoil material removed from the trench.

The Ohio Administrative Code Rule 3745-1-01 requires that notice must be given to the Director of Ohio EPA before chemicals are applied for the control of aquatic plants or animals in waters of the State (including wetlands). Applicants who intend to use chemicals in waters of the State shall contact the Ohio EPA, Division of Surface Water, P.O. Box 1049, Columbus, OH 43216-1049 prior to the applications of any chemicals.

This Nationwide Permit shall not authorize utility line installations greater than 1000 feet in length in forested wetlands, which are defined by Cowardin, Lewis M., 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Department of the Interior, Washington, D.C. to be characterized by woody vegetation that is 6 meters tall or taller. All water regimes are included except subtidal.

13. Bank Stabilization:

This Nationwide Permit shall not authorize the installation of vertical bulkheads and associated backfill except on river and harbor banks adjacent to federal navigation channels within the following harbors:

Sandusky Harbor	Rocky River Harbor
Huron Harbor	Cleveland Harbor
Vermilion Harbor	Fairport Harbor
Lorain Harbor	Ashtabula Harbor
Conneaut Harbor	Toledo Harbor
Port Clinton Harbor	

This Nationwide Permit shall only authorize the use of rock, stone, vegetative erosion control measures, broken concrete (without exposed reinforcing bar) and clean soil.

No material shall be placed in such a manner so as to restrict surface water flow into or out of any tributary.

This Nationwide Permit shall not authorize bank stabilization projects over 1000 feet in length.

16 Return Water from Upland Contained Disposal Areas:

This Nationwide Permit shall be limited to the authorization of the disposal of dredged materials dredged from state-owned properties, where there are no known areas of contaminated sediments, provided best management practices are used to minimize adverse impacts to water quality.

18 Minor Discharges:

This Nationwide Permit shall not authorize the installation of vertical bulkheads and associated backfill except on river and harbor banks adjacent to the federal navigation channels within the following harbors:

Sandusky Harbor	Rocky River Harbor
Huron Harbor	Cleveland Harbor
Vermilion Harbor	Fairport Harbor
Lorain Harbor	Ashtabula Harbor
Conneaut Harbor	Toledo Harbor
Port Clinton Harbor	

If used to authorize utility line backfills and bedding, this Nationwide Permit shall authorize sidecasting or stockpiling of dredged or fill material for a maximum of 3 months.

Dredged material shall be placed directly at an upland site in such a way that sediment runoff to any surface water is controlled and minimized.

This Nationwide Permit shall not authorize disposal of fill material into Lake Erie, where that is the primary project purpose.

19. Minor Dredging:

General conditions apply.

This Nationwide Permit shall not authorize dredging in stream riffles as defined in 40 CFR 230.45.

This Nationwide Permit shall not authorize dredging in surface waters that contain contaminated sediments. The applicant shall contact Ohio EPA for a determination whether a particular surface water contains contaminated sediments.

23. Approved Categorical Exclusions:

General conditions apply.

This Nationwide Permit shall only authorize activities described in 23 CFR Part 771.117 of the Federal Highway regulations except activities that impact 1) streams which are designated Exceptional Warmwater Habitat or Coldwater Habitat in Ohio's Water Quality Standards (Chapter 3745-1 of the Ohio Administrative Code (OAC), or 2) surface waters that contain contaminated sediments.

26. Headwaters and Isolated Waters Discharges:

This Nationwide Permit expires December 13, 1998. The U. S. Army Corps of Engineers should be contacted for specifics on Nationwide Permits that authorize headwaters and isolated waters discharges.

29. Single Family Housing:

This Nationwide Permit shall not authorize the discharge of fill material into the following waterbodies:

- Bogs and fens (see definitions in conditions to Nationwide Permit 26); or
- Headwater lakes or wetlands adjacent to headwater lakes (see definition in conditions to Nationwide Permit 26); or
- Designated components of the State Scenic River System; or
- Streams which are designated Coldwater, Exceptional Warmwater or Seasonal Salmonid aquatic life use habitat in Ohio's Water Quality Standards (Section 3745-1 of the Ohio Administrative Code); or
- Lake Erie, including Sandusky Bay, or wetlands adjacent to Lake Erie.

This Nationwide Permit shall not authorize fills which would result in stream channel diversions or rerouting.

This Nationwide Permit shall not authorize fills which would create impoundments of water.

In accordance with the Nationwide Permit General Condition entitled "Notification", Number 13(e)(i), the Corps shall submit a pre-construction notification to Ohio EPA for review and comment.

31. Maintenance of Existing Flood Control Projects:

This Nationwide Permit shall only authorize projects constructed by the Corps of Engineers and maintained by the Corps or transferred by the Corps to a local sponsor.

32. Completed Enforcement Actions:

This Nationwide Permit shall not authorize any impacts to bogs, fens, wetlands adjacent to headwater lakes (see definitions in condition to Nationwide Permit 26) or to streams which are designated as Exceptional Warmwater Habitat or Coldwater Habitat in Ohio Water Quality Standards (OAC 3745-1).

This Nationwide Permit shall not authorize any project with greater than 3 acres of wetland impacts, or impacts over 500 linear feet in any stream unless Ohio EPA has been informed in writing of each specific project that exceeds these criteria, and based on this information, has chosen not to issue a State Administrative Order, or Consent Order resulting from a State enforcement action.

The Corps of Engineers shall provide notification to Ohio EPA prior to any settlement agreement being finalized. The Corps shall provide such notification with a copy of the draft settlement document for Ohio EPA's review and comment. Ohio EPA will provide notice to the Corps that it intends to provide substantive site-specific comments within 5 days of the receipt of the draft settlement document. Ohio EPA will provide these comments to the Corps within 16 days of the receipt of the draft document. The Corps shall fully consider Ohio EPA's comments prior to finalizing the settlement document, and provide Ohio EPA with a copy of the final settlement agreement.

33. Temporary Construction and Access:

Temporary shall be defined as less than one year in duration.

This Nationwide Permit does not authorize construction, or maintenance, or modification of marina basins.

This Nationwide Permit does not authorize activities in special aquatic sites as defined in 40 CFR 230.3(q-1).

This Nationwide Permit shall not authorize temporary construction access and dewatering associated with mining activities.

In accordance with the Nationwide Permit General Condition entitled "Notification", Number 13(e)(i), the Corps shall submit a pre-construction notification to Ohio EPA for review and comment.

35. Maintenance Dredging of Existing Basins:

The dredged material shall be placed away from the water's edge and stabilized to prevent re-entry to any water of the State.

This Nationwide Permit shall not authorize changes in configuration, size, purpose, use or location of the marina basin.

Dredging must be conducted in accordance with all conditions of the original authorization including subsequent modification(s).

36. Boat Ramps:

    This Nationwide Permit shall not authorize boat ramps where dredging is required to establish water depths necessary for boat launching.

    In accordance with the Nationwide Permit General Condition entitled "Notification", Number 13(e)(i), the Corps shall submit a pre-construction notification to Ohio EPA for review and comment.

The director of Ohio EPA may revoke a section 401 water quality certification if he concludes at any time that any applicable laws or regulations have been or are likely to be violated (Ohio Administrative Code (OAC) Rule 3745-32-06). A section 401 water quality certification shall be issued, modified, revoked, or denied and may be challenged in accordance with the provisions of the rules of procedure of the Ohio EPA, Chapter 3745-47 of the Administrative Code. The Corps' regulation (33 CFR 330.4(c)(7)) states that the Corps' Division Engineer will review justifications for a State's attempt to modify, suspend or revoke a Section 401 certification action on a Nationwide Permit.

WETLANDS MITIGATION POLICIES
USED IN SECTION 401 REVIEWS

The following policies describe Ohio EPA's guidelines for reviewing applications for Clean Water Act Section 401 certifications. All applications must adhere to the Section 404(b)l guidelines prior to approval of a mitigation proposal. These guidelines stipulate that an applicant must demonstrate there is no practicable alternative and then demonstrate that impacts will be minimized before proceeding with a mitigation proposal.

-The mitigation ratio shall be a minimum of 1.5 acres of mitigated (restored or created) acres for every one acre of impacted wetlands. Ratios greater than 1.5:1 are encouraged. Ratios less than 1.5:1 are generally not acceptable unless agreed to by the resource agencies. Enhancement may be considered as part of the mitigation proposal.

-Mitigation shall replace the functions and values of the impacted wetlands. Final assessments of the functions and values of the impacted wetlands shall be determined by the resource agencies. It is the applicant's responsibility to provide the data and information necessary to make such a determination. The resource agencies shall provide any relevant data to a specific project site.

Wetland mitigation projects shall replace the impacted wetland type. For example, an application proposing to fill a shrub/scrub wetland (subsequent to the avoidance and minimization demonstrations) shall propose mitigation to restore, enhance or create a shrub/scrub wetland.

- Wetland mitigation sites shall be located as close as possible to the impacted wetlands as practicable, preferably at the project site or within the same watershed. Mitigation sites at distant locations will be considered on a case by case basis after on-site or near-Bite locations have been determined to be impractical.

-Mitigation bank proposals will be reviewed on a case by case basis, adhering to the sequencing review and all the above listed policies.

-Applicants shall be required to monitor the establishment of the mitigated wetland for a period of at least five years and to submit this data to Ohio EPA. Ohio EPA will provide a list of standard monitoring requirements to applicants. Requirements for each project will be tailored to the specific needs of the mitigation site.

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OHIO EPA POLICY FOR PURCHASE OF HIGH QUALITY WETLANDS AS PARTIAL MITIGATION FOR WETLANDS DESTRUCTION

This interim policy describes Ohio EPA's procedures for review of applications for Clean Water Act Section 401 certifications when an applicant proposes to mitigate for wetlands destruction by purchasing high quality wetlands. The policy describes a sequence of steps by which the Ohio EPA will review the application.

Ohio EPA may consider an applicant's proposal to purchase high quality wetlands as partial mitigation for direct and indirect impacts to wetlands associated with activities regulated by Clean Water Act Section 401 providing:

1. The wetland which will be impacted by the proposed project does not exhibit 'multiple wetland functions which are regionally significant.

2. The applicant demonstrates that it is not practical (for economic, technologic or sociologic reasons) to utilize alternative upland sites to fulfill the basic project purpose. (Upland sites are defined as sites which do not meet the definition of "waters of the state" according to Ohio Revised Code Chapter 6111. 01 (H) .) Ohio EPA will presume that alternate upland sites do exist, until an applicant demonstrates otherwise.

Once the applicant successfully demonstrates that it is not practical to utilize alternative upland sites, the applicant will minimize unavoidable adverse impacts to wetlands which occur as a result of project construction and/or operation. As requested by Ohio EPA, the applicant will modify his/her project plans appropriately to reduce or minimize adverse impacts and enhance water quality or other wetland functions.

4. To the extent practicable, the applicant will mitigate for wetland destruction caused by the construction and/or operation of his/her project by either creating, restoring or enhancing wetlands to replace the functions provided by the impacted wetlands. The total acreage of the on-site wetland mitigation project should be as close as possible to a ratio of I acre of wetland created, restored or enhanced for every 1 acre of wetland destroyed or adversely impacted by project construction and/or operation. Ohio EPA prefers that wetland mitigation sites be located as close as possible to the impacted wetlands, preferably at the project site or within the same watershed. The mitigation should replace the lost functions and values of the impacted wetland.

5. The wetland to be purchased is of high quality, as determined by Ohio EPA in consultation with the Ohio Department of Natural Resources and other environmental resource agencies. The high quality wetland should have important habitat and/or

water quality characteristics which are imminently threatened. The purchase and management of the wetland will result in preservation and/or enhancement of habitat and/or water quality characteristics.

6. The total acreage of purchased wetlands will be determined using a ratio of at least 0.5 acres of purchased wetland for every I acre of wetland which is adversely impacted by the project construction and/or operation. The total acreage of on-site mitigation and purchased wetland acreage must total at least 1.5 acres for every acre impacted. The purchased wetland must be deeded to a responsible party for management and/or enhancement in accordance with an Ohio EPA-approved plan. Ohio EPA prefers the purchased wetland acreage to be located in the same watershed as the impacted wetland.

7. Purchase and transfer of the deed for the high quality wetland will occur prior to any filling of wetlands at the project site.

8. The applicant demonstrates that a responsible, established professional party will undertake long-term management of the purchased wetland parcel in perpetuity. The purchased wetland must be maintained in perpetuity to prevent degradation of habitat and water quality functions and values.

9. Ohio EPA may require the preparation and submittal up to five annual wetland monitoring reports to be submitted to Ohio EPA. The applicant will be responsible for implementing and complying with all Section 401 water quality certification conditions.

OHIO EPA
STANDARD WETLAND MITIGATION CONDITIONS

NOTE: Each set of mitigation conditions is tailored to met the unique factors involved with each wetland created, restored or enhanced. The following represent the conditions most often appearing in Section 401 water quality certifications:

- Annual water quality, hydrology and vegetation surveys shall be conducted. A report containing these data shall be submitted to Ohio EPA for each of five consecutive years following completion of mitigation construction. The first annual report is due to Ohio EPA by December 31 of the year following completion of mitigation construction. All subsequent reports shall be submitted by December 31 of each of the five monitoring years. The reports shall contain, at a minimum, the following information:

  Water Quality Monitoring: A grab sample shall be collected in May of each monitoring year in each wetland mitigation area. The samples shall be analyzed for ammonia, nitrates, total nitrogen, total and ortho-phosphorus, total organic carbon, total sulfates, total iron, total manganese, specific conductivity, pH, turbidity, total suspended solids, metals, and biochemical oxygen demand.

  Hydrology Monitoring - : Water level data shall be collected in May and late- August of each monitoring year. Ground water levels shall be measured in the absence of inundated conditions.

  Vegetation Monitoring: The location and name of each plant community type within the mitigation area and buffer area shall be marked on a scaled drawing or scaled aerial photograph (base map) and named.

  A representative observation point shall be selected in each plant community type in each distinct wetland mitigation area. This shall be a point which best represents the characteristics of the entire plant community. The observation points shall be marked on the base map.

  The dominant plant species shall be visually determined in each vegetation layer of each community type, and the scientific names of these species shall be included in the report. Dominant species are those species which have the greatest relative basal area (wood overstory), greatest height (woody understory), greatest percentage of aerial coverage (herbaceous understory, and/or greatest number of stems (woody vines)

  Each sample point shall be photo-documented from the same position and angle during July of each monitoring year.

The applicant shall arrange an on-site meeting with Ohio EPA on the third year of the post-mitigation construction. The purpose of this inspection is to determine if the mitigation project has been constructed in accordance with the agreement between the applicant and Ohio EPA. If necessary, Ohio EPA may make recommendations to improve the wetland. The applicant is responsible for undertaking any reasonable modifications identified by the Ohio EPA.

The applicant is responsible for ensuring the wetland is not filled, drained or otherwise converted to upland. If the property is sold, the deed shall ensure that the wetland will not be filled, drained or otherwise converted to upland.

STATE Of OHIO

Executive Department

OFFICE OF THE GOVERNOR

Columbus

E X E C U T I V E O R D E R **90-68**

WHEREAS, Ohio's wetlands consist of marshes, bogs, fens, bottomland forests, and other areas which may be isolated or connected with other waters of the state such as lakes, streams and ground waters; and

WHEREAS, wetlands are assets to society serving many functions Important to the general public interest Including critical habitat for fish and wildlife and endangered animals and rare plants and plant communities, water quality maintenance and improvement, flood and storm damage protection, groundwater recharge and surface water supply, harvest of natural products such an timber, furs, fish and fowl, aesthetics, scientific 'study and education, and outdoor recreation; and

WHEREAS, wetlands are critical natural resources because of their fragile a physical and biological interconnection with other land and water resources, and because wetlands have become so diminished in Ohio and the nation through destruction, alteration, various forms of pollution and activities of man; and

WHEREAS, state government can profoundly affect the conservation of wetlands or their conversion to-other uses through land acquisition, land management and surplus property disposal, state development projects, regulatory programs, and state financial assistance for public and private projects; and

WHEREAS, it is essential that conservation of soil, water, wetlands and other natural resources of this state be accomplished in a workable and practicable manner and that state actions do not irretrievably convert wetlands to other uses when alternatives are available.

NOW THEREFORE, 1, **Richard F. Celeste, Governor of the State of Ohio, pursuant to the authority vested in me by the Constitution and the laws of the State of Ohio, do hereby declare and order the following:**

I. Each state agency shall provide leadership and shall take action to minimize adverse effects to wetlands and conserve, restore and enhance the environmental values and beneficial functions of wetlands in carrying out the agency's responsibilities. **Each agency will do so-with the overall goal to retain the state's remaining wetlands and to restore and create wetlands where feasible to Increase the state's wetlands resource base.**

II.(a) Bach state agency, to the extent permitted by law, shall avoid undertaking or providing **financial assistance** for construction which will substantially degrade or destroy for long or **permanent duration the functions of wetlands areas,** 11 unless the head of the agency finds that (1) the project or activity is in the overall public **Interest, (2) there is no reasonable alternative to such construction, and (3) the proposed action includes all practicable measures to minimize undesirable alterations and compensate or mitigate for unavoidable adverseimpacts.** These considerations shall also apply to offsite project Impacts such as stormwater runoff and erosion and sedimentation and “offsite” activities attendant to construction projects such as borrow site excavations and disposal of demolition debris, dredged material or excess excavated materials.

(b) consistent with the policies of the Ohio Nonpoint Source Management Program and Coastal Management Program, each state agency shall apply this policy in support of decisions to issue or deny permits or to authorize activities subject to the approval--of the agency. To the extent permitted by law, state agencies will enforce the following sequence of mitigation options: avoidance of adverse impacts to wetlands, minimization of impacts to wetlands, and finally, mitigation or compensation measures for unavoidable wetlands Impacts.
(c) Each agency which has regulatory responsibilities will act affirmatively to develop or modify administrative policies and procedures consistent with this order.

III. each agency of the state, In considering this acquisition of real property, disposal of surplus real property, or granting of any lease, License or other Interest In state real property, will determine whether wetlands may be affected by the proposed action. To the extent permitted by law, all necessary steps will be undertaken to, protect existing wetlands, restore wetlands, and otherwise implement this policy.

When state-owned properties are proposed for lease, license, easement, right-of-way, or disposal to a non-state public or private interest, the state agency shall (a) attach appropriate restrictions to the uses of the property by the grantee or purchaser and any successor to help ensure the continued protection of wetlands, except where prohibited by law; or (b) withhold such properties from disposal.

It in further ordered that:

A cabinet cluster consisting of. **the Directors of Natural Resources, Environmental Protection, Health, and the Ohio Historical Society** or **their designates shall convene for the purposes of** 0) **development and implementation of a state wetlands regulatory program; and (2) development and Implementation of an accelerated statewide** funding program to **assist the wetlands acquis**ition- **protection initiatives of local, state, federal and independent organizations.** In recognition of the need for swift action on wetlands protection, the cabinet cluster may at any time during **its tenure make recommendations for administrative action and express its views regarding any impending state or federal legislative initiative that affects wetlands conservation.**

The cluster will **consult with and seek the views of the Attorney General, the Directors Of Development, Transportation, and Agriculture, and other state,** local, regional and federal agencies, and representatives of public interest and special interest groups. A report with recommendations shall be submitted to the Governor and legislative leaders within one year of the effective date of this order.

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Ohio to be affixed at Columbus, this 25th day of October in the year nineteen hundred and ninety.

Richard F.. Celeste
Governor

ATTEST:

Secretary of State

Filed in the Office of the Secretary of State
at Columbus, Ohio on_____
SHERROD BROWN
Secretary of State
Per _____

POLICY STATEMENT

WETLANDS

The purpose of this statement is to affirm departmental policy to protect, restore and create wetland ecosystems thereby ensuring that Ohio and the nation continue to enjoy the many natural and beneficial functions Ohio's wetlands perform. This statement establishes the overall policy framework for the Ohio Department of Natural Resources' (ODNR) planning and land management and development, all regulation and financial assistance, water resources development, Lake Erie resources management, nonpoint source management and other cooperative programs, technical assistance and consultation, and external communication of departmental policy.

The Wetland Resource

Wetlands are ecosystems of unique and major importance to the people of Ohio. Wetlands are critical natural resources because of their many beneficial functions, their importance to many wildlife species, and their fragile physical and biological interconnection with other land and water resources. They have become so diminished through destruction, alteration; pollution and other activities of man that their benefits to man and the natural environment are being lost.

Definition of Wetlands

> "Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas." 33 C.F.R. 328.3(b); 40 C.F.R. 230 . 3M

In identifying and delineating wetlands, ODNR will utilize a multi-parameter approach which examines vegetation, soils, geology and hydrology. Potential atypical circumstances (such as below normal precipitation, and recent human activities) will be investigated when any wetland indicator (hydric soils, hydrophytic vegetation) at an apparent wetland site is absent. Also, the relative permanence of natural or man-induced changes in the landscape will be considered. Sites with wetland vegetation and hydrology (other than from irrigation) that have not yet developed hydric soil characteristics shall be considered to have soils that are functioning as hydric soils, and will be identified as wetlands.

Beneficial Functions of Wetlands

Ohio wetlands serve as habitat for mammals, many species of fish, waterfowl and other birds, reptiles and amphibians, rare and endangered species and significant plant and animal associations. These areas moderate extremes in water flow, aid in the natural purification of water and maintain and recharge ground water. They are the feeding, resting, nesting, spawning and nursery areas for a great number of wetland-dependent species and other wildlife. They are significant recreational areas of incalculable aesthetic value, and contain delicate and irreplaceable types of flora and fauna. Wetlands directly and indirectly support hunting, trapping, fishing, nature study, wildlife observation, scientific research, and many other beneficial human uses.

Wetlands support adjacent or downstream ecosystems in addition to the complex Web of life developed within the wetland environment itself. The nature of wetlands causes them to be vulnerable and fragile. When wetlands are destroyed, the environmental effects are not limited to the wetland area.

ODNR seeks to preserve, protect and restore Ohio's wetlands and the beneficial functions they perform with a comprehensive approach to land and water management, ODNR-sponsored developments, financial assistance, regulatory and environmental review activities, and public education.

POLICY

The goal of the Ohio Department of Natural Resources is to retain the state remaining wetlands and to restore and create wetlands in order to increase Ohio’s wetland resource base. The Department will therefore use its utmost influence to preserve and protect wetlands from damaging misuses. Consistent with provisions in Ohio Water Quality Standards (Chapter 3745-1-05 Ohio Administrative Code, Anti-degradation Policy), the Department will work in partnership with the Ohio Environmental Protection Agency to protect wetlands as state resource waters. It is the Department's policy to disallow harmful alterations in the natural flow of water that nourishes wetlands and to protect- wetlands from alteration by dredging, filling or draining, solid waste disposal, direct and indirect effects of construction activities, siltation, or the addition of pesticides and other pollutants arising from point and nonpoint sources of pollution.

Implementation

ODNR's wetlands conservation goal does not imply that alteration of individual wetlands will be avoided in every instance, nor that ODNR's preservation goal should be applied in every circumstance. ODNR acknowledges that programmatic implementation provides flexibility to accomplish wetlands conservation objectives on a watershed basis or within specific geographic or ecological contexts. The following provisions shall guide planning and decision making when ODNR projects or activities may affect wetlands resources:

1. ODNR's water resource developments and capital improvements will be planned and implemented with a clear preferred sequence of mitigation options that begins with avoidance of adverse impacts on wetlands and the reduction of unavoidable adverse impacts. Compensation measures for unavoidable impacts should be used only as a last resort. Opportunities for wetland restoration or creation will be identified and pursued.

   Early in the planning process, ODNR will identify whether there are potential direct or secondary impacts upon wetlands. If wetlands would be affected by a proposed project, detailed planning and design will commence only after an alternatives analysis has been completed including consideration of no action as an alternative. Unavoidable impacts upon wetlands will be assessed in terms of acreage, beneficial functions and ecological significance. Mitigation plans will be developed and implemented in order to achieve ODNR's goal of retaining wetlands and restoring and creating wetlands, as defined by acreage and function. Planning will include consultation among appropriate ODNR divisions and other resource and regulatory agencies. An environmental assessment of site suitability will be made prior to wetland development activities. Mitigation or compensation measures will be planned (and may be implemented in advance of project construction when desirable) concurrent with project planning and development. ODNR will utilize pre-bid and pre-construction conferences to advise contractors of measures necessary to protect wetlands including offsite impacts.

2. Funds for wetlands acquisition and protection will be a top priority in capital improvements budget requests. Where possible, ODNR will allocate funds from the various federal and state assistance programs for wetlands acquisition and restoration.

3. ODNR will not provide federal or state financial assistance for projects which may directly or secondarily degrade or destroy wetlands, unless the sequence of mitigation options described above is followed. There must be no reasonable alternative to the project (including no action) and the project must include all practicable measures to minimize adverse impacts to wetlands, including compensation measures. Decision making will consider ODNR's overall goal of no net loss of wetlands. Each division and office will take appropriate steps to incorporate this policy in procedural guides and other documents and materials which provide guidance to grant applicants and recipients of state assistance.

4. The agencies administering OONR regulatory programs will, to the extent permitted by law, avoid unnecessary wetlands damages or losses which may occur as a consequence of a regulated activity (such as mineral extraction activities or construction) and will develop policies and procedures which encourage wetland creation as a part of project plans. To the extent possible, discretionary authority will be exercised and variances to normal standards will be granted if such action will avoid the loss or degradation of wetlands. Regulatory agencies will first seek to avoid impacts to wetlands, and second, will attempt to mitigate unavoidable losses. Each division which has regulatory responsibilities will act affirmatively to develop or modify administrative policies and procedures and promulgate rules which may be necessary to implement this policy.

S. Land managing divisions will act affirmatively to manage wetlands which occur on ODNR property in order' to preserve and enhance their beneficial functions. ODNR offices and divisions will cooperate with one another and with other governmental and independent agencies to meet ODNR's goal and accomplish the objectives of applicable plans and programs. These include, but are not limited to, the North American Waterfowl Management Plan, The Statewide Comprehensive Outdoor Recreation Plan, Natural Areas and Scenic Rivers Preservation, Nongame and Endangered Species Management, and Floodplain Management. Wetlands will be inventoried and delineated in master plans and land management plans. Recreational uses and facility developments on or adjacent to any wetland will be controlled to protect the beneficial functions of the wetland and ensure its long-term productivity.

6. In considering the acquisition of property, disposal of surplus property or granting of any lease, license or other interest in state property, ODNR will determine whether wetlands may be affected by the proposed action. To the extent permitted by law, all necessary steps will be undertaken to protect existing wetlands, restore wetlands, and otherwise implement this policy.

Divisions and offices within the Department will work collaboratively to effect this policy to the maximum extent of authority in all program activities, planning, research, technical assistance, cost-sharing projects with other agencies, public education and the dissemination of information related to Departmental activities.

JOSEPH J. SOMMER
Director
September 8, 1989

1501-6-01 Definition of terms.

(A) "Applicant" means any person who applies to the department to develop or improve any part of the territory as defined in division (A) of section 1506.11 of the Revised Code.

(B) "Application" means the signed and completed form(s) and any supplemental information which may be required by the director in accordance with these rules and submitted to the director as provided in divisions (B) and (G) of section 1506.11 of the Revised Code.

(C) "Department" means the department of natural resources.

(D) "Development" or "improvement" means, but shall not be limited to, wharfs, breakwaters, piers, docks, bulkheads, marinas, groins, jetties, revetments, fill for the purpose of creating new lands or any structure of any kind which encroaches upon the territory.

(E) "Director" means the director of the department of natural resources.

(F) "Erosion control structure" means a structure solely and specifically designed to reduce or control lake Erie-related erosion of the shore. Examples include, but are not limited to, revetments, seawalls, bulkheads, and certain breakwaters and similar structures.

(G) "Fill" means any material used for the primary purpose of replacing lake Erie aquatic areas with dry land or changing the bottom elevation of lake Erie.

(H) "Governmental income producing facility" means any facility built in the territory managed by a governmental agency or by a contracted private management company which by the nature of the facility produces income above and beyond normal charges associated to cover operating costs. Said governmental agency shall include, but not be limited to, a county, township, village, municipality, port authority, park district or conservancy district.

(I) "Governmental non-income producing facility" means any facility built in the territory including, but not limited to, municipal water intake pipes, sewer outfall pipes, storm sewer outfall pipes, submerged cables or any other facility which is managed, owned, operated, occupied or utilized by a governmental agency for a governmental use or purpose at no charge or a nominal charge to cover operating cost. Said governmental agency shall include, but not be limited to, a county, township, village, municipality, port authority, park district, sewer district or conservancy district.

(J) "Large facility" means any semi-private or commercial facility built in the territory which exceeds four acres in total area and shall include, but not be limited to, an industrial facility such as a loading and off loading facility, an industrial water intake and an industrial water outfall, or fill to expand an upland or support facility for such use.

(K) "Lease" means a document prepared by the department containing terms and conditions for development or improvement of the territory of the state in lake Erie for a specified time, approved by the governor, and executed by the director in the manner prescribed by sections 1501.01, 1506.11 and 5301.13 of the Revised Code.

(L) "Littoral rights" means the right of an upland property owner to make reasonable use of the waters fronting the upland property and the right to wharf out to navigable waters within the projected boundaries of the upland property, said rights being subject to the rights of the state of Ohio and the United States.

(M) "Littoral zone" means the indefinite zone between the shoreline extending lakeward to the furthermost line where waves begin to break.

(N) "Ohio coastal management program" means the comprehensive action of the state and its political subdivisions to preserve, protect, develop, restore or enhance the resources of the coastal area in accordance with established objectives, policies, standards and criteria concerning protection of the natural resources in the coastal area; management of coastal development and redevelopment; preservation and restoration of historic, cultural and aesthetic coastal features; public access to the coastal area for recreational purposes; and as otherwise described in divisions (B) and (C) of section 1506.01 of the Revised Code and the Ohio coastal management program document.

(O) "Nonpoint source management program" means the management program for controlling pollution added from nonpoint sources to the waters of the state and improving the quality of such waters submitted by the governor to the U.S. environmental protection agency and approved November 21, 1989, in accordance with section 319 of the federal water quality act of 1987 and any federally approved amendments to the program adopted in accordance with section 6217 of the coastal zone act reauthorization amendments of 1990.

(P) "Private floating dock or structure" means a dock or structure placed in the territory of lake Erie for the sole use of the upland owner for upland owner's personal benefit. Said structure or dock shall not be used for any monetary gain such as, but not limited to, dock space for rent, lease or sale.
(Q) "Public hearing" means a formal hearing conducted by the director, or designee, in which evidence may be presented and testimony given. These proceedings are recorded and an official transcript is made a part of the administrative record maintained by the department for the subject submerged lands lease application as provided for in division (C) of section 1506.11 of the Revised Code.
(R) "Public meeting" means an assembly conducted by the department, the purpose of which is to provide an opportunity for a lease applicant to explain the developments, improvements and/or activities upon lake Erie submerged lands to concerned agencies and the general public and afford an opportunity for interested parties to express any relevant issues or concerns as provided for in division (C) of section 1506.11 of the Revised Code.
(S) "Semi-private facility" means any facility built in the territory in conjunction with, but not limited to, condominiums, trailer parks, cooperatives, residential associations, campgrounds, or apartments.
(T) "Small commercial facility" means any facility built in the territory in connection with the providing of commercial services and does not occupy more than four acres of total area. A small commercial facility shall include, but not be limited to, a commercial marina, private club, yacht club, sailing club, transit ferry boat facility, or breakwalls constructed to protect inland marina channels and/or boat basin for access to lake Erie.
(U) "State resource waters" means surface waters of the state that lie within national, state and metropolitan park systems, wetlands, wildlife refuges, waters of exceptional recreational or ecological significance, and as otherwise described in state water quality standards, rule 3745-1-05 of the Administrative Code.
(V) "Structure" means any facility which requires fill being placed upon the submerged land of lake Erie, including, but not limited to, a rubble mound dock, rubble mound walk, rock filled timber crib dock, rock filled timber crib wall, pilings, steel sheet pile wall, revetment, unattached breakwall, precast concrete modular structure and riprap shore protection.
(W) "Territory" as used in these rules shall be as it is described in section 1506.10 and as it is defined in division (A) of section 1506.11 of the Revised Code. Where the territory has been artificially filled, the director shall determine the natural shoreline as accurately as possible, using the best practicable measures including, but not limited to, an analysis of the earliest known charts, maps or photographs.
(X) "Utility" shall mean any utility company regulated by; within the jurisdiction of; registered with, or licensed to do business in the state of Ohio by the public utilities commission of Ohio, that is engaged in an activity in the territory including, but not limited to, the placement of submerged cables, water intake pipes, water outfall pipes, sewer outfall pipes, storm sewer outfall pipes, and the related structures necessary for protection. This definition shall not include any existing fill or any proposed new fill used or proposed to be used for existing buildings, expansion of existing buildings, or any facilities related to the operation of the utility, including, but not limited to, electric power plants, coal storage facilities, coal loading and off loading facilities, or disposal sites for fly ash, bottom ash, dredged materials or other products.

HISTORY: Eff 4-30-92; 7-4-99

Rule promulgated under: RC Chapter 119.
Rule authorized by: RC 1506.02
Rule amplifies: RC 1506.10, 1506.11

R.C. 119.032 review dates: 6/30/99, 12/30/03

1501-6-02 Application.
An application shall be deemed unacceptable by the director if it is found to have incomplete or insufficient information for proper evaluation of the development, improvement or activity upon lake Erie submerged lands. The applicant shall be notified by the director if the application is unacceptable within sixty days of its receipt by the director. Upon receipt of said notification, the applicant may resubmit a new application for evaluation. The director must, within a reasonable period of time, process the application.
When the director finds that the effort to supplement the information on the application will be unavailing and that the application is not in accordance with the requirements of section 1506.10 and 1506.11 of the Revised Code and applicable rules, or that the applicant failed to respond to request for information within sixty days of notice, the director shall issue an order denying the application for a submerged lands lease, and shall notify the applicant of the opportunity for a hearing pursuant to section 119.06 to 119.13 of the Revised Code.
HISTORY: Eff 4-30-92
Rule promulgated under: RC Chapter 119.
Rule authorized by: RC 1506.02
Rule amplifies: RC 1506.10, 1506.11

119.032 Review Date: 6-30-99, 12-30-03

1501-6-03 Director's recommendations.
(A) The director's recommendation to the governor as to whether to approve an application for a lease of submerged land shall be based upon an evaluation of whether the development, improvement or activity is consistent with the policies of the Ohio coastal management program document, in accordance with section 1506.03 of the Revised Code and does not otherwise contravene the general public's interest in lake Erie submerged lands, waters of the state, fish and wildlife, or cultural or other public trust resources. Notwithstanding the policies of the Ohio coastal management program document, the director, in said evaluation, shall give due consideration to any artificially filled area or filled portion of any area of the territory or any development, improvement or activity thereon existing on March 15, 1989, as set forth in this rule.
(B) Consistent with the protection of coastal area resources, the department will coordinate policies and decision-making with the rules and policies of other state and federal resource and regulatory agencies. In considering an application for a submerged lands lease, the department may solicit comments and relevant information from adjacent property owners, port authorities, local jurisdictions and planning agencies, the Ohio environmental protection agency, the Ohio historic preservation office, the general public and other agencies or individuals as deemed appropriate by the director.
(C) The department in determining whether the development, improvement or activity as set forth in an application for a lease will be compatible with the rights of the public and the public trust uses of the affected area will consider the following:
(1) Whether the project prejudices the littoral rights of any owner of land fronting on lake Erie without permission of that owner.
(2) Whether the project conforms to the permitted uses as regulated by the local government, where applicable.
(3) Whether public uses such as, navigation, water commerce, and fishing in the affected area would be destroyed or greatly impaired.
(4) Whether the diminution of the area of original use would be small compared to the use of the entire area.
(5) Whether the area has a history of use including, but not limited to, services rendered to the general public.
(D) In addition to any other laws or rules administered by any other state, local or federal agency, these are the criteria, if applicable, against which each application for a lease of submerged lands will be evaluated:
(1) WATER DEPENDENCY
Generally, an application for a lease to place fill and/or to construct facilities in the territory for a non-water dependent development or activity (i.e. an improvement which by its nature does not depend on being located in or upon the water) will not be approved. An exception to this water dependency criterion would be an improvement in the territory which is beneficial and important to the general public's health, safety or welfare as determined by the director. Under this exception, there shall be no practicable alternative to the improvement including an alternative upland site, and all reasonable measures shall be undertaken by the applicant to minimize any adverse impacts upon the waters and underlying lands of lake Erie and the beneficial functions these resources perform.
This criterion shall not apply to a lease application for development of the territory where the territory has been artificially filled prior to March 15, 1989.
(2) PROTECTION OF ENVIRONMENTAL QUALITY
The director may require an environmental impact assessment or other information in order to determine the probable direct, secondary and cumulative impacts of the development, improvement or activity upon the natural and human environment. With regard to any artificially filled area or filled portion of any area of the territory existing on March 15, 1989, the requirement for an environmental impact assessment shall be limited to any new development, improvement or activity or any change in an existing development, improvement or activity on said area of the territory.
The environment impact assessment shall include, but not be limited to, the following issues:
(a) Potential impact upon air and water quality;
(b) The likelihood that the development, improvement or activity may affect historic, cultural and aesthetic resources;

(c) Open space or recreational uses of the shoreline where increased access to the shorefront is a particularly important concern;
(d) Floral and faunal communities where loss of biological resources or threats to endangered or threatened species are of particularly important concern.
(e) Potential impact upon wetlands, or other state resource waters.
(f) Potential impact upon the littoral zone including sand transport.
(g) The potential individual and cumulative impacts of the lease activity in conjunction with other similar activities in the project area or geographic region will be considered.
To the maximum extent practicable the department's review of a lease application will utilize information and findings which may be developed in the public review process conducted by the U.S. department of the army, corps of engineers for authorization of activities in navigable waters, the section 401 water quality certification by the director of the Ohio environmental protection agency, and the consistency reviews of the state under the Ohio coastal management and nonpoint source management programs.
(3) PUBLIC RECREATION.
The potential impact of any development, improvement or activity upon the public right of recreation, including present or prospective recreational uses by the public during the term of the lease, will be evaluated. Provision for public access may be required as a condition of a lease or permit depending upon historic use patterns and suitability of the lease site for existing or prospective recreational uses.
(4) RELATIONSHIP TO PLANS FOR PORT DEVELOPMENTS, COMMERCIAL NAVIGATION AND URBAN WATERFRONT DEVELOPMENT.
The department in determining the compatibility of the development, improvement or activity with existing waterfront master plans, local land use plans and regulations and any other relevant plans or programs adopted by local or regional authorities, will consider the following:
(a) Whether the development, improvement or activity assists in the redevelopment of deteriorating urban waterfronts and ports, and is sensitive to the preservation and restoration of historic, cultural and aesthetic coastal features.
(b) Whether the development, improvement or activity allows for public access to the waterfront for recreational purposes consistent with orderly coastal-dependent uses. The potential for a development, improvement or activity in the territory to directly or indirectly, preempt future public access to the coast or waters of lake Erie will be examined.
(c) To the maximum extent practicable, priority consideration will be given to new commercial and port-related developments, improvements or activities in or adjacent to areas where such development, improvement or activity already exists.
(d) The importance of the development, improvement or activity to the local and regional economy. Interstate commerce and any other identified national, state or great lakes region interest which would be affected by the development, improvement or activity will be considered. To this end, documentation of relevant intergovernmental consultation may be supplied by the applicant.
(e) The history of pre-existing uses including, but not limited to, services to the general public. To the maximum extent practicable, consideration shall be given to such uses on any artificially filled area or filled portion of any area of the territory existing on March 15, 1989.
HISTORY: Eff 4-30-92
Rule promulgated under: RC Chapter 119.
Rule authorized by: RC 1506.02
Rule amplifies: RC 1506.10, 1506.11

119.032 Review Date: 6-30-99, 12-30-03

1501-6-04 Public hearing/public meeting.
At any time during the lease application review period or upon completion of the department's evaluation, if the director finds that there is insufficient information upon which to base a decision, or if there are significant unresolved issues, the director may request the applicant to supply additional information and may declare that a public hearing or a public meeting be held to obtain the necessary information.
(A) If a public hearing is scheduled, said hearing shall be held at a time and place designated by the director. The hearing shall be of a formal nature. A court reporter shall be present and all parties shall have an opportunity to present evidence and/or provide testimony. Notice of said hearing shall be advertised in accordance with division (C) of section 1506.11 of the Revised Code. All costs pertaining to the hearing, including but not limited to the court reporter and advertisement, shall be paid by the applicant.
(B) If the director determines that a public meeting would serve to provide sufficient information to supplement the administrative record and support a decision whether or not a lease may properly be entered into, the director shall order a public meeting to be held in the geographic locality of the applicant's lease request. Notice of said public meeting shall be advertised in a manner to be determined by the director. All costs of the meeting shall be paid by the applicant.
(C) The public hearing or public meeting shall be limited to the gathering of information which directly pertains to the application in question and to the evaluation of the development, improvement or activity in accordance with section 1506.11 of the Revised Code and rules contained herein.
HISTORY: Eff 4-30-92
Rule promulgated under: RC Chapter 119.
Rule authorized by: RC 1506.02
Rule amplifies: RC 1506.10, 1506.11

119.032 Review Date: 6-30-99, 12-30-03

1501-6-05 Lease.

A lease for lake Erie submerged land shall be prepared by the department of natural resources and shall contain, but not be limited to, language which reflects the following:

(A) A metes and bounds description of the submerged land to be occupied or an alternate description referenced to the applicant's upland property description that is considered adequate by the director as provided by the applicant.

(B) The director shall set the period of time (term) of the lease. The term of the lease shall be fifty years unless the director recommends a longer or shorter term. Should the director recommend a lease term less than or greater than fifty years, the director shall state in writing the specific findings, rationale and justification for the differential in setting the term. Applicant shall have the right of appeal in accordance with sections 119.06 to 119.13 of the Revised Code.

(C) A complete description of the development, improvement or activity upon the submerged lands. Said clause shall contain the following "any change in use approved by the director, Ohio department of natural resources, may also result in a re-evaluation of the rent. Said lease shall be amended to reflect the proper rent as assigned by the director, based upon the new use," or words of similar import.

(D) There shall be no assignment, sublease or mortgage of the leasehold without the expressed written consent of the director, which consent shall not be unreasonably withheld or unreasonably conditioned.

(1) A written request to assign, sublet, or mortgage shall be delivered by the lessee to the director not less than ninety days prior to the proposed effective date thereof, and the director shall respond within thirty days of the director's receipt of such request. Any assignment shall be held in escrow by the closing officer of the title company, bank, or attorney until the sale of the uplands has been completed. Should the sale not be consummated then the assignment shall automatically be null and void. If the director fails to act in any manner within ninety days of the receipt of the written request, then the request shall be deemed approved by the director.

(2) Rent and other lease terms shall be subject to revision at time of assignment.

(3) Applicants for the director's consent to sublease, assign or mortgage shall be entitled to an administrative review of and appeal from any decision of the director pursuant to section 119.06 of the Revised Code.

(E) Each lease area shall be subject to the public's right to navigation in and around any structures covered in the lease. However, the public's right of navigation is limited to the extent that it does not interfere with lessee's safe use of lessee's structure.

(F) No lessee shall refuse, during storms or other adverse conditions, safe harbor refuge to any vessel seeking such refuge, provided that the harbor can safely accommodate such vessel.

(G) Each lease shall require adequate liability insurance or self insurance documentation for lessee, municipal corporations or political subdivisions of the state for lessee's development, improvement or activity in the territory and lessee's occupation of the territory. Minimum limits of liability insurance shall be established by the department and shall contain a clause naming the state of Ohio as additional insured.

(H) Each lease shall be subject to any and all local, state or federal laws or regulations. The issuance of the lease does not release the lessee from obtaining any and all other permits or documents from any local, state or federal agency as required for the use of the territory. Failure to obtain any required permits or documents shall be a violation of the lease and subject to cancellation under the default provisions therein.

HISTORY: Eff 4-30-92; 7-4-99

Rule promulgated under: RC Chapter 119.
Rule authorized by: RC 1506.02
Rule amplifies: RC 1506.10, 1506.11

R.C. 119.032 review dates: 6/30/99, 12/30/03

1501-6-06 Rental.

The rent rates herein determined shall be applied equally throughout the entire lake Erie shoreline, including Sandusky bay, Maumee bay and the islands. Rates will be determined by the director using the description of the development, improvement or activity provided by the applicant according to the following schedule:

(A) Existing fill – any artificially filled area or filled portion of any area of the territory existing on March 15, 1989, shall be charged $0.01 per square foot per year for the term of the lease or renewals. This rental rate shall apply only to the use of the filled area as it existed on March 15, 1989. If the lessee or its assigns change the use of the filled area, the rent may be modified to reflect the rent rate in effect for the new use at the time of the change of use.

The rental rate for any artificially filled area of the territory existing on March 15, 1989, which qualifies as a governmental non-income producing facility as determined by the director, shall be $1.00 per year.

(B) Private floating dock – $50 per year.

(C) Private structure – $50 plus $0.02 per square foot of leased area per year.

(D) Private erosion control structure – $50 plus $0.01 per square foot of leased area for the first year, and $0.01 per square foot of leased area per year thereafter.

This rental rate shall be applied to all qualifying leases, or qualifying portion of the leased area for leases executed on or after the effective date of this rule. For existing leases executed after the April 30, 1992 effective date of the original rules, this lease rate will apply upon the rent renewal date for the lease, unless the lease is modified prior to such date. This rate shall not apply to leases executed prior to April 30, 1992 unless the lease is modified on or after the effective date of this rule.

(E) Semi-private and small commercial facility occupying no more than four acres – $0.03 per square foot of leased area per year.

(F) Large facility and an industrial facility – $0.04 per square foot of the leased area per year.

(G) Utility – $500 per year.

(H) Governmental income producing facility shall pay the rent for the category of the facility.

(I) Governmental non-income producing facility shall pay $1.00 per year. Where practicable, a lease for all such governmental uses or purposes shall be covered in one instrument for each political subdivision.

(J) "Escalator clause" – the rental rates as provided for in paragraphs (B) to (H) of this rule, shall be recalculated every five years beginning on the fifth anniversary of the effective date of this rule and any increase shall be at the same rate of increase as the "National Consumers Price Index" (C.P.I.). The annual base rate for calculation purposes shall be the rate established by the U.S. department of labor for the city of Cleveland, Ohio, urban, all categories (C.P.I.U.) for February, 1992. That annual base rate is 136.2. The new rate shall be most recent C.P.I.U. annual rate established to the nearest month prior to the date of recalculation by the U.S department of labor. Once the new annual rate has been determined and the amount of increase has been calculated, then the new annual rate shall become the base annual rate for calculation purposes for the next five year period of time. This change in rates shall continue until such time as the C.P.I.U. is no longer used or the director determines that another method may be more accurate. The rental rate percentage increase shall be the lesser of the following:

(1) The base annual rate shall be subtracted from the new annual rate, the base rate shall be divided into the difference between the base rate and the new rate and the answer will be the percentage of increase or decrease over that five year period of time:

example:

new rate (nr)	140.2
- base rate (br)	136.2
_____	_____
difference (df)	4.0

$$\frac{df\ 4.0}{br\ 136.2} = .0293 \text{ or } 2.93\% \text{ increase}$$

current rent: $10,000.00×.0293 increase=$293.00
new rent: $10,293.00

(2) At no time shall the increases of the rental rate exceed 20 percent in any given five year period of time, nor shall the aggregate increase of the rental rate exceed 150 percent over the term of the lease. Also at no time shall the rental rate charged in any lease written by the state of Ohio pursuant to sections 1506.10 and 1506.11 of the Revised Code or by these rules be lowered.

Should the United States department of labor discontinue the use of C.P.I. the director shall select as nearly compatible a statistical formula on the purchasing power of the consumer dollar as is then available and published in some responsible governmental publication.

This escalator method shall not affect the rent charged under paragraph (A) of this rule existing fill or paragraph (H) of this rule governmental non-income producing facility.

HISTORY: Eff 4-30-92; 7-4-99

Rule promulgated under: RC Chapter 119.
Rule authorized by: RC 1506.02
Rule amplifies: RC 1506.10, 1506.11

R.C. 119.032 review dates: 6/30/99, 12/30/03