

TITLE 35: ENVIRONMENTAL PROTECTION

SUBTITLE C: WATER POLLUTION

CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 395

**PROCEDURES AND CRITERIA FOR CERTIFICATION
OF APPLICATIONS FOR FEDERAL PERMITS OR LICENSES
FOR DISCHARGES INTO WATERS OF THE STATE**

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AUTHORITY: Implementing Section 4(m) of the Environmental Protection Act (Ill. Rev. Stat. 1979, ch. 111 1/2, par. 1004(m)), and Section 401 of the Clean Water Act (33 U.S.C. 1341), and authorized by Rule 971 of Chapter 3: Water Pollution, of the Pollution Control Board's Rules and Regulations.

SOURCE: Procedure for Certification of Applications for Federal Permits for Discharges into the Waters of the State, amended March 21, 1974; Rules repealed, new rules adopted at 5 Ill. Reg. 7892, effective July 17, 1981.

SUBPART A: INTRODUCTION

Section 395.101 Purpose

These rules state the procedures and criteria which the Agency will use in certifying, under Section 401 of the Clean Water Act, that activities requiring federal permits or licenses will comply with Sections 301, 302, 303, 306 and 307 of the Clean Water Act.

Section 395.102 Definitions

Definitions for words not included below may be found in Chapter 3: Water Pollution, of the Illinois Pollution Control Board's Rules and Regulations.

- a) Receiving Water: Waters of the State of Illinois to which wastewater will be discharged.
- b) Particle Size Analysis: Test for the physical separation of sand and gravel (diameters greater than 62 microns) from silt and clay (diameters less than 62 microns).
- c) Resuspension Test: Chemical analysis of the constituents of the wastewater from the dredge or fill process; may be either an elutriate or supernatant test.
- d) Elutriate Test: Resuspension test for mechanically moved dredge or fill material.
- e) Supernatant Test: Resuspension test for hydraulically moved dredge or fill material.

SUBPART B: PROCEDURES FOR CERTIFYING DREDGE AND FILL ACTIVITIES REQUIRING A CORPS OF ENGINEERS PERMIT

Section 395.201 Application

Application for certification for dredge and fill activities shall be made on the joint application form available from the Agency, the U.S. Army Corps of Engineers (Corps), the Illinois Department of Transportation and the Illinois Department of Conservation. This form is entitled "Protecting Illinois Waters."

Section 395.202 Public Notice of Application

- a) When the Agency issues public notice jointly with the federal licensing or permitting authority, such notice shall state that application for certification under Section 401 of the Clean Water Act has been made to the Agency. The notice shall state to whom written comments may be submitted.
- b) The Agency shall issue a separate notice in the absence of an agreement to issue notice jointly, or when the Agency determines that the joint notice will not sufficiently apprise interested persons of the application for certification. In determining the form of this notice, the Agency will consider the nature and extent of the discharge and the interests of those who may be affected. Such notice shall include at least the following information:
 - 1) Name and business address of the applicant;
 - 2) Location of the discharge;
 - 3) Name of the receiving water;
 - 4) Nature of the facility;
 - 5) Nature of the discharge;
 - 6) Type of federal license or permit for which certification is requested; and
 - 7) Name, address and telephone number of the person within the Agency to whom comments or inquiries may be directed, and where the permit application may be examined.

Section 395.203 Testing and Information

Tests and information on dredge and fill discharges are required to determine the significant physical and chemical characteristics of the material to be excavated in order to evaluate if the potential exists for water pollution as a result of the discharge. Information on the material being excavated, the disposal site, and the receiving water beyond the dispersion (mixing) zone is required.

Section 395.204 Material Testing Exemptions

Dredge and fill material will be considered nonpolluted and, therefore, exempt from testing if all of the following conditions exist:

- a) The material is composed predominantly of sand, gravel or other naturally occurring sedimentary material with particle sizes larger than silt, as defined in Section 395.205 (a) (1).
- b) The characteristics of the material at the disposal site are similar to the excavated material.
- c) The excavation site is removed from known sources of pollution, toxic contamination and incidence of spills.
- d) The discharge does not occur in waters of Lake Michigan or any waters determined to be nondegradation waters.
- e) The discharge does not interfere with or threaten municipal or other public and food processing water supply sources.
- f) The discharge is adjacent to the disposal site and the quality of the discharge is similar to natural background conditions.

Section 395.205 Material Testing

- a) Materials not exempt under Section 395.204 will be subject to the following testing procedures. Details for these procedures are found in the joint application form.
 - 1) Particle size analysis (or sand/fine split) using a No. 230 U.S. sieve. For material resulting in 20 percent or greater passage of the sieve, resuspension testing is required.
 - 2) For hydraulically moved material, or mechanically moved material which is placed in the waterway, a supernatant test for nonsettleable material is required. Analysis will be made for total suspended solids (TSS), total volatile solids (TVS), ammonia-nitrogen as N, lead (total), and zinc (total) for both the supernatant and receiving water.
 - 3) For mechanically moved material which is placed outside of the waterway, testing of the filtered elutriate is required. Analysis will be made for ammonia-nitrogen as N, lead (total), and zinc (total) for both the elutriate and receiving water.
- b) Analysis for additional parameters and detailed testing for suspended particulates may be necessary to determine pollutional characteristics of the material with time, and the effectiveness of proposed facilities for treatment and settling. Information concerning disposal practices and procedures, and the engineering plans and specifications of the disposal site will be required to supply data on volume, retention time estimates, site location, berm grading, slope stabilization, and discharge structures.

- c) Previous tests on materials at or near the activity site may be submitted as supplemental information. This will not be done in lieu of or as an exemption from the testing requirements listed above.

Section 395.206 Public Hearing

- a) The Agency may hold a public hearing concerning the application for certification in the county where the discharge originates or at some other convenient location. The purpose of the hearing shall be to enable all interested persons to provide information to the Agency for its decision on the application.
- b) In determining whether to hold a public hearing, the Agency will consider:
 - 1) Evidence of interest as demonstrated by comments and requests for hearing received from members of the public;
 - 2) Evidence that a cause and effect relationship exists between the proposed activities and the concerns of the public;
 - 3) Expectation that a public hearing will provide information useful to the Agency for making its determination on the request for certification.
- c) Notice of any hearing shall be given to the applicant. At least 30 days before holding a hearing pursuant to these rules, notice shall be published in at least one newspaper of general circulation in the county where the discharge originates or will originate.
- d) The notice of hearing shall include at least the following:
 - 1) The information in Section 395.202(b);
 - 2) The time and location of the hearing;
 - 3) The purpose of the hearing;
 - 4) A concise statement of the issues to be considered at the hearing; and
 - 5) A brief description of the procedures to be followed at the hearing.
- e) The Agency may hold a public hearing covering more than one application for certification at the same time, or may participate in a joint public hearing with the federal licensing or permitting authority.

Section 395.207 Agency Determination

The Agency will evaluate all available information and make determinations on certification by applying the criteria in subsection 395.401(a).

Section 395.208 Notification

Notification of issuance, waiver or denial of certification shall be given to:

- a) The applicant;
- b) The Regional Administrator, USEPA;
- c) The federal licensing or permitting authority; and
- d) Any other state whose waters are or may be affected by the discharge, as determined by the Regional Administrator pursuant to Section 401 (a)(2) of the Clean Water Act.

SUBPART C: PROCEDURES FOR CERTIFYING OTHER ACTIVITIES REQUIRING FEDERAL LICENSES OR PERMITS

Section 395.301 Application

The applicant shall provide one copy of the application form used by the federal licensing or permitting authority with pertinent drawings, plans and specifications.

Section 395.302 Public Notice of Application

See Section 395.202

Section 395.303 Information

The applicant shall submit to the Agency such evidence as the Agency may require that the discharge complies or will comply with the criteria in subsection 395.401(a) of these rules.

Section 395.304 Public Hearing

See Section 395.206

Section 395.305 Agency Determination

See Section 395.207

Section 395.306 Notification

See Section 395.208

SUBPART D: AGENCY DECISION MAKING

Section 395.401 Criteria for Certification, Waiver of Certification or Denial of Certification

In making its determination, the Agency shall consider all information provided under Sections 395.203, 395.205, 395.301 and 395.303 of these rules.

- a) Certification or waiver of certification by the Agency shall be based on its determination that the intended activities of the applicant shall not cause:
 - 1) Violations of the water quality standards of Chapter 3 of the Board's rules;
 - 2) Violation of other applicable regulations of the Board;
 - 3) Noncompliance with Sections 301, 302, 303, 306, and 307 of the Clean Water Act;
 - 4) Interference with existing water uses, particularly public recreation on affected waters and public and food processing water supply sources.
- b) The Agency may place conditions on its certification or waiver of certification of activities under these rules. Such conditions shall relate to the characteristics of the specific site and the nature of the intended activities. The federal licensing or permitting authority is required to include such conditions in its license or permit.
- c) When the Agency determines that the intended activities cannot be performed without violation of the criteria in subsection (a) of this section, it shall deny certification.

Section 395.402 Certification and Permits

- a) When the Agency determines that the intended activities will meet the criteria in Section 395.401(a) and will not require a separate permit under Board rules, it may certify or waive certification of the activity.
- b) When the Agency determines that the intended activities require a separate permit under Rule 951 of Chapter 3 or under other Board rules:
 - 1) Certification may be postponed until the permit(s) has (have) been issued; or
 - 2) Certification may be conditioned on the issuance of the permit(s).

(Source: Filed July 17, 1981; effective July 17, 1981)