

§ 143-214.1A. Water quality certification requirements for certain projects.

(a) The following requirements shall govern applications for certification filed with the Department pursuant to section 401 of the Clean Water Act, 33 U.S.C. § 1341(a)(1), for maintenance dredging projects partially funded by the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund, electric generation projects located at an existing or former electric generating facility, and projects involving the distribution or transmission of energy or fuel, including natural gas, diesel, petroleum, or electricity:

- (1) Within 30 days of the filing of such application, a supplemental application, or a supplemental information on a pending application, the Department shall (i) determine whether or not the application is complete and notify the applicant accordingly and (ii), if the Department determines an application is incomplete, specify all such deficiencies in the notice to the applicant. The applicant may file an amended application or supplemental information to cure the deficiencies identified by the Department for the Department's review. An application may be deemed incomplete only if it does not provide sufficient information necessary for the Department to determine if the proposed discharges into navigable waters will comply with State water quality requirements. If the Department fails to issue a notice as to whether or not the application is complete within the requisite 30-day period, the application shall be deemed complete. As used in this section, State water quality requirements means water quality standards approved by the United States Environmental Protection Agency pursuant to 33 U.S.C. § 1313(c)(3) and in effect for purposes of the federal Clean Water Act.
- (2) Within five days of the date the application is deemed complete, the Department shall issue a public notice soliciting comment on the application. The Department shall either approve or deny an application within (i) 60 days of the date the application is deemed complete if no public hearing is held or (ii) 90 days of the date the application is deemed complete if a public hearing is held. Failure of the Department to approve or deny the application within the requisite 60-day or 90-day period, as applicable, shall result in a waiver of the certification requirement by the State, unless the applicant agrees, in writing, to an extension of time, which shall not exceed one year from the State's receipt of the application for certification. The 60-day or 90-day period, as applicable, for the Department to approve or deny an application established by this subdivision shall constitute the "reasonable period of time" for State action on an application for purposes of 33 U.S.C. § 1341(a)(1), absent a negotiated agreement with the federal permitting or licensing authority to extend that time frame for a period not to exceed one year.
- (3) The Department shall issue a certification upon determining that the proposed discharges into navigable waters will comply with State water quality requirements. The Department shall include as conditions in a certification any applicable effluent limitations or other limitations necessary to assure the proposed discharges into navigable waters will comply with State water quality requirements. The Department shall not impose any other conditions in a certification.
- (4) The Department shall deny a certification application only if it determines that no reasonable conditions would provide assurance that the proposed discharges into navigable waters will comply with State water quality requirements. The denial shall include a statement explaining why the

Department determined the proposed discharges into navigable waters will not comply with the State water quality requirements.

(5) The Department may grant, deny, or waive certification but shall not require an applicant to withdraw an application.

(b) For the purposes of this section, the term "maintenance dredging project" means the repetitive removal of naturally recurring deposited bottom sediment such as sand, silt, and clays in an existing navigation channel. The navigation channel may be a previously permitted channel that was constructed or maintained under permits issued by the State or federal government. If the navigation channel in use is a natural channel or, if a human-made channel was constructed before permitting was necessary, there shall be evidence that the channel was continuously used for a specific purpose. "Maintenance dredging project" does not include activities that increase the original depth and width of a human-made or natural channel to allow a new or expanded use of the channel. (2023-137, s. 7(a); 2024-45, s. 11(a).)