

Regulatory Guidance Letter 90-04

SUBJECT: Water Quality Considerations (33 CFR 320.4 (d))

DATE: March 13, 1990

EXPIRES: December 31, 1992

1. Section 320.4(d) provides that a state's certification of compliance with applicable effluent limitations and water quality standards will be conclusive with respect to water quality considerations, unless the Environmental Protection Agency (EPA) advises the district engineer (DE) of "other water quality aspects" that he should examine.
2. The DE can usually presume that a state's water quality certification satisfies the requirements of [Section 401 of the Clean Water Act \(CWA\)](#), 40 CFR 230.10(b)(1), and 33 CFR 320.4(d). If, however, EPA disagrees with the state's conclusions or raises water quality concerns beyond the state certification's scope, the DE shall consider EPA's objections and concerns as "other water quality aspects," as provided by 33 CFR 320.4(d). "Other water quality aspects," therefore, include water quality concerns outside the scope of the state's Section 401 certification review, indirect impacts on water quality aspects that the state certification does not address, and matters addressed in the state certification with which EPA has a different viewpoint.
3. In cases where the EPA regional Administrator advises the DE of "other water quality aspects" to be taken into consideration, the DE shall not consider the state Section 401 certification conclusive regarding water quality considerations. Although the state certification still satisfies the CWA Section 401 requirement in such cases, the DE must make his own independent judgments regarding compliance with 40 CFR 230.10(b)(1) and the consideration of water quality issues in the public interest review process. In exercising his judgment, the DE shall coordinate his actions with the state certifying agency and EPA.
4. This guidance expires 31 December 1992 unless sooner revised or rescinded.

FOR THE DIRECTOR OF CIVIL WORKS:

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