

### § 337.9

be necessary in the following situations:

(1) When there is substantial doubt as to the authority, law, regulations, or policies applicable to the Federal project;

(2) When higher authority requests the case be forwarded for decision;

(3) When the state does not concur in a coastal zone consistency determination or attempts to concur with conditions or controls;

(4) When the state denies or unreasonably delays a water quality certification or issues the certification with conditions or controls not related to maintenance or enforcement of state water quality standards or significantly exceeding the Federal standard;

(5) When the regional administrator has advised the district engineer, pursuant to section 404(c) of the CWA, of his intent to prohibit or restrict the use of a specified discharge site; or notifies the district engineer that the discharge of dredged material in ocean waters or territorial seas will not comply with the criteria and restrictions on the use of the site established under the ODA; and the district engineer determines that the proposed disposal cannot be reasonably modified to alleviate the regional administrator's objections; and

(6) When the state fails to grant water quality certification or a waiver of certification or concurrence or waiver of coastal zone consistency for emergency actions.

(b) *Reports.* The report of the district engineer on a project requiring action by higher authority should be in letter form and contain the following information:

(1) Justification showing the economic need for dredging.

(2) The impact on states outside the project area if the project is not dredged.

(3) The estimated cost of agency requirements which exceed those necessary in establishment of the Federal standard.

(4) The relative urgency of dredging based on threat to national security, life or property.

(5) Any other facts which will aid in determining whether to further defer the dredging and seek Congressional

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appropriations for the added expense or the need to exercise the authority of the Secretary of the Army to maintain navigation as provided by sections 511(a) and 404(t) of the CWA if the disagreement concerns water quality certification or other state permits.

(6) If the disagreement concerns coastal zone consistency, the district engineer will follow the reporting requirement of this section and §336.1(b)(9) of this chapter.

#### §337.9 Identification and use of disposal areas.

(a) District engineers should identify and develop dredged material disposal management strategies that satisfy the long-term (greater than 10 years) needs for Corps projects. Full consideration should be given to all practicable alternatives including upland, open water, beach nourishment, within banks disposal, ocean disposal, etc. Within existing policy, district engineers should also explore beneficial uses of dredged material, such as marsh establishment and dewatering techniques, in order to extend the useful life of existing disposal areas. Requests for water quality certification and/or coastal zone consistency concurrence for projects with identified long-term disposal sites should include the length of time for which the certification and/or consistency concurrence is sought. The section 404(b)(1) evaluation and environmental assessment or environmental impact statement should also address long-term maintenance dredging and disposal. District engineers should use the guidance at 40 CFR 230.80 to shorten environmental compliance processing time. The Corps of Engineers will be responsible for accomplishing or assuring environmental compliance requirements for all disposal areas. This does not preclude the adoption of other agencies NEPA documents in accordance with 40 CFR parts 1500 through 1508.

(b) The identification of disposal sites should include consideration of dredged material disposal needs by project beneficiaries. District engineers are encouraged to require local interests, where the project has a local sponsor, to designate long-term disposal areas.