

Environmental Protection Agency

§ 231.3

the recommended determination after consultation with the Chief of Engineers or with the state.

(c) **Applicability:** The regulations set forth in this part are applicable whenever the Administrator is considering whether the specification of any defined area as a disposal site should be prohibited, denied, restricted, or withdrawn. These regulations apply to all existing, proposed or potential disposal sites for discharges of dredged or fill material into waters of the United States, as defined in 40 CFR 230.2.

§ 231.2 Definitions.

For the purposes of this part, the definitions of terms in 40 CFR 230.2 shall apply. In addition, the term:

(a) *Withdraw specification* means to remove from designation any area already specified as a disposal site by the U.S. Army Corps of Engineers or by a state which has assumed the section 404 program, or any portion of such area.

(b) *Prohibit specification* means to prevent the designation of an area as a present or future disposal site.

(c) *Deny or restrict the use of any defined area for specification* is to deny or restrict the use of any area for the present or future discharge of any dredged or fill material.

(d) *Person* means an individual, corporation, partnership, association, Federal agency, state, municipality, or commission, or political subdivision of a state, or any interstate body.

(e) *Unacceptable adverse effect* means impact on an aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies (including surface or ground water) or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the section 404(b)(1) guidelines (40 CFR part 230).

(f) *State* means any state agency administering a 404 program which has been approved under section 404(h).

§ 231.3 Procedures for proposed determinations.

(a) If the Regional Administrator has reason to believe after evaluating the

information available to him, including any record developed under the section 404 referral process specified in 33 CFR 323.5(b), that an “unacceptable adverse effect” could result from the specification or use for specification of a defined area for the disposal of dredged or fill material, he may initiate the following actions:

(1) The Regional Administrator will notify the District Engineer or the state, if the site is covered by an approved state program, the owner of record of the site, and the applicant, if any, in writing that the Regional Administrator intends to issue a public notice of a proposed determination to prohibit or withdraw the specification, or to deny, restrict or withdraw the use for specification, whichever the case may be, of any defined area as a disposal site.

(2) If within 15 days of receipt of the Regional Administrator’s notice under paragraph (a)(1) of this section, it has not been demonstrated to the satisfaction of the Regional Administrator that no unacceptable adverse effect(s) will occur or the District Engineer or state does not notify the Regional Administrator of his intent to take corrective action to prevent an unacceptable adverse effect satisfactory to the Regional Administrator, the Regional Administrator shall publish notice of a proposed determination in accordance with the procedures of this section. Where the Regional Administrator has notified the District Engineer under paragraph (a)(1) of this section that he is considering exercising section 404(c) authority with respect to a particular disposal site for which a permit application is pending but for which no permit has been issued, the District Engineer, in accordance with 33 CFR 325.8, shall not issue the permit until final action is taken under this part.

COMMENT: In cases involving a proposed disposal site for which a permit application is pending, it is anticipated that the procedures of the section 404 referral process will normally be exhausted prior to any final decision of whether to initiate a 404(c) proceeding.

(b) Public notice of every proposed determination and notice of all public hearings shall be given by the Regional

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Administrator. Every public notice shall contain, at a minimum:

(1) An announcement that the Regional Administrator has proposed a determination to prohibit or withdraw specification, or to deny, restrict, or withdraw the use for specification, of an area as a disposal site, including a summary of the facts on which the proposed determination is based;

(2) The location of the existing, proposed or potential disposal site, and a summary of its characteristics;

(3) A summary of information concerning the nature of the proposed discharge, where applicable;

(4) The identity of the permit applicant, if any;

(5) A brief description of the right to, and procedures for requesting, a public hearing; and

(6) The address and telephone number of the office where interested persons may obtain additional information, including copies of the proposed determination; and

(7) Such additional statements, representations, or information as the Regional Administrator considers necessary or proper.

(c) In addition to the information required under paragraph (b) of this section, public notice of a public hearing held under § 231.4 shall contain the following information:

(1) Reference to the date of public notice of the proposed determination;

(2) Date, time and place of the hearing; and

(3) A brief description of the nature and purpose of the hearing including the applicable rules and procedures.

(d) The following procedures for giving public notice of the proposed determination or of a public hearing shall be followed:

(1) Publication at least once in a daily or weekly newspaper of general circulation in the area in which the defined area is located. In addition the Regional Administrator may (i) post a copy of the notice at the principal office of the municipality in which the defined area is located, or if the defined area is not located near a sizeable community, at the principal office of the political subdivision (State, county or local, whichever is appropriate) with general jurisdiction over the area in

which the disposal site is located, and (ii) post a copy of the notice at the United States Post Office serving that area.

(2) A copy of the notice shall be mailed to the owner of record of the site, to the permit applicant or permit holder, if any, to the U.S. Fish and Wildlife Service, National Marine Fisheries Service and any other interested Federal and State water pollution control and resource agencies, and to any person who has filed a written request with the Regional Administrator to receive copies of notices relating to section 404(c) determinations;

(3) A copy of the notice shall be mailed to the appropriate District and Division Engineer(s) and state;

(4) The notice will also be published in the FEDERAL REGISTER.

§ 231.4 Public comments and hearings.

(a) The Regional Administrator shall provide a comment period of not less than 30 or more than 60 days following the date of public notice of the proposed determination. During this period any interested persons may submit written comments on the proposed determination. Comments should be directed to whether the proposed determination should become the final determination and corrective action that could be taken to reduce the adverse impact of the discharge. All such comments shall be considered by the Regional Administrator or his designee in preparing his recommended determination in § 231.5.

(b) Where the Regional Administrator finds a significant degree of public interest in a proposed determination or that it would be otherwise in the public interest to hold a hearing, or if an affected landowner or permit applicant or holder requests a hearing, he or his designee shall hold a public hearing. Public notice of that hearing shall be given as specified in § 231.3(c). No hearing may be held prior to 21 days after the date of the public notice. The hearing may be scheduled either by the Regional Administrator at his own initiative, or in response to a request received during the comment period provided for in paragraph (a) of this section. If no public hearing is held the Regional Administrator shall notify