

40 C.F.R. § 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.

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