

§ 231.5

40 CFR Ch. I (7-1-04 Edition)

issued, a Record Clerk shall be designated with responsibility for maintaining the administrative record identified in § 231.5(e). Copying of any documents in the record shall be permitted under appropriate arrangements to prevent their loss. The charge for such copies shall be in accordance with the written schedule contained in part 2 of this chapter.

§ 231.5 Recommended determination.

(a) The Regional Administrator or his designee shall, within 30 days after the conclusion of the public hearing (but not before the end of the comment period), or, if no hearing is held, within 15 days after the expiration of the comment period on the public notice of the proposed determination, either withdraw the proposed determination or prepare a recommended determination to prohibit or withdraw specification, or to deny, restrict, or withdraw the use for specification, of the disposal site because the discharge of dredged or fill material at such site would be likely to have an unacceptable adverse effect.

(b) Where a recommended determination is prepared, the Regional Administrator or his designee shall promptly forward the recommended determination and administrative record to the Administrator for review, with a copy of the recommended determination to the Assistant Administrator for Water and Waste Management.

(c) Where the Regional Administrator, or his designee, decides to withdraw the proposed determination, he shall promptly notify the Administrator by mail, with a copy to the Assistant Administrator for Water and Waste Management, who shall have 10 days from receipt of such notice to notify the Regional Administrator of his intent to review such withdrawal. Copies of the notification shall be sent to all persons who commented on the proposed determination or participated at the hearing. Such persons may submit timely written recommendations concerning review.

(1) If the Administrator does not notify him, the Regional Administrator shall give notice at the withdrawal of the proposed determination as provided

in § 231.3(d). Such notice shall constitute final agency action.

(2) If the Administrator does decide to review, the Regional Administrator or his designee shall forward the administrative record to the Administrator for a final determination under § 231.6. Where there is review of a withdrawal of proposed determination or review of a recommended determination under § 231.6, final agency action does not occur until the Administrator makes a final determination.

(d) Any recommended determination under paragraph (b) of this section shall include the following:

(1) A summary of the unacceptable adverse effects that could occur from use of the disposal site for the proposed discharge;

(2) Recommendations regarding a final determination to prohibit, deny, restrict, or withdraw, which shall confirm or modify the proposed determination, with a statement of reasons.

(e) The administrative record shall consist of the following:

(1) A copy of the proposed determination, public notice, written comments on the public notice and written submissions in the hearing file;

(2) A transcript or recording of the public hearing, where a hearing was held;

(3) The recommended determination;

(4) Where possible a copy of the record of the Corps or the state pertaining to the site in question;

(5) Any other information considered by the Regional Administrator or his designee.

§ 231.6 Administrator's final determinations.

After reviewing the recommendations of the Regional Administrator or his designee, the Administrator shall within 30 days of receipt of the recommendations and administrative record initiate consultation with the Chief of Engineers, the owner of record, and, where applicable, the State and the applicant, if any. They shall have 15 days to notify the Administrator of their intent to take corrective action to prevent an unacceptable adverse effect(s), satisfactory to the Administrator. Within 60 days of receipt of the