

§ 231.4

40 CFR Ch. I (7-1-08 Edition)

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

any persons who requested a hearing of the reasons for that decision. Where practicable, hearings shall be conducted in the vicinity of the affected site.

(c) Hearings held under this section shall be conducted by the Regional Administrator, or his designee, in an orderly and expeditious manner. A record of the proceeding shall be made by either tape recording or verbatim transcript.

(d) Any person may appear at the hearing and submit oral or written statements and data and may be represented by counsel or other authorized representative. Any person may present written statements for the hearing file prior to the time the hearing file is closed to public submissions, and may present proposed findings and recommendations. The Regional Administrator or his designee shall afford the participants an opportunity for rebuttal.

(e) The Regional Administrator, or his designee, shall have discretion to establish reasonable limits on the nature, amount or form of presentation of documentary material and oral presentations. No cross examination of any hearing participant shall be permitted, although the Regional Administrator, or his designee, may make appropriate inquiries of any such participant.

(f) The Regional Administrator or his designee shall allow a reasonable time not to exceed 15 days after the close of the public hearing for submission of written comments. After such time has expired, unless such period is extended by the Regional Administrator or his designee for good cause, the hearing file shall be closed to additional public written comments.

(g) No later than the time a public notice of proposed determination is 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