



WETLANDS FACT SHEET #12

Clean Water Act §404(c): Veto Authority

THE §404 (c) PROCESS

Section 404(c) of the Clean Water Act gives EPA the authority to "veto" a permit if the discharge of dredged or fill material will have unacceptable adverse effects on the aquatic or wetland ecosystem.

Public Notice Intent to Issue

EPA Regional Administrator states his/her intention to issue a public notice of a Proposed Determination to withdraw, prohibit, deny, or restrict the specification of a defined area for the disposal of dredged or fill material.

Proposed Determination Publication of Notice

If within 15 days, it has not been demonstrated to the satisfaction of the Regional Administrator that no unacceptable adverse effects will occur, the Regional Administrator publishes notice of the Proposed Determination. The Proposed Determination does not represent a judgment that discharges of dredged or fill material will result in unacceptable adverse effects; it merely means that the Regional Administrator believes that the issue should be explored.

Public Comment Period

The public comment period for the Proposed Determination is longer than 30 days and less than 60 days, except under circumstances where a longer period is warranted. Generally, due to the degree of public interest in the EPA action, a public hearing is held. Within 30 days of the public hearing, or if no public hearing is held, within 15 days of the end of the comment period, the Regional Administrator takes action.

Recommended Determination Prepared

Recommendation to withdraw, prohibit, deny, or restrict the specification of a defined area for the disposal of dredged or fill material.

Recommended Determination Reviewed

The Regional Administrator forwards that document and the administrative record to the Administrator and the Assistant Administrator for Water of EPA for review. Within 30 days, EPA Headquarters initiates action.

Final Determination

Within 60 days of receipt of the recommendation and the administrative record, EPA Headquarters makes a Final Determination affirming, modifying, or rescinding the Recommended Determination. Notice of the final determination shall be published in the *Federal Register*.

Section 404(c) of the Clean Water Act authorizes EPA to restrict or prohibit the use of an area as a disposal site for dredged or fill material if the discharge will have *unacceptable adverse effects* on municipal water supplies, shellfish beds and fishery areas, wildlife or recreational areas. Because §404(c) actions have historically arisen in response to unresolved permit applications, the EPA action is frequently referred to as an EPA "veto" of the U.S. Army Corps of Engineers permit.

Unacceptable Adverse Effects

Impact on an aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies (including surface or groundwater) or significant loss of or damage to fisheries, shellfishing, or wildlife habitat, or recreation areas.

Under the current §404(c) regulations, EPA decisions regarding formal elevation of a project under Section 404(c) must be initiated by the Regional Administrator. Initiation of a Section 404(c) action is completely within the discretion of the Agency. If the Regional Administrator chooses to recommend actions pursuant to Section 404(c) of the Clean Water Act, EPA Headquarters then becomes formally involved. The authority for Final Determinations pursuant to §404(c) regarding site restriction or prohibition is currently delegated to

Proposed Determination Withdrawn

EPA Headquarters Review

The Assistant Administrator for Water may review the withdrawn Proposed Determination

EPA's Assistant Administrator for Water, who is EPA's National §404 program manager.

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To date, EPA has completed only 11 Section 404(c) actions out of an estimated 150,000 permit applications received since the Section 404(c) regulations went into effect in October 1979.

FOR MORE INFORMATION: call the EPA Wetlands Hotline* at 1-800-832-7828

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