

[OW-6-FRL-2837-5]

Proposed Determination To Prohibit, Deny, or Restrict the Specification, or the Use for Specification, of an Area as a Disposal Site; Notice and Public Hearing

SUMMARY: Section 404(c) of the Clean Water Act (33 U.S.C. 1251 *et seq*) provides that the Administrator of the U.S. Environmental Protection Agency (EPA) is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearing, that the discharge of dredged or fill materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreation areas. The procedures for implementation of 404(c) are set forth in 40 CFR Part 231. This notice of the proposed determination and public hearing is being published in accordance with 40 CFR 231.3 by the Regional Administrator of EPA's Region 6.

On December 18, 1984, EPA Region 6 notified the U.S. Army Corps of Engineers, and subsequently notified affected landowners, of our intention to prohibit an area known as the Bayou aux Carpes swamp from future use as a disposal site under section 404(c) of the Clean Water Act (CWA). The approximately 3,000 acre site lies south of New Orleans, Louisiana, on the "West Bank" of Jefferson Parish. The area is bounded on the north by the east-west Estelle Pumping Station Outfall Canal, on the east by the Plaquemines-Jefferson Parish line, on the south by Bayou Barataria and Bayou des Familles, and on the west by State Highway La. 3134 and the "Vee-Levee" pipeline canal. Maps of the project area are available at the above address. The geographic coordinates are:

- Range 23E, Township 15S, Portions of Sections 13, 14, 55, 57, 59;
- Range 24E, Township 14S, Portions of Sections 55, 81, 82; and
- Range 24E, Township 15S, Portions of Sections 48, 49, 50, 52, 57.

Purpose of Public Notice

EPA would like to obtain comments on this proposed determination, which could result in the denial of any future applications for Section 404 (CWA) permits for the discharge of dredged or fill material in wetlands within the area in question. We are also soliciting

comments on whether or not the impacts of any such proposed disposal operations would represent an unacceptable adverse effect as described in Section 404(c) of the Clean Water Act.

Public Hearing

A public hearing will be conducted on June 18, 1985, beginning at 7:00 in the evening, in the Council Chambers of the Gretna Courthouse, located at Second Avenue and Derbigny Street in Gretna, Louisiana.

Written comments may be submitted prior to the hearing. Both written and oral comments may be presented during the hearing. The hearing record will remain open for the submittal of written comments until the close of business on July 3, 1985, or possibly a later date announced at the hearing. Comments submitted prior to or after the hearing should be sent to the Environmental Protection Agency, Federal Activities Branch, 1201 Elm Street, Dallas, Texas 75270. All comments should directly address whether the proposed determination should become the final determination. These comments will be considered in reaching a decision to either withdraw the proposed determination or prepare a recommended determination to prohibit or deny the specification or the use for specification of the area as a disposal site. If a recommended determination is made, it and the administrative record will be forwarded to the Administrator of EPA in Washington, DC, for review and the final determination. The procedures to be used by the Administrator in making the final determination are specified in 40 CFR 231.6.

Copies of all comments submitted in response to this notice will be available for public inspection from 8:00 a.m. to 4:00 p.m. weekdays at the EPA address above.

The Regional Administrator of EPA's Region 6, or his designee, will be the Presiding Officer at the hearing. Any person may appear at the hearing and present oral or written statements, and may be represented by counsel or other authorized representative. The Presiding Officer will establish reasonable limits on the nature and length of the oral presentations. No cross examination of any hearing participant will be permitted, although the Presiding Officer may make appropriate inquiries of any such participant.

Background

EPA is taking this action according to the provisions of section 404(c) of the Clean Water Act. Although the U.S.

Army Corps of Engineers actually issues the section 404 permits, EPA also has certain responsibilities regarding this program. EPA is responsible for developing the guidelines to be used by the Corps in reviewing the permit applications. The agency also reviews and provides comments to the Corps during their review of the applications and EPA has the authority to restrict or prohibit certain areas from use as disposal sites.

EPA's decision to initiate the 404(c) process came about at this particular time partly as a result of recent judicial action. A suit was filed in 1977 by landowners who were interested in seeing a project, which originated in the 1960's as a Corps flood control project (Harvey Canal—Bayou Barataria Levee project), completed as it was originally designed. This original design included levee-building, construction of a pumping station, and closure of some waterways.

Over the years, EPA (and other agencies) continually objected to the original project design because of the significant adverse effects (primarily drainage of the wetland) which would be inflicted on this productive wetland ecosystem. In 1975, EPA recommended a modified design, which would replace the dams with flood gates and which would require that, if a pumping station was needed for flood control, it be operated so as to maintain the integrity of the wetlands.

The latest step in the landowner's law suit occurred in the U.S. District Court for the Eastern District of Louisiana (on remand from the U.S. Court of Appeals for the 5th Circuit). Judge Lansing Mitchell issued an order which, in part, allowed EPA until December 18, 1984, to invoke 404(c) on the project as originally designed. On December 18, 1984, EPA initiated the 404(c) process with respect to that portion of the Bayou aux Carpes swamp owned by these landowners.

Subsequently, EPA initiated the 404(c) process for an additional area adjoining that property, but outside of the realm of the area being considered in the specific case before the District Court. Together, both of these tracts comprise the approximately 3,000 acre tract which is the subject of this notice and the public hearing.

EPA concern regarding the effects from projects involving the discharge of dredged or fill material in this area is not new. During a review of the Environmental Impact Statements and section 404 permit applications for two other large-scaled projects (the Marrero-Lafitte Waterline Project and the West Bank Hurricane Protection Levee

Project) which would affect this same area, EPA became involved in extensive negotiations regarding the protection of these wetland resources. EPA has thereby historically recognized this area as a sensitive, valuable wetland worthy of special protective measures and yet continually subject to project proposals which could adversely affect its wetland characteristics.

Section 404(c) criteria

Unacceptable adverse effects of municipal water supplied, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas are the four criteria which may individually or jointly be used to support an EPA decision to invoke the provisions of section 404(c) of the Clean Water Act. As a result of previous studies of the area associated with various project proposals and recent studies related to this proposed determination, EPA staff has concluded that the discharge of dredged or fill material in the subject area could induce significant and unacceptable adverse effects in all criteria areas except that of municipal water supplies.

The wooded swamp and marsh habitat, in conjunction with the waterways, is a part of an intertidal estuarine system within the biologically productive Barataria Basin. The area exhibits the hydrological, biological, and soils characteristics typical of a wetland regulated under Section 404 of the Clean Water Act. The value of the area is also evidenced by the tidal exchange, with attendant detrital export and ingress and egress of estuarine fauna. Detritus from the wetland plant species serves as a fundamental element in the food chain of the regional estuarine biota. The marsh and swamp provide valuable feeding, breeding, and/or nursery habitat for various species of fish and wildlife. In addition, the public currently has access to portions of the area for certain recreational pursuits through several watercourses which pass through the site.

In summary, the tract displays many beneficial wetland characteristics and functions such as: (1) A high degree of biological productivity; (2) habitat for all or portions of the life cycles of a variety of fish and wildlife, including waterfowl, furbearers, freshwater sport fish and commercially important shellfish and marine fish; (3) hydrological buffering, including stormwater retention and downstream freshwater contribution; (4) water quality improvement and erosion control; (5) nutrient and energy export; and (6) recreational opportunities.

Potential Adverse Impacts of Section 404 Permit Activities

The direct water quality effects resulting from the discharge of dredged or fill material could significantly and adversely affect the functions and values currently characterizing this wetland system. For example, plant productivity and the resulting food supply for fish and wildlife are dependent to a large degree upon existing water quality characteristics. Also, many important finfish and shellfish species are adversely impacted by alterations to the physical-chemical environment during critical stages in their life cycles. Effects on the ability of estuarine species to utilize in this area would be manifested in other portions of the Barataria Bay estuarine system.

Aside from the more immediate and direct effects of depositing fill material, activities requiring a Section 404 permit have been proposed for the area which would result in isolating the area hydrologically and/or draining the wetland. Although previous projects have limited the area through which water may flow, this wetland and its associated functions and values are still predominately determined by this interchange. Hydrological isolation would unacceptably diminish the current fish and wildlife potential of the immediate site. Areas further downstream would be affected also because of the site's use as a nursery area, its nutrient and detrital contributions, and its water quality contributions.

Draining the wetland would be the most severe of the indirect results of possible section 404 permit activities. The maintenance and movement of water through this wetland are vital to the preservation of the system. In addition, draining this site would have unacceptable adverse effects on the ecological characteristics of and recreational opportunities afforded by the eastern wetland portions of the Barataria Unit of the Jean Lafitte National Historical Park, which lies within the same drainage area as the site in question.

Drainage and conversion of this area would also contribute significantly to the cumulative wetland losses currently being experienced in coastal Louisiana in general, and in the Barataria Basin in particular. According to the Louisiana State University Center for Wetland Resources, Louisiana is losing nearly 40 square miles of its coastal wetlands each year. The rates of loss in the Barataria Basin from 1955-1978 averaged 7.5 square miles per year (Louisiana Department of Natural

Resources) and are increasing faster than the national average for wetlands. This situation is significant because of the associated adverse consequences described above and because the Barataria Bay estuary provides an average 44 percent of Louisiana's total annual fish and shellfish harvest (Louisiana Department of Transportation and Development).

Proposed Determination

Based on a thorough site evaluation, coordination with other agencies and knowledgeable individuals, and a review of the literature, the Regional Administrator of Region 6 is of the opinion that issuing permits for Section 404 activities to be conducted in the wetlands in question could result in unacceptable adverse effects on shellfish beds and fishery areas, wildlife, and recreation areas. A possible exception would be for permits covering only certain habitat enhancement activities. EPA proposes to prohibit the specification of this wetland site for discharge of dredged or fill materials because such discharge could result in the direct loss of fish and wildlife habitat, the loss of detrital materials and fresh water which are exported to downstream fisheries by tidal exchange, a potential decreased production of fish food items, the loss of the natural water filtration mechanisms, the loss of stormwater buffering capacity, and the loss of recreational opportunities.

FOR FURTHER INFORMATION CONTACT:
Environmental Protection Agency,
Federal Activities Branch, 1201 Elm
Street, Dallas, Texas 75270, (214) 767-
2716.

Dated: May 10, 1985.

Frances E. Phillips,
Acting Regional Administrator.
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FEDERAL COMMUNICATIONS COMMISSION

Allen H. Weiner and Weiner Broadcasting Co.; Order To Show Cause

In the matter of Allan H. Weiner and
Weiner Broadcasting Company Presque
Isle, ME MM Docket No. 85-109; FCC
85-183.

Licensee of radio stations WOZW(AM),
Monticello, ME, WOZI(FM), Presque Isle, ME,
and remote pickup base station KPF-941,
Yonkers, NY.

Order to show cause why the licenses for
radio stations WOZW(AM), Monticello, ME,