

Environmental Protection Agency

§ 149.109

§ 149.106 Notice of review.

(a) *Notice to Federal agency.* If the Regional Administrator decides upon receipt of a public petition or upon his own motion to review a project under section 1424(e), he shall give written notification of the decision to the Federal agency from which financial assistance is sought. The notification shall include a description and identification of the project.

(b) *Notice to public.* When the Regional Administrator undertakes to review a project pursuant to §149.13 above, he shall provide public notice of project review by such means as he deems appropriate. The notice shall set forth the availability for public review of all data and information available, and shall solicit comments, data and information with respect to the determination of impact under section 1424(e). The period for public comment shall be 30 days after public notice unless the Regional Administrator extends the period at his discretion or a public hearing is held under §149.16.

§ 149.107 Request for information.

In reviewing a project under section 1424(e), the Regional Administrator may request any additional information from the funding Federal agency which is pertinent to reaching a decision. If full evaluation of the groundwater impact of a project has not been submitted in accordance with the agency's NEPA procedures, the Regional Administrator may specifically request that the Federal agency submit a groundwater impact evaluation of whether the proposed project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health.

§ 149.108 Public hearing.

If there is significant public interest, the Regional Administrator may hold a public hearing with respect to any project or projects to be reviewed if he finds that such a hearing is necessary and would be helpful in clarifying the issues. Public hearings held under this section should be coordinated, if possible, with other Federal public hearings held pursuant to applicable laws and regulations. Any such hearing shall be conducted by the Regional Ad-

ministrator or designee in an informal, orderly and expeditious manner. Where appropriate, limits may be placed upon the time allowed for oral statements, and statements may be required to be submitted in writing. The record will be held open for further public comment for seven (7) days following the close of the public hearing.

§ 149.109 Decision under section 1424(e).

(a) As soon as practicable after the submission of public comments under section 1424(e) and information requested by the Environmental Protection Agency from the originating Federal agency, on the basis of such information as is available to him, the Regional Administrator shall review the project taking all relevant factors into account including:

(1) The extent of possible public health hazard presented by the project;

(2) Planning, design, construction, operation, maintenance and monitoring measures included in the project which would prevent or mitigate the possible health hazard;

(3) The extent and effectiveness of State or local control over possible contaminant releases to the aquifer;

(4) The cumulative and secondary impacts of the proposed project; and

(5) The expected environmental benefits of the proposed project.

(b) After reviewing the available information, the Regional Administrator shall:

(1) Determine that the risk of contamination of the aquifer through the recharge zone so as to create a significant hazard to public health is not sufficiently great so as to prevent commitment of Federal funding to the project; or

(2) Forward the information to the Administrator with his recommendation that the project may contaminate the aquifer through the recharge zone so as to create a significant hazard to public health.

(c) After receiving the available information forwarded by the Regional Administrator, the Administrator shall:

(1) Determine that the risk of contamination of the aquifer through the

§ 149.110

recharge zone so as to create a significant hazard to public health is not sufficiently great so as to prevent commitment of Federal funding to the project; or

(2) Determine that the project may contaminate the aquifer through the recharge zone so as to create a significant hazard to public health.

(d) Notice of any decisions by the Regional Administrator under paragraph (b)(1) of this section or by the Administrator under paragraphs (c)(1) and (2) of this section to prevent a commitment of Federal funding shall be published in the FEDERAL REGISTER. Such notices shall include a description of the proposed project, and a statement of decision with an accompanying statement of facts and reasons.

§ 149.110 Resubmittal of redesigned projects.

If a project is redesigned in response to EPA's objections, the applicant for Federal financial assistance or the grantor agency may file a petition with the Regional Administrator for withdrawal of the determination that the project may contaminate the aquifer through the recharge zone so as to create a significant hazard to public health. Any such petition shall demonstrate how the project has been rede-

40 CFR Ch. I (7-1-07 Edition)

signed so as to justify the withdrawal of EPA's objections. If appropriate, the Regional Administrator may request public comments or hold an informal public hearing to consider the petition. After review of pertinent information, the Regional Administrator shall either deny the petition or recommend to the Administrator that the initial determination that a project may contaminate the aquifer be vacated. Upon receipt of a recommendation from the Regional Administrator that a determination be vacated, the Administrator shall either deny the petition or order that the initial determination be vacated. The final decision regarding a petition shall be published in the FEDERAL REGISTER with an accompanying statement of reasons.

§ 149.111 Funding to redesigned projects.

After publication of a decision that a proposed project may contaminate a sole or principal source aquifer in a designated area through its recharge zone so as to create a significant hazard to public health, a commitment for Federal financial assistance may be entered into, if authorized under another provision of law, to plan or redesign such project to assure that it will not so contaminate the aquifer.