

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-R04-OW-2008-0179; FRL-8717-6]

**Final Determination of the Assistant Administrator for Water Pursuant to Section 404(c) of the Clean Water Act Concerning the Proposed Yazoo Backwater Area Pumps Project in Issaquena County, MS****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** This is a notice of EPA's Final Determination pursuant to section 404(c) of the Clean Water Act to prohibit the specification of subject wetlands and other waters of the United States in Issaquena County, MS, as a disposal site for the discharge of dredged or fill material for the purpose of construction of the proposed Yazoo Backwater Area Pumps Project, i.e., Plan 5 in the U.S. Army Corps of Engineers' (the Corps) Final Supplemental Environmental Impact Statement (FSEIS) for the Yazoo Backwater Area Project, as well as FSEIS Plans 3, 4, 6, and 7, and Modified Plan 6 (proposed by the Corps after publication of the FSEIS). EPA's determination is based upon a finding that the discharge of dredged or fill material associated with the construction and operation of these projects would result in unacceptable adverse effects on fishery areas and wildlife.

**DATES:** *Effective Date:* The effective date of the Final Determination is August 31, 2008.

**ADDRESSES:** U.S. Environmental Protection Agency, Office of Water, Wetlands Division, Mail code 4502T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. EPA has established a docket for this action under Docket ID No. EPA-R04-OW-2008-0179. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday,

excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tanya A. Code at (202) 566-1063 or by e-mail at [code.tanya@epa.gov](mailto:code.tanya@epa.gov) or Mr. Palmer F. Hough at (202) 566-1374 or by e-mail at [hough.palmer@epa.gov](mailto:hough.palmer@epa.gov). Additional information and copies of EPA's Final Determination are available at the following Web site: <http://www.epa.gov/404c/>.

**SUPPLEMENTARY INFORMATION:** Section 404(c) of the Clean Water Act (CWA) (33 U.S.C. 1251 *et seq.*) authorizes EPA to prohibit, restrict, or deny the specification of any defined area in waters of the United States (including wetlands) as a disposal site for the discharge of dredged or fill material whenever it determines, after notice and opportunity for public hearing, that such discharge into waters of the United States will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

EPA's regulations for implementing section 404(c) are set forth in 40 CFR part 231. Four major steps in the process are: (1) The Regional Administrator's notice to the U.S. Army Corps of Engineers (the Corps), the property owner, and the applicant (and/or project proponent) of the intention to initiate the section 404(c) process; (2) the Regional Administrator's publication of a Proposed Determination to withdraw, deny, restrict, or prohibit the use of the site, soliciting public comment and offering an opportunity for a public hearing; (3) the Regional Administrator's recommendation to the Assistant Administrator for Water at EPA Headquarters to withdraw, deny, restrict, or prohibit the use of the site (Recommended Determination); and, (4) the Assistant Administrator for Water's Final Determination to affirm, modify, or rescind the Regional recommendation.

Pursuant to section 404(c), EPA initiated a CWA section 404(c) review of the proposed Yazoo Backwater Area Pumps Project on February 1, 2008. The Yazoo Backwater Area Pumps Project is a Corps Civil Works project designed to address flooding concerns in a 630,000 acre area situated between the Mississippi and Yazoo Rivers in west-central Mississippi (Yazoo Backwater Area). The project is represented as Plan 5 in the Corps' FSEIS (published in November 2007). The primary component of this project is a 14,000

cubic feet per second (cfs) pumping station that would pump surface water out of the Yazoo Backwater Area during high water events on the Mississippi River. The project also includes 10,662 acres of reforestation of agricultural land to compensate for the adverse environmental impacts associated with the project, and up to 40,571 acres of reforestation of agricultural land to provide potential environmental benefits.

According to the Corps, the Yazoo Backwater Area contains between 150,000 to 229,000 acres of wetlands, as well as an extensive network of streams, creeks, and other aquatic resources. Extensive information collected on the Yazoo Backwater Area demonstrates that it includes some of the richest wetland and aquatic resources in the Nation. These include a highly productive floodplain fishery, substantial tracts of highly productive bottomland hardwood forests that once dominated the Lower Mississippi River Alluvial Valley (LMRAV), and important migratory bird foraging grounds. These wetlands provide important habitat for an extensive variety of wetland dependent animal and plant species, including the federally protected Louisiana black bear and pondberry plant. In addition to serving as critical fish and wildlife habitat, project area wetlands also provide a suite of other important ecological functions. These wetlands protect and improve water quality by removing and retaining pollutants, temporarily store surface water, maintain stream flows, and support aquatic food webs by processing and exporting significant amounts of organic carbon. As stated in the FSEIS, "The lands in the lower Mississippi Delta are noted for high value fish and wildlife resources. The area serves as an integral part of the economic and social life of local residents and sportsmen from around the Nation" (FSEIS, Appendix 1—Mitigation, page 1-29).

The construction and operation of the proposed pumps would dramatically alter the timing, and reduce the spatial extent, depth, frequency, and duration of time that wetlands within the project area are inundated. After extensive evaluation of the record for this project, EPA has determined that these large-scale hydrologic alterations would significantly degrade the critical ecological functions provided by approximately 67,000 acres of wetlands in the Yazoo Backwater Area, including those functions that support wildlife and fisheries resources.

During the initial consultation period with the Corps and the Mississippi

Board of Levee Commissioners (the project sponsor), the Corps offered two alternatives to the proposed project to reduce wetland impacts. One of these alternatives is Plan 6 from the FSEIS, and the other is a modified version of Plan 6. Both of these alternatives retain the 14,000 cfs pump station, but include modifications to the pump-on elevation and the amount of compensatory mitigation and reforestation as compared to Plan 5. After discussions with the Corps and following careful consideration of the two alternatives, EPA is concerned that neither proposal would reduce impacts to an acceptable level.

In March 2008, EPA Region IV published a proposal (i.e., Proposed Determination) to prohibit or restrict the use of certain waters of the United States as disposal sites for the discharge of dredged or fill material in connection with the construction of the proposed Yazoo Backwater Area Pumps Project (73 FR 14806, March 19, 2008). EPA Region IV solicited public comments on the Proposed Determination until May 5, 2008. EPA received approximately 47,600 written comment letters, including approximately 1,500 individual comment letters and 46,100 mass mailers. Nearly all of the comment letters (99.9 percent) urged EPA to prohibit discharges to waters of the United States associated with the proposed pumps project. A public hearing was held in Vicksburg, Mississippi, on April 17, 2008, in which approximately 500 people participated. A total of 67 people provided oral statements, including one representative from the Corps' Vicksburg District and four individuals representing the project sponsor. Of the remaining 62 people who provided oral statements, 32 people spoke in opposition to the proposed pumps project, 29 spoke in favor of the pumps project and one person did not specify a position. In total, approximately 463 residents of the state of Mississippi submitted written comments to EPA or spoke at the public hearing. Of these, 417 expressed support for EPA's proposal and 45 favored construction of the pumps. Within the Yazoo Backwater Area, a total of 31 residents expressed an opinion on the project either at the public hearing, in written comments, or both. Of these 31, four expressed support for EPA's position, 26 expressed support for construction of the pumps, and one did not express an opinion.

On July 2, 2008, EPA Region IV submitted to EPA Headquarters its Recommended Determination to prohibit the specification of certain wetlands and other waters of the United

States within Humphreys, Issaquena, Sharkey, Warren, Washington, or Yazoo County, in the state of Mississippi as a disposal site for the discharge of dredged or fill material for the purpose of construction of the proposed Yazoo Backwater Area Project, or any similar pump project in the Yazoo Backwater Area that would result in unacceptable adverse effects on fishery areas and wildlife.

EPA Region IV based its recommendation upon a conclusion that the proposed discharge of fill material into 43.6 acres of wetlands and other waters of the United States in connection with the construction of the pumping station and the subsequent secondary impacts, would result in unacceptable adverse effects on at least 67,000 acres of wetlands and other waters of the United States and their associated wildlife and fisheries resources. Additionally, EPA Region IV expressed concern that the proposed mitigation would not fully compensate for the potential impacts of the project, as identified in the FSEIS, and that the suggested environmental benefits associated with the project's reforestation component have not been substantiated. EPA Region IV also stated that the Corps did not evaluate the proposed project's adverse impacts on up to 24,000 acres of wetlands outside the FSEIS's wetland assessment area. EPA Region IV also expressed its belief that there are likely to be less environmentally damaging practicable alternatives available to achieve the improved flood protection goals of the proposed Yazoo Backwater Area Project.

The U.S. Fish and Wildlife Service (FWS), in its comments on the Proposed and Recommended Determinations, concurred with EPA Region IV's conclusion that the proposed project would result in extensive and unacceptable adverse effects on wildlife and fishery areas. FWS also highlighted its concerns that the proposed project would significantly degrade the wildlife habitat provided by its four National Wildlife Refuges located within the Yazoo Backwater Area—reducing the capability of these refuges to achieve the purpose and intent for which they were Congressionally established.

EPA prepared the Final Determination based on an evaluation of EPA Region IV's Recommended Determination, and review and consideration of the administrative record, including information in the Corps' 2007 FSEIS, public comments received in writing and at the public hearing, and submissions by other federal and state agencies. In addition, the Final Determination reflects the careful

review and full consideration of written information that was subsequently submitted and made part of the record, as well as information conveyed to EPA by the Department of the Army and the project sponsor during the EPA Headquarters section 404(c) consultation process.

EPA's Final Determination concludes that the discharge of dredged or fill material in connection with the construction of the proposed Yazoo Backwater Area Pumps Project (i.e., Plan 5 from the FSEIS), as well as the two alternative proposals offered by the Corps in February 2008 (i.e., Plan 6 from the FSEIS and Modified Plan 6) and subsequent operation of the 14,000 cfs pumping station would result in unacceptable adverse effects on fishery areas and wildlife. The administrative record developed in this case fully supports the conclusion that, as a result of alterations to the spatial extent, depth, frequency, and duration of inundation of wetlands within the project area, the proposed projects would significantly degrade the critical ecological functions provided by approximately 28,400 to 67,000 acres of wetlands (i.e., the range of wetland impacts as a result of Plan 5, Plan 6, and Modified Plan 6) in the Yazoo Backwater Area, including those functions that support wildlife and fisheries resources. Although not proposed to go forward, FSEIS Plans 3, 4, and 7, which also include a 14,000 cfs pumping station are expected to result in wetland impacts between approximately 28,400 and 118,400 acres (see FSEIS Main Report, Table 17, page 1–20). EPA has determined that each of these alternatives would also result in unacceptable adverse effects on fishery areas and wildlife. EPA does not believe that these adverse impacts can be adequately compensated for by the proposed mitigation, and are inconsistent with the requirements of the CWA. Further, these impacts should be viewed in the context of the significant cumulative losses across the Lower Mississippi River Alluvial Valley (LMRAV), which has already lost over 80 percent of its bottomland forested wetlands, and specifically in the Mississippi Delta where the proposed project would significantly degrade important bottomland forested wetlands.

Based on these findings, the Final Determination prohibits, pursuant to section 404(c) of the CWA, the specification of the subject wetlands and other waters of the United States as described in the FSEIS as a disposal site for the discharge of dredged or fill material for the purpose of construction

of FSEIS Plans 3 through 7, and Modified Plan 6. The adverse effects associated with the prohibited projects are the result of a combination of operational factors including the capacity of the pumping station and its associated pump-on elevations. While the Final Determination prohibits the construction of FSEIS Plans 3 through 7, and Modified Plan 6, the data supporting the Final Determination indicates that derivatives of the prohibited projects that involve only small modifications to the operational features or location of these proposals would also likely result in unacceptable adverse effects and would generate a similar level of concern and review by EPA.

EPA continues to support the goal of providing improved flood protection for the residents of the Mississippi Delta; however, it believes that this vital objective can be accomplished consistent with ensuring effective protection for the area's valuable natural resources. EPA is committed to participating in discussions with other federal and state agencies, and the public, concerning the best way to provide flood protection while protecting wetlands and other natural resources.

Dated: September 11, 2008.

**Benjamin H. Grumbles,**

*Assistant Administrator for Water.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8717-4; Docket ID No. EPA-HQ-ORD-2008-0547]

### Draft Problem Formulation for Human Health Risk Assessments of Pathogens in Land-Applied Biosolids

**AGENCY:** Environmental Protection Agency (U.S. EPA).

**ACTION:** Notice of Public Comment Period and External Peer-Review Workshop.

**SUMMARY:** The U.S. EPA is announcing the release of a pre-dissemination, external review draft titled, "Problem Formulation for Human Health Risk Assessments of Pathogens in Land-applied Biosolids" (EPA/600/R-08/035A), for both public comment and external peer review. The public comment period will span 45 days. Eastern Research Group (ERG), under contract with EPA, will convene an independent panel of experts and organize and conduct an external peer-

review workshop to review the draft document. Both the U.S. EPA and ERG invite the public to register to attend this workshop. Additional information regarding both submissions and registration is provided in the remainder of the document.

The public comment period and the external peer-review workshop are separate processes that provide opportunities for all interested parties to comment on the document. In addition to consideration by EPA, all public comments submitted in accordance with this notice will also be forwarded to the external peer-review panel for review prior to the workshop.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

**DATES:** The 45-day public comment period will begin September 19, 2008 and end November 3, 2008. Technical comments should be provided in writing and must be received by the U.S. EPA by November 3, 2008. Comments received after this date will only be considered if time permits and might not be included for discussion at the external peer-review workshop. The external peer-review workshop will be held on November 19, 2008, starting at 8:30 a.m. and adjourning by 5 p.m.

**ADDRESSES:** The external peer-review workshop will be held at U.S. EPA's Andrew W. Briedenbach Environmental Research Center (AWBERC), Rooms 120-126, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268. ERG is organizing, convening, and conducting the peer-review workshop. Registration to attend the external review workshop must be completed prior to November 12, 2008, via one of the following methods:

- Online via the Internet—<https://www2.ergweb.com/projects/conferences/peerreview/register-biosolids.htm>
- Telephone—781-674-7374 (registration line).
- Sending an e-mail to [meetings@erg.com](mailto:meetings@erg.com), subject line "Biosolid Peer Review." When making reservations to attend the external peer-review workshop, individuals must indicate whether they plan to provide brief oral comments to the external review panel. Space is limited, and reservations will be accepted on a first-come, first-served basis.

Electronic copies of the external review draft document and the U.S. EPA

Peer-Review Charge can be accessed at that National Center for Environmental Assessment (NCEA)'s homepage under the "Recent Additions" and the "Data and Publications" menus at <http://www.epa.gov/ncea>. Copies are not available from ERG.

Comments may be submitted electronically via <http://www.regulations.gov>, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION, CONTACT:** Questions about the public comment period can be directed to the OEI Docket Center (telephone—202-566-1752; Fax: 202-566-1753; or e-mail—[ORD.Docket@epa.gov](mailto:ORD.Docket@epa.gov)).

Questions about the external peer-review workshop can be directed to ERG, through Kate Schalk (telephone—781-674-7374, or e-mail—[Kate.Schalk@erg.com](mailto:Kate.Schalk@erg.com)).

Questions about the draft document can be directed to Michael Troyer, NCEA, U.S. EPA, 26 W. Martin Luther King Drive, Cincinnati, OH 45268, Telephone—513-569-7399; or e-mail—[troyer.michael@epa.gov](mailto:troyer.michael@epa.gov).

## SUPPLEMENTARY INFORMATION:

### I. Information About the Document

In January 2004, the U.S. EPA released a final Action Plan for setting new priorities for the biosolids program, which included the Agency's response to the National Research Council's 2002 report entitled, *Biosolids Applied to Land: Advancing Standards and Practice*. This current, external review draft document is an important step in the Agency's response because it aims to improve problem formulation and strengthen the analysis plans associated with the conduct of quantitative microbial risk assessments on land-applied biosolids.

### II. How To Submit Technical Comments to the Docket at [www.regulations.gov](http://www.regulations.gov)

Submit your comments, identified by Docket ID No. EPA-HQ-ORD 2008-0547, by one of the following methods:

- E-mail—[ORD.Docket@epa.gov](mailto:ORD.Docket@epa.gov);
- Fax—202-566-1753;
- Mail—Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; or
- Hand Delivery—The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The OEI Docket Center Public Reading Room is open from 8:30