

§ 209.155

with the marketing agency will develop appropriate reporting procedures in coordination with that agency.

[43 FR 8258, Mar. 1, 1978]

§ 209.155 Expenditure of Federal funds for work shoreward of harbor lines.

(a) Section 5 of the River and Harbor Act of July 13, 1892 (27 Stat. 111; 33 U.S.C. 628), prohibits the expenditure of money appropriated for the improvement of rivers and harbors for dredging inside of harbor lines duly established.

(b) It is not the policy of the Department to expend Federal funds for the removal of wrecks or other obstructions shoreward of established harbor lines.

§ 209.160 The California Debris Commission.

Section 1 of the Act of Congress of March 1, 1893 (27 Stat. 507; 33 U.S.C. 661), created the California Debris Commission, consisting of three officers of the Corps of Engineers, to regulate under the supervision of the Chief of Engineers and direction of the Secretary of the Army, hydraulic mining in the territory drained by the Sacramento and San Joaquin River systems, California. Under section 9 of the act (27 Stat. 508; 33 U.S.C. 669), the individual proprietor or proprietors, or in case of a corporation, its manager or agent appointed for that purpose, owning mining ground in this territory which it is desired to work by the hydraulic process, must file with the Commission a verified petition, setting forth such facts as will comply with law and the rules prescribed by the Commission. The law contains detailed instructions with regard to facts required to be shown by the petitioner and the procedure to be followed by the Commission in issuing an order directing the methods and specifying the manner in which operations shall proceed. Full information on law and procedure can be obtained from the Secretary, California Debris Commission, 650 Capitol Mall, Sacramento, California 95814.

§ 209.170 Violations of laws protecting navigable waters.

(a) [Reserved]

33 CFR Ch. II (7-1-11 Edition)

(b) *Injuries to Government works.* Section 14 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 408), makes it unlawful for any person or persons to take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, obstruct by fastening vessels thereto or otherwise, or in any manner whatever impair the usefulness of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States, or any piece of plant, floating or otherwise, used in the construction of such work under the control of the United States, in whole or in part, for the preservation and improvement of any of its navigable waters or to prevent floods, or as boundary marks, tide gauges, surveying stations, buoys, or other established marks, nor remove for ballast or other purposes any stone or other material composing such works. (The Secretary of the Army may, on the recommendation of the Chief of Engineers, grant permission for the temporary occupation or use of any of the aforementioned public works when in his judgment such occupation or use will not be injurious to the public interest).

(c) *Injurious deposits.* (1) Section 13 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 407), makes it unlawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft, or from the shore, wharf, manufacturing establishment, or mill, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water, or to deposit or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or

obstructed. Section 13 does not apply to the operations in connection with the improvement of navigable waters or construction of public works considered necessary and proper by the United States officers supervising such improvement or public work.

(2) An Act of Congress approved June 29, 1888 (25 Stat. 209; 33 U.S.C. 441-451), as amended on August 28, 1958 (72 Stat. 970-971; 33 U.S.C. 441-451b) forbids the placing, discharging, or depositing of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the tidal waters of the harbors of New York, Hampton Roads, and Baltimore or its adjacent or tributary waters, within the limits which shall be prescribed by the Supervisor of the Harbor. The provisions of this act are enforced by the Supervisor under the direction of the Secretary of the Army.

(d) *Penalties for violations.* (1) Section 12 of the River and Harbor Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 406), as amended, provides that every person and every corporation that shall violate any of the provisions of sections 9 and 10 shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine, imprisonment, or both, in the discretion of the court. The removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction of any district court exercising jurisdiction in any district in which such structures may exist, and proper proceedings to this end may be instituted under the direction of the Attorney General.

(2) Section 16 of the River and Harbor Act of March 3, 1899 (30 Stat. 1153; 33 U.S.C. 412), provides that every person and every corporation that shall violate, or that shall knowingly aid, abet, authorize or instigate a violation of the provisions of sections 13, 14 and 15, shall be guilty of a misdemeanor. On conviction thereof violators shall be punished by a fine, imprisonment, or both, in the discretion of the court. Any master, pilot, and engineer, or person or persons acting in such capacity, respectively, on board of any boat or

vessel who shall knowingly engage in towing any scow, boat, or vessel loaded with any material specified in section 13 to any point or place of deposit or discharge in any harbor or navigable water, elsewhere than within the limits defined and permitted by the Secretary of the Army, or who shall willfully injure or destroy any work of the United States contemplated in section 14, or who shall willfully obstruct the channel of any waterway in the manner contemplated in section 15, shall be deemed guilty of a violation of the Act. Upon conviction he shall be punished as provided in this section, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. Any boat, vessel, scow, raft, or other craft used or employed in violating any of the provisions of sections 13, 14, and 15 shall be liable for the pecuniary penalties specified in this section, and in addition for the amount of the damages done by said boat, vessel, scow, raft, or other craft. The latter sum shall be placed to the credit of the appropriation for the improvement of the harbor or waterway in which the damage occurred, and said boat, vessel, scow, raft, or other craft may be proceeded against summarily by way of libel in any district court of the United States having jurisdiction thereof.

(e) *Enforcement.* (1) Section 17 of the River and Harbor Act of March 3, 1899 (30 Stat. 1153; 33 U.S.C. 413) provides that the Department of Justice shall conduct the legal proceedings necessary to enforce the provisions of sections 9 to 16, inclusive, of the Act. It shall be the duty of district attorneys of the United States to prosecute vigorously all offenders against the same whenever requested to do so by the Secretary of the Army or by any of his designated representatives.

(2) Under the provisions of section 17, District Engineers and the United States collectors of customs and other revenue officers, have power and authority to swear out process and to arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by sections 9 to 16, inclusive, or who may violate any of the provisions of the same. No person shall

be arrested without process for any offense not committed in the presence of some one of the aforesaid officials. Whenever any arrest is made under the provisions of the Act, the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him. Such commissioner, judge, or court shall proceed as authorized by law in case of crimes against the United States.

(3) It is the duty of each District Engineer to take notice of any violations of the laws for the protection of the navigable waters and the works of improvement therein that may occur in his district and to take the necessary steps to secure enforcement of the law. Whenever any violation of any of these provisions of law comes to his attention he will investigate carefully the circumstances of the case and will determine the amount of the damage for which the parties committing the violation are responsible under section 16 of the River and Harbor Act of March 3, 1899. He will advise the responsible parties to remove the illegal structure or deposit or to repair the damage at their own expense within a time specified by him. When there is reasonable doubt as to legal liability or the facts do not appear to warrant legal action, the District Engineer will report the case to the Chief of Engineers for decision before communicating with the responsible parties. When the damage must be repaired within a reasonable time, if the responsible parties so request in writing and if, when considered advisable by the District Engineer to protect the interests of the United States, they furnish a satisfactory bond or other guaranty, he may cause the repairs to be made by employees of the United States and then call upon the responsible parties to pay over to him the cost of the damages when finally ascertained. Where the damage is not to be repaired within a reasonable time, the District Engineer will make final settlement with the responsible parties as promptly as possible by collecting the estimated amount of the damages. All sums so received will be deposited promptly to the credit of the Treasurer of the United States for re-credit to the appropriation affected and

will be accounted for in the District Engineer's money accounts by proper vouchers. With reference to the method of ascertaining the amount of the damages under section 16 of the Act, a distinction should be made between cases involving property that should be repaired and those involving property that should be abandoned. In the former cases the amount of the damages should be the total cost of repairs, less any salvage value and any enhanced value. In the latter cases, the amount of the damages should be the fair value of the property, less any salvage value. Whether or not there has been any enhanced value (*i.e.*, whether the fair value of the structure immediately after the repairs is greater than its fair value immediately before the damage occurred) is a matter to be determined from an actual survey of the structure and knowledge of its age and condition. Where maintenance has equalled depreciation there probably would be no enhanced value.

(4) If the parties deny their responsibility, or if they refuse or neglect to remove any unlawful structure or deposit or to repair the damages within the time specified by the District Engineer, the matter will be reported to the Chief of Engineers with such evidence as the District Engineer may be able to obtain and his recommended action under section 17 of the Act of March 3, 1899. In a situation requiring immediate action, the District Engineer may report the case directly to the U.S. attorney for the district. The Chief of Engineers will be advised of such action by a written report. Although the Corps of Engineers has certain police powers under this Act it has been the long standing policy to secure compliance with its provisions short of legal proceedings. Accordingly every effort will be made to accomplish corrective measures prior to initiation of action leading to such proceedings. As a general rule, while minor and unintentional or accidental violations of the provisions of the Act need not be reported to the Chief of Engineers, all willful or intentional violations and all cases in which the parties responsible refuse or neglect to remove the unlawful structure or deposit or to make

good the damages suffered should be reported promptly to the Chief of Engineers in accordance with the above. It is the policy not to recommend prosecution when the violation of law is trivial, apparently unpremeditated, and results in no material public injury. Each report recommending prosecution should be accompanied by a full statement of the case and copies of correspondence relating thereto.

(5) The procedure in cases involving injurious deposits is similar to that described for other violations of law except that as the damage caused thereby cannot be repaired readily there will be no reason for serving any notice on the parties responsible for the violations further than to bring to their attention the consequences thereof.

(6) Section 6 of the river and Harbor Act approved March 3, 1905 (33 Stat. 1148; 33 U.S.C. 417) provides that expenses incurred by the Corps of Engineers in all investigations, inspections, hearings, reports, service of notice, or other action incidental to examinations into alleged violations of laws for protection and preservation of navigable waters shall be payable from any funds which may be available for the improvement, maintenance, operation, or care of the waterways or harbors affected. If such funds are not available in sums judged by the Chief of Engineers to be adequate, they shall be payable from any funds available for examinations, surveys, and contingencies of rivers and harbors.

[33 FR 18670, Dec. 18, 1968, as amended at 36 FR 17855, Sept. 4, 1971; 51 FR 45765, Dec. 22, 1986; 53 FR 27512, July 21, 1988]

§ 209.180 Temporary closure of waterway to navigation.

(a) When an application is received for the temporary closure of a waterway for the construction of a structure or the performance of other work in the waterway, the District Engineer will assure himself of the necessity for the closure and arrange after informal communication with any important navigation interests concerned the time and duration of the closure which will enable the operations to be completed with the least interference with navigation. If there is no question as to the necessity and propriety of the clo-

sure, the District Engineer is authorized to inform the applicant as follows: "The Department of the Army will interpose no objection to the closure for a stated period beginning at a specified date: *Provided*, That prior thereto the applicant will notify navigation interests by an advertisement in the press or otherwise as the District Engineer may approve and on the understanding that the waiver of objection does not affect the liability of the applicant for any damages that may arise by reason of the closure." The letter to the applicant will be signed "By Authority of the Secretary of the Army" and distribution made as prescribed for permits.

(b) District Engineers will give careful consideration to the effect of any closure on through navigation. Should coordination with other districts be necessary the case will be forwarded to the Division Engineer for such coordination.

(c) Cases not falling within the authority above conferred will be forwarded to the Chief of Engineers with the recommendations of the Division and District Engineers.

§ 209.190 [Reserved]

§ 209.200 Regulations governing navigable waters.

(a) *Publication of regulations.* (1) Regulations prescribed by or under the direction of the Secretary of the Army to govern navigation and navigable waters, are contained in the Code of Federal Regulations, title 33, Navigation and Navigable Waters, Chapter II.

(2) District engineers (or division engineers if considered preferable by the latter to avoid duplication in cases where the regulations involved apply to more than one district) will distribute copies of departmental regulations to all known interested parties as soon as their publication has been noted in the FEDERAL REGISTER. In the case of regulations applicable to more than one division, distribution will be handled as agreed upon by the division engineers concerned. Under the Administrative Procedure Act (5 U.S.C. 551-553), publication in the FEDERAL REGISTER shall be not less than 30 days prior to the effective date except as