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(Fox River, Wis.)—SPEWR), 11 F.R. 65451

(17) *Pleasure boats.* Pleasure boats operated by power other than oars or sails may pass through locks in accordance with these regulations only between the hours of 6:00 a. m. and 10:00 p. m. Not more than one lockage each way through the same lock will be given any such boat in 24 hours.

(18) *Closed periods in Upper Fox River.* No passages through the locks in the Upper Fox River, between the mouth of the Wolf River and the Wisconsin River, will be given on Tuesday or Wednesday of each week. [Subparagraphs (17) and (18) amended, Dec. 26, 1945 (CE 800.215 (Fox River, Wis.)—SPEWR), 11 F.R. 638]

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AUTHORITY: §§ 209.10 to 209.520, inclusive, issued under Pub. Law 404, 79th Cong., 60 Stat. 237; 5 U.S.C., Sup., 1001 et seq.

SOURCE: §§ 209.10 to 209.520, inclusive, contained in Rules Relating to Administrative Procedure, Acting Adjutant General, effective Sept. 11, 1946, 11 F.R. 177A-805.

ORGANIZATION

§ 209.10 *Civil functions of the War Department.* In addition to its military duties, the War Department, acting through the Corps of Engineers performs extensive civil functions which include the execution, operation, maintenance, and control of river and harbor and flood control improvements authorized by law, and the administration of laws for the protection and preservation of navigation and navigable waters of the United States. Later paragraphs will describe the organization of the Corps, in Washington and in the field, and explain its jurisdiction and methods of operation.

§ 209.20 *The Corps of Engineers—(a) Central organization.* The civil functions of the War Department are carried out by the Corps of Engineers. The Chief of Engineers commands the Corps of Engineers and is responsible to the Secretary of War. On his staff in the Office of the Chief of Engineers, Washington 25, D. C., the Director of Civil Works is directly responsible for the civil functions described herein.

(b) *Field organization.* For administrative convenience and to permit decentralization of operations, the country is divided into thirteen "divisions" which are subdivided into fifty "districts". Each division is in charge of a division engineer, who supervises activities of the district engineers, who in turn are in charge of the district offices. All division and district engineers are commissioned army officers. The boundaries of districts and divisions are governed by the limits of the watersheds of principal rivers.

§ 209.30 *The Supervisor of New York Harbor.* The laws enacted for the preservation of the tidal waters of New York Harbor, its adjacent or tributary waters, and the waters of Long Island Sound are administered by the supervisor of New York Harbor, a line officer of the Navy, under the direction of the Secretary of War. The supervisor is charged under the laws with the duties of preventing any obstructive or injurious deposits in the waters under his jurisdiction and the prevention of any interference with safe navigation of the channels of the harbor by deep-draft vessels.

§ 209.40 *The California Debris Commission—(a) Organization and jurisdiction.* This Commission, consisting of three officers of the Corps of Engineers appointed by the President with the consent of the Senate, was created by the act of Congress approved March 1, 1893 (27 Stat. 507; 33 U.S.C. 661), was organized in San Francisco, Calif., on June 8, 1893, and has jurisdiction and duties extending over the drainage area of the Sacramento and San Joaquin Rivers, comprising the great central valley of California and extending from the crest of the Sierra Nevada on the east to that of the Coast Range on the west and from Mount Shasta and the Pit River Basin on the north to the Tehachapi Mountains on the south. These rivers empty into the head of Suisun Bay, ultimately discharging into the Pacific Ocean through the connecting bays and straits and the Golden Gate.

(b) *Duties.* The duties prescribed by the act creating the Commission include the regulation of hydraulic mining in such a way as to permit its resumption and continuance under such restrictions as to prevent the resulting debris from being carried into navigable waters or otherwise causing damage.

§ 209.50 *Jurisdiction of the Corps of Engineers.* These are the principal laws for the protection and preservation of navigation and navigable waters of the United States, administered by the Corps of Engineers:

(a) *Bridges and dams across waterways.* Location and plans of bridges, dams, dikes, and causeways across navigable waters must be approved by the Chief of Engineers and Secretary of War prior to construction. Section 9 of the River and Harbor Act of March 3, 1899 (30 Stat. 1151; 33 U. S. C. 401). General Bridge Act of March 23, 1906 (34 Stat. 84; 33 U. S. C. 491). General Bridge Act of 1946 (Title V, Pub. Law 601, 79th Cong., 60 Stat. 847).

(b) *Piers, dredging, etc., in waterways.* Plans for wharves, piers, dolphins, booms, weirs, breakwaters, bulkheads, jetties, or other structures, and excavation or fill in navigable waters must be recommended by the Chief of Engineers and approved by the Secretary of War. Section 10 of the River and Harbor Act of March 3, 1899 (30 Stat. 1151; 33 U. S. C. 403).

(c) *Harbor lines.* Authorizes the Secretary of War to establish harbor lines, beyond which no piers, wharves, bulkheads, or other works may be extended. Section 11 of the River and Harbor Act of March 3, 1899 (30 Stat. 1151; 33 U. S. C. 404).

(d) *Pollution control.* (1) Deposit of refuse matter in navigable waters forbidden. Section 13 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152; 33 U. S. C. 407).

(2) Deposits in the tidal waters of the harbor of New York, adjacent or tributary waters, or Long Island Sound forbidden. Act of June 29, 1888 (25 Stat. 209), as amended by section 3 of the River and Harbor Act of August 18, 1894 (28 Stat. 360), by section 8 of the act of May 28, 1908 (35 Stat. 426), and by the act of February 16, 1909 (35 Stat. 623) (33 U. S. C. 441-451).

(3) Discharge of oil in coastal navigable waters from vessels forbidden. Oil Pollution Act of 1924 (43 Stat. 604; 33 U. S. C. 431).

(e) *Use of or injury to Government works.* Permission for the temporary occupation or use of public works, such as sea wall, jetty, levee, or other work built for improvement of navigable waters or control of floods must be obtained from the Secretary of War; injury to such work is unlawful. Section 14 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152; 33 U. S. C. 408).

(f) *Obstructive bridges.* (1) Bridges found to be unreasonable obstructions to navigation may be ordered altered by the Secretary of War at expense of bridge owner. Section 18 of the River and Harbor Act of March 3, 1899 (30 Stat. 1153; 33 U. S. C. 502).

(2) Bridges used and operated for the purpose of carrying railroad traffic, or both railroad and highway traffic, may be ordered altered by the Secretary of War and costs apportioned between the United States and the bridge owner. Act of June 21, 1940 (54 Stat. 497; 33 U. S. C. 511-523).

(g) *Removal of wrecks.* (1) Sunken craft or similar obstruction endangering navigation subject to removal at discretion of the Secretary of War without liability, if abandoned or in existence for longer than thirty days. Section 19 of the River and Harbor Act of March 3, 1899 (30 Stat. 1154; 33 U. S. C. 414).

(2) In emergency, Secretary of War may take immediate possession of and remove wrecks. Section 20 of the River and Harbor Act of March 3, 1899 (30 Stat. 1154; 33 U. S. C. 415).

(3) Owners of sunken vessels must mark the wreck until removed or abandoned. Section 15 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152; 33 U. S. C. 409).

(h) *Navigation regulations.* It is the duty of the Secretary of War to prescribe regulations for the use, administration, and navigation of navigable waters required for the protection of life and property, or of operations of the United States in channel improvement, covering all matters not specifically delegated by law to some other executive department. Section 4 of the River and Harbor Act of August 18, 1894 (28 Stat. 362), as amended by Sections 6 and 11 of the act of June 13, 1902 (32 Stat. 374), and by section 7 of the act of August 8, 1917 (40 Stat. 266; 33 U. S. C. 1).

(i) *Danger zone regulations.* The Secretary of War is authorized to prescribe regulations for the use and navigation of waters endangered or likely to be endangered by Coast Artillery fire, or by the proving operations of Government ordnance proving grounds, and of waters occupied by submarine mines, mine fields, submarine cables, or other material and accessories pertaining to seacoast fortifications, or by any plant or facility engaged in the execution of any public project of river and harbor improvement. Sections 1-4 of Chapter XIX of the Army Appropriation Act of July 9, 1918 (40 Stat. 892; 33 U. S. C. 3).

(j) *Regulations for floating of logs and rafts.* The Secretary of War is authorized to prescribe rules and regulations to govern the floating of loose timber and logs, and sack rafts of timber and logs, and other methods of navigation on waterways whereon the floating of loose timber and logs and sack rafts is the principal method of navigation. Act of May 9, 1900 (31 Stat. 172; 33 U. S. C. 410).

(k) *Dumping regulations.* The Secretary of War is authorized to prescribe regulations to govern the transportation and dumping into any navigable water, or waters adjacent thereto, of refuse materials. Section 4 of the act of March 3, 1905 (33 Stat. 1147; 33 U. S. C. 419).

(1) *Anchorage regulations.* The Secretary of War is authorized to define and establish anchorage grounds and to adopt rules and regulations in relation thereto. Section 7 of the River and Harbor Act of March 4, 1915 (38 Stat. 1053; 33 U. S. C. 471).

(m) *Drawbridge regulations.* It is the duty of bridge owners to operate drawbridges under such rules and regulations as the Secretary of War deems necessary for the passage of water craft. Section 5 of the act of August 18, 1894 (28 Stat. 362), as amended by section 8 of the act of June 13, 1902 (32 Stat. 374) (33 U. S. C. 499). Section 4 of the Bridge Act of March 23, 1906 (34 Stat. 85; 33 U. S. C. 494).

(n) *Bridge tolls.* Rates of toll for transit over certain toll bridges are subject to regulation by the Secretary of War. Section 4 of the Bridge Act of March 23, 1906 (34 Stat. 85; 33 U. S. C. 494). Section 17 of the act of June 10, 1930 (46 Stat. 552; 33 U. S. C. 498a). Section 1 of the act of June 27, 1930 (46 Stat. 821; 33 U. S. C. 498b). Act of August 21, 1935 (49 Stat. 670; 33 U. S. C. 503-507).

(o) *Flood control regulations.* (1) Section 3 of the Flood Control Act of June 22, 1936 (49 Stat. 1571; 33 U. S. C. 701c), as amended and supplemented, authorizes the Secretary of War to prescribe regulations to govern the maintenance and operation of completed flood control works by local interests.

(2) Section 7 of the Flood Control Act December 22, 1944 (58 Stat. 890; 33 U.S.C., Sup., 709), authorizes the Secretary of War to prescribe regulations for the use of storage allocated for flood control or navigation at reservoirs constructed wholly or in part with Federal funds provided on the basis of such purposes.

(3) Section 4 of the Flood Control Act December 22, 1944, as amended by Section 4 of the Flood Control Act of 1946, approved July 24, 1946 (Public Law 526; 79th Cong., 60 Stat. 641), authorizes the Secretary of War to prescribe rules and regulations to govern the public use of reservoir areas for recreational purposes.

§ 209.60 *Delegations of authority.* In the interests of efficient administration authority has been delegated by the Secretary of War and by the Chief of En-

gineers to subordinates to act in certain specific cases as described below.

(a) *The Chief of Engineers*—(1) *Piers, dredging, etc., in waterways.* The Secretary of War has authorized the issuance of War Department permits by local officers of the Engineer Department, at the option of the Chief of Engineers, for work and structures in or over navigable waters in cases which are entirely routine and which involve no difference of opinion on the part of engineer authorities, nor doubt as to the law, facts, or regulations, nor any opposition or other considerations which should be decided by higher authority.

A case is held to be entirely routine if the circumstances are such that approval of the plans would unquestionably be given were the matter presented to the Chief of Engineers and the Secretary of War. The mere fact that proposed work, such as dredging, for example, is extensive in scope does not necessarily remove it from the class of routine cases if no possible objection to the work can be foreseen.

Under the provisions of section 11 of the Act of March 3, 1899, the Secretary of War has authorized the Chief of Engineers to issue permits for works of a temporary or relatively non-obstructive character channelward of harbor lines approved by the Secretary of War.

(2) *Removal of wrecks.* The authority vested in the Secretary of War under sections 19 and 20 of the act of March 3, 1899, concerning the removal of wrecks, has been delegated to the Chief of Engineers and also to the District Engineer in the case of emergency action under section 20.

(3) *Use of Government works.* The authority of the Secretary of War to grant permission for the temporary occupation or use of public works under section 14 of the act of March 3, 1899 has been delegated to the Chief of Engineers.

(4) *Supervisor of New York Harbor.* The powers and duties of the Secretary of War with respect to the Supervisor of New York Harbor under the act of June 29, 1888 are exercised through the Chief of Engineers.

(5) *Bridge repairs.* The Secretary of War has authorized offices of the Engineer Department to interpose no objection to the closing of bridges for limited periods to permit repairs. Periods in

excess of 15 days must be acted upon by the Chief of Engineers; Division and District Engineers may act on lesser periods.

(b) *Division engineers*—(1) *Piers, dredging, etc., in waterways.* The Chief of Engineers has authorized Division Engineers to issue direct from their own offices, in the name of the Secretary of War, letters of authorization for dumping, and for the construction of wharves, piers, revetments and other forms of shore protection, and oil well and appurtenant structures in navigable waters of the United States within the limits of their divisions provided the work is clearly such as will not interfere with present or prospective commerce nor injuriously affect the regimen of the waterway nor extend channelward of the limits that may reasonably be expected to be adopted for harbor lines. Subject to the above restrictions they may authorize dumping and minor and readily removable structures such as fenders, false work for the construction of legally approved bridges, booms, dolphins, and piles, channelward of established harbor lines provided that in tidal waters the amount of tidewater displaced is of minor importance.

Division Engineers are authorized to include in permits issued under the above authority any connected work or structures for which District Engineers are herein authorized to issue permits separately.

Division Engineers are not empowered to authorize wharves, piers, revetments, or other forms of shore protection of permanent or semi-permanent character extending beyond the limitations fixed by established harbor lines, nor fishing structures, nor any structures connected with a bridge if the plans of the bridge have not been approved by the Chief of Engineers and the Secretary of War, nor structures at any bridge permanently altering the clear width of channel or other openings from those shown on the plans approved by the Chief of Engineers and the Secretary of War.

Division and District Engineers are authorized to approve plans for structures and work, of the class they are authorized to issue permits, when the application for approval is submitted after the commencement or completion

of the structures or work, subject to certain conditions.

Division Engineers are authorized to revive and extend for successive periods not exceeding three years each the life of permits which have been issued by District Engineers of their division or by the Division Engineer, whether issued by general or special authority; provided that public notice is issued, that evidence satisfactory to the Division Engineer is furnished of the bona fide intention of the permittee to complete the work within a reasonable time, and that there has been no change in the attendant circumstances since the issuance of the permit sufficient to warrant the forwarding of the case to the Chief of Engineers for consideration.

Division and District Engineers are empowered to approve revised plans for works under permits issued by them.

(2) *Bridge repairs.* Division Engineers are authorized to interpose no objection to the closing of bridges to permit repairs for periods exceeding 48 hours but not exceeding 15 days.

(c) *District Engineers*—(1) *Piers, dredging, etc., in waterways.* District Engineers are authorized to issue direct from their own offices, in the name of the Secretary of War, letters of authorization for the following classes of work and structures in or over navigable waters of the United States within the limits of the district under their charge:

(i) *Dredging.*

(ii) *Dredging and dumping combined,* when possible interference or obstruction to navigation by the character and amount of material to be dumped is so small as to be negligible.

(iii) *Dumping of material not easily transported by currents* when the least low-water depth over the deposited material will be not less than 50 feet.

(iv) *Minor and readily removable structures* such as pipes, wires, cables, temporary false work for the construction of legally approved bridges, fenders, booms, dolphins, and piles channelward of Federal harbor lines or where no harbor lines exist, when the possible obstruction to navigation is so small as to be negligible.

This authorization shall not be construed to apply to submarine cables for which, under the provisions of act of

Congress approved May 27, 1921, "Relating to the landing and operation of submarine cables in the United States," Presidential licenses are required (42 Stat. 8; 47 U. S. C. 34-39). Also this authorization shall not be construed as applying to transmission lines which form a part of a waterpower "project" as defined in section 3 (11) of the Federal Power Act (41 Stat. 1063; 16 U.S.C. 796).

District Engineers are not empowered under this paragraph to authorize fishing structures, nor any structures connected with a bridge if the plans of the bridge have not been approved by the Chief of Engineers and the Secretary of War, nor structures at any bridge altering the clear width of channel or other openings from those shown on the plans approved by the Chief of Engineers and the Secretary of War.

(2) *Bridge repairs.* District Engineers are authorized to interpose no objection to the closing of bridges to permit repairs for periods not exceeding 48 hours.

(3) *Removal of wrecks.* The Secretary of War has delegated authority to District Engineers under section 20 of the River and Harbor Act of March 3, 1899 (30 Stat. 1154; 33 U. S. C. 415), to take immediate action in the removal of sunken vessels under circumstances of emergency.

§ 209.70 · Office addresses.

Office of the Chief of Engineers; War Department Building, Twenty-first and Virginia Avenue NW., Washington 25, D. C., Republic 6700.

Great Lakes Division: 20 North Wacker Drive, Chicago 6, Ill., Randolph 1311. Buffalo District: 960 Ellicott Square Building, Buffalo 3, N. Y., Cleveland 8157. Chicago District: 520 Merchandise Mart, 222 North Bank Drive, Chicago 54, Ill., Delaware 7620. Detroit District: Postoffice Box 2859, 800 Guardian Building, 500 Griswold Street, Detroit 31, Mich., Randolph 2721. Duluth District: Postoffice Box 248, Engineer Building, Canal Park, Duluth 1, Minn., Melrose 1451. Milwaukee District: Postoffice Box 744, 428 Federal Building, Milwaukee 1, Wis., Broadway 8600.

Lower Mississippi Valley Division: Postoffice Box 80, Mississippi River Commission Building, Vicksburg, Miss., Vicksburg 3200. Memphis District: Postoffice Box 97, Memphis 1, Tenn., Memphis 5-4671. New Orleans District: Foot of Prytania Street, New Orleans 9, La., Walnut 7580. Vicksburg District: Postoffice Box 60, United States Postoffice and Courthouse Building, Vicksburg, Miss., long distance 9997, local 1850.

Middle Atlantic Division: 907 Calvert Building, 101 East Fayette Street, Baltimore 2, Md., Plaza 8060. Baltimore District: 8th floor, Standard Oil Building, Baltimore 2, Md., Vernon 2600. Norfolk District: Postoffice Box 119, Fort Norfolk, Norfolk 1, Va., Norfolk 51411. Washington District: First and Douglas Streets NW., Washington 25, D. C., Hobart 8000.

Missouri River Division: Farm Credit Building, 206 South Nineteenth Street, Omaha 2, Nebr., Jackson 8308. Denver District: 909 Seventeenth Street, Denver, Colo., Tabor 5231. Fort Peck District: Administration Building, Fort Peck, Mont., Fort Peck 92. Garrison District: Fort Lincoln, Postoffice Box 300, Bismarck, N. Dak., Bismarck 1331. Kansas City District: Room 601, Davidson Building, 10 East Seventeenth Street, Kansas City 8, Mo., Harrison 4175. Omaha District: 1709 Jackson Street, Omaha 2, Nebr., Jackson 8308.

New England Division: 75 Federal Street, Boston 10, Mass., Hubbard 8100. Boston District: Park Square Building, 31 St. James Avenue, Boston 16, Mass., Hubbard 7400. Providence District: 819 Industrial Trust Building, 111 Westminister Street, Providence 2, R. I., Gaspee 5124.

North Atlantic Division: 111 East Sixteenth Street, New York 7, N. Y., Barclay 7-1616. New York District: Room 601, 120 Wall Street, New York 5, N. Y., Whitehall 4-5500. Philadelphia District: Post Office Box 8629, 1400 Penn Mutual Building, Sixth and Walnut Street, Philadelphia 1, Pa., Walnut 5270. Syracuse District: Chimes Building, Syracuse 2, N. Y., Syracuse 6-2161.

North Pacific Division: 500 Pittcock Block, Portland 5, Oreg., Broadway 0621. Portland District: 628 Pittcock Block SW., Tenth Avenue and Washington Street, Portland 5, Oreg., Broadway 0621. Seattle District: 1400 Textile Tower Building, Seventh and Olive Way, Seattle 1, Wash., Main 0861.

Ohio River Division: Post Office Box 1799, 243 North High Street, Columbus 16, Ohio, Main 6481. Cincinnati District: Post Office Box 1234, 526 United States Post Office and Courthouse Building, Cincinnati 1, Ohio, Cherry 5820. Huntington District: Post Office Box 2127, 1301 Chesapeake and Ohio Building, Huntington, W. Va., Huntington 8524. Louisville District: Post Office Box 59, 830 West Broadway, Louisville 3, Ky., Wabash 7571. Nashville District: Post Office Box 1070, 306 United States Courthouse, Seventh Avenue and Broadway, Nashville, Tenn., Nashville 5-4601. Pittsburgh District: 925 New Federal Building, Pittsburgh 19, Pa., Grant 0800.

South Atlantic Division: Post Office Box 4114, 50 Whitehall Street, Atlanta 2, Ga., Cypress 3661. Charleston District: Post Office Box 905, 33 Customhouse, Charleston 1, S. C., Charleston 3-5341. Jacksonville District: Post Office Box 4970, 575 Riverside Avenue, Jacksonville, Fla., Jacksonville 7-8671. Mobile District: Post Office Box

1169, 2301 Grant Street, Mobile 7, Ala., Mobile 6-4421. Savannah District: Second floor, Post Office Building, Savannah, Ga., Georgia 3-8822. Wilmington District: 308 Customhouse, Wilmington, N. C., Wilmington 2-0621.

South Pacific Division: 351 California Street, San Francisco, Calif., Garfield 6900. Los Angeles District: Post Office Box 5180, Metro Station, 751 South Figueroa Street., Los Angeles 55, Calif., Tucker 1311. Sacramento District: Post Office Box 1739, 1209 Eighth Street, Sacramento 8, Calif., Sacramento 3-8092. San Francisco District: Post Office Box 3050—Rincon Annex, 74 New Montgomery Street, San Francisco 19, Calif., Yukon 0667.

Southwestern Division: Santa Fe Building, 1114 Commerce Street, Dallas 2, Tex., Dallas LD 930. Albuquerque District: Post Office Box 1538, Fourth and Gold Avenue, Albuquerque, N. Mex., Albuquerque 2-5241. Galveston District: Post Office Box 1229, 606 Santa Fe Building, Galveston, Tex., Galveston 2-8621. Little Rock District: 300 Broadway, Little Rock, Ark., Little Rock 23431. San Antonio District: Post Office Box 155, Wilson and Division, Fort Sam Houston, Tex., Cathedral 8411. Tulsa District: Post Office Box 61, 416 Wright Building, Tulsa, Okla., Tulsa 2-9161.

Upper Mississippi Valley Division: Post Office Drawer D-18—Central Station, 1124 Syndicate Trust Building, 915 Olive Street, St. Louis 1, Mo., Central 4940. Rock Island District: Clock Tower Building, Rock Island, Ill., Rock Island 6440. St. Louis District: Post Office Drawer T—Plaza Station, 816 United States Courthouse and Customhouse, 1114 Market Street, St. Louis 1, Mo., Garfield 0360. St. Paul District: 1217 United States Post Office and Customhouse, 180 South Kellogg Road, St. Paul, Minn., Cedar 1813.

Western Ocean Division: Sausalito, Calif., Sausalito 1300. Honolulu District (Post Office Box 2240); Fort Armsstrong, Honolulu, T. H.

§ 209.80 *Inquiries and applications.* The public may secure full information on any matter coming under the jurisdiction of the Corps of Engineers or make submittals or requests by addressing the nearest District Engineer at the address listed above.

PRACTICE AND PROCEDURE

§ 209.110 *Purpose.* The following paragraphs state the general course and method by which the functions of the Corps of Engineers are channeled and determined, including the nature and requirements of all procedures as well as forms and instructions. They are intended to show what the department requires and how the Department acts in a given type of case.

§ 209.120 *Bridges and dams across waterways—*(a) *How to obtain approval of plans.* To obtain the approval of the Chief of Engineers and the Secretary of War the builder of a bridge must file an application on a prescribed form, copies of which may be obtained from the District Engineer. The application must show the name and address of the applicant; the waterway and location of the bridge; citation to the act of Congress or the State legislature authorizing the bridge; and be accompanied by a map of the location and plans of the bridge showing these features which affect navigation; papers to establish the identity of the supplicant.

(1) *Prior authority necessary.* A bridge cannot lawfully be constructed across any navigable waterway of the United States until legislative authority has been obtained and the plans have been approved by the Chief of Engineers and the Secretary of War. (See Section 9, River and Harbor Act of March 3, 1899 (30 Stat. 1151; 33 U. S. C. 401), General Bridge Act of March 23, 1906 (34 Stat. 84; 33 U. S. C. 491), and General Bridge Act of 1946 (Pub. Law 601, 79th Cong., 60 Stat. 641).)

(2) *Legislation required.* The legislative authority must be obtained from Congress if the bridge crosses an international waterway. If the navigable portions of the waterway are not within the limits of a single State, the General Bridge Act of 1946 grants authority of Congress and no special act is necessary. If the navigable portions of the waterway are within the limits of a single State, State authority is necessary.

(3) *Form.* The application for the approval of plans should be made on Form 92b. (See also Information Circular, Form 96a, copies of which may be obtained from the District Engineer.)

(4) *Signature.* In case of signature by an agent or by an official of a corporation, a duly authenticated copy of the authority for the action must accompany the application.

(5) *Identification to the Department.* If the applicant is a corporation, it must furnish for the information of the Department copies of the following papers, all properly authenticated: The charter or articles of incorporation; The minutes of organization; Extract from minutes showing the names of existing officers of the corporation.

(6) *Identification in cases of application by State or county officers.* Where State laws vest in State or county officers, such as boards of supervisors and county courts, the power to authorize the construction of bridges, they must furnish with their application certified extracts from their proceedings showing their action authorizing the proposed structure.

(7) *Plans.* One set of the plans furnished should be on tracing line. The location of the work and the essential features covered by the application will be outlined in red.

(8) *Size of sheets.* The drawings will be on sheets 8 by 10½ inches in size. The dimensions specified are to be measured in all cases from edge to edge of the sheet and include a margin of 1 inch along one of the 8-inch sides for binding purposes. As few sheets will be used as necessary to show clearly what is proposed.

(9) *Special instructions.* The scale will be shown graphically. The north and south line will be indicated by a meridian arrow. Soundings and elevations will be shown in feet and referred to the established Government datum plane at the locality.

The direction of currents will be indicated by an arrow, and the strength of currents, both ebb and flow, or low water and high water, will be shown close to the proposed location of the bridge, and at both ends of the waterway shown on the map of location.

The plans will show in figures the least clear height of the lowest part of the superstructure over navigation openings, with reference to the planes of mean high water and mean low water if the bridge is to cross tidal waters; if the waters are nontidal, to the planes of extreme high water, ordinary boating water, and low water; and, if records of river heights are available, to the plane above which flood waters have not remained at any time longer than five consecutive days.

If harbor lines have been established at the site of the bridge, their position will be shown on the plans. Each drawing will have a simple title, preferably in the lower right-hand corner.

(10) *Structural details.* Only those should be shown which are needed to illustrate the effect of the proposed structure on navigation. If the bridge is to be equipped with a draw, the latter will

be shown in two positions: closed and open.

(11) *To whom application should be presented.* The application and the papers and plans accompanying it should be submitted to the U. S. District Engineer in charge of the waterway.

(b) *Action on application.* When an application is received for approval of plans for a bridge, the district engineer will verify the authority for construction of the bridge, review the application and plans as to sufficiency, ascertain the views of local authorities and other interested parties, and submit a report transmitting the application to the Chief of Engineers for departmental action, all as outlined in the following subparagraphs.

The procedure prescribed above will also be following for applications involving modification or replacement of existing bridges over navigable waters.

(1) *Verification of construction authorization.* District engineers will require applicants to establish their identity to insure that the applicant represents the individual, agency or corporation to whom Congress or the State has granted the authority for bridge construction. If the applicant is a corporation, there will be required a copy of its charter or articles of incorporation and of the minutes of organization; also extracts from the corporation minutes showing the names of the present officers and the acceptance by the corporation of the provisions of the act of Congress, all properly authenticated.

(2) *Preliminary review of application and plans.* If upon preliminary examination of the application the district engineer feels that it must inevitably be denied (as might be the case, for example, if a bridge with too little clearance were proposed to be built), he at once notifies the applicant that the desired permit cannot be granted and states his reasons. If, however, the applicant desires that his application receive the further consideration of the Chief of Engineers and the Secretary, and in all other cases in which the application is not defective on its face, the district engineer is required to give public notice that the application has been filed and proceed with the case.

(3) *Notice and hearing.* Public hearings are required unless the report of the

district engineer convincingly demonstrates that from the circumstances no proper objection to the structure can exist. In any event a public notice must be issued to all interested parties.

The notice is a brief formal statement identifying the application, to which the hearing relates, indicates the place and time of hearing, customarily 30 days after notice) and indicates the particular issues to which the hearing will pertain. Notice is communicated to the applicant by letter and mailed to State, county, and municipal authorities and all other known interested parties. It is also posted at the post office nearest the site and public places in the vicinity.

Hearings are public and conducted in an informal manner. The district engineer, or another officer attached to his staff, presides. At the opening of the hearing the presiding officer announces (i) the purpose of the hearing, (ii) that the Department desires all interested parties to make full and frank statements of their views, (iii) that the Department will consider all evidence and arguments presented, and (iv) that later *ex parte* evidence and arguments are not desired unless the matter is new, material, and could not be presented at the hearing. The statutes bearing on the subject matter of the hearing and any other pertinent documents are read aloud and the discussion is then opened. The submission of written statements is invited and encouraged. Anyone desiring to do so may speak. Statements, written or oral, are not under oath, and cross-examination is not usually permitted. No fixed order has been established for the presentation of evidence or argument although proponents are generally heard first, followed by opponents with full opportunity afforded for rebuttals.

(4) *District engineer's report.* When the minutes of the hearing have been transcribed and the district engineer's study has been completed, the district engineer prepares his report, which is a detailed statement of his findings, conclusions, and recommendations based on information obtained at the hearing and knowledge derived from his experience and office data. His report must include: (i) Comparison of proposed bridge with existing bridges over the waterway, (ii) attitude of local authorities, (iii) summary of objections offered at public hearing, with his comments

thereon, (iv) nature and extent of navigation, (v) probable effect on navigation, present and prospective, with reasons, on harbor lines and on flood heights and drift, (vi) his remarks and recommendations with any recommended special conditions to be attached to the instrument if approved, (vii) a list of the parties notified, the record of hearing and all other pertinent papers to complete the record.

The district engineer's report must include description of the commerce on the waterway past the site of the proposed bridge, the number and type of vessels, the number of vessel trips, and the principal method of handling traffic, whether in single vessels or in tows. If tows are used, the manner in which they are made up shall be stated, whether in fleets or in single vessels arranged tandem. The probable maximum length and breadth of tows during the lifetime of the bridge shall be given and the manner in which they are likely to pass the navigation opening, whether directly ahead on a line approximately parallel to the channel axis, or by flanking movement. If flanking movement is likely, the report shall also give the width of waterway required for the passage of the maximum-sized tow in the most oblique position it will probably have with respect to the channel axis.

The district engineer must state specifically whether he recommends approval of the plans. If he finds them objectionable, a detailed statement of his objections must be submitted. If the clearances which he recommends are smaller than the corresponding clearances on that portion of the waterway bearing the larger or more important traffic between the proposed location and principal connecting waterways, he must state the names and locations of the bridges in which the larger clearances are found and give in detail the reasons for his recommendations. If he considers the plans do not afford reasonable passage of flood waters in and outside of the natural stream bed, the applicant will be so advised. If the applicant declines to submit plans with adequate water passages, the case is referred to the Chief of Engineers with full information and appropriate recommendation.

If approval is recommended, a draft must be furnished of all conditions to

which the instrument should be subject with the exception that conditions found in the standard bridge-approval forms (ED 92c and ED 92d), may be designated by a reference to the proper form number and need not be written out in full.

(5) *Division Engineer's action.* The district engineer's report is attached to the application and transmitted to the division engineer with all other documents, including the minutes of the hearing. The division engineer considers the entire file and, if he believes the report to be adequate and he concurs in its recommendations, he indicates his approval by adding an indorsement, and by forwarding the whole file to the Department.

In case the division engineer disagrees with the district engineer, or believes that additional material should be obtained, he may return the file to the district engineer with appropriate instructions, which are added as an indorsement. The district engineer adds his indorsement showing compliance with the instructions and returns the file to the division engineer.

Regardless of whether the district engineer and he have agreed, the division engineer states his recommendations, supported by reasons when necessary, in an indorsement and forwards the entire file.

(6) *Final action.* The file is received in the office of the Director of Civil Works where it is again considered by engineers and, if necessary, by one or more attorneys. When the Director disagrees with the reporting officers as to a matter of substance, he may return the case for reconsideration, or, when he disagrees as to a matter of procedure, he may return the case with instructions to correct the procedural defect (such as the failure to give notice, or to hold a public hearing). When the application is favorably considered by the Director he prepares a draft of indorsement and instrument of approval for the signature of the Chief of Engineers. Approval of the Corps of Engineers is signified by his signature to the indorsement and instrument and the file is forwarded to the Secretary of War.

When favorable action is taken on an application, the instrument of approval, signed by the Secretary and the Chief of Engineers, is transmitted to the dis-

trict engineer to be relayed to the applicant. When unfavorable action is taken, the reasons for rejection and the modifications of plans which would induce reconsideration are stated by the chief to the division engineer, who notifies the district engineer, who in turn informs the applicant.

(c) *Dams, dikes, and causeways.* The requirements as to primary authority and approval by the Chief of Engineers and the Secretary of War of the plans and location applicable to bridges are also applicable to dams, dikes, and causeways in navigable waters of the United States. Such structures may be built under authority of the legislature of a State across waterways the navigable portions of which lie wholly within the limits of a single State, otherwise an act of Congress is necessary. Applications for approval of plans and location should be in the form of a letter submitted to the District Engineer in charge of the waterway. Information similar to that required in the case of bridges, together with tracings showing plans and location, should be furnished. Applications for authority to construct water power dams are subject to the provisions of the Federal Power Act, revised to August 26, 1935. Inquiries concerning the required procedure in such cases should be addressed to the Federal Power Commission, Washington, D. C.

§ 209.130 *Piers, dredging, etc., in waterways—(a) Laws relating to permits.*

(1) Section 10 of the River and Harbor Act of March 3, 1899, prohibits the placing of any structures in or over any navigable waters of the United States, or excavating or depositing material therein, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War. Section 14 of the River and Harbor Act of March 3, 1899, provides that the Secretary of War on the recommendation of the Chief of Engineers, may grant permission for the temporary occupation or use of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States. Such authorization or permission is ordinarily granted in the form of a permit.

(2) Section 1 of the River and Harbor Act of June 13, 1902, provides that any person or persons, corporations, municipal or private, desiring to improve any navigable river, or any part thereof, at

their own expense and risk may do so upon the approval of the plans and specifications of said proposed improvement by the Secretary of War and the Chief of Engineers.

(3) Permits are not required for pipe, wire, or cable crossings when attached to the fixed parts of bridges if the pipe, wire, or cable does not reduce the headroom or clear width of boat passages under the bridge. Such attachments will be considered a part of the bridge, and the bridge owner will be responsible for them under his bridge franchise.

(4) Submarine cables connecting the United States with any foreign country, directly or indirectly, or connecting any portion of the United States with any other portion thereof, are subject to the provisions of an act of Congress of May 27, 1921 (42 Stat. 8; 47 U.S.C. 34), prescribing that such cables shall not be laid or operated unless a written license therefor has been issued by the President. In every case where a cable lies in navigable water of the United States a War Department permit therefor is necessary. If, in addition, the case is one requiring a license from the President under the provisions of the act of May 27, 1921, the War Department does not take action until the Presidential license is issued. Facilities for the transmission of electric energy between the United States and foreign countries and for the exportation and importation of natural gas to or from foreign countries are also subject to the provisions of the Federal Power Act of August 26, 1935 (49 Stat. 838; 16 U.S.C. 796 et seq.), and the Natural Gas Act of June 21, 1938 (52 Stat. 821; 15 U.S.C. and Sup., 717 et seq.), and a Presidential permit is required (Executive Order 8202, July 13, 1939).

(5) Policies and procedures applicable to those operations in which the Corps of Engineers may be called upon to participate under the Federal Power Act are stated in § 209.140. Licensing activities of the California Debris Commission are stated in § 209.160.

(b) *Application.* (1) The application and plans will be prepared in accordance with instructions in Information Circular, Form 96a, copies of which may be obtained from the District Engineer. District Engineers will furnish applicants all proper advice and assistance in the preparation of the application and plans.

(2) The application consists of a letter requesting the permit, accompanied by maps and plans of the proposed work. The letter of application should be addressed to the District Engineer in charge of the locality in which the work lies. Such officers have general authority to issue permits for certain classes of work, and will forward to proper authority applications for permits on which they cannot themselves take final action.

(3) There is no prescribed form. The letter of application should bear the address of the applicant and the date, contain the name of waterway, location of the work, description of work, and a statement whether the work is within corporate limits of a municipality.

(4) The letter should give any explanation of the plans necessary to enable the Department to determine exactly what is proposed and to show that the structure is not likely to fail and become a danger or obstruction to navigation, or injure the navigable capacity of any of the public navigable waters. If dredging or dumping is proposed, the application should give the exact location of the work, the depth to which the proposed dredging is to be carried, the approximate amount of the material to be removed, and the definite location of the deposit of the dredged material and the depth to be left over it. Where dredging or dumping is proposed in connection with other work, a separate application for dredging is not required, but the information above specified should be included in the application.

(5) The District Engineer is required to notify the municipal authorities of any application for work lying within the corporate limits of a municipality. To save time and correspondence, every application for a permit should state the city or town within which the work lies, or should definitely state that it lies outside of the limits of any city or incorporated town, unless such fact is clearly shown by the maps and description.

(6) The letter of application, attached papers, and maps should be complete, without reference to other correspondence not attached, and should include any special authorization for the work that is prerequisite to the action of the Department, as, for example, a copy of the State permit for the work, if the laws of the State in which it is situated require the obtaining of such instruments.

(7) The letter of application must be signed by the owner or proprietor of the proposed work, or by his duly authorized agent, and not by the contractor whom it is proposed to employ on the work, except in the case of applications for permits for dredging.

(8) A copy of the letter of application should be furnished for the convenience of the District Engineer, and all attached papers should be furnished in quadruplicate. Information Circular, Form 96a, contains two examples of letters of application.

(c) *Maps and plans.* (1) Maps and plans showing the location, extent, and character of the proposed work are an essential part of an application for a permit. Such drawings are attached to, and form a part of, the permit issued, and must be carefully prepared in the form prescribed.

(2) As the employment of a suitable engineer or draftsman will often be necessary for the preparation of the drawings, parties desiring to do work in navigable waters are advised to consult with the district engineer, by letter or in person, in order that they may avoid the unnecessary expense of preparing plans for works for which permission must be denied in the interests of navigation, or of preparing plans that do not meet the requirements.

(3) One set of plans on tracing linen, and three sets of blueprints, or other copies are required. An exception will be made to the rule requiring a set of plans on tracing linen, when the map or drawing is a part of a printed map or plan which is sufficiently clear to permit reproduction by the photographic process; and, in ordinary applications for dredging, all four copies of the map may be blueprints, which may often be secured from the district engineer at small cost. In all cases four complete sets must be furnished.

(4) The drawings will be on sheets 8 by 10½ inches in size, measured in all cases from edge to edge of the sheet, including a margin of 1 inch along one of the 8-inch sides for binding purposes. As few sheets will be used as necessary to show clearly what is proposed.

(5) All drawings must be drawn to scale and the scale shown graphically. All maps must have the usual meridian arrow showing the north. When two maps are shown on the same sheet they should be so drawn that their meridians

are parallel. It is desired that where convenient the maps be so drawn that the north be at the top of the map.

(6) On all maps of rivers, or plans showing river areas, the direction of the current will be indicated by a suitable arrow.

(7) All soundings and elevations should be shown in feet, and referred to the established Government datum plane at the locality. This plane is usually—

On the Atlantic and Gulf coasts, mean low water.

On the Pacific coast, mean lower low water.

On the Great Lakes, low water datum or mean lake level.

On rivers, low water.

(8) Further information, including the location and description of any gauge or bench marks that may be available, may be secured from the district engineer. Plans for structures in tidal waterways should contain indication of the tidal range.

(9) The instructions below provide for showing in red ink the structures proposed. This should be neatly and carefully done, so as not to obscure any details of the drawing. If desired by the applicant, the colored lines will be drawn in at the district engineer's office. In the event modification of an existing structure is contemplated only the new work should be shown in red.

(10) Each drawing should have a simple title, preferably in the lower right-hand corner, telling what the map is.

(11) A map on a small scale showing the location of the proposed work is always required, unless the other plans submitted clearly show the general location. The location map may be on a separate sheet, or may be drawn as an inset map on a corner of the sheet showing the details of structure or work. It may be traced from a Coast Survey, Lake Survey, or Geological Survey, or other general map, and should bear a note showing the number or title of such map or chart, thus: "Traced from U. S. Coast Survey Chart 273." The name of the waterway and the names of towns and prominent points should be placed on this map, and any lines of latitude or longitude should be included in the tracing and correctly numbered. The location of the proposed work should be marked in red ink on all copies of this map.

(12) Plans of the proposed work should show:

(i) *For wharves, piers, bulkheads, etc.* The ground plan or layout of the proposed structure showing the shore line (both high and low water line) and any existing structures in the immediate vicinity. In rivers, the plan should usually show the high and low water lines on both banks of the stream. The depth of water in the vicinity of the proposed structure should be shown by soundings.

Where practicable, the proposed work should be referenced by distance and direction to some established monument of definite mark. If harbor lines have been established in the locality, these should be accurately shown on the drawing. The outer lines of the proposed structure should be drawn in red ink on all copies.

A typical cross section of the structure, showing the type of construction and showing in figures the elevation of the deck or top above the datum plane.

(ii) *For a pier, jetty, dike, etc.* A longitudinal section of the structure, together with a profile of the bottom extending at least 100 feet beyond the end of the structure. The outer lines of the proposed structure should be drawn in red ink on all copies. The elevation of the deck or top above the datum plane should be shown in figures.

(iii) *For pipes, cables, etc., under water.* A plan, showing the shore line (both high- and low-water lines), any existing structures, cables, etc., in the immediate vicinity and in red ink on all copies, the alignment of the proposed pipe or cable. The depths in the vicinity of the crossing should be shown by soundings.

A note on the plan should state the purpose of the pipe or cable and describe it sufficiently for its identification, as other installations of the kind may already exist or be placed in the same locality in the future.

A profile, showing the bottom from bank to bank, low- and high-water lines, and, in red ink on all copies, the proposed pipe or cable. The clear depth below the datum plane to be afforded by the pipe or cable in the navigable channel should be shown in figures.

(iv) *For overhead cables of all descriptions.* A plan and profile as above, showing in figures the minimum clearance of the lowest part of the cable above high water and above low water and the heights at supports.

(v) *For dredging.* A map showing the area to be dredged, and, unless the material is to be placed on an established dumping ground, the exact locality for the disposal of the excavated material, both these areas being drawn in red ink on all copies and suitably designated by words. Present depths on and in the vicinity of both these areas should be indicated by soundings. The dumping ground may be shown on the inset map or on a separate map if necessary. If the deposit is to be behind a bulkhead, either in the waterway or on shore, the plans must be sufficiently detailed to show that the structure will be adequate to confine the material.

(vi) *For dolphins, piles, etc.* A map showing the location of the structures, the shore line, and existing structures in the vicinity, and soundings showing the depth of water. The proposed work will be outlined in red ink on all copies, and the elevation of the tops of the piles or dolphins with reference to high water will be shown in figures.

(13) Additional instructions covering the requirements, made necessary by special conditions in certain localities will be furnished the applicant on request addressed to the district engineer.

(14) Samples of drawings are shown in Information Circular, Form 96a. However, the form of lettering, conventional signs, etc., need not necessarily conform to these samples.

(d) *Notices.* (1) Unless the application is for the dredging of vessel berths and approach channels which cannot affect adversely any interests, the District Engineer will send notices thereof to all parties deemed likely to be interested, such as State or local harbor commissions, proper city authorities if the site of the proposed work is within corporate limits of any city, adjacent property owners, and owners or associations of owners of boat lines. Copies of the notice will be posted in the post offices or other public places in the vicinity of the site. The public notice is mandatory, and no permit or extension of time in which to complete work authorized by permit will be granted unless notice has been issued and a reasonable time afforded for protest, except as above provided.

(2) When application is made for a permit for new work in any way affecting air commerce, District Engineers will in-

sure that four copies of all public notices issued are forwarded promptly to the Civil Aeronautics Administration. Copies of public notices relating to applications for permits for aerial transmission lines and approval of plans for bridges will also be sent to regional managers of the Civil Aeronautics Administration. Such notices will include a statement as to the elevation of the highest point of the towers or superstructure above the local water surface datum, and a copy of the plans of the proposed work if necessary to a clear understanding.

(3) Public notices shall be issued in connection with cableways for stream gaging purposes, gage installations, and other non-project structures constructed by the Corps of Engineers in or over navigable waters. Copies of such notices will be sent to all interested parties.

(4) Notices should state the name of the applicant, should give the location and a brief description of work for which application for approval is made, should state where the plans may be seen, and should fix a limiting date within which protests from the standpoint of navigation will be received. The period so fixed should be as brief as will afford to all having a legitimate objection a reasonable opportunity to be heard. If time is an essential element, interested parties will be given a minimum period of 3 days after their receipt of the notice in which to present protests. The period normally should not be less than 10 days after the actual mailing of the notice. A longer period will be afforded if necessary in exceptional or especially important cases. If the District Engineer deems a public hearing essential to public interests, he may hold one.

(5) Copies of the notices sent to interested parties, together with a list of parties to whom sent, will accompany all applications for permits submitted to the Chief of Engineers for approval, and will also accompany all copies of permits issued by District Engineers and Division Engineers forwarded for file.

(e) *Reports on permit applications.*
 (1) The Secretary of War has authorized the issuance of War Department permits by local offices of the Engineer Department, at the option of the Chief of Engineers, for work and structures in or over navigable waters in cases which are entirely routine and which involve no difference of opinion on the part of en-

gineer authorities, nor doubt as to the law, facts, or regulations nor any opposition or other considerations which should be decided by higher authority.

(2) The report of a District Engineer on an application for a permit requiring action by a higher authority is indorsed upon the application to the higher authority.

(3) In cases of conflicting property rights the Department cannot undertake to adjudicate rival claims. In reporting such cases for the action of the Department, the District Engineer will state the attitude of adjacent or neighboring property owners whose interests may be affected by the work proposed, and will also state his views concerning any alleged adverse effects so far as regards the possible use of such property in connection with navigation.

(f) *Permits*—(1) *Forms.* A printed copy of Form 96, as amended to date of issue of permit, will be used ordinarily for the letter of authorization. Permits to Federal agencies will be executed on Form 96d. Subsequent approval of plans will be accomplished on Form 96c.

(2) *General conditions.* For the information of applicants, the general conditions of the Department standard form of permit are given below. Special conditions are added when necessary to protect navigation:

That the work shall be subject to the supervision and approval of the District Engineer, Engineer Department at Large, in charge of the locality, who may temporarily suspend the work at any time, if in his judgment, the interests of navigation so require.

That any material dredged in the prosecution of the work herein authorized shall be removed evenly, and no large refuse piles, ridges across bed of the waterway, or deep holes that may have a tendency to cause injury to navigable channels or to the banks of the waterway shall be left. If any pipe, wire, or cable hereby authorized is laid in a trench, the formation of permanent ridges across the bed of the waterway shall be avoided and the back filling shall be so done as not to increase the cost of future dredging for navigation. Any material to be deposited or dumped under this authorization, either in the waterway or on shore above high-water mark, shall be deposited or dumped at the locality shown on the drawing here-

to attached, and, if so prescribed thereon, within or behind a good and substantial bulkhead or bulkheads, such as will prevent escape of the material into the waterway. If the material is to be deposited in the harbor of New York, or in its adjacent or tributary waters, or in Long Island Sound, a permit therefor must be previously obtained from the Supervisor of New York Harbor, Army Building, New York City.

That there shall be no unreasonable interference with navigation by the work herein authorized.

That if inspections or any other operations by the United States are necessary in the interests of navigation, all expenses connected therewith shall be borne by the permittee.

That no attempt shall be made by the permittee or the owner to forbid the full and free use by the public of all navigable waters at or adjacent to the work or structure.

That if future operations by the United States require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Secretary of War, it shall cause unreasonable obstruction to the free navigation of said water, the owner will be required, upon due notice from the Secretary of War, to remove or alter the structural work or obstructions caused thereby without expense to the United States, so as to render navigation reasonably free, easy, and unobstructed; and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners shall, without expense to the United States, and to such extent and in such time and manner as the Secretary of War may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable capacity of the watercourse. No claim shall be made against the United States on account of any such removal or alteration.

That the United States shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the Government for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

That if the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the U. S. Coast Guard shall be installed and maintained by and at the expense of the owner.

That the permittee shall notify the said district engineer at what time the work will be commenced, and as far in advance of the time of commencement of work, suspension of work, if for a period of more than 1 week, resumption of work, and its completion.

That if the structure or work herein authorized is not completed on or before ----- day of -----, 19--, this permit, if not previously revoked or specifically extended, shall cease and be null and void. This condition will be completed by inserting a specific date, normally December 31 of the third year subsequent to the year of issuance. Thus the limiting date fixed in permits issued in 1946 should normally be December 31, 1949. District and Division Engineers are not authorized to fix a later date for completion, but if special reasons so require, a shorter period may be specified provided that the limit expires in all cases on the last day of a quarter, i. e., March 31, June 30, September 30, or December 31. Experience has, however, shown a tendency to prescribe insufficient time limits, thus subjecting the Department and the permittee to unnecessary annoyance and expense in accomplishing extensions. The full authorized time should usually be allowed. Work or operations of a temporary and obstructive character, however, should be limited to a period as short as is considered reasonable. This will be accomplished by including in the description on the first page of the permit for the work or operation, the restriction "to be removed (or completed) on or before the ----- day of -----," naming the last day of a quarter, and the time limit in addition (j) of the permit form will prescribe the same date.

District and Division Engineers are authorized to insert, in proper cases, the following additional clause: "That this permit is revocable at the will of the Secretary of War."

(3) *Special conditions.* If conditions other than those authorized, and additional to those expressed in the standard permit form, are regarded as necessary, or if any modification of conditions of

the standard form is deemed essential, the application will be forwarded for the action of the Department, in which cases the exact wording of the recommended conditions will be given with explanatory statements showing why they are proposed, and whether they are acceptable to the applicant, or if not, the grounds for his objections.

When compensatory works or the removal of temporary structures should be required of the permittee, or in other unusual cases when there is reason to anticipate that the permittee may fail to carry out parts of the work that are against his interest, an additional condition should be submitted to the Department for approval, requiring the permittee to furnish a bond insuring compliance with the permit requirements. He should be fully advised concerning the proposed condition, including the amount and conditions of the proposed bond, and also be given an opportunity to present objections before the case is forwarded for consideration by the Department. Copies of all pertinent correspondence will accompany the application when forwarded.

General approval of special conditions for use in a District or Division may be given by the Chief of Engineers on proper presentation of the need therefor.

(4) *Number and disposition of copies.* In addition to the signed copies of the permit two initialed copies will be prepared. The drawings showing the work will be securely attached to each copy, care being taken that none of the information on the plans is obliterated or damaged. When a permit is issued for the erection of an aerial transmission line, or when the permittee is required to pay or deposit with the District Engineer any sum of money, an additional copy will be prepared.

One signed copy of the permit will be delivered to the applicant. District and Division Engineers in transmitting approved plans to applicants will caution them that if any material changes in the location or plans of the structure or work are found necessary on account of unforeseen or altered conditions or otherwise, revised plans should be submitted promptly to the District Engineer to the end that these revised plans, if found unobjectionable from the standpoint of navigation, may receive the approval required by law before construction thereon is begun.

The second signed copy, which must be clear and legible in all its details and be identical in every respect with that issued to the applicant without added notation of any description, will be sent directly to the Chief of Engineers to form the legal record of the authorization, together with a copy of the notice sent to interested parties. The letter of transmittal will contain a statement as to whether harbor lines have been established for the locality, and if the permit was issued under special authority will give the date and E. D. file number thereof.

Whenever the permittee is required to pay or deposit with the District Engineer any sum of money for any purpose, the permit will be signed in triplicate, the third signed copy, which must be clear and legible in all its details and be identical in every respect to that issued to the permittee without added notation of any description, will be transmitted to the Chief of Engineers for forwarding to the General Accounting Office. In such cases, permits will be assigned a contract symbol number which will be placed on all copies.

One of the initialed copies of the permit will be filed in the District Office and the other in the Division Office. If the permit was issued under special authority, both copies will show the date and file number thereof. If issued by the District Engineer, the copy furnished the Division Engineer will bear a notation showing the date of mailing the record copy to the Chief of Engineers. If issued by the Division Engineer, the copy furnished the District Engineer will bear a notation showing the date of mailing or other delivery to the permittee.

(g) *Work constructed without prior authority.* District and Division Engineers are authorized to approve plans for structures and work of the classes for which they are authorized to issue permits, when the application for approval is submitted after the commencement or completion of the structures or work, subject to the following rules:

(1) Approval will be limited to those cases where the necessary primary authority, State or Federal as the case may be, validly exists, when the work was innocently constructed, and where the work will not unreasonably interfere with navigation.

(2) The applicant will submit the plans in the prescribed form.

(3) Notices of the application will be duly issued.

(4) The approval will be issued in the prescribed form, Form 96c.

(5) The approval will be signed and recorded as prescribed for permits.

(6) Applications for the approval of plans for structures which have been commenced or completed requiring action of higher authority will be reported on in the form prescribed for permit applications.

(7) When forwarding approval the applicant will be informed that the law contemplates prior approval and that in the future plans must be submitted in ample time for their consideration by the Department before construction is begun.

(h) *Necessary primary authority.* For works constructed by State or municipal agencies, the primary authority will be presumed without proof. If the law of the State requires a license for or approval of the work from a constituted State agency, a copy of such license or approval will be required and may be accepted as evidence of the primary authority. If there be no State regulation of structures in navigable waters, the necessary primary authority may be that granted in the charter of a corporation, or the authority inherent in the ownership of the land on which the structure is placed. The applicant will in such cases be required to furnish an extract from the charter, or a statement of ownership. Especial care will be taken that Federal approval is not granted when there is doubt of the right of the builder to construct and utilize the work.

(i) *Aerial transmission lines.* (1) When applications are received for permits for transmission lines crossing navigable waters of the United States and for easements for rights-of-way for transmission lines across, over and upon lands of the United States under the control and jurisdiction of the War Department, the District Engineer shall first determine whether the transmission line forms a part of a waterpower "project" as the term "project" is defined in section 3 (11) of the Federal Power Act. Where the proposed transmission line does not form a part of a waterpower "project" applications will be acted upon with a view to issuance of permit in accordance with the provisions of section

10 of the River and Harbor Act approved March 3, 1899, for transmission lines crossing the navigable waters of the United States, and the grant of easements under the act approved March 4, 1911, for rights-of-way for transmission lines over, across, and upon lands of the United States under the jurisdiction and control of the War Department. Where the proposed transmission line forms a part of a waterpower "project" the applicant should be advised of the law on the subject (sec. 4 (e) Federal Power Act), and directed to present the application to the Federal Power Commission. In cases of doubt, the application should be forwarded to the Chief of Engineers with the views and recommendations of the District and Division Engineers.

(2) Whenever a permit is issued for the erection of an aerial transmission line across a navigable water of the United States, an additional copy, unsigned and uninitialed, will be prepared and forwarded to the Chief of Engineers with the signed copy.

(3) District and Division Engineers are authorized and directed to insert in letters of authorization for aerial transmission lines and similar installations over navigable waters the following condition:

That the permittee will promptly comply with any future regulations or instructions affecting the work hereby authorized if and when issued in accordance with law by any department of the Federal Government for the aid or protection of aerial navigation.

(j) *Extensions of time.* (1) Division Engineers are authorized to revive and extend for successive periods not exceeding three years each the life of permits which have been issued by District Engineers of their division or by the Division Engineer, whether issued by general or special authority; provided that public notice is issued, that evidence satisfactory to the Division Engineer is furnished of the bona fide intention of the permittee to complete the work within a reasonable time, and that there has been no change in the attendant circumstances since the issuance of the permit sufficient to warrant the forwarding of the case to the Chief of Engineers for consideration.

(2) The letter granting the extension will be substantially the following form:

In accordance with your written request dated -----, the authorization granted

by the Secretary of War, in letter dated -----, from the District (Division) Engineer at -----, to (here follow the identical wording of the description of the work in the permit) is hereby specifically extended to (give date).

The conditions to which the authorization is made subject, excepting the time limit for completion, remain in full force and effect.

If the structure or work authorized is not completed on or before the date herein specified, the authorization, if not previously revoked or specifically further extended, will cease and become null and void.

By authority of the Secretary of War.

(If any condition of the standard permit form has been amended, the condition as amended will be added to the letter of extension where not contained in the original permit or prior extension or modification thereof.)

(3) The letter will be signed in duplicate, and copies will be distributed as prescribed for permits.

(4) All applications for extensions of time not falling within the provisions of subparagraph (1) of this paragraph will be forwarded for the consideration of the Chief of Engineers, with a full statement of circumstances, and with the recommendation of the District and Division Engineers.

(k) *Revision of plans.* (1) District and Division Engineers are empowered to approve revised plans for works under permits issued direct from their own offices.

(2) Notices of the revised plans will be sent to all parties of interest before action thereon, unless the revision is clearly such as to have no adverse effect on navigation or other interest.

(3) The approval will be in substantially the following form:

In accordance with your written request dated -----, the revised plans hereto attached are approved to supersede the plans for the works authorized by the Secretary of War, in letter dated -----, from the District (Division) Engineer at ----- to (here follow the identical wording of the description of the work in the permit).

The conditions to which the work is made subject remain in full force and effect.

By authority of the Secretary of War:

(4) The letter will be signed in duplicate and distributed as prescribed for permits.

(5) All applications for approval of revised plans not falling within the provisions of subparagraph (1) of this para-

graph will be forwarded for the consideration of the Chief of Engineers, with a full statement of circumstances, and with the recommendation of the Division and District Engineers.

(1) *Cancellation and revocation of permits.* (1) District and Division Engineers are without authority to cancel or revoke permits but District Engineers are authorized to accept from the permittee a voluntary relinquishment of the permit. Such relinquishment should be reported through the Division Engineer to the Chief of Engineers.

(2) Whenever during the life of a permit it is found that operations or interests of the United States require an alteration in the position of the structure or work authorized by the permit, or that any operation or work thereunder causes unreasonable obstruction to free navigation, the District Engineer in charge of the locality will forward through the Division Engineer a full report on the subject, with recommendations appended as to action to be taken.

(m) *Supervision of work and report.* District Engineers will exercise close supervision, of all work authorized under permits and will require that the work be conducted and executed in conformity with the approved plans. Such inspections as are necessary for this purpose must be made on timely occasions before and during construction, and such notices and instructions will be given permittees to insure that they do not depart from the approved plans. District Engineers will promptly report at the expiration of the time limit of the permit or upon completion of the work if at an earlier date, whether the conditions have been observed and whether the structures or operations as completed are in accordance with the approved plans. If the work is in accordance with the approved plans, the report will be sent direct to the Chief of Engineers and a copy furnished the Division Engineer. If the work as executed is not in substantial compliance with the approved plans, report will be submitted through the Division Engineer.

(n) *Departure from permit plans.* If the final inspection shows a material departure from the authorized plans, the District Engineer will call upon the permittee to furnish a tracing showing the work as actually constructed and will forward it with his recommendation to the Chief of Engineers. If the departure

is not sufficient to justify action by the Department a statement to that effect should be included. If the Chief of Engineers concurs, the papers will be filed and further correspondence with the permittee will not be necessary.

(o) *Expenses of inspection.* (1) The condition requiring that the grantee will bear all expenses for inspection, or any other operations by the United States in connection with permits granted under the provisions of section 10 of the River and Harbor Act approved March 3, 1899, will be applied only to special or elaborate supervision deemed necessary to protect the interest of navigation and involving unusual expense.

(2) The cost of supervision of dumping of dredged material in navigable waters, requiring the exclusive time of one or more inspectors, will be collected from the permittee unless other action is specifically approved by the Chief of Engineers. General authority to collect during a fiscal year the expenses of inspection of other classes of work will be granted by the Chief of Engineers in proper cases if the usual number of permits of the class warrants such course. The initial request for such authority will show the justification for the collection, the nature of the expenses, the usual range of the amount to be collected, and the usual number of cases of the class handled during the year. Thereafter requests for the renewal of the authority should be included in the annual request for authorities.

(3) In cases not covered by general authority as provided above, specific authority will be secured in each instance before making any collection from a permittee. Division Engineers are authorized to grant such authority if the operations to be inspected will probably be completed within six months, and if no doubt or disagreement arises as to the propriety of the collection, otherwise the authority of the Chief of Engineers must be obtained. Each request for special authority will show the character of the work, the necessity for the proposed collection, and the estimated amount to be collected.

(4) When general or special authority for the collection of expenses has been granted, the District Engineer is authorized to require, in proper cases, initial and subsequent advance deposits from the permittee in amounts generally not exceeding the estimated cost of in-

spection during the ensuing month. In cases where deposits are not promptly made or where an additional fraction of a month will probably finish the permit work, or in other cases regarded as exceptional, larger deposits may be required. If it appears advisable to require during the life of the permit advance deposits in excess of this limitation, the case will be presented to the Chief of Engineers for approval.

(5) On the completion of the work under a permit, and the payment of expenses by the permittee without protest, the account will be closed, outstanding deposits returned to the permittee, and a final statement of the account will be furnished the Chief of Engineers through the Division Engineer. If the account is protested by the permittee, it will be referred to the Chief of Engineers for approval before closing it and before returning any deposits to the permittee.

(6) The method of procedure will be as follows: The District Engineer will assign to the work of inspection one or more qualified inspectors for such time as may be necessary to insure compliance with the conditions of the permit and observance of the laws for the protection of navigable waters. These inspectors will be treated in all respects as regular employees of the United States and will be paid by the District Engineer from any available appropriation in his charge, on regular pay rolls or service vouchers. At the end of each month the amount chargeable for the cost of inspection pertaining to the permit will be collected from the permittee and will be taken up on the account current and deposited in a designated depository to the credit of the Treasurer of the United States, on account of reimbursement of the appropriation from which the expenses of the inspection were paid.

(7) The District Engineer will take such measures as he may deem necessary to insure the United States against loss through possible failure of the grantee to supply the necessary funds to liquidate indebtedness for services paid for by the United States in connection with the inspection and supervision of his permit. This may be accomplished by requiring the permittee to keep on deposit with the District Engineer at all times an amount equal to the estimated cost of inspection and supervision for the ensuing month, such deposit being preferably in the form of a certified check, payable to the Dis-

trict Engineer. Certified checks so deposited will be carried in a special deposit account (guaranty for inspection expenses) and upon completion of the work under the permit the funds will be returned to the permittee provided he has paid the actual cost of inspection, or used to reimburse the United States for such cost in case of failure to pay the bills promptly when presented.

(8) The permittee will not be required or permitted to pay the United States inspector either directly or through the District Engineer, nor will the inspector be laid off or furloughed in order that he may be employed by the permittee to supervise the permit operations.

(p) *Permits for fishing structures.*

(1) Special regulations for the issuance of permits for fish traps in specified localities are issued by the Chief of Engineers. Cases not covered by such regulations must be submitted to the Chief of Engineers for approval.

(2) Prior to action by the Department on an application for permission to construct a fish weir, trap, or similar contrivance in any navigable waters of the United States, the applicant will be required to furnish the Department with evidence that the proper license has been granted by the State or municipal authorities in cases where the laws prescribe such requirements, or to show that there is no State law or municipal regulations relating to the subject.

(q) *Lighting fishing structures.* (1) Fishing structures and appliances in navigable waters of the United States will be lighted for the safety of navigation as follows:

The lights will be displayed between sunset and sunrise. They will be placed at each end of the structure, excepting where the inner end terminates in such situation that there is no practicable navigation between it and the high-water line of the adjacent coast, in which case no inner light will be displayed. The outer light will be white, and the inner light will be red. The size, capacity, and manner of maintenance of the light will be such as may be specified in the War Department permit authorizing the erection of the structure or appliance. When several structures or appliances are placed on one line with no navigable passage between them, they will be considered for lighting purposes as one structure.

(2) By authority of the Secretary of War conditions in form as follows will be included in all permits for fishing structures and appliances in navigable waters of the United States, issued by the Chief of Engineers or by District Engineers specially authorized by him to issue such permits:

That the weir, trap, or pound will be lighted between sunset and sunrise, by and at the expense of the permittee, for the safety of navigation. The lights will be displayed at each end, the outer end of the structure, and at an elevation of not less than ----- feet above high water. The outer light will be white, the inner light will be red, and both will be equal to ----- with a capacity to burn ----- days untended. They will be subject to the inspection of the aforesaid District Engineer before use. (Additions may be made to this condition and superfluous words deleted as may be necessary to provide for lighting the particular structure.)

That there will be installed and maintained on the weir, trap, or pound, by and at the expense of the permittee, such additional lights and signals, if any, as may be prescribed by the U. S. Coast Guard, and that provision will be made for proper attendance by watchman or otherwise of all lights and signals, so that they will at all times be in effective condition.

§ 209.140 *Operations of the Corps of Engineers under the Federal Power Act*—(a) *General.* This section outlines policies and procedures applicable to those operations in which the Corps of Engineers may be called upon to participate under the Federal Power Act. Such operations include: Investigations and reports on applications for permits and licenses for development of power affecting navigable waters; supervision of investigations, construction, and operation of projects under such permits and licenses; preparation of special reports as required by the Federal Power Commission; and review of plans of dams or other structures affecting navigation. The foregoing functions are performed by the Engineer Department only upon request of the Federal Power Commission.

(b) *Authority of Division and District Engineers.* Section 2 of the revised Federal Power Act provides that the Federal Power Commission may request the President to detail an officer or officers from the Corps of Engineers, or other branches of the United States Army, to serve the Commission as Engineer officer or officers, or in any other capacity, in field work outside the seat of government, their duties to be prescribed by

the Commission. By authority of the Secretary of War, and in accordance with the instructions issued by the President in a letter to the Secretary of War dated May 18, 1931, Division Engineers will be detailed to serve the Commission as engineer officers in field work outside the seat of government, their duties to be prescribed by the Commission, and to be performed under the supervision of the Chief of Engineers. District Engineers will be designated to carry out the field inspections and investigations under the supervision of the Division Engineers. When a Division Engineer is detailed by the Chief of Engineers to assist the Commission in either the investigation or supervision of a project he will be the accredited representative of the Commission. The actual field work will be done by the designated District Engineer who will make a report to the Division Engineer. All reports and such correspondence as would normally be forwarded to the Commission will be addressed to the Chief of Engineers.

(c) *Procedure for investigations and report on applications for permits and licenses.* (1) Upon assignment to the Division Engineer by the Chief of Engineers of an investigation under the Federal Power Act, the Division Engineer will submit to the Chief of Engineers an estimate of the cost and the approximate date when the investigation will be made and report submitted.

(2) If in the investigation of an application or a declaration of intention filed under the Federal Power Act the Division Engineer considers a public hearing desirable in the interests of navigation or flood control, the Chief of Engineers will be notified whereupon the matter will be brought to the attention of the Commission. No public hearing will be held unless specifically authorized by the Commission or by the Chief of Engineers. If a hearing is authorized it will be limited strictly to consideration of the purpose for which approval is granted.

(3) The report will be confined to a discussion of the topics specified in the request of the Commission unless otherwise authorized by the Chief of Engineers. Descriptions and discussions will be limited to material facts having a definite bearing on the case.

(4) If the project is on a Federal reservation or contemplates the use of a dam under the jurisdiction of the War

Department the report will state, giving reasons;

(i) Whether the project will interfere or be inconsistent with the purposes for which such reservation was created or acquired and what conditions if any, should be imposed for the adequate protection and utilization of the reservation.

(ii) Whether the dam may be advantageously used by the United States for public purposes in addition to navigation and whether it should be reserved for such use.

(iii) Whether the development should be undertaken by the United States.

(5) The reports will not be released or made public except by specific authority of the Chief of Engineers, nor will copies of a report, its findings, or recommendations be furnished to the applicant, to interested parties, or to the Commission until released by the Chief of Engineers.

(6) Periodic reports of progress or investigations will be made as required in paragraph (e).

(d) *Procedure for supervision of operations under permits and licenses.*

(1) When supervision of the operations of an applicant under a permit or a license is requested by the Federal Power Commission, the Chief of Engineers will assign responsibility for supervision to the Division Engineer. The operations to be supervised, such as investigations being conducted by a permittee, construction of a project under a license or operation of completed projects, will be as specified by the Commission.

(2) Projects will be classified as major, minor, minor part or transmission line projects as indicated in the Federal Power Act and as specified in the instructions from the Commission.

(3) Inspection during the construction of a major project will be made monthly, or as often as may be necessary for the Division Engineer to assure himself that the terms of the license are being complied with and the work is of acceptable quality and in accordance with the approved plans. The frequency of inspections of minor, minor part, and transmission line projects is left to the discretion of the Division Engineer.

(4) Periodic reports will be made on operations under permits or licenses as prescribed in paragraph (e) of this section.

(5) After a project has been completed and placed in operation, semi-annual inspections will be made of major projects, and annual inspections of minor, minor part, and transmission line projects. These inspections will be continued and reports made as prescribed in paragraph (e) until discontinuance is directed by the Chief of Engineers.

(e) *Periodic reports.* (1) All periodic reports on Federal Power Commission projects as outlined below will be submitted by the Division Engineer, in accordance with forms issued by the Commission, direct to the Chief of Engineers, a copy being furnished the District Engineer.

(2) *Monthly reports on investigations.* If the investigation and report on an application for a preliminary permit or license or on a declaration of intention are not completed within the calendar month of reference of the application to the Division Engineer, monthly reports showing the progress made on the investigation and report will be submitted.

(3) *Quarterly reports on supervision of investigation under permits.* Reports on supervision of the investigations made by the permittee will be rendered quarterly and, unless otherwise directed, will be continued until the Division Engineer is notified that the permit has expired or an application for license has been received for investigation.

(4) *Monthly reports on supervision of construction under a license.* Reports on the progress of construction made by a licensee will be submitted monthly and unless otherwise directed will be continued until the initial installation covered by the license has been completed and placed in operation when reports as called for in subparagraph on "Semi-annual and annual operation reports" below will be submitted.

(5) *Dormant projects.* Projects in which no change of status has occurred since the previous report will be listed on one sheet with a statement that, "no change has occurred in the status of the following project since the latest report was submitted."

(6) *Semiannual and annual operation reports.* After a project has been completed as required by the license, and placed in operation, inspections will be made as called for in paragraph (d). Reports on the operation and maintenance of the project will be submitted

semiannually for major projects, and annually for minor, minor part and transmission line projects. A special report will be made in case of severe flood or of interruption in operation due to failure of material or accident.

(f) *Hydrometric reports.* When requested by the Commission and so directed by the Chief of Engineers, the Division Engineer will supervise the stream-gaging activities of the permittee or licensee and submit an annual report covering the water year as soon after September 30 as practicable. The scope and character of hydrometric reports required of the licensee will depend on the circumstances in the individual case. The Commission prescribes within certain limits what will be required, but considerable discretion in the matter is left to the Division Engineer, with the right of appeal to the Commission in case of controversy. Where, however, questions of benefits from headwater improvements are involved or where in a comprehensive project the run-off in tributary streams will play an important part in the design and operation of project works or in the modification of designs or of plans of operation it is important that the records be full and accurate and considerable expenditure therefor may be justifiable. In important cases the hydrometric reports of licensees will include the following:

(1) Mean daily discharge of stream or streams covered by the license.

(2) Daily records of intake and tail-race gages or plants under license.

(3) Daily record of reservoir gage height.

(4) Mean daily discharge from reservoir spillways.

(5) If the stream flow during the year has been affected by the headwater improvements of another licensee, reference should be made to the fact. If there are any unusual circumstances by which the stream flow of a project on the lower reaches of a stream will be affected by the headwater improvements above, an analysis of such circumstances should be submitted with the hydrometric data.

(g) *Conditions for insertion in permits and licenses.* Subparagraphs (1), (2), and (3) contain the standard conditions usually inserted in a preliminary permit for a project which affects navigation. Subparagraphs (1) to (6), inclusive, are the standard conditions usually inserted

in a license for a project which affects navigation, while subparagraphs (7), (8), and (9) are special conditions which may be recommended for insertion in any license as required.

(1) That whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with said project, the licensee shall convey to the United States, free of cost, such of its lands and its rights-of-way and such right of passage through its dam or other structures and permit such control of pools as may be required to complete, maintain, and operate such navigation facilities.

(2) That the licensee shall furnish free of cost to the United States, power for the operation of such navigation facilities, whether constructed by the licensee or by the United States.

(3) The operation of any navigation facilities which may be constructed as a part or in connection with any dam or diversion structure built under the provisions of this license shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of War. Such rules and regulations may include the maintenance and operation by the licensee at its own expense of such lights and signals as may be directed by the Secretary of War, and such fishways as may be prescribed by the Secretary of the Interior.

(4) The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of War, as may be necessary for the purposes of navigation and the operations of the licensee so far as they affect the use, storage, and discharge from storage of waters affected by this license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of War may prescribe in the interests of navigation.

(5) Insofar as any material is dredged or excavated in the prosecution of the work herein authorized, it shall be removed and deposited so it will not interfere with navigation and to the satisfaction of the District Engineer in charge of the locality.

(6) The licensee shall allow officers and employees of the United States free and

unrestricted access in, through, and across the said project and project works in the performance of their official duties.

(7) The licensee shall permit the free use by the public for navigation or recreational purposes of the reservoir formed by said dam, and shall, when not inconsistent with the operation of said project, allow the construction of wharves or landings in the interest of navigation.

(8) The licensee shall cut and remove or destroy, to the satisfaction of the representative of the Commission, all brush and trees from that zone within and adjacent to the area to be submerged, which is included between the contour of elevation ---- feet above mean sea level and a line ---- feet horizontally from the outside of the contour of elevation ---- feet above mean sea level for the initial development, and of the contour of elevation ---- feet above mean sea level for the ultimate development, and shall remove or destroy all floatable refuse or other material within said areas to be submerged. The licensee shall also cut in such manner or so remove or destroy brush or trees within said area to be submerged that no part of such brush or trees shall project above said elevation of ---- feet.

(9) The licensee, unless otherwise directed by the Secretary of War in accordance with the rights reserved to the United States in Article 5, shall so operate its project works that the discharge in the ----- River immediately below ----- dam site shall not be less than ----- acre-feet of water in each 24-hour period except that when the flow of the river available to the project is less than ---- acre-feet in 24 hours, the discharge required shall be equivalent to such lower flow. The distribution of said discharge over any 24-hour period shall be subject to such regulations as the Secretary of War may prescribe.

§ 209.150 *Harbor lines*—(a) *The harbor line system.* (1) Section 11 of the River and Harbor Act approved March 3, 1899, authorizes the Secretary of War to cause harbor lines to be established where it is made manifest to him that establishment is essential for the preservation and protection of a harbor, and provides that compensation may be required where the extension of structures beyond established harbor lines is permitted.

(2) If only a single type of construction is permissible, a single limiting line should be defined. It will be designated a pierhead line if the type of construction is to be open-pile work and a bulkhead line if the construction is to be solid fill. If either open or solid construction is permissible, the limiting line will be designated a pierhead and bulkhead line. If solid construction is permissible adjacent to the shore, and open-pile work may be extended farther toward the channel, both bulkhead and pierhead lines will be established.

(3) Applications for the shifting of harbor lines channelward will receive very careful consideration by District and Division Engineers. The movement of bulkhead lines channelward allows the creation of additional land which may be valuable for terminal or other uses, but it diminishes the tidal prism and reduces the length of piers unless the pierhead line is moved correspondingly. The movement of pierhead lines channelward in important harbors frequently sought as a means for accommodating longer ships leads to greater congestion of shipping, increased velocity of current and more serious danger of accident. Such encroachments should not be recommended where the results will be detrimental to navigation. Temporary extensions of piers are open to the objection that they usually lead to requests for continuance of the obstruction beyond the prescribed time. Accommodations for longer ships can generally be provided by a change of landing place to a wider section of the harbor, the construction of piers oblique to the shore line, or an extension landward of the slips between piers.

(4) The selection of the system will require consideration of the following questions:

(i) Whether open-pile construction or solid fill or both, or a combination of both will be permissible.

(ii) Whether the channel faces of wharves, bulkheads, and similar structures at the locality should be vertical or inclined.

(5) Experience has shown that the establishment of a bulkhead line has been frequently followed by solid filling to the limit and by requests thereafter from riparian owners to push the limit farther toward the channel. It has also

been found in some cases where the pierhead line is about a ship's length channelward of the bulkhead line that deep-draft vessels lying in the slips cut off much of the water flow causing silt deposits under the piers and in the slips thus considerably reducing the benefits expected under the plan of establishing separate limits for solid and open work.

(6) Each case must be considered on its merits and the probable commercial developments at the particular locality should be carefully studied. If they cannot be clearly foreseen, it may be advisable to make use of some experimental features with the view of adopting a fixed plan where experience indicated more conclusively what it should be. For example, it may be specified on the harbor line map that no structure will be placed between the pierhead and bulkhead lines until the special permission of the Secretary of War has been obtained; or that applications for solid construction between the bulkhead and pierhead lines will be considered; or that if slips are required in the future they will be provided by excavating shoreward of the bulkhead line. The fixing of the limits as permanently as possible is much preferred but proper concessions for shore developments and for the adequate protection at the same time of the interests of navigation without unreasonably reducing wharf frontage, may occasionally require some temporary expedient.

(7) If the channel faces of wharves and bulkheads at the locality are to be vertical and the channelward limits of extension from shore will therefore be vertical planes the establishment of a single harbor line to define the position of each plane will be sufficient. If the channel faces are to be inclined the position of the sloping limiting plane may be defined either by the establishment of two lines lying in the plane and at specified elevations, as for instance approximately at high and low water mark, or by establishing a single line at a specified elevation and prescribing that the limiting plane will pass through the line with a specified ratio or degree of slope. When the channelward limiting plane is a slope the shoreward limit where vertical walls may be erected will be defined when necessary.

(8) Harbor lines will not be established across the mouths or entrances to navigable waterways. Care will be taken to see that the terminal points on either

side of a waterway to be left open are selected with the view of a future extension of harbor lines along it.

(9) When an extension or modification of a project has been recommended to Congress which will involve conflict with established harbor lines, the District Engineer will submit a report, with recommendation and map, as to abrogation or modification of the harbor line or lines affected.

(b) *Establishment of harbor lines.*

(1) Harbor lines will be so established and marked that their exact position at any point can be determined with reasonable convenience and accuracy. Reference monuments will be selected or established at convenient intervals and whenever possible convenient ranges on the lines should be selected or established on shore.

(2) Reference monuments should be of permanent character so marked and described that they may be readily and certainly identified. They should be situated on the same side of the channel as the angle points referred to them and as close to them as practicable. It is desirable to use for reference purposes monuments of important Federal, State, or municipal surveys, boundary monuments, or lines of record, and intersections of center or side lines of streets where streets are well defined or can be located with reasonable accuracy. Wherever practicable within reasonable limits of expense the harbor line system should be referenced to the plane coordinate system of the U. S. Coast and Geodetic Survey for the locality if such a system has been established, and connected with monuments of that Survey or the Lake Survey if such exist in the vicinity. Points on railroad tracks, wharves, or other structures likely to be shifted or changed in connection with work of reconstruction or repair will be used with caution. The bearing of reference lines should read from the reference point toward the harbor line point.

(3) All harbor lines will be straight lines unless exceptional circumstances require the use of curves. In such cases prior application for authority to use curves will be made accompanied by a statement of necessity therefor.

(4) All traverses formed by sections of the lines and reference lines will close within reasonable limits.

(5) The descriptive data will be given in such form that a surveyor can readily

locate any section of the lines or any reference line with as little additional computation or investigation as practicable.

(c) *Harbor line maps.* (1) Each harbor line map shall be complete in itself, furnishing all description essential for the identification of monuments and reference points and for determining the position of the harbor lines on the ground. The measurements for locating the lines shall be made as direct as practicable. Where streets are well defined or where they can be located with reasonable accuracy, the distance to the harbor lines shall be given from the street intersections (centers of sides) measured along streets running toward the lines. The data shall be inscribed adjacent to the lines and monuments to which it relates and in a manner convenient for reference. The descriptive data shall be carefully checked and compared.

(2) Where the harbor line system is referenced to the U. S. Coast and Geodetic Survey plane coordinate grid system, the coordinates of every harbor line point, monument and reference point shall be given in tabular form on the map, and each map shall have two meridian arrows, one showing the grid north and the other the true north, with appropriate notation as to the difference in the meridians. Where the plane coordinate grid system is not used, the coordinates of every harbor line point, monument and reference point, based on true meridian, shall likewise be given in tabular form on the map and a true meridian shall be shown. Each section of the harbor line shall be described by its length and appropriate azimuth of bearing.

(3) Hydrographic data and shore facilities shall be shown in sufficient detail to present conditions clearly for the information of the Department in acting on the case.

(4) The map shall show whether the proposed lines are pierhead lines, bulkhead lines, combined pierhead and bulkhead lines, or otherwise, and shall also bear all or such portion of the following statement as may be appropriate to the particular case. The bulkhead line defines the limit of solid filling; the pierhead line the limit to which open-pile structures may be built.

(5) Harbor line tracing shall be brought up to date at sufficiently frequent intervals to protect properly the

Federal investment in harbor line systems. District and Division Engineers shall take necessary measures to protect the property of the United States represented in field notes, monuments and maps relating to harbor lines in order that costly resurveys are not made necessary. In the reestablishment of any monuments careful selection of the stations will be made to insure permanency.

(d) *Notification to municipal authorities.* Whenever an application is received for the establishment of harbor lines or the erection of structures in or over navigable waters of the United States within the corporate limits of any city, the proper city authorities will be promptly notified in order that they may have full opportunity to be heard in case the contemplated work may interfere with any plans or works which the city has in view.

(e) *Public hearing.* Unless otherwise authorized harbor line applications will be made the subject of public hearings.

(f) *Report of the district engineer.* The report will state in detail why the establishment of harbor lines is essential to the preservation and protection of the harbor. It will also give the approximate commerce of the waterway affected, present and prospective, and such other matters as should be considered by the Department in passing upon the necessity and sufficiency of the proposed lines.

(g) *Modification of harbor lines.* When modification of an established harbor line becomes necessary the procedure will be as prescribed for the establishment of original lines. The report of the District Engineer on such modification will be accompanied by a copy of the approved map, showing clearly the original lines to remain in force, the portion to be superseded, and the new lines proposed. If it is not practicable to revise the approved map, the District Engineer will furnish a new map prepared in accordance with the instructions found in paragraph (c) but omitting all lines superseded.

§ 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 War, 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, 1209 8th Street, Sacramento 8, California (P. O. Box 1739).

§ 209.170 *Violations of laws protecting navigable waters—(a) Illegal structures or other work.* (1) Section 9 of the River and Harbor Act of March 3, 1899, makes it unlawful to construct any bridge, dam, dike, or causeway over or in any navigable water of the United States until the proper local authority has been obtained and until the location and plans have been approved by the Chief of Engineers and the Secretary of War. When plans for any structure have been so approved, it is unlawful to deviate from such plans unless the modification thereof has received the approval of the Chief of Engineers and the Secretary of War.

(2) Section 10 of the River and Harbor Act of March 3, 1899, prohibits the creation of any obstruction not affirmatively authorized by Congress to the navigable capacity of any of the waters of the United States, and makes it unlawful to build any wharf, pier, dolphin, boom weir, breakwater, bulkhead, jetty, or other structures, outside established harbor lines or where no harbor lines have been established, or to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War.

(b) *Wrecks and similar obstructions.* Section 15 of the River and Harbor Act of March 3, 1899, makes it unlawful to tie up or anchor vessels or other craft

in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft, or to voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other craft in navigable channels, or to float loose timber and logs or sack rafts of timber and logs in streams or channels actually navigated by steamboats in such manner as to obstruct, impede, or endanger navigation (an act of Congress approved May 9, 1900, 31 Stat. 172; 33 U.S.C. 410, authorizes the Secretary of War to prescribe regulations to govern the floating of loose timber and logs and sack rafts and other methods of navigation on any navigable river or waterway of the United States or any part thereof whereon the floating of loose timber and logs and sack rafts is the principal method of navigation). Whenever a vessel, raft, or other craft is wrecked and sunk in a navigable channel, accidentally or otherwise, it is the duty of the owner to immediately mark it with a buoy or beacon during the day and a lighted lantern at night, and to maintain such marks until the sunken craft is removed or abandoned.

(c) *Injuries to Government works.* Section 14 of the River and Harbor Act of March 3, 1899, 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 War 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.

(d) *Injurious deposits.* (1) Section 13 of the River and Harbor Act of March 3, 1899, 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 of June 29, 1888, 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 harbor of New York, or its adjacent or tributary waters, or in those of Long Island Sound, within the limits which shall be prescribed by the Supervisor of New York Harbor. The provisions of this act are enforced by the Supervisor under the direction of the Secretary of War.

(e) *Oil pollution.* (1) Section 3 of the Oil Pollution Act, 1924, approved June 7, 1924, provides that except in case of emergency imperiling life or property, or unavoidable accident, collision, or stranding, and except as otherwise permitted by regulations prescribed by the Secretary of War, it shall be unlawful for any person to discharge, or suffer, or permit the discharge of oil by any method, means, or manner into or upon the coastal navigable waters of the United States from any vessel using oil as fuel for the generation of propulsion power, or any vessel carrying or having oil thereon in excess of that necessary for its lubricating requirements and such as may be required under the laws of

the United States and the rules and regulations prescribed thereunder.

(2) The following instructions relative to enforcement of the Oil Pollution Act have been issued by the Acting Commandant of the Coast Guard to all District Coast Guard Officers. Upon the detection by the Coast Guard Captain of the Port or other officer that oil is being or has been discharged into or upon the coastal or navigable waters of the United States by any vessel a complete investigation and report will be made of the incident, which will include the names of witnesses, samples, and all other pertinent details. This report will be forwarded immediately by the District Coast Guard Officer to the District Engineer (or to the Supervisor of New York Harbor) in all cases for his decision as to subsequent prosecution procedure. If the vessel involved is of American registry, a duplicate report will be forwarded to the Office of the Chief of Marine Inspection. If the report indicates that the spill resulted from the incompetence, negligence, inattention to duty, or misconduct of any licensed or certificated personnel, the Office of the Chief of Marine Inspection will take action under the provisions of R. S. 4450 (46 U. S. C. 239) for the revocation or suspension of the license or certificate. Any action taken in this connection is to be regarded as incidental to and independent of the statutory prosecution as decided upon by the District Engineer.

(f) *Penalties for Violations.* (1) Section 12 of the River and Harbor Act of March 3, 1899, 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. And further, 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, 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, and on conviction thereof shall be punished by a fine, imprisonment, or both, in the discretion of the court, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction. Any and every 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 War, 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, and shall upon conviction be punished as hereinbefore 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. And 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 thereto for the amount of the damages done by said boat, vessel, scow, raft, or other craft, which 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.

(3) Section 4 of the Oil Pollution Act provides that any person who violates section 3 is guilty of a misdemeanor, and upon conviction shall be punished by fine, imprisonment, or both. And any vessel (other than a vessel owned and operated by the United States) from which oil is discharged in violation of section 3 shall be liable for the pecuniary penalty specified, and clearance of such vessel from a port of the United States may be withheld until the penalty is paid, and said penalty shall constitute a lien on such vessel which may be recovered in proceedings by libel in rem in the district court of the United States for

any district within which the vessel may be. Section 5 provides that a board of local inspectors of vessels may suspend or revoke a license issued by any such board to the master or other licensed officer of any vessel found violating the provisions of section 3.

(g) *Enforcement.* (1) Section 17 of the River and Harbor Act of March 3, 1899, 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, and it shall be the duty of district attorneys of the United States to vigorously prosecute all offenders against the same whenever requested to do so by the Secretary of War or by any of the officials hereinafter designated, and it shall furthermore be the duty of said district attorneys to report to the Attorney General the action taken by him against offenders so reported, and a transcript of such reports shall be transmitted to the Secretary of War by the Attorney General.

(2) Section 17 further provides that for the better enforcement of the provisions of sections 9 to 16, inclusive, and to facilitate the detection and bringing to punishment of such offenders, the officers and agents of the United States in charge of river and harbor improvements, and the assistant engineers and inspectors employed under them by authority of the Secretary of War, and the United States collectors of customs and other revenue officers, shall 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 the aforesaid sections, 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, and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States. Similar provisions are contained in section 7 of the Oil Pollution Act, 1924, except that the words "officers of the Customs and Coast Guard of the United States" are

substituted for the words "the United States collectors of customs and other revenue officers."

(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 then communicate directly with the parties responsible for the violation, giving them notice to remove the illegal structure or deposit or to repair the damage by their own labor and at their own expense within a reasonable time to be fixed in the notice. If they so request in writing and furnish a satisfactory bond or other guaranty he may cause the repairs to be made by employees of the United States and will then call upon the responsible parties to pay over to him the cost of the damages when finally ascertained. All sums so received will be deposited promptly to the credit of the Treasurer of the United States for recredit to the appropriation affected and will be accounted for in the District Engineer's money accounts by proper vouchers.

(4) If the parties at fault deny their responsibility, or if they refuse or neglect to remove any unlawful structure or deposit or to repair the damages within the time fixed by the notice, the matter will be reported promptly 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 an unusual situation requiring immediate action, the District Engineer may report the case direct to the United States Attorney for the district. The Chief of Engineers will be advised by wire of such action to be followed by a written report. If the unlawful structure or deposit is removed or the damage repaired by the parties responsible therefor in conformity with the notice, the District Engineer will report whether further action should be taken against them with a view to making them liable to the fine or im-

prisonment prescribed by the act as a punishment for violations of its provisions. 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. 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 and oil pollution is similar to that described for other violations of law except that as the damage caused thereby cannot be readily repaired there will ordinarily be no reason for serving any notice on the parties responsible for the violations further than to bring to their attention the consequences thereof. In all cases in which a violation of law is clearly established the circumstances will be immediately reported to the District Attorney; however, it is the established policy of the Department not to recommend prosecution when the violation of law is trivial, apparently unpremeditated, and results in no material public injury. Violations of the Oil Pollution Act by vessels of American registry should be brought to the attention of the District Coast Guard Officer for possible action under the provisions of R. S. 4450.

§ 209.180 *Alteration of obstructive bridges*—(a) *Laws relating to alteration of bridges other than railroad and combined railroad and highway bridges.*

(1) Section 18 of the River and Harbor Act of March 3, 1899, as amended, provides that whenever the Secretary of War shall have good reason to believe that any bridge (except a bridge used and operated for the purpose of carrying railroad traffic or both railroad and highway traffic) over any of the navigable waterways of the United States is an unreason-

able obstruction to navigation, it shall be his duty, first giving the parties reasonable opportunity to be heard, to give notice to the persons or corporations owning or controlling such bridge so to alter the same as to render navigation through or under it reasonably free, easy, and unobstructed; and in giving such notice he shall specify the changes recommended by the Chief of Engineers that are required to be made, and shall prescribe in each case a reasonable time in which to make them. If at the end of such time the alteration has not been made, the Secretary of War shall forthwith notify the United States district attorney for the district in which such bridge is situated, to the end that the criminal proceedings hereinafter mentioned may be taken. If the persons, corporation, or association owning or controlling any bridge shall, after receiving notice to that effect, as hereinbefore required, from the Secretary of War, and within the time prescribed by him will fully fail or refuse to remove the same or to comply with any lawful order, such persons, corporation, or association shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding \$5,000, and every month such persons, corporation, or association shall remain in default in respect to the removal or alteration of such bridge shall be deemed a new offense, and subject the persons, corporation, or association so offending to the penalties above prescribed.

(2) Section 4 of the General Bridge Act of March 23, 1906, as amended, provides that if any bridge erected in accordance with provisions of that act (except a bridge used and operated for the purpose of carrying railroad traffic or both railroad and highway traffic) shall, in the opinion of the Secretary of War, at any time unreasonably obstruct navigation, it shall be his duty, after giving the parties interested reasonable opportunity to be heard, to notify the persons owning or controlling such bridge so to alter the same as to render navigation through or under it reasonably free, easy, and unobstructed, stating in such notice the changes required to be made and prescribing in each case a reasonable time in which to make such changes, and if at the end of the time so specified the changes so required have not been made, the persons owning or controlling such bridge shall be deemed guilty of a vio-

lation of the act. Any persons who shall be guilty of a violation of the act shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished in any court of competent jurisdiction by a fine not exceeding \$5,000, and every month such person shall remain in default shall be deemed a new offense and subject such persons to additional penalties therefor; and in addition to the penalties above described the Secretary of War may, upon refusal of the persons owning or controlling any such bridge and accessory works to comply with any lawful order, cause the removal of such bridge and accessory works at the expense of the persons owning or controlling such bridge; and the removal of any structures maintained in violation of the provisions of the order may be enforced by summary process.

(b) *Law relating to alteration of railroad and combined railroad and highway bridges.* The Truman-Hobbs Act of June 21, 1940 (54 Stat. 497; 33 U.S.C. 511 et seq.), provides that whenever any lawful bridge over navigable waters of the United States, used and operated for the purpose of carrying railroad traffic, or both railroad and highway traffic, shall, in the opinion of the Secretary of War, at any time unreasonably obstruct navigation it shall be his duty, after notice to interested parties, to hold a hearing at which the bridge owner, those interested in water navigation thereunder or therethrough, those interested in either railroad or highway traffic thereover, and any other party or parties in interest shall have full opportunity to offer evidence and be heard as to whether any alteration of such bridge is needed, and if so what alterations are needed, having due regard to the necessity of free and unobstructed water navigation and to the necessities of the rail or highway traffic. If, upon such hearing the Secretary of War determines that any alterations of such bridge are necessary in order to render navigation through or under it reasonably free, easy, and unobstructed, having due regard also for the necessities of rail or highway traffic thereover, he shall so find and shall issue and cause to be served upon interested parties an order requiring such alterations of such bridge as he finds reasonably necessary for the purposes of navigation. The act further provides for the approval by the Secretary of War of general plans

and specifications and contracts for the project and apportionment of the total cost thereof between the United States and the bridge owner. Any bridge owner who shall willfully fail or refuse to comply with any lawful order shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished in any court of competent jurisdiction by a fine not exceeding \$5,000, and every month such bridge owner shall remain in default shall be deemed a new offense and subject such bridge owner to additional penalties therefor. In addition to the penalties above prescribed the Secretary of War may, upon the failure or refusal of any bridge owner to comply with any lawful order, cause the removal of any such bridge and accessory works at the expense of the bridge owner. Compliance with any order may be enforced by summary process.

(c) *Investigation of complaints of obstructive bridges.* (1) Upon receipt of a complaint that a designated bridge over a navigable waterway of the United States is an obstruction to navigation, the District Engineer will investigate to determine if in his opinion, the complaint is justified. If the District Engineer does not consider the bridge unreasonably obstructive to navigation he will so notify the complainant. If the District Engineer finds that the bridge is unreasonably obstructive or is unable to satisfy the complainant that the bridge is not obstructive, he will submit a report to the Chief of Engineers, through the Division Engineer, specifying the character of obstruction, the changes necessary to render navigation through or under the bridge reasonably free, easy and unobstructed, and his estimate of a reasonable period of time in which to make the required changes. In cases under the Truman-Hobbs Act, the estimate of time required need not be included but the best available preliminary estimate of total cost of the required changes and probable portion of cost to be borne by the United States will be stated.

(2) The Chief of Engineers will notify the reporting officers of the action desired after consideration of the report on the complaint.

(d) *Hearings to be held on obstructive bridges.* (1) Upon receipt of authority from the Chief of Engineers, the District Engineer will arrange for a hearing at which the owners and controllers of the bridge, the complainants, and all other

known interested parties will be given reasonable opportunity to be heard.

(2) The notice of the hearing will include statements of the changes required and, except in cases under the Truman-Hobbs Act, the estimate of time considered reasonable for accomplishment of the changes.

(3) Upon conclusion of hearings, the District Engineer will submit to the Chief of Engineers, through the Division Engineer, a full report on the subject, including statements on:

(i) Whether the bridge unreasonably obstructs navigation.

(ii) Whether rafts, steamboats, or other water craft have difficulty in passing the draw opening or draw span.

(iii) The changes necessary to render navigation through or under the bridge reasonably free, easy, and unobstructed.

(iv) The reasonable time in which such changes should be made, except in the case of railroad or combined railroad and highway bridges.

(v) The character and the approximate amount of commerce affected by the obstructive features of the bridge.

(vi) Whether, in the judgment of the District Engineer, the commerce affected is sufficient to justify a requirement that the proposed changes in the bridge will be made.

(vii) An estimate of cost of alterations and proportionate share to be borne by the United States in actions relating to railroad or combined railroad and highway bridges.

(viii) A sketch on letter size paper showing the principal features of the bridge, the particular features against which complaint is made, and any other natural or artificial feature pertinent to consideration of the complaint.

(ix) A transcript of the proceedings of the hearing.

(4) The Chief of Engineers will notify the reporting officers of the action desired by the Secretary of War with respect to proposed alterations of the bridge.

(e) *Notice to alter obstructive bridges.*
(1) Upon receipt of War Department notices directing any action by the owners or operators of a bridge, the District Engineer concerned will make prompt service of such notice on the proper par-

ties and will submit to the Chief of Engineers through the Division Engineer a photostat copy of the notice as served together with an affidavit thereon executed by the person serving the notice and showing on whom, and when and where the service was made. Similar photostatic copies will be retained in the files of the Division and District Engineers.

(2) In cases under the Truman-Hobbs Act, the District Engineer will also quote to the bridge owner the requirements of the act of June 21, 1940, for submission of general plans and specifications. The District and Division Engineers will review the plans and specifications and will submit them with their views and recommendations to the Chief of Engineers for approval, including remarks on:

(i) Whether the plans and specifications provide for the minimum structure meeting the requirements of the notice to alter.

(ii) Whether they include items or features not necessary to meet the notice to alter but desired by the bridge owner.

(iii) Whether they provide for materials or workmanship of a higher grade than that of comparable items of features of the existing bridge, or where no counterpart, of a higher grade than provided in recommended practice of the Association of American Railroads.

(iv) Any indicated revision of the preliminary estimate of cost and apportionment.

(3) Upon receipt of approval of the plans and specifications, the District Engineer will notify the bridge owners of the approval and will invite the attention of the owners to the requirements of sections 5 and 6 of the act of June 21, 1940 with respect to submission of bids and guaranty of cost.

(f) *Approval of award and guaranty of cost under Truman-Hobbs Act.* (1) The District Engineer will forward the bids obtained by the bridge owners to the Chief of Engineers through the Division Engineer and will notify the bridge owner when award is approved. The District Engineer will then request the bridge owner to furnish guaranty of cost as required by section 6 of the act of June 21, 1940, and will submit the statement of guaranty of cost to the Chief of Engineers through the Division

Engineer together with the statement of proportionate shares of cost to be borne by the United States and the owner in the following form:

Cost of alteration.....	\$-----
Cost attributable to bridge owner, viz:	
Direct and special bene- fits.....	\$-----
Expectable savings in re- pair or maintenance costs.....	-----
Costs attributable to the requirements of rail- road traffic.....	-----
Expenditure for increased carrying capacity.....	-----
Expired service life of old bridge.....	-----
Cost.....	-----
Cost to be borne by the United States.....	-----

(2) Direct and special benefits will ordinarily include such items as improved signal and fender system, pro-rata share of dismantling costs, any improvements included but not required in the interests of navigation. The foregoing statements will include or be accompanied by breakdown of the statements of total cost and proportionate shares and sufficient details of the features of construction to show how the apportionment was determined and to permit review and auditing of the statements by the Department.

(g) *Reports on completion of alterations.* District Engineers will advise the Chief of Engineers through the Division Engineer of any failure to comply with notices to alter obstructive bridges within time limits specified and will also report when alterations are satisfactorily completed.

§ 209.190 *Removal of wrecks and other obstructions*—(a) *Laws relative to removal of wrecks and obstructions.* The laws relating to removal of wrecks are contained in sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899, and section 1 of the act of August 16, 1937. Section 15 of the former act provides that it shall be the duty of the owner to mark the location of the wreck immediately and until removed or abandoned; sections 19 and 20 authorize removal under the direction of the Secretary of War if the owner does not take action; section 19 governs in cases where

removal is not an urgent necessity; and section 20 applies to emergencies where the interests of navigation require immediate action. Section 1 of the latter act provides for action in case the owner fails to mark a wreck suitably.

(b) *Reports on accidents or obstructions affecting navigation.* When any major accident occurs, such as vessel collision, sinking, grounding, or bridge failure, District Engineers will keep the Chief of Engineers informed by wire of pertinent details and developments, particularly as to any interference or danger to navigation and estimated duration of obstruction.

(c) *General procedure on wrecks and obstructions.* (1) District Engineers receiving information of the existence of any wreck or similar obstruction in navigable waters of the United States within the limits of their districts will at once ascertain whether navigation is obstructed or endangered. If the obstruction is found to be of a character requiring removal thereof the District Engineer will promptly inform the owner of the provisions of law on the subject.

(2) Vessel owners, masters and others interested are encouraged to send to the District Engineer as prompt and accurate reports as possible of wrecks and their approximate location.

(3) If removal is commenced by the owner the District Engineer will keep himself informed of the progress of the work and will exercise sufficient supervision of the operations to insure that they cause no unreasonable interference with navigation and that the operations are diligently prosecuted as required by law. If removal by the United States is found necessary proceedings must be promptly instituted in accordance with the appropriate provisions of law. In such case if the owner has not marked the obstruction the District Engineer will immediately request the district commander of Coast Guard to see that marks are established.

(4) In the removal and disposal of sunken vessels the District Engineer will ascertain from the owner, if known, whether there is a Government interest in the vessel by way of mortgage or otherwise, and if such interest be found he will ascertain what disposition is desired by the Maritime Commission or other agency of the Government having such

interest before offering the vessel for sale to the public.

(d) *Marking of wrecks by owners.* Whenever a vessel, raft, or other craft is wrecked and sunk in a navigable channel, accidentally or otherwise, it will be the duty of the owner of such sunken craft to mark it immediately with a buoy or beacon during the day and a lighted lantern at night, and to maintain such marks until the sunken craft is removed or abandoned, and the neglect or failure of the said owner so to do shall be unlawful (sec. 15, act of March 3, 1899, 33 U. S. C. 409).

(e) *Marking of wrecks by Coast Guard.* (1) District Commanders of the Coast Guard are required upon the request of District Engineers to maintain suitable warnings on abandoned wrecks until the wrecks are removed by the Engineer Department. Section 1 of the act of August 16, 1937, contains provision for the marking of any sunken vessel, boat, watercraft, raft, or similar obstruction, existing in any river, lake, harbor, sound, bay, or canal or other navigable water of the United States by the Lighthouse Service (Coast Guard), and for the distribution of cost for such marking. For regulations of the Coast Guard governing marking of wrecks see § 402.5 of this title.

(2) The District Engineer will notify the District Commander of the Coast Guard of the exact time when the United States assumes charge of a wreck or other menace to navigation in his district so as to enable the Coast Guard to allocate properly any expense that may be incurred by it in the marking of the wreck.

(f) *Information for Coast Guard.* Whenever any wreck, which has been buoyed by the Coast Guard has been so far removed or destroyed that buoys are no longer needed this fact will be reported at once by the District Engineer under whose direction the wreck was removed to the Coast Guard Commander of the district in which the wreck was located.

(g) *Cooperation with Coast Guard.* Regulations have been approved by the Chief of Engineers and the Secretary of War and by the Treasury Department with a view to cooperation between the Coast Guard and the Engineer Department in connection with the removal and

destruction of derelicts, wrecks, and other obstructions to navigation.

(h) *Removal of obstructions under section 19 of the River and Harbor Act of March 3, 1899.* Action under this section for removal of an obstruction requires prior authority from the Chief of Engineers and may be undertaken only when navigation of navigable waters of the United States is obstructed or endangered, and if the obstruction has been in existence for a longer period than thirty days, or its abandonment by the owner can be legally established in a shorter period. The obstruction can be removed by any method deemed most advantageous.

(i) *Removal of obstructions under section 20 of the River and Harbor Act of March 3, 1899.* This section provides that action thereunder may be taken by any agent of the United States to whom the Secretary of War "may delegate proper authority." A delegation of such authority was made by an order issued by the Secretary of War, January 20, 1905, which as amended November 2, 1917, reads as follows:

Whenever any vessel, boat, water craft, or raft sinks, grounds or is unnecessarily delayed in any canal, lock, or other improvement controlled or owned by the United States, or in any of the navigable waters of the United States, under circumstances of emergency, the district engineer in charge of such lock, canal, improvement, or district will, under authority conferred by section 20 of the River and Harbor Act of March 3, 1899 take charge of such vessel, boat, water craft, raft, or other obstruction with a view to its immediate removal or destruction, using his best judgment, in all cases, to prevent any unnecessary injury. Any action taken under the above instructions will be reported forthwith to the Chief of Engineers for the information or action of the Secretary of War.

§ 209.200 *Regulations governing navigable waters—(a) Publication of regulations.* District Engineers will distribute mimeographed copies of all departmental regulations to all known interested parties as soon as their publication has been noted in the FEDERAL REGISTER. The following note will be included:

These rules and regulations, when published, have the force of law. They were

published in the FEDERAL REGISTER -----
 -----; public notices of their approval
 were sent to all known interested parties
 on -----;
 they have been posted at -----

(P. O.'s, bridges, etc.)

(b) *Drawbridge operation.* (1) Section 5 of the River and Harbor Act of August 18, 1894, requires the opening of draws of all drawbridges across navigable waters of the United States under such rules and regulations as in the opinion of the Secretary of War the public interests require. Section 4 of the General Bridge Act approved March 23, 1906, requires that draws of bridges affected by that act will be opened promptly upon reasonable signal.

(2) Requests for establishment of closed periods, opening upon advance notice, and other special regulations to govern operation of drawbridges will be investigated by the District Engineer and all known interested parties given an opportunity to be heard. A report will then be made detailing the requirements of land and water traffic to include all available evidence of past use of the drawspan, particularly log of openings, and a draft of recommended regulations.

(c) *Anchorage grounds.* (1) Section 7 of the River and Harbor Act of March 4, 1915, authorizes the Secretary of War to establish anchorage grounds for vessels in navigable waters of the United States whenever it is manifest that the maritime or commercial interests of the United States require such anchorage grounds for safe navigation and the establishment of such anchorage grounds will have been recommended by the Chief of Engineers, and to adopt suitable rules and regulations in relation thereto. Such rules and regulations are enforced by the Coast Guard under the direction of the Secretary of the Treasury (or Navy when the Coast Guard is operating as a part of the Navy in time of war or when the President shall so direct), except where there is no Coast Guard vessel available in which case they may be enforced by the Chief of Engineers under the direction of the Secretary of War.

(2) District and Division Engineers will, whenever matters relating to the anchorage of vessels are under consideration, ascertain the views of the District Commander of the Coast Guard

and or the proper representatives of all other departments likely to be interested, and when public hearings for the consideration of such matters are proposed, to send notice to the proper representatives of other departments likely to be interested, including the Commandant of the Naval District concerned and the medical officer in charge of the quarantine station at localities where quarantine anchorages are involved, in order that they may arrange for suitable representation at such hearings. The views of the medical officer in charge of the quarantine station relating to the proposed location and boundaries of the quarantine anchorage will be accepted insofar as practicable and consistent with the establishment of other anchorage areas. (An act of Congress approved March 3, 1901, as amended (42 U. S. C. 102), authorizes the Surgeon General, with the approval of the Federal Security Administrator, to designate and mark the boundaries of the quarantine grounds and quarantine anchorages for vessels which are reserved for use at each United States quarantine station.)

(3) Proceedings against a vessel violating the anchorage regulations are to be brought in the name of the officer of the Coast Guard assigned for the time being as Captain of the Port. When the vessel is at a port where there is no Coast Guard officer, proceedings will be instituted in the name of the District Engineer.

(d) *Special anchorage areas.* An act of Congress of April 22, 1940, provides that the Secretary of War may, after investigation, by rule, regulation, or order, designate such areas as he may deem proper as special anchorage areas wherein vessels not more than sixty-five feet in length, when at anchor, will not be required to carry or exhibit anchorage lights. Administrative procedure in investigating and reporting on special anchorage areas will be similar to that followed for anchorage grounds under section 7 of the River and Harbor Act of March 4, 1915. Investigations should show conclusively that the areas are well removed from the fairways and located where general navigation will not endanger or be endangered by unlighted anchored vessels.

(e) *Danger zones.* (1) The Secretary of War has authority to prescribe regulations for the use and navigation of any

portion or area of the navigable waters of the United States or waters under the jurisdiction of the United States endangered or likely to be endangered by target practice, ordnance proving operations, bombing practice, etc., under the provisions of Chapter XIX of the Army Act of July 9, 1918, or of section 7 of the River and Harbor Act of August 8, 1917.

(2) Upon receipt of a request from any branch of the War Department or from the Navy Department for approval by the Secretary of War of regulations establishing bombing or gunnery practice areas under authority of either act, the District Engineer will act upon such a request in a manner similar to that followed in acting upon anchorage and navigation regulations. The authority to prescribe such regulations must be so exercised as not unreasonably to interfere with or restrict the food fishing industry, and whenever the establishment of a proposed restricted area may affect fishing operations the District Engineer will consult with the Area Coordinator, Office of the Coordinator of Fisheries, Department of the Interior.

(3) In the event that the use of such areas is desired only for temporary, occasional, or intermittent periods, applicants may be advised that formal approval of the Secretary of War is not required, and that proper notices for mariners should be forwarded to the United States Coast Guard, Washington, D. C., and the Hydrographic Office, Navy Department, Washington, D. C., and furnished all interested persons in such manner as the District Engineer may suggest.

(4) Two copies of all notices of applications for the establishment of danger zones and restricted areas will be forwarded to Headquarters, Army Air Forces. In addition notices of all applications relating to the establishment of aerial gunnery and bombing areas will be sent to local Army, Navy and Civil Aeronautics Administration representatives. Reports on such applications will include a specific statement of the names of such representatives to whom notice has been sent.

(f) *Navigation.* Section 7 of the River and Harbor Act of August 8, 1917, authorizes the Secretary of War to prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States as in

his judgment the public necessity may require for the protection of life and property, or for protection of operations of the United States in channel improvement, covering all matters not specifically delegated by law to some other executive department. Under this authority regulations have been prescribed to govern signals to be displayed on vessels, passing signals, speed and movement of vessels, aids to navigation, length of towlines, etc. (General Regulations), as well as the use, administration, and navigation of navigable waters in particular localities (Navigation Regulations). Whenever matters relating to the movement of vessels are under consideration, District and Division Engineers will take steps to ascertain the views of the District Commander of the Coast Guard and of the proper representatives of all other departments likely to be interested in the same manner as in the case of anchorage regulations.

(g) *Seaplane restricted areas.* District and Division Engineers will give appropriate consideration to restricted areas for the establishment of restricted areas of the navigable waters of ports for use by seaplanes and their attendant craft. In connection with any application or question relating to anchorage areas or navigation regulations for the usual forms of water navigation, District and Division Engineers will consider fully the possibility of conflict with the use of the waters by seaplanes. Before action is taken in any instance in which it is likely that the interests of air commerce are involved, District Engineers will obtain the views of the Civil Aeronautics Authority and the United States Maritime Commission, through the Chief of Engineers.

(h) *Dumping grounds.* (1) Section 4 of the River and Harbor Act of March 3, 1905, authorizes the Secretary of War to prescribe regulations to govern the transportation and dumping into any navigable water, or waters adjacent thereto, of dredgings and other refuse materials whenever in his judgment such regulations are required in the interest of navigation. Under this authority dumping grounds have been established in certain localities and regulations relating thereto have been prescribed.

(2) Section 13 of the River and Harbor Act of March 3, 1899, contains a proviso authorizing the Secretary of War

to permit the deposit of refuse matter in navigable waters, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material. Although the Department has exercised this authority from time to time, it is considered preferable to act under section 4 of the River and Harbor Act of March 3, 1905.

(3) Under the authority contained in an act of Congress to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York City of June 29, 1888, the Supervisor of New York Harbor has established dumping areas in those waters and has prescribed regulations relating thereto. The provisions of the act are enforced by the Supervisor under the direction of the Secretary of War.

(4) In considering requests for the establishment of dumping grounds, District and Division Engineers will give careful consideration to the requirements of navigation and will take action to prevent unreasonable injury to fish and wild life.

(i) *Fishing and hunting structures.* Special regulations have been approved by the Secretary of War to govern the placing, under permits issued by District Engineers, of fishing and hunting structures in certain designated areas. Cases not covered by such regulations must be submitted to the Chief of Engineers for approval.

§ 209.210 *Regulation of bridge tolls.*

(a) As a general rule the laws on the subject of tolls commit their regulation to the Secretary of War. The General Bridge Act of March 23, 1906, provides that the Secretary of War may at any time and from time to time prescribe the reasonable rates of toll for transit over any bridge constructed subject to the provisions of the act. Section 17 of an act of June 10, 1930 (46 Stat. 552; 33 U. S. C. 498a), and an act of June 27, 1930, extends this provision to bridges previously authorized by acts of Congress specifically reserving to Congress the right to regulate subsequently tolls on such bridges, and the right to alter, amend, or repeal such act, respectively. In addition, some special Congressional bridge acts contain provisions concerning

the regulation of tolls for the particular structure authorized.

(b) Complaints that existing charges are unreasonable are referred to the District Engineer for consideration and preliminary determination whether further Departmental action should be taken. If possible, complaints should be specific and state facts giving rise to an inference that existing rates are excessive. If the District Engineer's preliminary findings suggest that Departmental action may be justified, he will be instructed by the Chief of Engineers to issue a notice of hearing. The notice states simply that a hearing is to be held with respect to the reasonableness of the tolls charged on a designated bridge. At the conclusion of the hearing the District Engineer will prepare a report of the facts disclosed by the hearing and by his own investigation and, if existing rates are considered unreasonable, a schedule of rates which, in his opinion, will afford a reasonable return. If a change in existing rates is determined upon by the Chief of Engineers and the Secretary of War, the latter will issue an order to the owner of the bridge revising the rates accordingly.

(c) The act of August 21, 1935 (49 Stat. 670; 33 U. S. C. 503-507), authorizes the Secretary of War to regulate tolls on bridges over navigable waters of the United States which bridges are used for purposes of travel or transportation in interstate or foreign commerce, except (1) bridges subject to the provisions of the General Bridge Act of 1906, (2) bridges built under the authority of the legislature of the State across waterways the navigable portions of which lie wholly within the limits of a single State, and (3) bridges on which the tolls are prescribed by a contract entered into by or with any State or political subdivision thereof, or any municipality. The act contains detailed information as to procedure.

§ 209.220 *Flood control regulations—*

(a) *Local protection works.* On projects authorized subject to specified conditions of local cooperation, no construction is undertaken by the War Department until satisfactory assurances of the required local cooperation have been accepted by the Secretary of War and until any lands, easements, and rights-of-way required to be furnished by local inter-

ests have been made available for at least a complete unit of the project. The District Engineers notify local interests concerned of the requirements of local cooperation and request assurances by registered mail prior to the preparation of final plans and specifications. Regulations prescribed by the Secretary of War for the maintenance and operation of local flood protection works are published in § 208.10 of this chapter. When assurances satisfactory to the District Engineer are received, they are forwarded through the Division Engineer to the Chief of Engineers for consideration of the Secretary of War. The District Engineers advise local interests of the action taken by the Department. Completed projects or completed useful units thereof are normally turned over to local interests for maintenance and operation as soon as the construction and testing of equipment is completed and the project is in proper condition for the assumption of maintenance and operation by local interests. The transfer is accomplished by formal notice from the District Engineer to the local interests that the completed facilities are being turned over to them for maintenance and operation as of a specific date. During construction, District Engineers keep the local interests concerned advised as to the probable date of transfer.

(b) *Use of storage allocated for flood control or navigation at reservoirs constructed wholly or in part with Federal funds.* Regulations prescribed by the Secretary of War in accordance with section 7 of the Flood Control Act of December 22, 1944 (58 Stat. 890; 33 U.S.C., Sup., 709) are for the purpose of coordinating the operation of the flood control features of reservoirs constructed wholly or in part with Federal funds and other flood control improvements to obtain the maximum protection from floods which can reasonably be obtained with the proper operation of all flood control improvements. Proposed regulations are determined by the District Engineer in cooperation with the persons responsible for the maintenance and operation of the reservoir involved after a detailed study of the flood problems and the characteristics of the reservoir project. The proposed regulations are forwarded by the District Engineer through the Division Engineer to the Chief of Engineers for consideration of the Secretary of War. When approved by the Secretary

of War, these regulations are published in Part 208 of this chapter.

§ 209.230 *Use of reservoir areas for recreation.* The War Department in accordance with section 4 of the Flood Control Act of December 22, 1944, as amended by section 4 of the Flood Control Act of July 24, 1946 (Pub. Law 526, 79th Cong., 60 Stat. 641) prepares and administers plans to obtain the maximum sustained public benefit from the use of reservoir areas under its control for recreation and other related purposes, when such use is consistent with the operation and maintenance of the reservoir project for the specific purposes of the reservoir project as authorized by law and when such use is determined not to be contrary to the public interest. The plans are prepared and administered by the District Engineers, subject to review and approval of the Division Engineers and the Chief of Engineers, in close cooperation with other Federal agencies and local interests. The views and desires of these agencies and local interests are obtained normally by conferences with the District Engineers. In many cases, public hearings are held by the District Engineers at appropriate times in the vicinity of the reservoir area at which time anyone can express his views relative to these plans for consideration of the War Department. Rules and regulations are prescribed by the Secretary of War to govern the public use of the reservoir areas in accordance with the law as a part of the general plan for recreational and related uses of the reservoir area. These rules and regulations are published in 36 CFR, Part 301. Licenses and leases are granted under the law containing conditions and provisions to govern the use of specific portions of the reservoir area. Full information concerning such matters may be obtained from the District Engineer in charge of the reservoir.

SUBSTANTIVE RULES, POLICY, AND INTERPRETATIONS

§ 209.260 *Navigable waters of the United States.* (a) In the administration of the laws enacted by Congress for the protection and preservation of the navigable waters of the United States, the War Department is frequently called upon to make determinations as to the navigability of waterways. It should be understood that such determinations

merely represent the views of the Department since the jurisdiction of the United States can be conclusively determined only through judicial proceedings. As information, definitions as to what constitutes a navigable water of the United States based on decisions of the Supreme Court are as follows: Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. And they constitute navigable waters of the United States within the meaning of the acts of Congress, in contra-distinction from the navigable waters of the States, when they form in their ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other States or foreign countries in the customary modes in which such commerce is conducted by water. *The Daniel Ball*, 10 Wall. 557.

(b) The capability of use by the public for purposes of transportation and commerce affords the true criterion of the navigability of a river, rather than the extent and manner of that use. If it be capable in its natural state of being used for purposes of commerce, no matter in what mode the commerce may be conducted, it is navigable in fact, and becomes in law a public river or highway. As Chief Justice Shaw said (21 Pickering 344), it is not every small creek in which a fishing skiff or gunning canoe can be made to float at high water which is deemed navigable, but, in order to give it the character of a navigable stream, it must be generally and commonly useful to some purpose of trade or agriculture. *The Montello*, 20 Wall. 430.

(c) Navigability, in the sense of the law, is not destroyed because the watercourse is interrupted by occasional natural obstructions or portages; nor need the navigation be open at all seasons of the year, or at all stages of the water. A river having actual navigable capacity in its natural state and capable of carrying commerce among the States, is within the power of Congress to preserve for purposes of future transportation, even though it be not at present used for such commerce, and be incapable of such

use according to present methods, either by reason of changed conditions or because of artificial obstructions. It is not difficult to believe that many streams require only the exertion of federal control to make them again important avenues of commerce among the States. If they are to be abandoned, it is for Congress, not the courts, so to declare. *Economy Light and Power Co. v. U. S.*, 256 U. S. 113.

(d) It is obvious that the uses to which streams may be put vary from the carriage of ocean liners to the floating out of logs; that the density of traffic varies equally widely from the busy harbors of the seacoast to the sparsely settled regions of the Western mountain. The tests as to navigability must take these variations into consideration. To appraise the evidence of navigability on the natural condition only of the waterway is erroneous. Its availability for navigation must also be considered. "Natural and ordinary" condition refers to volume of water, the gradients and the regularity of flow. A waterway, otherwise suitable for navigation, is not barred from that classification merely because artificial aids must make the highway suitable for use before commercial navigation may be undertaken. There are obvious limits to such improvements as affecting navigability. These limits are necessarily a matter of degree. There must be a balance between cost and need at a time when the improvement would be useful. Nor is it necessary that the improvements should be actually completed or even authorized. The power of Congress over commerce is not to be hampered because of the necessity for reasonable improvements to make an interstate waterway available for traffic. Improvements that may be entirely reasonable in a thickly populated, highly developed, industrial region may have been entirely too costly for the same region in the days of the pioneers. The changes in engineering practices or the coming of new industries with varying classes of freight may affect the type of the improvement. Although navigability to fix ownership of the river bed or riparian rights is determined, as of the formation of the Union in the original states or the admission to statehood of those formed later, navigability, for the purpose of the regulation of commerce, may later arise. *U. S. v. Appalachian Electric Power Co.*, 311 U. S. 377.

§ 209.265 *General regulations.* Rules and regulations to govern the display of signals on, and the operation of, all craft and accessories working on wrecks, engaged in dredging, surveying, or other work of improvement, and the use and navigation of the waters in the vicinity thereof, in all harbors, rivers, and inland waters of the United States, including the Great Lakes and their connecting and tributary waters, and to govern the length of towlines upon improved and connecting channels of the Great Lakes, are codified in Part 201 of this chapter.

§ 209.270 *Anchorage regulations.* (a) Descriptions of established anchorage grounds and special anchorage areas and rules and regulations relating thereto, are codified in Part 202 of this chapter.

(b) *Special anchorage areas.* Special anchorage areas are designated by the Secretary of War under authority of the act of April 22, 1940 (54 Stat. 150; 33 U. S. C. 180, 258, 319), only when investigation shows conclusively that they are well removed from the fairways and located where general navigation will not endanger or be endangered by unlighted anchored vessels.

§ 209.275 *Bridge regulations.* Regulations to govern the operation of drawbridges are codified in Part 203 of this chapter.

§ 209.280 *Danger zone regulations.* Regulations to govern the use and administration of waters endangered or likely to be endangered by military or naval operations in target practice or otherwise, are codified in Part 204 of this chapter.

§ 209.285 *Dumping grounds regulations.* Regulations to govern the transportation and dumping of refuse materials into navigable waters or waters adjacent thereto, are published in Part 205 of this chapter. Section 13 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152; 33 U. S. C. 407), contains a proviso that the Secretary of War, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of refuse matter in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material. Although the Department has exercised this au-

thority in the past, its present policy is to act only under the authority contained in section 4 of the act of March 3, 1905 (33 Stat. 1147; 33 U. S. C. 419).

§ 209.290 *Fishing and hunting regulations.* Regulations to govern the construction and maintenance in navigable waters of structures to be used for fishing and hunting, are codified in Part 206 of this chapter.

§ 209.295 *Navigation regulations.* Regulations to govern the use, administration, and navigation of navigable waters generally, are codified in 33 CFR, Part 207.

§ 209.300 *Flood control regulations.*

(a) Regulations for the operation and maintenance of local flood protection works approved by the Secretary of War under the authority contained in section 3 of the Flood Control Act of June 22, 1936, as amended and supplemented, are codified as § 208.100 of this chapter. These regulations cover conditions normally and regularly required. Whenever the regulations are not sufficiently broad to cover the specific maintenance and operation requirements of a particular project, District Engineers will submit through the Division Engineers recommended additional regulations needed for that particular project. Such supplemental regulations will require approval of the Secretary of War and will be made applicable only to the individual project concerned. Local interests will be advised of the approved regulations for operation and maintenance of local flood protection works at the time assurances of local cooperation are requested. District Engineers will keep informed as to the extent of compliance with approved regulations for operation and maintenance through regular, periodic inspection of the projects concerned and through careful analysis of the semi-annual reports which the operating and maintaining agencies are required to submit in accordance with the regulations. The District Engineer's views as to any measures required to conform to the approved regulations will be furnished to the agencies responsible. In any case where the District Engineer has been unable to arrange satisfactory compliance or where there is question or disagreement as to the measures required for compliance, a report of the circumstances, together with the recommenda-

tions of the District and Division Engineers, will be submitted to the Chief of Engineers for consideration.

(b) Regulations for the use of storage allocated for flood control or navigation at reservoirs constructed wholly or in part with Federal funds provided on the basis of such purposes, are codified in § 208.25 et seq. of this chapter.

(c) Rules and regulations to govern the public use of reservoir areas under the control of the War Department for recreational purposes, are codified in 36 CFR, Part 301.

§ 209.305 *Regulations under the Oil Pollution Act, 1924.* Section 3 of the Oil Pollution Act, 1924, of June 7, 1924 (43 Stat. 605; 33 U. S. C. 433), authorizes the Secretary of War to prescribe regulations permitting the discharge of oil from vessels in such quantities, under such conditions, and at such times and places as in his opinion will not be deleterious to health or sea food, or a menace to navigation, or dangerous to persons or property engaged in commerce on such waters, and for the loading, handling, and unloading of oil. The only regulations that have been issued under this Act were prescribed July 20, 1943, to govern the discharge of water ballast under the direction of the Supervisor of New York Harbor or the Captain of the Port at other localities, and were in effect only for the duration of the war (§ 207.1 of this chapter).

§ 209.310 *Operation of drawbridges in absence of regulations.* (a) Section 5 of the act of August 18, 1894 (28 Stat. 362; 33 U. S. C. 499), provides that it shall be the duty of persons owning, operating, and tending drawbridges built across navigable waters of the United States, to open, or cause to be opened, the draws of such bridges under such rules and regulations as in the opinion of the Secretary of War the public interests require. Insofar as criminal liability on the part of the bridge owner is concerned, the Department is of the opinion that, in the absence of Federal regulations, there is no Federal authority requiring the opening of any drawbridge to which the General Bridge Act of March 23, 1906, does not apply. With reference to the civil liability of the bridge owner, however, it has been held that the duty to take proper care of a bridge includes the duty to make proper provision for the passage

of vessels through the draw. In constructing a bridge with a draw, and in undertaking to open and manage the draw so as to allow vessels to pass, the owner has recognized the right of vessels to pass through without any appeal to the national authority to protect that right. Having thus recognized the rights of commerce, and undertaken to provide accommodations for the passage of vessels, the owner is bound that the custodians of the bridge shall use ordinary diligence to avoid accidents to vessels going through the draw at customary hours, and in the customary manner, as one of the incidents of the care, management, and control of the bridge itself. The owner is responsible, therefore, for the want of ordinary care and diligence in his servants, and for the consequent damage.

(b) The Attorney General has held (Jan. 28, 1899; 22 Opin. 314) that the first part of section 5 of the 1894 act is merely declaratory of the legal duty of the owners or operators which attaches to the maintenance and operation of a drawbridge across navigable waters. "It is the duty of all persons operating such drawbridges to open or cause them to be opened in a reasonable manner and at a reasonable time, consistent with the uses for which drawbridges are constructed, for the passage of vessels. The repair of such draws and of the bridges with which they are connected is also necessary for their maintenance. It is reasonable that a sufficient time should be allowed for such repairs, and if they cannot be prosecuted without closing the bridge for a number of successive days, such closing cannot be considered an unreasonable interference with navigation." "It is entirely competent for the Secretary of War to make rules and regulations governing this subject, but in the absence of such rules and regulations the law is as I have above stated it."

§ 209.315 *Bridge repairs.* Repairs to a bridge which do not alter the clearances, type of structure, or any integral part of the substructure or superstructure or navigation conditions, but which consist only in the replacement of worn or obsolete parts, may, if the bridge is a legally approved structure, be made as routine maintenance without approval of the War Department.

§ 209.320 *Assignment of bridge franchises.* Authority granted by an act of Congress to construct a bridge is a franchise which cannot be assigned without the permission of Congress. The Department has no authority to approve the plans of a bridge on an application made by a party or corporation to which the franchise has been transferred without authority of Congress. When plans have been approved and the bridge has been built the franchise is regarded as passing with the title to the property, and in such case plans for the renewal, reconstruction, or repair of the bridge may be accepted from the person or corporation in actual possession or control of the property. A similar rule applies to bridges authorized by State laws.

§ 209.325 *Sufficiency of State authority for bridges.* An opinion of the attorney general of the State as to the sufficiency of State authority for the construction of a bridge is acceptable to the Department in doubtful cases.

§ 209.330 *General policies on issuance of permits.* (a) The decision as to whether a permit will be issued must rest primarily upon the effect of the proposed work on navigation. However, in cases where the structure is unobjectionable from the standpoint of navigation but when State or local authorities decline to give their consent to the work, it is not usual for the Department actually to issue a permit. This is for the reason that while the instrument merely expresses assent so far as concerns the public rights of navigation, it practically becomes of no value in the event of opposition by State or local authority and may be regarded by such authority as an act of discourtesy. In such cases the applicant is informed that the structure is unobjectionable from the standpoint of navigation and that permit would be issued were the consent of the local authority also forthcoming.

(b) In cases of conflicting property rights the Department cannot undertake to adjudicate rival claims.

(c) Where it is found that the work for which a permit is desired may interfere with a proposed flood control project, the applicant and the party or parties responsible for fulfillment of the requirements of local cooperation apprised in writing of the fact and of the possibility that a flood control project

which may be constructed in the vicinity of the proposed work will necessitate its removal or reconstruction. It is pointed out to the applicant and to local interests that the Department's function in approving plans for structures in navigable waters is only to insure that structures meet the requirements of navigation and that the application for a permit will be considered on that basis; and that the United States will in no case be liable for any damage or injury to the structures or work authorized which may be caused by or result from future operations undertaken by the Government for the conservation or improvement of navigation, or for other purposes, and no claims or right to compensation will accrue from any such damage.

§ 209.335 *Delegation of authority to issue permits.* The Secretary of War has authorized the issuance of War Department permits by local offices of the Engineer Department, at the option of the Chief of Engineers, for work and structures in or over navigable waters in cases which are entirely routine and which involve no difference of opinion on the part of engineer authorities, nor doubt as to the law, facts, or regulations nor any opposition or other considerations which should be decided by higher authority. A case is held to be entirely routine if the circumstances are such that approval of the plans would unquestionably be given were the matter presented to the Chief of Engineers and the Secretary of War. The mere fact that proposed work, such as dredging, for example, is extensive in scope does not necessarily remove it from the class of routine cases if no possible objection to the work can be foreseen. Under similar circumstances applications for permits for works in navigable waters which extend from or are connected with works constructed without the authorization of the Department but presumably in ignorance of the law will be considered routine. The authority above granted is not a delegation of discretionary powers, but is considered to constitute advance approval by the Secretary of War of a class of cases leaving to the Chief of Engineers or the local engineer officer the application of such approval to particular instances as they arise. Such permits will be signed by Division or District Engineers under the words "By authority of the Secretary of War."

§ 209.340 *Work constructed without prior authority.* The Department will approve plans for structures and issue permits authorizing structures and other work in or over navigable waters, in cases where the application therefor is submitted after the commencement or completion of the structures or work, subject to the following rules: Approval will be limited to those cases where the necessary primary authority, State or Federal as the case may be, validly exists, when the work was innocently constructed, and where the work will not unreasonably interfere with navigation. When forwarding approval the applicant will be informed that the law contemplates prior approval and that in the future plans must be submitted in ample time for their consideration by the Department before construction is begun.

§ 209.345 *Necessary primary authority.* For works constructed by State or municipal agencies, the primary authority will be presumed without proof. If the law of the State requires a license for or approval of the work from a constituted State agency, a copy of such license or approval will be required and may be accepted as evidence of the primary authority. If there be no State regulation of structures in navigable waters, the necessary primary authority may be that granted in the charter of a corporation, or the authority inherent in the ownership of the land on which the structure is placed. The applicant will in such cases be required to furnish an extract from the charter, or a statement of ownership. Especial care will be taken that Federal approval is not granted when there is doubt of the right of the builder to construct and utilize the work.

§ 209.350 *Limiting date in permits.* A specific limiting date will be inserted in all permits, normally December 31 of the third year subsequent to the year of issuance. Thus the limiting date fixed in permits issued in 1946 should normally be December 31, 1949. District and Division Engineers are not authorized to fix a later date for completion, but if special reasons so require, a shorter period may be specified provided that the limit expires in all cases on the last day of a quarter, i. e., March 31, June 30, September 30, or December 31. Experience has, however, shown a tendency to prescribe insufficient time limits, thus subjecting the Department and the permit-

tee to unnecessary annoyance and expense in accomplishing extensions. The full authorized time should usually be allowed. Work or operations of a temporary and obstructive character, however, should be limited to a period as short as is considered reasonable.

§ 209.355 *Permit bonds.* When compensatory works or the removal of temporary structures should be required of the permittee, or in other unusual cases when there is reason to anticipate that the permittee may fail to carry out parts of the work that are against his interest, an additional condition will be included in the permit requiring the permittee to furnish a bond insuring compliance with the permit requirements.

§ 209.360 *Transfer of permits.* Permits express merely the assent of the Federal Government so far as concerns the public rights of navigation. Although issued to a specific party, the assent is not limited to execution of the work by that party and may be availed of by the assignees or purchasers of the property affected, provided the terms of the instrument are strictly complied with.

§ 209.365 *Departure from permit plans.* (a) If the final inspection shows a minor departure from the authorized plans which does not materially affect navigation, the permittee will be required to furnish a tracing showing the work as actually constructed but no further action will be taken by the Department.

(b) Acceptance of permit work. It is not the practice of the Department to issue letters certifying that completed work conforms to the Department authorization. That question is a matter of fact to be determined in case of controversy by the usual rules of court procedure.

§ 209.370 *Payment of expenses of inspection by permittees.* As a general policy, expenses incurred by the Engineer Department in all investigations, inspections, hearings, reports, service of notice, or other action incidental to examination of plans or sites of bridges or other structures built or proposed to be built in or over navigable waters, will be paid from Federal funds in accordance with section 6 of the River and Harbor Act of March 3, 1905 (33 Stat. 1148; 33 U. S. C. 417). A condition requiring that the grantee will bear all

expenses for inspection, or any other operations by the United States in connection with permits granted by the Department will be applied only to special or elaborate supervision deemed necessary to protect the interest of navigation and involving unusual expense. The cost of supervision of dumping of dredged material in navigable waters, requiring the exclusive time of one or more inspectors, will as a general rule be collected from the permittee. In cases not covered by general authority granted by the Chief of Engineers, specific authority must be secured in each instance before making any collection from a permittee. Division Engineers may grant such authority if the operations to be inspected will probably be completed within six months, and if no doubt or disagreement arises as to the propriety of the collection, otherwise the authority of the Chief of Engineers must be obtained.

§ 209.375 *Revocation and relinquishment of permits.* (a) Permits may be revoked by the Secretary of War for failure on the part of the permittee to comply with any of the conditions therein, or where the structures or other work constitute an unreasonable obstruction to navigation or to operations of the United States in the interests of navigation or flood control.

(b) District Engineers may accept from the permittee a voluntary relinquishment of the permit.

§ 209.380 *Establishment of harbor lines.* Harbor lines should provide for the present and future needs of navigation so far as they can be foreseen. Questions of the development of water terminals, the location of existing fixed structures, and of sufficient cross section for the passage of floods will receive attention. The lines will be kept as near to the shore as the reasonable demands of navigation, present or prospective may require, since when the lines are once established and reclamation work and structures have been constructed in the rear, difficulties are likely to be encountered in moving the lines farther toward shore. Harbor lines will not be established across the mouths or entrances to navigable waterways. To avoid ambiguity and misunderstanding both by the public and in the Department the expressions "shoreward (or landward) of harbor lines" and "channel-

ward (or riverward) of harbor lines" will be used in official correspondence to describe position relative to harbor lines and such terms as "inside" and "outside," which might be given opposite meanings, shall be avoided.

§ 209.385 *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.

§ 209.390 *Operations shoreward of harbor lines.* The establishment of a harbor line implies consent to riparian owners to erect structures to the line without special authorization by the Secretary of War but does not imply consent to operations of every kind landward of the line. Such work as dredging for instance may seriously interfere with the regimen of the waterway and will ordinarily require the authorization of the Department to insure that operations are conducted under proper restrictions. District Engineers will therefore supervise operations landward of harbor lines sufficiently to assure themselves that all work proposed is either of the character authorized by the establishment of the line or has been properly authorized and that there is no encroachment channelward of approved limits. Where proposed structures are to touch or closely approach the harbor line the builder will be called upon to submit to the District Engineer in advance, plans of that portion of the proposed work which will be adjacent to the harbor line in order that the integrity of the line may be carefully watched and maintained. Every structure touching the harbor line or closely approaching it will be inspected on completion and its location will be recorded on an office copy of the harbor line map or note made on the map showing where such data may be found.

§ 209.395 *Deposit of refuse.* Section 13 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152; 33 U. S. C. 407), prohibits the deposit in navigable waters generally of "refuse matter of any kind or description whatever other than that

flowing from streets and sewers and passing therefrom in a liquid state". The jurisdiction of the War Department, derived from the Federal laws enacted for the protection and preservation of the navigable waters of the United States, is limited and directed to such control as may be necessary to protect the public right of navigation. Action under section 13 has therefore been directed by the Department principally against the discharge of those materials that are obstructive or injurious to navigation.

§ 209.400 *Violations of law.* Although the Corps of Engineers has certain police powers under the River and Harbor Act of March 3, 1899, and other laws for the protection and preservation of navigable waters, it has been the long standing policy to secure compliance with their provisions short of legal proceedings. Accordingly every effort is made to accomplish corrective measures prior to initiation of action leading to such proceedings. As a general rule, no action is taken when the violation is minor, unintentional, or accidental, and the party responsible makes good the damages suffered. It is the established policy of the Department not to recommend prosecution when the violation is trivial, apparently unpremeditated, and results in no material public injury. Prosecution is recommended in all cases of 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.

§ 209.405 *Damages.* With reference to the method of ascertaining the amount of damages done to a public work by a vessel, for which the vessel is liable under section 16 of the River and Harbor Act of March 3, 1899 (30 Stat. 1153; 33 U. S. C. 412), a distinction is 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 would probably be no enhanced value.

§ 209.410 *Abandonment of wrecks.* By the maritime law the owner of a vessel which is sunk without fault on his part may abandon the wreck in which case he cannot be held responsible for removing it even though it obstructs navigation. That law has not been changed by sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152, 1154; 33 U. S. C. 409, 414, 415), which fully recognize the owner's right of abandonment. However, a person who willfully or negligently permits a vessel to sink in navigable waters of the United States may not relieve himself from all liability by merely abandoning the wreck. He may be found guilty of a misdemeanor and punished by fine, imprisonment, or both, and in addition may have his license revoked or suspended. He may also be compelled to remove the wreck as a public nuisance or to pay for its removal.

§ 209.415 *Removal of wrecks.* Usually removal by the United States is not undertaken if the obstruction simply affects the approaches to private wharves and is without influence upon general navigation.

§ 209.420 *Removal of sunken logs.* The United States acquires no property rights in sunken logs through the mere fact that they lie in navigable waters. It is permissible for the original owner to trace and reclaim them but he should do so within a reasonable time especially if they obstruct navigation. If they form obstructions to navigation and the owner fails to exercise his right to reclaim and remove them they may be removed by the Government. Logs thus removed by the Government may be sold or otherwise disposed of without liability to the original owner. When persons known to have no ownership therein or legal title thereto apply for permission to remove sunken logs it may be assumed that the privilege is desired as a matter of gainful speculation. Ordinarily they will be advised that the Department can grant them no property rights in the logs but will not object

to their removing them provided removal operations are so conducted as not to injure or interfere with navigation. In cases, however, where the logs form serious obstructions to navigation and the conditions are such that the Department would be justified in removing them, there is no legal objection to permitting a private applicant to remove them under an agreement providing that they shall become the property of the applicant.

§ 209.425 *Acting Chief of Engineers and Acting Division and District Engineers.* When so designated, an Acting Chief of Engineers, Acting Division Engineer, or Acting District Engineer exercises all powers, duties, and responsibilities of the Chief of Engineers, Division Engineer, or District Engineer, respectively.

§ 209.430 *Representation of submarine cables and pipe lines on Government charts.* Joint Board Report No. 344, serial No. 213 as amended by serial No. 255, October 8, 1925, approved by the Secretary of War and the Secretary of the Navy, adopted the following policy with respect to showing the locations of submarine pipe lines and cables on charts published by the Government:

(a) Within protected waters (harbors, rivers, bays, estuaries, or other inland waterways). The location of submarine pipe lines and cables is to be indicated by shaded areas marked "Pipe-line area" or "Cable area" on Government charts issued for general use.

(b) Outside protected waters (offshore or in the open sea). As a general rule do not indicate the location of the offshore approaches of submarine pipe lines and cables on Government charts issued for general use.

(c) The Joint Board further recommends that the commandants of naval districts in cooperation with local Army commanders consider and report upon the submarine pipe line and cable situations within the waters of their districts with a view to determining these cases which will follow the policy and those for which exceptions must be made.

(d) Whenever a change is made in the position of any submarine cable or pipe line shown by shaded area on Government charts, or whenever a new cable or pipe line is laid in navigable waters at a depth where interference with navigation

or fouling by anchors is probable, the District Engineer will have the changed or new location indicated on a copy of the Coast Survey Chart of the locality or on a drawing traced from such chart. Such chart or drawing will then be submitted to the local corps area and naval district commanders for their views as to whether the location should or should not be shown in accordance with the policy set forth in the Joint Board report or whether it should be excepted from the general rules laid down therein. The views of the local commanders will be forwarded to the Chief of Engineers and if they recommend publication will be accompanied by three copies of a chart or drawing showing the cable or pipe-line location by a shaded area which ordinarily should not extend more than 500 feet on each side of the location except on the very small scale charts where an area of that width would not be of sufficient prominence. The shaded area will be designated "Cable area" or "Pipe-line area," as the case may be, but no other information as to the character or ownership of the installation will appear on the chart. If it is recommended that the location be not shown on the published charts only one copy of the chart showing it need be furnished.

NOTE: Cables and pipe lines laid at sufficient depths below the beds of waterways to prevent interference with navigation or fouling by anchors need not be considered.

§ 209.435 *Public access to navigation works.* While the regulations prescribed by the Secretary of War for various navigation improvements usually strictly prohibit trespass on Government property, those regulations will not be construed as prohibiting access to navigation works of general public interest subject to the following criteria:

(a) The public will not be permitted in areas where their presence would subject themselves or Government operating personnel to serious accident hazards.

(b) The public will not be permitted in areas where their presence would interfere with any phases of navigation operations.

(c) The public will be given free access to all areas other than those specified under paragraphs (a) and (b) of this section, subject only to the normal legal requirements with respect to property and personal rights.

§ 209.440 *Policy on release of commercial statistics.* The collection of commercial statistics pertaining to rivers, harbors, and waterways, and annual reports thereof to Congress, are required by the River and Harbor Act of June 23, 1866 (14 Stat. 70), the act of February 21, 1891 (26 Stat. 766), the River and Harbor Act of June 13, 1902 (32 Stat. 376), the River and Harbor Act of July 25, 1912 (37 Stat. 201), the River and Harbor Act of September 22, 1922 (42 Stat. 1043), and Public No. 16, February 10, 1932 (47 Stat. 42). It is the policy of the Department to hold in strict confidence any data or information which has been furnished by shippers and others upon the understanding that it will not be disclosed and will only be used in the compilation of port or waterway statistics. In case Federal or State agencies or local interests request other than general information made permissible hereunder, their attention will be called to the policy herein indicated.

§ 209.445 *Certified copies of public records.* It is the established policy of the Department not to furnish certified copies of the public records to private persons for use in controversies in which the United States has no real interest except upon the certificate of the tribunals before which such controversies are to be decided that such transcripts of the public records are deemed essential to the ends of justice.

§ 209.450 *Distribution of maps and charts.* Engineer Department maps and charts will be furnished to mariners or others not in the Government service at the cost of reproduction. Distribution of maps containing classified information is subject to the provisions of AR 380-5. Information as to maps and charts available and prices can be obtained from District and Division Engineers and the Chief of Engineers.

§ 209.455 *U. S. Lake Survey Office.* The U. S. Lake Survey Office performs the service of surveying and charting, for navigation purposes, the Great Lakes and connecting streams as far down the St. Lawrence River as the international boundary at St. Regis, 66 miles above Montreal. This work is confined to United States territory, except for the depiction of such Canadian waters and shores as may be essential to the integrity and usefulness of charts showing locali-

ties contiguous to the boundary and those covering a whole lake or river. Associated with its operations on the Great Lakes, the Lake Survey publishes charts of Lake Champlain and of the natural navigable waters of the New York State canal system. It is also charged with the preparation of charts of the Lake of the Woods and Rainy Lake. The charts undergo constant revision to show changes in aids to navigation and other important features. A catalogue of the charts, outlining areas covered, scales, prices, and conditions of sale, may be had by applying to the District Engineer, U. S. Lake Survey Office, 630 Federal Building, Detroit 26, Michigan. A bulletin revised annually to supplement the information given upon the charts may also be purchased at the Lake Survey Office.

AVAILABILITY OF OPINIONS AND ORDERS AND RULES

§ 209.480 *Statutory requirement.* Subsection 3 (b) of the Administrative Procedure Act of June 11, 1946 (Pub. Law 404, 79th Cong., 60 Stat. 238; 5 U.S.C., Sup., 1002) requires every agency to publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.

§ 209.490 *Final opinions and orders in adjudication of cases.* Final opinions and orders in the adjudication of cases will not be published. They will be served on the parties directly affected thereby and subject thereto. Copies of such opinions and orders will be made available to public inspection in the office of the District Engineer in whose district the case arose to which they apply, and in the Office of the Chief of Engineers. Full information regarding such opinions and orders and their availability may be obtained by communicating with either of these offices. This rule does not apply to those opinions and orders required for good cause to be held confidential and not cited as precedents.

§ 209.500 *Rules.* Section 3 of the Administrative Procedure Act requires publication of all rules except to the extent that there is involved (a) any function of the United States requiring secrecy in the public interest or (b) any matter re-

lating solely to the internal management of an agency, in which cases rules are not published. Except to the extent that there is involved any function of the United States requiring secrecy in the public interest, all rules, whether published or unpublished, will be made available to public inspection in all offices of District Engineers, Division Engineers, and the Chief of Engineers.

PUBLIC RECORDS

§ 209.510 *Availability.* Pursuant to subsection 3 (c) of the Administrative Procedure Act, matters of official record, except information held confidential for good cause found and save as otherwise required by statute, will be made available to persons properly and directly concerned. If the matter is of local significance only, it will be made available in the office of the District Engineer concerned or the Office of the Chief of Engineers. If the matter is of general significance, it will be made available in all offices of District Engineers, Division Engineers, and the Chief of Engineers. Full information regarding the availability of any matter of official record may be obtained by communicating with the Office of the Chief of Engineers.

NOTICE OF PROPOSED RULE MAKING

§ 209.520 *Publication.* (a) Section 4 of the Administrative Procedure Act requires publication of general notice of proposed rule making in the FEDERAL REGISTER (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law), except to the extent that there is involved (1) any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. Except where notice or hearing is required by statute, this requirement does not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(b) General notice of proposed rule making published in accordance with the

above will include (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

PART 210—PROCUREMENT ACTIVITIES OF THE CORPS OF ENGINEERS [ADDED]

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