

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; and it shall not be lawful 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: *Provided*, That nothing herein contained shall extend to, apply to, or prohibit 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: *And provided further*, That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above mentioned 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; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful.

(Mar. 3, 1899, ch. 425, §13, 30 Stat. 1152; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501.)

#### CODIFICATION

Section is from act Mar. 3, 1899, popularly known as the "Rivers and Harbors Appropriation Act of 1899".

#### PRIOR PROVISIONS

This section and sections 408, 411, and 412 of this title, superseded act Aug. 18, 1894, ch. 299, §§6, 7, 8, 28 Stat. 363, which prohibited the depositing of refuse in navigable waters for the improvement of which money had been appropriated, and the injury to sea walls and other works built by the Government, and prescribed penalties for violations, including penalties against masters, etc., and vessels.

Section also superseded act Sept. 19, 1890, ch. 907, §6, 26 Stat. 453, which prohibited obstructing navigation by deposits of refuse, etc., in navigable waters.

#### CHANGE OF NAME

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3010 to 3013 continued Department of the Army under administrative supervision of Secretary of the Army.

#### SHORT TITLE

This section is popularly known as the "Refuse Act of 1899".

#### TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of the Army and other offices and officers of Department of the Army under section 401 of this title to extent that they relate generally to location and clearances of bridges and causeways in navigable waters of United States transferred to and vested in Secretary of Transportation by Pub. L. 89-670, §6(g)(6)(A), Oct. 15, 1966, 80

Stat. 941, which created Department of Transportation. Pub. L. 97-449 amended section 401 of this title to reflect transfer made by section 6(g)(6)(A) of Pub. L. 89-670, and repealed section 6(g)(6)(A).

#### TERMINATION OF DISCHARGE PERMIT PROGRAM

No permits for discharges into navigable waters to be issued under this section after Oct. 18, 1972, and the discharge permit program to be carried out instead under section 1342 of this title, with applications under this section pending on Oct. 18, 1972, to be deemed applications for permits under section 1342, see section 1342 of this title.

#### EXECUTIVE ORDER No. 11574

Ex. Ord. No. 11574, Dec. 23, 1970, 35 F.R. 19627, which provided for administration of a permit program to regulate discharge of pollutants and other refuse matter into navigable waters or their tributaries and placement of such matter on their banks, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

#### § 407a. Deposit of debris of mines and stamp works

In places where harbor-lines have not been established, and where deposits of debris of mines or stamp works can be made without injury to navigation, within lines to be established by the Secretary of the Army, said officer may, and is authorized to, cause such lines to be established; and within such lines such deposits may be made, under regulations to be from time to time prescribed by him.

(Aug. 5, 1886, ch. 929, §2, 24 Stat. 329; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501.)

#### CHANGE OF NAME

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3010 to 3013 continued Department of the Army under administrative supervision of Secretary of the Army.

#### TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of the Army and other offices and officers of Department of the Army under section 401 of this title to extent that they relate generally to location and clearances of bridges and causeways in navigable waters of United States transferred to and vested in Secretary of Transportation by Pub. L. 89-670, §6(g)(6)(A), Oct. 15, 1966, 80 Stat. 941, which created Department of Transportation. Pub. L. 97-449 amended section 401 of this title to reflect transfer made by section 6(g)(6)(A) of Pub. L. 89-670, and repealed section 6(g)(6)(A).

#### § 408. Taking possession of, use of, or injury to harbor or river improvements

##### (a) Prohibitions and permissions

It shall not be lawful 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 im-

provement 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: *Provided*, That the Secretary of the Army may, on the recommendation of the Chief of Engineers, grant permission for the temporary occupation or use of any of the aforementioned public works when in his judgment such occupation or use will not be injurious to the public interest: *Provided further*, That the Secretary may, on the recommendation of the Chief of Engineers, grant permission for the alteration or permanent occupation or use of any of the aforementioned public works when in the judgment of the Secretary such occupation or use will not be injurious to the public interest and will not impair the usefulness of such work.

**(b) Concurrent review**

**(1) NEPA review**

**(A) In general**

In any case in which an activity subject to this section requires a review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), review and approval of the activity under this section shall, to the maximum extent practicable, occur concurrently with any review and decisions made under that Act.

**(B) Corps of Engineers as a cooperating agency**

If the Corps of Engineers is not the lead Federal agency for an environmental review described in subparagraph (A), the Corps of Engineers shall, to the maximum extent practicable and consistent with Federal laws—

(i) participate in the review as a cooperating agency (unless the Corps of Engineers does not intend to submit comments on the project); and

(ii) adopt and use any environmental document prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) by the lead agency to the same extent that a Federal agency could adopt or use a document prepared by another Federal agency under—

(I) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(II) parts 1500 through 1508 of title 40, Code of Federal Regulations (or successor regulations).

**(2) Reviews by Secretary**

In any case in which the Secretary must approve an action under this section and under another authority, including sections 401 and 403 of this title, section 1344 of this title, and section 1413 of this title, the Secretary shall—

(A) coordinate applicable reviews and, to the maximum extent practicable, carry out the reviews concurrently; and

(B) adopt and use any document prepared by the Corps of Engineers for the purpose of complying with the same law and that addresses the same types of impacts in the same geographic area if such document, as

determined by the Secretary, is current and applicable.

**(3) Contributed funds**

The Secretary may accept and expend funds received from non-Federal public or private entities to evaluate under this section an alteration or permanent occupation or use of a work built by the United States.

**(c) Timely review**

**(1) Complete application**

On or before the date that is 30 days after the date on which the Secretary receives an application for permission to take action affecting public projects pursuant to subsection (a), the Secretary shall inform the applicant whether the application is complete and, if it is not, what items are needed for the application to be complete.

**(2) Decision**

On or before the date that is 90 days after the date on which the Secretary receives a complete application for permission under subsection (a), the Secretary shall—

(A) make a decision on the application; or

(B) provide a schedule to the applicant identifying when the Secretary will make a decision on the application.

**(3) Notification to Congress**

In any case in which a schedule provided under paragraph (2)(B) extends beyond 120 days from the date of receipt of a complete application, the Secretary shall provide to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives an explanation justifying the extended timeframe for review.

**(d) Work Defined**

For the purposes of this section, the term “work” shall not include unimproved real estate owned or operated by the Secretary as part of a water resources development project if the Secretary determines that modification of such real estate would not affect the function and usefulness of the project.

(Mar. 3, 1899, ch. 425, §14, 30 Stat. 1152; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501; Pub. L. 99-88, title I, §100, Aug. 15, 1985, 99 Stat. 315; Pub. L. 114-322, title I, §1156(a), Dec. 16, 2016, 130 Stat. 1664; Pub. L. 115-270, title I, §1165, Oct. 23, 2018, 132 Stat. 3797.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (b)(1), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

CODIFICATION

Section is from act Mar. 3, 1899, popularly known as the “Rivers and Harbors Appropriation Act of 1899”.

PRIOR PROVISIONS

Section superseded act Sept. 19, 1890, ch. 907, §9, 26 Stat. 426, which prohibited persons taking possession of

or using or injuring government works in navigable waters.

Act Aug. 14, 1876, ch. 267, §3, 19 Stat. 139, penalizing persons injuring any pier breakwater, or other work of the United States for the improvement of rivers or harbors or navigation, was probably omitted from the Code as superseded by this section.

#### AMENDMENTS

2018—Subsec. (d), Pub. L. 115–270 added subsec. (d).

2016—Pub. L. 114–322 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

1985—Pub. L. 99–88 inserted further proviso empowering Secretary, on recommendation of Chief of Engineers, to grant permission for alteration or permanent occupation or use of any of public works mentioned in this section when in judgment of Secretary such occupation or use will not be injurious to public interest and will not impair usefulness of such work.

#### CHANGE OF NAME

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted “Title 10, Armed Forces” which in sections 3010 to 3013 continued Department of the Army under administrative supervision of Secretary of the Army.

#### TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of the Army and other offices and officers of Department of the Army under section 401 of this title to extent that they relate generally to location and clearances of bridges and causeways in navigable waters of United States transferred to and vested in Secretary of Transportation by Pub. L. 89–670, §6(g)(6)(A), Oct. 15, 1966, 80 Stat. 941, which created Department of Transportation. Pub. L. 97–449 amended section 401 of this title to reflect transfer made by section 6(g)(6)(A) of Pub. L. 89–670, and repealed section 6(g)(6)(A).

### § 408a. Expediting approval of modifications and alterations of projects by non-Federal interests

#### (a) Section 14 application defined

In this section, the term “section 14 application” means an application submitted by an applicant to the Secretary requesting permission for the temporary occupation or use of a public work, or the alteration or permanent occupation or use of a public work, under section 14 of the Act of March 3, 1899 (commonly known as the “Rivers and Harbors Appropriation Act of 1899”) (33 U.S.C. 408).

#### (b) Review

Not later than 1 year after June 10, 2014, the Secretary, after providing notice and an opportunity for comment, shall establish a process for the review of section 14 applications in a timely and consistent manner.

#### (c) Benchmark goals

##### (1) Establishment of benchmark goals

In carrying out subsection (b), the Secretary shall—

(A) establish benchmark goals for determining the amount of time it should take the Secretary to determine whether a section 14 application is complete;

(B) establish benchmark goals for determining the amount of time it should take

the Secretary to approve or disapprove a section 14 application; and

(C) to the extent practicable, use such benchmark goals to make a decision on section 14 applications in a timely and consistent manner.

#### (2) Benchmark goals

##### (A) Benchmark goals for determining whether section 14 applications are complete

To the extent practicable, the benchmark goals established under paragraph (1) shall provide that—

(i) the Secretary reach a decision on whether a section 14 application is complete not later than 15 days after the date of receipt of the application; and

(ii) if the Secretary determines that a section 14 application is not complete, the Secretary promptly notify the applicant of the specific information that is missing or the analysis that is needed to complete the application.

##### (B) Benchmark goals for reviewing completed applications

To the extent practicable, the benchmark goals established under paragraph (1) shall provide that—

(i) the Secretary generally approve or disapprove a completed section 14 application not later than 45 days after the date of receipt of the completed application; and

(ii) in a case in which the Secretary determines that additional time is needed to review a completed section 14 application due to the type, size, cost, complexity, or impacts of the actions proposed in the application, the Secretary generally approve or disapprove the application not later than 180 days after the date of receipt of the completed application.

#### (3) Notice

In any case in which the Secretary determines that it will take the Secretary more than 45 days to review a completed section 14 application, the Secretary shall—

(A) provide written notification to the applicant; and

(B) include in the written notice a best estimate of the Secretary as to the amount of time required for completion of the review.

#### (d) Failure to achieve benchmark goals

In any case in which the Secretary fails make<sup>1</sup> a decision on a section 14 application in accordance with the process established under this section, the Secretary shall provide written notice to the applicant, including a detailed description of—

(1) why the Secretary failed to make a decision in accordance with such process;

(2) the additional actions required before the Secretary will issue a decision; and

(3) the amount of time the Secretary will require to issue a decision.

#### (e) Notification

##### (1) Submission to Congress

The Secretary shall provide a copy of any written notice provided under subsection (d)

<sup>1</sup> So in original. Probably should be preceded by “to”.