

## CODIFICATION

Text of section, which was previously omitted from the Code, was restored in view of conflicting court decisions as to whether or not section had been repealed or superseded. See *eg. United States v. Wishkah Boom Co.*, 136 F. 42 (9th Cir. 1905), (appeal dismissed [1906] 202 U.S. 613); *United States v. Wilson*, 235 F.2d 251 (2d Cir. 1956).

#### § 403b. Lighting at docks and boat launching facilities

Whenever the Secretary considers a permit application for a dock or a boat launching facility under section 403 of this title, the Secretary shall consider the needs of such facility for lighting from sunset to sunrise to make such facility's presence known within a reasonable distance.

(Pub. L. 99-662, title IX, §946, Nov. 17, 1986, 100 Stat. 4200.)

#### Statutory Notes and Related Subsidiaries

##### “SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2201 of this title.

#### § 404. Establishment of harbor lines; conditions to grants for extension of piers, etc.

Where it is made manifest to the Secretary of the Army that the establishment of harbor lines is essential to the preservation and protection of harbors he may, and is, authorized to cause such lines to be established, beyond which no piers, wharves, bulkheads, or other works shall be extended or deposits made, except under such regulations as may be prescribed from time to time by him: *Provided*, That, whenever the Secretary of the Army grants to any person or persons permission to extend piers, wharves, bulkheads, or other works, or to make deposits in any tidal harbor or river of the United States beyond any harbor lines established under authority of the United States, he shall cause to be ascertained the amount of tidewater displaced by any such structure or by any such deposits, and he shall, if he deem it necessary, require the parties to whom the permission is given to make compensation for such displacement either by excavating in some part of the harbor, including tidewater channels between high and low water mark, to such an extent as to create a basin for as much tidewater as may be displaced by such structure or by such deposits, or in any other mode that may be satisfactory to him.

(Mar. 3, 1899, ch. 425, §11, 30 Stat. 1151; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501.)

#### Editorial Notes

##### CODIFICATION

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

##### PRIOR PROVISIONS

This section and section 406 of this title, superseded act Aug. 11, 1888, ch. 860, §12, 25 Stat. 425, as amended by act Sept. 19, 1890, ch. 907, §12, 26 Stat. 455, which authorized the establishment of harbor lines, and prescribed a penalty for a violation of the section or any rule made in pursuance of it.

Section also superseded act Aug. 18, 1894, ch. 299, §9, 28 Stat. 364, which contained provisions for compensa-

tion for tide water displaced similar to the proviso in this section.

Act Aug. 5, 1886, ch. 929, §2, 24 Stat. 329, which was probably omitted from the Code as superseded by this section, provided that: “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 War, said officer may, and is hereby 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.”

#### Statutory Notes and Related Subsidiaries

##### 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. 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).

#### § 405. Establishment and modification of harbor lines on Potomac and Anacostia Rivers

The provisions of section 404 of this title are made applicable to the Potomac and Anacostia Rivers, and after July 25, 1912, harbor lines in the District of Columbia, or elsewhere on said rivers, shall be established or modified as therein provided.

(July 25, 1912, ch. 253, §1, 37 Stat. 206.)

#### Editorial Notes

##### CODIFICATION

Section is from part of section 1 of act July 25, 1912, popularly known as the “Rivers and Harbors Appropriation Act of 1912”.

#### § 406. Penalty for wrongful construction of bridges, piers, etc.; removal of structures

Every person and every corporation that shall violate any of the provisions of sections 401, 403, and 404 of this title or any rule or regulation made by the Secretary of the Army in pursuance of the provisions of section 404 of this title shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$2,500 nor less than \$500, or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, 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 of the United States.

(Mar. 3, 1899, ch. 425, §12, 30 Stat. 1151; Feb. 20, 1900, ch. 23, §2, 31 Stat. 32; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501.)

#### Editorial Notes

##### CODIFICATION

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

##### AMENDMENTS

1911—Act Mar. 3, 1911, transferred to the District Courts the enforcement powers formerly lodged in the Circuit Courts.

1900—Act Feb. 20, 1900, substituted "section eleven" for "section fourteen" where first appearing, which for codification purposes, was translated as "section 404 of this title".

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

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##### TRANSFER OF FUNCTIONS

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#### § 407. Deposit of refuse in navigable waters generally

It shall not be lawful 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 of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, 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; 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.)

#### Editorial Notes

##### 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.

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

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##### 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.