

§ 245.25

Engineers will consult with the Coast Guard district to jointly determine whether the obstruction poses a hazard to navigation.

(b) Factors to be considered, as a minimum, include:

(1) Location of the obstruction in relation to the navigable channel and other navigational traffic patterns.

(2) Navigational difficulty in the vicinity of the obstruction.

(3) Clearance or depth of water over the obstruction, fluctuation of water level, and other hydraulic characteristics in the vicinity.

(4) Type and density of commercial and recreational vessel traffic, or other marine activity, in the vicinity of the obstruction.

(5) Physical characteristics of the obstruction, including cargo, if any.

(6) Possible movement of the obstruction.

(7) Location of the obstruction in relation to existing aids to navigation.

(8) Prevailing and historical weather conditions.

(9) Length of time the obstruction has been in existence.

(10) History of vessel accidents involving the obstruction.

§ 245.25 Determination of remedial action.

(a) *Consultation with Coast Guard.* After a determination has been made that an obstruction presents a hazard to navigation, District Engineers will consult with the Coast Guard district to determine appropriate remedial action for the specific situation.

(b) *Options.* The following options, or some combination of these options, may be considered:

(1) No action.

(2) Charting.

(3) Broadcast notice to mariners and publication of navigational safety information.

(4) Marking.

(5) Redefinition of navigational area (e.g., channel, fairway, anchorage, etc.).

(6) Removal.

§ 245.30 Identification of responsible parties.

(a) *Investigation.* When marking or removal are determined to be appro-

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appropriate remedial action and no emergency situation exists, the District Engineer will investigate to determine the owner or, if the owner cannot be determined, the lessee or operator. If cargo is involved, ownership will be separately determined.

(b) *Notification.* If the owner or other responsible party can be determined, the District Engineer and/or the Coast Guard will send a notice, via certified mail, advising them of their legal obligation to mark (referencing Coast Guard requirements) and to remove the obstruction, and of the legal consequences for failure to do so, with a request for prompt reply of intent.

(c) *Public notice.* If the owner or responsible party cannot be determined from investigation, the District Engineer will publish a legal advertisement in a newspaper nearest the location of the obstruction and in a newspaper of at least 25,000 circulation, addressed "To Whom It May Concern," requiring removal by the owner, lessee or operator. The advertisement will be published at least once a week for 30 days.

§ 245.35 Judgments to require removal.

When the owner or responsible party has been identified, and refuses or fails to take prompt action toward removal, the District Engineer may seek a judgment by the district court requiring removal.

§ 245.40 Removal by responsible party.

(a) *Corps monitoring.* If the owner, lessee or operator agrees to remove a hazard to navigation, the District Engineer should ascertain that:

(1) Marking is accomplished promptly and is maintained,

(2) The plan for removal and disposal is reasonable and acceptable to the District Engineer,

(3) Removal operations do not unreasonably interfere with navigation,

(4) All conditions of the Corps of Engineers permit are met, and

(5) Removal operations are pursued diligently.

(b) *Deficiencies.* If the removal actions are not proceeding satisfactorily, the District Engineer will notify the responsible party of the deficiencies and

provide a reasonable time for correction. If not corrected promptly, the District Engineer may declare the wreck "abandoned" and proceed with actions toward Corps removal.

§ 245.45 Abandonment.

(a) *Establishing abandonment.* Abandonment is the surrendering of all rights to a vessel (or similar obstruction) and its cargo by the owner, or owners if vessel and cargo are separately owned. In all cases other than emergency, abandonment will be established as a precondition to Corps removal, to avoid a "taking" of private property for public purposes. Abandonment is established by either:

(1) Affirmative action on the part of the owner declaring intention to abandon, or

(2) Failure to commence immediate removal of the obstruction and prosecute such removal diligently.

(b) *Owner declaration.* The Corps of Engineers will not "accept" a notice of abandonment. Any notice of abandonment received by the Corps of Engineers will be acknowledged only, and will stand by itself as a declaration. Abandonment by the operator or lessee alone does not constitute abandonment.

(c) *Non-diligence.* The determination of whether removal is commenced immediately and prosecuted diligently will be made by the District Engineer based on the degree of hazard to navigation, the difficulty and complexity of the removal operation, and the appropriateness of the removal effort. When no removal actions are being undertaken and the District Engineer is unable to identify the owner through investigation or 30 days of public notice, abandonment is presumed.

(d) *Cargo.* If vessel and cargo are separately owned, or ownership of cargo is uncertain, abandonment of vessel and cargo will be established separately.

(e) *Later claims.* After abandonment is established, the owner may no longer undertake removal or make any claim upon the vessel (or other obstruction) or its cargo, unless expressly permitted by the District Engineer.

(f) *Continuing owner liability.* The abandonment of a wreck or other obstruction does not remove the owner's

liability for the cost of removal and disposal if removal is undertaken by the Corps of Engineers, except in cases of nonnegligent sinking which occurred prior to November 17, 1986.

§ 245.50 Removal by Corps of Engineers.

(a) *Non-emergency situations.* In non-emergency situations, the District Engineer may undertake removal action (within the limits of delegation) after all of the following conditions have been met:

(1) A determination has been made, in consultation with the Coast Guard, that the obstruction is a hazard to navigation,

(2) The District Engineer and the Coast Guard agree on a course of action which includes the need for removal (or, if a conflict exists, the need for removal has been resolved at higher level),

(3) The District Engineer has made a reasonable attempt to identify the owner, operator, or lessee, and

(4) Abandonment of the wreck or obstruction has been established.

(b) *Emergency actions.* In emergency situations, the District Engineer may bypass (within the limits of delegation) any or all of the four conditions in the preceding paragraph if, in his judgment, circumstances require more immediate action, and if either one of the following conditions are met:

(1) The obstruction impedes or stops navigation, or

(2) The obstruction poses an immediate threat to life, property, or a structure that facilitates navigation.

§ 245.55 Permit requirements.

(a) *Permits for removal.* Marking and removal operations by the owner, operator or lessee are normally permitted under nationwide permits for such activities as outlined in part 330 of this chapter. The activities must meet certain conditions as stated in those regulations, and additional permits may still be required from state or local agencies.

(b) *Special conditions.* The Corps of Engineers may add individual or regional conditions to the nationwide permit, or require an individual permit on a case-by-case basis.