Rivers & Harbors Act of 1899, Section 10

Agencies: U.S. Army Corps of Engineers

Citation: 33 U.S.C. § 403

Enacted as: “An Act Making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes”, on March 3, 1899

Summary:
The Rivers and Harbors Act of 1899 (RHA) (33 U.S.C. §§ 401 et seq.) is the initial authority for the U.S. Army Corps of Engineers (ACOE) regulatory permit program to protect navigable waters in the development of harbors and other construction and excavation. Section 10 of the RHA (33 U.S.C. § 403) prohibits the unauthorized obstruction or alteration of any navigable water of the U.S. This section provides that the construction of any structure in or over any navigable water of the U.S., or the accomplishment of any other work affecting the course, location, condition, or physical capacity of such waters is unlawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. The Secretary’s approval authority has since been delegated to the Chief of Engineers. Activities requiring section 10 permits include structures (e.g., piers, wharfs, breakwaters, bulkheads, jetties, weirs, transmission lines) and work such as dredging or disposal of dredged material, or excavation, filling, or other modifications to the navigable waters of the United States.

The geographic jurisdiction of the RHA includes all navigable waters of the United States which are defined (33 C.F.R. Part 329.4) as, “those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce.” While “navigable waters” is generally defined under regulations to extend seaward to the 3 nm limit of the old territorial sea, section 10 may apply seaward to the outer limits of the continental shelf. See Lathrop v. Unidentified, Wrecked & Abandoned Vessel, 817 F. Supp. 953 (M.D. Fla. 1993) (dicta statement of the ACOE).


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