



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314

REPLY TO
ATTENTION OF

DAEN-CWO-R

18 JAN 83

SUBJECT: Implementation of Section 6, PL 97-140

SEE DISTRIBUTION


1. Reference: DAEN-CWR-R multiple letter, dated 11 February 1982, SAB.
2. As a result of formal and informal inquiries concerning the impact of PL 97-140 on the lakeshore management program, the following additional guidance is furnished.
3. It is the opinion of the Office of Chief Counsel that no action may be undertaken to cause forced removal or relocation of a dock lawfully installed at the time of enactment of Section 6 of PL 97-140 unless it is a threat to life or property.
4. Section 6 prohibits forced removal or relocation of a grandfathered structure in the event of the death of the permit holder or sale of the structure to a new owner. In the event of sale of the grandfathered structure, the new owner should be issued a permit on an annual basis with the condition that removal from the lake or relocation to a limited development area is required after 31 December 1989 or on the repeal of Section 6 of PL 97-140, whichever comes first.
5. It is also the opinion of the Office of Chief Counsel that forced removal of a structure cannot be undertaken when a permit holder violates the conditions of the permit or the lakeshore management plan. While the permit may be revoked for violation, actual removal must be postponed until after 1989.
6. Section 6 addresses enforced removal actions only. There is nothing in the law to preclude communication with affected property owners and advising them of violations of permit conditions or lakeshore management plans in an effort to promote voluntary compliance. This communication may have the added advantage of making property owners aware of the requirement for compliance with permit conditions and lakeshore management plans at the end of the statutory moratorium period. Efforts should be confined to promoting voluntary compliance. ~~Concerted efforts to persuade owners to comply might constitute pressure tactics which would violate the spirit of the law.~~

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7. Owners of structures should be made aware that failure to accept a permit, pay the permit fee or abide by the conditions of a permit or the lakeshore management plan on a voluntary basis are cause for removal at the end of the statutory moratorium period. The permit files should be documented on willful non-compliance of permit conditions and the lakeshore management plan so that removal action, where warranted, may be initiated at the end of the statutory moratorium or on the repeal of Section 6 of PL 97-140, whichever comes first.

FOR THE COMMANDER:



C. G. GOAD
Chief, Construction-Operations Division
Directorate of Civil Works

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18 MAR 1983

SOSEBEE/bas/20247
15 March 1983

ECB
3/16/83

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SEE DISTRIBUTION

1. References:

- a. DAEN-CWR-R multiple letter, dated 11 Feb 82, SAB.
- b. DAEN-CWO-R multiple letter, dated 10 Jan 83, SAB.

2. As a result of additional inquiries concerning the impact of P.L. 97-140 on the lakeshore management program, we are furnishing the following additional guidance.

3. It is the opinion of the Office of Chief Counsel that our "citation" authority and sanctions provided for in 16 U.S.C. 460d can be invoked despite the enactment of Section 6. Section 6 prescribes a moratorium on enforced removal actions only. It in no way alters or repeals fines or sanctions contemplated in other statutes." The use of citation authority as a means of gaining compliance with the terms and conditions of permits issued prior to the date of enactment of P.L. 97-140 remains an option available to you. However, it is imperative that we exercise good judgment to insure the spirit of the law is upheld. The use or threat of a citation for violation of Title 36 CFR must not be used to compel removal of structures protected by Section 6, P.L. 97-140.

A. The Office of Chief Counsel further advises that "appurtenant structures" as written in P.L. 97-140 should be interpreted to include other facilities not specifically included in Section 6, i.e., boat ramps, power lines, light poles, waterlines, improved walkways, etc. It appears the intent of Congress was to prevent enforced removal of all lawfully installed facilities, if they do not occasion a threat to life or property.

FOR THE COMMANDER:

CF: DAEN-CWO
DAEN-CWM-A

C. G. GOAD
Chief, Construction-Operations Division
Directorate of Civil Works

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