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AN INDEX OF LAWS AND REGULATIONS AFFECTING FIXED OCEAN FACILITIES

FPO-1-77 (7)
DECEMBER 1976

OCEAN ENGINEERING
AND CONSTRUCTION PROJECT OFFICE
CHESAPEAKE DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
WASHINGTON, D.C. 20374

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20. ABSTRACT (Continue on reverse side if necessary and identify by block number) This is a cursory examination of "current" laws and regulations effecting the siting, construction, and operating of fixed offshore structures. Preceded by a slim discussion-conclusion, the bulk of the report is a listing of addresses useful, apparently, for further research should a specific ocean construction project be planned for a particular site.		

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Acknowledgements

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Sponsorship

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SECTION I INTRODUCTION

This report describes a survey of the current legal documentation pertaining to the siting, construction and operation of fixed offshore structures. Inquiries were not limited to any particular area or type of structure.

To obtain this information, all of the coastal states and the territories governed by the U.S. were contacted. Letters of inquiry were mailed directly to the governors of each state, and the request was then channeled to the appropriate governmental agency. Naturally, the responses from state to state vary widely as to the quantity of applicable legislation. The North Carolina Department of Natural and Economic Resources provided legislation regarding "dredge and fill", "refinery siting", application for a permit, and the "Coastal Area Management Act". The Commonwealth of Massachusetts, at the other end of the spectrum, responded only with a letter explaining that they were in the process of complying with the Coastal Zone Management Act, and would have a list of their applicable laws compiled later in the year. Most of the territories were unable to respond in a satisfactory manner, but assured us that they adhered to all United States legislation regarding their coastal waters.

In addition to surveying local and state statutes, laws and regulations, contact was maintained with the Bureau of Land Management, Law of the Sea Institute, National Oceanographic and Atmospheric Agency and the National Science Foundation. These agencies provided insight into the scope of legislation being considered and implemented on a national and international level.

Research was done at the Library of Congress. The individual state codes were examined for applicable legislation. While laws directly related to fixed ocean structures are rare, there are many laws which apply to, or affect, such construction. Also examined in this search for up-to-date information on local, state, national and international statutes were legal journals and periodicals. Unfortunately, most of what is currently written concerns international ocean policy. This is a relevant issue at this time, and will be discussed further in this report.

A file of legal documentation was prepared to accumulate the material received in response to our inquiries. This file, of course, is not exhaustive, nor is it reproduced in this report. The file itself has been delivered to the Naval Facilities Engineering Command separately. Appendix A is a list of the authorities contacted in preparing the file; Appendix B lists the materials received.

SECTION II DISCUSSION

The construction of facilities on the coast or continental shelf of the oceans surrounding United States territory is regulated by Federal, State, and local authority. The laws and regulations mandated by these authorities change from time to time. As a result, the emphasis of this study is to provide direction for locating current legal documentation.

The authors and researchers for this report are not attorneys. Consequently, the findings reported and opinions expressed do not constitute a substitute for the services of an attorney or an expression of legal counsel.

The examples of laws and regulations cited in this section were chosen to illustrate authorities influencing the construction of offshore facilities. Of course, many activities conducted on or from offshore facilities would fall under other authorities as well. This aspect of offshore operation has been ignored in this study. Furthermore, such indirect topics as labor relations law applying to the workmen constructing an offshore facility is not discussed herein. To include these topics would inundate the study with a flood of further topics such as Internal Revenue regulations providing for withholding income tax from the workman's salaries, etc.

2.1 FEDERAL AUTHORITIES.

The United States Government influences ocean facilities through laws, regulations, and other actions. The United States Government Manual, published by the Federal Register and available from the U.S. Government Printing Office (GPO) is a valuable guide to the various Federal components.

2.1.1 FEDERAL LAWS. Federal laws, of course, are bills passed by Congress, signed into law by the President, or vetoed and overridden by Congress, etc. The U.S. Government Manual mentioned above describes the process of publishing Federal laws. Ultimately, laws become a part of the United States Code, which is indexed and updated periodically.

In addition, copies are available at Federal Depository Libraries (FDL) throughout the nation. The libraries of most Federal agencies are FDL's. In addition, most law libraries have copies.

Federal laws range from broad topics, such as establishing an agency and granting it a charter to regulate some activity, to highly specific laws designed to redress a particular inequity.

Four Federal laws have been identified which seem to bear, at least indirectly, on the construction of facilities in United States waters.

- Coastal Zones Management Act (PL 92-583)
- Outer Continental Shelf Lands Act (67 Stat. 462)
- Submerged Lands Act (67 Stat. 29)
- Fishery Conservation and Management Act of 1976

This list is not intended to be exhaustive, but these laws should provide an opening for researching specific legal problems.

2.1.2 FEDERAL REGULATIONS. Federal regulations are issued by Federal agencies under the authority of their Charter from Congress. They are published by the GPO and are available at FDL's, law libraries and the like. The U.S. Government Manual gives further details regarding the publication and indexing of Federal Regulations. In brief, regulations are indexed into 120 Titles, one-fourth of

which are revised and republished every three months. The Titles are codified in Parts and Subparts.

- Title 35: U.S. Coast Guard Artificial Islands and Fixed Structures on the Outer Continental Shelf (parts 140-147).
- Title 43 Subpart 2883: Pipelines on the Outer Continental Shelf

These are clearly two Regulations affecting offshore construction. But one can also anticipate that regulations of the Environmental Protection Agency (EPA) and the Occupational Health and Safety Administration would also influence offshore construction projects.

2.1.3 OTHER FEDERAL ACTIONS. The means whereby the Federal Government can exert authority are many and varied.

- Executive Orders of the President
- Delegations of Authority by a Cabinet Officer
- Memoranda of Understanding, Agreements, and Secretarial Orders

Among the latter category are the Department of the Interior Outer Continental Shelf, Orders 1 through 12.

2.2 STATE AND TERRITORIAL AUTHORITIES.

The jurisdiction of the States of the United States is restricted to the three-mile limit by Federal law. Structures within this limit are bound by State law. Each state, of course, is free to enact whatever laws and regulations are in its interest.

The Coastal Zone Management Act noted in Section 2.1 makes certain demands upon the States. As a result, the laws and regulations of some states are currently being revised. This may result in making the State laws and regulations more readily available through better indexing and the like. The Law Library of the Library of Congress maintains up-to-date copies of the laws of every State.

The laws of the States typically regulate fishing, ownership of coastal land, exploitation of coastal resources, permit requirements for coastal enterprises, and control of coastal pollution.

The Territories of the United States are governed primarily by Federal Law. A few, however, have enacted further regulation of offshore enterprise in response to local conditions.

2.3 OTHER AUTHORITIES.

The United Nations Conference on the Law of the Sea has a potential influence on ocean construction in international waters. At present, however, such regulation is only in the discussion stage.

A large project in international waters would probably merit a review of United States Treaty obligations with other nations, as well as the provisions of the Geneva Convention.

SECTION III CONCLUSIONS

On the state level, the purpose of most legislation is to promote, improve and safeguard the lands and waters located in the coastal areas. Concern for environmental protection has generated many of the statutes, laws and regulations which the states use in defining acceptable and unacceptable procedures for construction in coastal water. The procedures for obtaining the necessary building permits vary from state to state, but almost all of the states cited some type of permit requirement.

It can be concluded that the Coastal Zone Management Act (PL 92-583) should greatly affect the proliferation of legislation. Where the states may now govern the use of their coasts with scattered legislation, this act requires that the states formulate definitive policies and governing agencies. This act also encourages the individual states to continue to refine and improve their capacity to understand and manage their coastal resources.

On the national level, the United States ocean policy shows an intensified effort to come to grips with the complex issues involved in the exploitation of ocean resources and the general use of ocean space. There are, of course, many factors which enter into the determination of national ocean policy, including the views of various industrial and other interest groups which would be affected by any changes.

At this time, there appear to be five basic subject areas of concern to this country. The first is the question of the regime for exploration and exploitation of the nonliving resources of the seabed and subsoil.

Secondly, the question of management of living marine resources, wherever situated. The third question is the breadth of the territorial sea and the concomitant right of navigation and overflight on the high seas and through international straits. The questions of freedom of scientific research in the ocean, and protection of the marine environment are the fourth and fifth areas of concern.

Gradually, specific solutions are being developed in some of these subject areas. All of these concerns affect, directly or indirectly, the construction of fixed ocean facilities. For example, the United States has recognized the need in certain situations for regulation of navigation, particularly relating to navigation near offshore installations. All coastal countries are permitted to establish reasonable safety zones around offshore installations but such zones must comply with the international standards in existence or to be promulgated.

Naturally, the resolution of all of these issues may substantially alter the present conditions affecting construction of fixed facilities in the ocean. However, if the past is any indication of the future, it will be quite some time before definite policies are established. The sensitive nature of these matters necessitates the lengthy negotiations of all aspects before conclusions can be reached.

SECTION IV
RECOMMENDED USAGE AND ARRANGEMENT
OF ACCOMPANYING FILES

The final results of the effort are evidenced in the accompanying materials. These files include the information gathered from each individual state and territory, and the texts of some of the major legislation on a national level. The folders are arranged alphabetically, first the states, followed by the territories. They contain all of the correspondence with each state agency, and the hard copy legislation that resulted from our inquiries.

A complete list of the contents of the files is contained in Appendix B. This list should provide an index to the file contents, and assist anyone wishing to duplicate the materials for their own use. These files are not complete, since they are limited to the legislation which the governing agencies provided. They can, however, be useful in supplying an overview of the kinds of laws being enacted, and the level of sophistication of the various areas.

We recommend that whenever construction is planned for a new location in the ocean, the laws, regulations, and statutes be thoroughly researched in light of the type of structure planned for the specific locale.

APPENDIX A
MAILING ADDRESSES

The following addresses, arranged alphabetically by states, and followed by territories, provide the sources from which we obtained pertinent information. They will provide a focal point for the in-depth research of legal issues raised by specific construction projects in the ocean.

ALABAMA

State of Alabama
Legislative Reference Service
Suite 220, State Capital
Montgomery, Alabama 36104

ALASKA

Department of Law
State of Alaska
Office of the Governor
Juneau, Alaska 99801

CALIFORNIA

Department of Navigation and Ocean Development
1416 Ninth Street
Sacramento, California 95814

CONNECTICUT

State of Connecticut
Department of Environmental Protection
State Office Building
Hartford, Connecticut 06115

DELAWARE

State of Delaware
Division of Environmental Control
Edward Tatnall Building
Dover, Delaware 19901

GEORGIA

The Department of Law
State of Georgia
132 State Judicial Building
Atlanta, Georgia 30334

HAWAII

Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801

Department of Transportation
Harbors Division
79 South Nimitz Highway
Honolulu, Hawaii 96813

HAWAII (Contd.)

Environmental Quality Commission
550 Halekauwila Street
Honolulu, Hawaii 96813

LOUISIANA

Commissioner of Conservation
State Land & Natural Resources Building
Baton Rouge, Louisiana 70821

Department of Public Works
Capital Annex
Baton Rouge, Louisiana 70821

Wildlife & Fisheries Commission
400 Royal Street
New Orleans, Louisiana 70130

State Land Office
Land & Natural Resources Building
Baton Rouge, Louisiana 70821

Offshore Terminal Authority
1130 International Trade Mart
New Orleans, Louisiana 70130

MAINE

State of Maine
Department of Conservation
Augusta, Maine 04333

MARYLAND

State of Maryland
Executive Department
Annapolis, Maryland 21404

MASSACHUSETTS

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

NEW HAMPSHIRE

New Hampshire Special Board
State of New Hampshire
Concord, New Hampshire 03301

New Hampshire Water Supply and Pollution Control Commission
State of New Hampshire
Concord, New Hampshire 03301

NEW JERSEY

State of New Jersey
Department of Environmental Protection
P.O. Box 1889
Trenton, New Jersey 08625

NEW YORK

New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233

NORTH CAROLINA

State of North Carolina
Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602

North Carolina Department of Natural & Economic Resources
P.O. Box 27687
Raleigh, North Carolina 27611

OREGON

Department of Land Conservation and Development
1175 Court Street, N. E.
Salem, Oregon 97310

SOUTH CAROLINA

South Carolina Water Resources Commission
P.O. Box 4515
Columbia, South Carolina 29240

TEXAS

General Land Office
Coastal Section
Austin, Texas 78701

Texas Coastal and Marine Council
P.O. Box 13407
Austin, Texas 78711

VIRGINIA

Commonwealth of Virginia
Marine Resources Commission
P.O. Box 756
Newport News, Virginia 23607

WASHINGTON

Washington State Law Library
Temple of Justice
Olympia, Washington 98504

WASHINGTON (Contd.)

Commissioner of Public Lands
Public Lands Building
Olympia, Washington 98504

COMMONWEALTH OF PUERTO RICO

Ports Authority
GPO Box 2829
San Juan, Puerto Rico 00936

Department of Natural Resources
Box 5887
San Juan, Puerto Rico 00906

GOVERNMENT OF AMERICAN SAMOA

Office of the Governor
Pago Pago, American Samoa 96799

PANAMA CANAL COMPANY

Engineering and Construction Director
Panama Canal Company
Balboa Heights, Canal Zone

TERRITORY OF GUAM

Department of Land Management
Government of Guam
Agana, Guam 96910

Department of Land Management
Territorial Seashore Protection Commission
Government of Guam
Agana, Guam 96910

Bureau of Planning
P.O. Box 2950
Agana, Guam 96910

U. S. Army Corps of Engineers
Guam Operations Office
P.O. Box 196
FPO San Francisco 96630

TRUST TERRITORY OF THE PACIFIC ISLANDS

Office of the High Commissioner
Saipan, Mariana Islands 96950

THE VIRGIN ISLANDS OF THE UNITED STATES

Office of the Governor
Charlotte Amalie, St. Thomas
Virgin Islands 00801

ADDITIONAL SOURCES

**Office of Law of the Sea Negotiations
Department of State
Washington, D.C. 20240**

**National Academy of Sciences
2101 Constitution Avenue, N.W.
Washington, D.C. 20418**

**National Oceanic and Atmospheric Administration
6010 Executive Boulevard
Rockville, Md. 20852**

**National Ocean Survey
Atlantic Marine Center
439 W. York St.
Norfolk, Va. 23510**

**Office of Water Research and Technology
Department of the Interior
Washington, D.C. 20240**

**Bureau of Land Management
Department of Interior
Washington, D.C. 20240**

APPENDIX B

INDEX TO FILE OF LEGAL DOCUMENTATION FOR OFFSHORE CONSTRUCTION

ALABAMA

Act No. 1274, S.311 - Owen, Alabama Law, (Regular Session, 1973)
"To provide for the preservation, enhancement and development of the coastal areas of Alabama; to establish a board with responsibility and authority for developing, coordinating and maintaining a coastal area program; and to provide for the promulgation of regulations and provisions for the enforcement of this act."

ALASKA

Correspondence

CALIFORNIA

"California Boating Law, Small Craft Harbors and Launching Facilities Registration, Equipment, and Operation of Vessels," published by the State of California Resources Agency, Department of Navigation and Ocean Development, 1974, DNOD 1-74. (publication)

CONNECTICUT

General Statutes of Connecticut Revision of 1958, Revised to January 1, 1975, Volume V.

Title 25: Water Resources, Flood and Erosion
Chapter 473, Water Resources Part I and Part II
Sections 25-7b to 25-16

Title 22a: Environmental Protection
Chapter 440, Wetlands and Water Courses
Sections 22a-28 to 22a-35

DELAWARE

Delaware Code Annotated, Revised 1974.

Title 7: Conservation
Chapter 61, Underwater Lands
Subchapters I-IV

"Regulations Governing the Use of Water Resources and Public Subaqueous Lands," published by Water and Air Resources Commission, July 14, 1969. Regulation No. IV, Requirements for the Use of Public Subaqueous Lands. (publication)

GEORGIA

Correspondence

HAWAII

Correspondence citing laws and statutes and the agencies responsible for enforcement.

LOUISIANA

"Related Statutes Relative to Oil and Gas Leasing and Development of State Owned Lands and Water Bottoms and State Agency Lands," published by Office of State Mineral Board, December 1975. (publication)

West's Louisiana Statutes Annotated, Revised Statutes, Volume 17A, St. Paul, West Publishing Company, 1975.

Title 30: Minerals, Oil and Gas
Chapter 2, Leases and Contracts
Sections 101-112
Sections 121-147
Sections 151-159
Sections 171-179.14
Sections 181-188
Sections 201-221
Sections 251-252
Sections 301-306
Sections 401-403

West's Louisiana Statutes Annotated, Revised Statutes, Volume 23A, St. Paul, West Publishing Company, 1965.

Title 41: Public Lands
Chapter 10, Leases for Public Lands
Section 41:1261-41:1262

West's Louisiana Statutes Annotated, Revised Statutes, Volume 21, St. Paul, West Publishing Company.

Title 34: Navigation and Shipping
Chapter 35, Offshore Terminal Authority
Section 34:3101-34:3116
Chapter 1, Ports and Harbors
Section 34:203

MAINE

Chapter 287, Public Laws of 1975, H.P. 567 - L.D. 703, approved May, 1975.
"An Act to Include the Right to Use Submerged Lands as Part of Environmental Licensing."

MARYLAND

The Annotated Code of the Public General Laws of Maryland, Natural Resources, Charlottesville, The Miche Company, 1974.

Title 9: Wetlands and Riparian Rights
Subtitle 1-5

MASSACHUSETTS

Correspondence

NEW HAMPSHIRE

New Hampshire Revised Statutes Annotated 1955, Volume 2, Orford,
Equity Publishing Company.

Title X: Public Health
Chapter 149, Pollution of Waters
Section 149.8-a

New Hampshire Revised Statutes Annotated 1955, Volume 4-A, Orford,
Equity Publishing Company.

Title L: Waters; Water Resources Board
Chapter 483-A, Tidal Waters
Section 483-A:1-6

NEW JERSEY

"Proposed CAFRA Rules and Regulations," published by Department of
Environmental Protection, March 10, 1976. (publication)

"Coastal Zone Management in New Jersey," published by Department of
Environmental Protection. (brochure)

"Facts to Know About New Jersey's Riparian Lands Program," published
by Department of Environmental Protection. (brochure)

"Facts About New Jersey's Wetlands," published by Department of
Environmental Protection. (brochure)

"Riparian Rights," published by Department of Conservation and
Economic Development, Bureau of Navigation, November 1968.
(publication)

P.L. 1973, Chapter 185, 1972 Assembly No. 1429, approved June 20, 1973.
"An Act to provide for the review of "certain" facilities in
the coastal area and making an appropriation therefor."

NEW YORK

"Rules and Regulations for the Administration of Environmental
Conservation Law, Part 608, Article 15, Title 5 (Protection of
Waters) and Certifications Under P.L. 92-500," published by
Department of Environmental Conservation, June 1, 1973. (publication)

"Official Compilation of Codes, Rules and Regulations of the State
of New York, Tidal Wetlands - Moratorium Permits, Part 660,
Title 6," published by Department of Environmental Conservation,
July 1, 1974. (publication)

NEW YORK (Contd)

"Laws for the Protection and Preservation of the Navigable Waters of the United States," published by the U.S. Army Corps of Engineers. (publication)

NORTH CAROLINA

"Applying for Permit to Alter Marshlands, Estuarine Waters, Tidelands and State-Owned Lakes," published by North Carolina Department of Natural and Economic Resources, Division of Marine Fisheries, January, 1975.

North Carolina General Statute, Chapter 113, Article 17, Dredge and Fill Law.

North Carolina General Statute, Chapter 143, Article 21, Environmental Management Commission.

North Carolina General Statute, Chapter 113A, Article 7, Coastal Area Management.

North Carolina General Statute, Chapter 113A, Article 7, Coastal Area 1975 Supplement.

North Carolina Administrative Code, Chapter 3D, Subchapter 3D.0100, Dredge and Fill Permit Processing Procedure, Standard.

OREGON

"Draft, Land Use Planning Goals and Guidelines for the Coastal Zone," published by Land Conservation and Development Commission, 1973. (publication)

SOUTH CAROLINA

"State Permit Procedure," published by State of South Carolina Water Resources Commission. (publication)

TEXAS

"Texas Coastal Legislation," second edition, published by Texas Coastal and Marine Council, October 1975. (publication)

VIRGINIA

"Laws of Virginia Relating to Wetlands and Subaqueous Lands," published by Marine Resources Commission, 1975.

Title 62.1: Waters of the State, Ports and Harbors
Chapter 1, Watercourses Generally
Sections 62.1-1 to 62.1-3.03
62.1-4, 62.1-5

Chapter 2.1, Wetlands
Sections 62.1-13.1 to 62.1-13.20

Chapter 3.1, State Water Control Law
Sections 62.1-44.33, 62.1-44.34

VIRGINIA (Contd)

Chapter 16, "Wharves, Docks, Piers and Bulkheads"
Section 62.1-164

Chapter 20, Miscellaneous Offenses
Sections 62.1-194 to 62.1-194:1

WASHINGTON

Revised Code of Washington Annotated, Title 79: Public Lands,
Title 80: Public Utilities St. Paul, West Publishing Company, 1962.
(RCWA 79.01.004)

Title 79: Public Lands
Chapter 79.01 Use of Tide and Shore Lands Granted to
United States
Section 79.01.596
79.01.600
79.01.604
79.01.608

COMMONWEALTH OF PUERTO RICO

Act No. 23, S.B 1322, Approved June 20, 1972.

"To create a Department of Natural Resources, to establish its organization, powers and duties, to transfer functions, fix penalties and to appropriate funds for its operation and to provide that the Secretary of Natural Resources be a member of the Environmental Quality Board."

Act No. 151, H.B. 1090, Approved June 28, 1968.

"To regulate and provide for the regulation by the Puerto Rico Ports Authority for the navigation and marine trade in navigable waters of Puerto Rico and in its harbors and docks, etc."

GOVERNMENT OF AMERICAN SAMOA
Correspondence

PANAMA CANAL COMPANY
Correspondence

TERRITORY OF GUAM
Correspondence

TRUST TERRITORY OF THE PACIFIC ISLANDS

Civil Action No. 202, Trial Division of the High Court, Ponape District,
March 23, 1965.

"The Protestant Mission of Ponape vs Trust Territory of the Pacific Islands and Its Alien Property Custodian."

TRUST TERRITORY OF THE PACIFIC ISLANDS (Contd)

Civil Action No. 23, Trial Division of the High Court, Yap District,
April 21, 1961.

"Yangruw and Giltaman vs Manggur and Fenam."

Civil Action No. 123, Trial Division of the High Court, Palau District,
September 5, 1958.

"Ngiraibichel vs Trust Territory of the Pacific Islands."

Civil Action No. 415, Trial Division of the High Court, Ponape District,
March 13, 1972.

"Otniel Edmond Tulenkun vs Village Government of Utwe."

THE VIRGIN ISLANDS OF THE UNITED STATES

Correspondence

FEDERAL LEVEL

Public Law 92-583, 92nd Congress, S. 3507, October 27, 1972.
(86 Stat. 1280)

"Coastal Zone Management Act of 1972."

Public Law 94-265, 94th Congress, H.R. 200, April 13, 1976.
(90 Stat. 331)

"Fishery Conservation and Management Act of 1976."

Regulations Pertaining to Mineral Leasing, Operations and Pipelines
on the Outer Continental Shelf, published by the United States De-
partment of the Interior, August 1975.

(as contained in Title 30 and Title 43 of the Code of
Federal Regulations and the Outer Continental Shelf
Lands Act (67 Stat. 462)

OCS Orders 1 thru 12 Governing Oil, Gas, and Sulphur Leases In The
Outer Continental Shelf Gulf of Mexico Area, published by the U.S.
Geological Survey, Department of the Interior under authority of
30 CFR 250.11, May 1975.

INTERNATIONAL LEVEL

Third United Nations Conference of the Law of the Sea, New York Session,
March 15 - May 7, 1976, Revised Single Negotiating Text, published by
Office of Law of the Sea Negotiations, Department of State, May 10, 1976.