

eventually modified and combined into one "Oil Pollution and Hazardous Substance Control Act". Most important is the inclusion of a "trust fund or insurance" section.

#### THREE AREAS OF LAW

Unfortunately, in their present forms neither of these pieces of proposed legislation adequately addresses itself to the complex issues which must be considered before comprehensive guidelines and areas of responsibility can be set forth. Not the least of the complex issues which must first be reconciled is the fact that there are three different areas of Law which bear heavily on the establishment of liabilities and the enforcement of legal decisions: International Law, Admiralty Law, and Statutory and Common Law.

As far as International Law is concerned, the United States is a signatory to the Convention for the Prevention of the Pollution of Seas by Oil and the Convention for the Contiguous Zone. Both Conventions affect the discharge of oil and the associated liabilities.

Admiralty Law is of particular concern in light of the Limitations of Liability Act of 1851, as amended. This Act was passed at a time when Congress was attempting to encourage the development of United States maritime commercial activities. Its provisions regarding liability are somewhat permissive and are contrary to the intent of oil pollution legislation being considered by this Committee.

Lastly, and equally important, is normal Statutory and Common Law, which outlines three types of liability (based on negligence) having a profound effect on the effectiveness of oil pollution laws.

Any Bill which is agreed upon by the Committee must insure compatibility between these three areas of Law. Otherwise, when it comes time to decide Oil Pollution cases, the Courts may have their hands tied because of contradictory legal concepts. As an example, under Admiralty Law the community which suffers from damages caused by oil discharged from a vessel must wait for higher priority liens to be adjusted before it can collect damages. Since a Seaman's wages are first priority, and both H.R. 15906 and S. 2760 limit liability to the value of the vessel (to actions in rem) then there may never be any money left to pay for losses incurred by the *community*—or residents and property owners thereof.

#### LIMITATION OF LIABILITY

This points up another issue, which should be resolved by the Committee. Since these Bills are designed to assist communities which may suffer damage from pollution by oil or other matter, then it seems that the intent of the law would be overshadowed by the limitation of liability which accompanies actions in rem. It is my contention that actions in personum should not be precluded from the options available to potential plaintiffs. *Therefore, I hope that the Committee Bill will clearly indicate that liens can be recovered either by actions against the ship or against the owner.*

#### GEOGRAPHICAL CONSIDERATION

Another matter of equal or possibly greater concern is the insufficient geographical area covered by either Bill. S. 2760 simply applies to incidents occurring within the 3 mile limit. And, since there are now Federally leased off-shore drilling sites in operation beyond 5 miles from the shoreline of Santa Barbara County and Ventura County, California, the Senate Bill would be ineffective when dealing with incidents occurring beyond 3 miles from the shoreline. As for H.R. 15906, since it only deals with the contiguous zone, (that area between 3 and 12 miles out) rights to collect for damages suffered within the 3 mile limit are ill defined and possibly non-existent. *I hope that the Committee clearly specifies a zone which extends 50 miles from the shore.*

These considerations are in addition to the fact that H.R. 15906 does not have any provision for removing oil which was discharged into the contiguous zone and has drifted into the territorial waters. Also, the fact that H.R. 15906 does not clearly include off-shore drilling facilities when it is assigning liability for oil discharges, again points to the need for a carefully drafted Committee Bill which protects shoreline communities and owners of real and personal property therein or nearby.