

United States, or any of its tributaries, any refuse matter. The U.S. Supreme Court in *United States v. Standard Oil Co.*, 384 U.S. 224, 16 L ed 2d 492, 86 S. Ct. 1427 (1965), opinion delivered by Mr. Justice Douglas, broadly and liberally construed the term "refuse" to include "oil" of any kind whether waste or useful, and to encompass "all foreign substances and pollutants", apart from those "flowing from streets and sewers."

The Department of Justice, during 1967 Hearings on Water Pollution by the Senate Public Works Committee, acknowledged that "vessel-caused oil pollutions can be prosecuted under that act", based on the aforesaid Supreme Court decision. But, they contended that this was not a "complete solution" since the violator was not obligated to clear up his spill.

The obvious answer to this contention is for the Department of Justice, in appropriate cases, to file an action under the Oil Pollution Act of 1924, as amended to clean up the spillage. The Act, as amended, should be subject to judicial interpretation prior to being repealed by Congress merely because of an untested belief that it may be difficult to enforce.

Certainly the Senate bill in its present form would not provide a "complete solution" relative to enforcement of the Act. Not unless mass conviction of all users of the waterways would satisfy this requirement. The proposed Act, as written, would be impossible to police or enforce since anyone using the waterways would technically be guilty of violating its provisions.

Recommendation

A common sense approach is required. The answer is simple. If the "grossly negligent or willful" criteria is to be eliminated then it is necessary to revert to the scope of vessels used in the Oil Pollution Act of 1924, prior to the 1966 Amendment, or to vessels carrying oil as cargo.

The above modification to the Oil Pollution Act of 1924, as amended, [33 U.S.C 433] together with the insertion of the term "shore installations" would cover the primary sources of pollution for which S. 2760 was intended to proscribe.

H.R. 14000

Should this Committee decide to recommend the repeal of the Oil Pollution Act of 1924 rather than amend existing legislation as proposed above, then it is suggested that the following language of Subsection 19(k) of H.R. 14000 be retained:

"(k) Nothing contained in this section shall extend to, apply to, or prohibit operations in connection with projects for the improvement of navigable waters or construction of public works, authorized by Acts of Congress. Further, this section shall not be construed to authorize the issuance of permits by any other Federal agency for disposal of dredged materials from such authorized projects. [Whenever the disposition of such materials into the navigable waters of the United States is proposed by any department or agency of the United States, or any public or private agency under Federal permit or license, the Federal department or agency involved shall first consult with the Secretary of the Interior with a view to the prevention of pollution of such waters by oil. The Secretary of the Army in cooperation with the Secretary of the Interior shall, within one year after enactment of this Act, develop guidelines governing disposal of such dredged matters."]

In view of the Memorandum of Understanding between the Secretary of the Army and the Secretary of Interior, dated July 13, 1967, the third sentence of Subsection 19(k) should be deleted. It is also urged that the fourth sentence of this Subsection be deleted pending the results of the Pilot Study programs heretofore authorized by Congress.

The definition of "oil" [§ 19(a)(1)] should be revised as suggested in the foregoing commentary of S. 2760.

H.R. 15906

It is urged that Subsection 21(a) be amended to read:

"Sec. 21(a) As used in this section, the term 'matter' means any substance of any description or origin, other than oil [or dredge spoil], which, when discharged from a vessel or short installation into any waters in substantial quantities, presents, in the judgment of the Secretary, an imminent and substantial hazard to the public health or welfare."

One final observation. It is ironic, but one of the absurd results of the proposed legislation when considered in conjunction with S. 2760 and H.R. 14000, is that