

wastewater with a control facility approved by a state water pollution control agency and discharging the treated wastewater into navigable waters, could be guilty of a Federal crime if the treated wastewater contained any amount of oil. This provision runs completely contrary to the schemes of regulation set up under the Federal Water Pollution Control Act and the Water Pollution Control Acts of the various States. The lack of quantitative specificity makes such a criminal provision of extremely doubtful validity. In any event, it is highly unwise and undesirable to set up a criminal statute that could result in conflict with state and federal regulatory provisions.

The proposed legislation further provides that any vessel or shore installation which violates this section or any regulation issued thereunder, shall be liable for a penalty of not more than \$10,000, although it is not clear how this type of in rem penalty can be made applicable to a shore installation. Some limitations are placed on the liability of the owner or operator under S. 2760; however, they could still be held accountable for such unauthorized acts as vandalism, sabotage, and negligent acts by others.

Subsection 19(e) would provide that "The owner or operator of a vessel or shore installation from which oil is discharged into or upon the navigable waters of the United States or adjoining shorelines shall remove such discharged oil immediately from such waters and shorelines in accordance with regulations prescribed by the Secretary under this section. If such owner or operator fails to so act, the Secretary may remove the oil or arrange for its removal from such waters and shorelines, and such owner or operator and, as appropriate, the vessel and the shore installation shall be liable, notwithstanding any other provision of law, to the United States, in addition to any penalties prescribed in this section, for the full amount of the actual costs incurred by the Secretary under this subsection: *Provided*, That there shall be no such liability where such discharge was due to an act of God."

At best, the words "unlawfully and negligently discharged" should appear in this section to avoid the imposition of liability without fault. The obligation would be to act "immediately," with apparent disregard of whether the manpower or equipment was readily available. Oil would have to be removed in accordance with regulations prescribed by the Secretary. Thus, the Secretary would be granted sweeping powers to require methods of removal which could turn out to be extremely costly and unnecessary under particular circumstances. The liability for the full amount of the actual costs incurred by the Secretary in removing the oil would be imposed without administrative hearing or review. It is also significant to note that criminal and civil penalties would be imposed regardless of whether or not there were any adverse effects from the discharge. By contrast, subsection 19(k) referring to federal operations uses the phrase "where adverse effects may occur."

Our conclusion is that it would be highly desirable to leave the regulation of discharges from shore installations subject to the present regulatory provisions set forth in the Federal Water Pollution Control Act. Therefore, it is respectfully urged that, if any bill is reported, provisions providing for a different system of regulation or enforcement for shore installations be deleted.

#### DUAL REGULATION

It would be most unfortunate to have a dual system of administering water pollution control for discharges from shore installations. Under the policy of the Water Quality Act of 1965, as wisely adopted by the Congress, there has been a tremendous ferment of interest in water quality objectives and means for their attainment as the states formulated water quality standards for interstate waters within their respective boundaries. Thus, action to maintain high standards applicable to waters receiving discharges of not only oil but of any kind of matter is at an all-time high. The most desirable approach would be to allow this program to go forward through administration by the states of their own water quality standards, rather than to impose a conflicting, federally administered system.

We would be remiss if we did not mention one difficulty arising in connection with the Water Quality Act of 1965. Under that Act, the Secretary of the Interior is directed to make a determination as to whether the state standards are consistent with the objectives of the Act. The criteria used by the Secretary in making these determinations have been expressed in various docu-