

within the navigable waters of the United States. This bill, largely regulatory in nature, provides for comprehensive regulations to be promulgated by the Secretary of the Interior governing the discharge of sewage, ballast and bilge water, litter, sludge, garbage, or other substances of any kind or description other than oil or dredge spoil, into the navigable waters of the United States or the contiguous zone. Violations of these regulations would result in a criminal penalty not exceeding \$2,500.00 or imprisonment not exceeding one year and a civil penalty of not more than \$10,000. In general, our statement will deal with certain procedural rights connected with the promulgation of regulations, and which agency should have primary control over certifying shipboard pollution devices and over the promulgation and enforcement of rules. In addition, we will discuss certain discrepancies in the bill and the vexing problem of retrofit.

We are, of course, greatly concerned with the problem of pollution of the seas by noxious materials, and have so stated unequivocally before the Subcommittee on Oil and Water Pollution of the Senate Commerce Committee just last June. Thus, we are in favor of the overall objectives of H.R. 16207. However, there are several suggestions which, we believe, will improve the bill and which will result in more effective control of water pollution. For example, H.R. 16207 should result in uniformity of the control of water pollution from vessels. However, the bill does not appear to accomplish this inasmuch as it seems to impose Federal requirements on existing and future State or local requirements. Hence, it is suggested that all regulations be promulgated with a view toward uniformity, and that the bill be amended so as to provide that regulations issued thereunder shall preempt all other State or local regulations relating to the control of water pollution by vessels.

While this proposed legislation is largely regulatory in nature it does not require the Secretary to hold hearings before promulgating his regulations. For this reason, and in order to insure that all interested parties have their views fully considered, we think it is imperative that H.R. 16207 should provide for notice and hearing procedures before the regulations called for in both sections 11 and 12 are adopted. It is true that subsection (d) provides that the Secretary shall consult with certain agency heads before the regulations are issued, and that after they are issued, but before they become effective, interested parties shall be afforded "a reasonable opportunity to comment thereon". But where regulations are so far-reaching and all-inclusive and their violation carries a criminal penalty not exceeding \$2,500.00 or one year imprisonment and a civil penalty of not more than \$10,000—as is the case under H.R. 16207—it is only right and just that the Secretary should be required to make findings as to the facts on which regulations are based. And on questions such as whether the findings of fact are based on substantial evidence and whether the regulations are reasonable in light of the findings made, we think interested parties should be afforded the right of judicial review. The issues involved are far too serious to be governed by regulations promulgated on the basis of merely affording interested parties opportunity to comment between issuance and effective date and without the procedural safeguards mentioned above.

As constituted, the implementation and enforcement of H.R. 16207 is almost wholly with the Department of the Interior. Here is a bill dealing entirely with ships—inland and ocean-going, and since the Coast Guard is the Federal agency which has always had the responsibility for regulating the operations of vessels, we think the various responsibilities of regulation, implementation, and enforcement under H.R. 16207 should properly repose in the Coast Guard—the agency with existing expertise and experience. Thus, the bill should be amended to place the Department in which the Coast Guard is operating in place of the Department of Interior, and the Secretary of the Department in which the Coast Guard is operating in place of the Secretary of Interior.

One of the weaknesses of the present bill is the divided responsibility involved in the promulgation of the regulations and their enforcement and regulation in general. For example, on page 4, subsection (e), the Secretary of Interior has the power to certify the conformance of any device designed to control the discharge of sewage from vessels, and the Secretary of the Department in which the Coast Guard is operating only has the power of approval of such devices insofar as "safety" is concerned. The authority of the Secretary of the Interior should be confined to setting standards and criteria with respect to pollution. The certification as to safety and all other aspects should be with the agency that has the responsibility for approving virtually all vessel equipment and operations—the Coast Guard. After all, it is the Coast Guard which is involved in these pro-