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History of Florida Oil Spill Legislation

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# HISTORY OF FLORIDA OIL SPILL LEGISLATION

**David A. Barrett and Christine M. Warren**

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HISTORY OF FLORIDA OIL SPILL LEGISLATION

DAVID A. BARRETT* AND CHRISTINE M. WARREN**

I. INTRODUCTION
A. Prelude to Legislation

On March 19, 1967, the Liberian tanker, Torrey Canyon, ran aground on the Scillies, just outside the English Channel. The stricken tanker spewed forth tons of oil that gathered to form a massive slick eighteen miles long and three miles wide. Frantic British and French authorities searched futilely for effective cleanup methods; their efforts, judged by present standards, seem to have been a comedy of errors. Over $16,000,000 was spent on intensive cleanup operations. Royal Air Force bombers sought to set fire to the slimy residue; tons of detergent were thrown on the waters. More than half of the $16,000,000 was used to clean up the cleanup, hay and sawdust were spread on the sea to soak up the oil, then stacked on the beach for an incoming tide to carry out again.

Whatever the myriad mistakes of the English and French seaside janitors, the effect of the massive spill on the public was electric. Worldwide media, particularly the English speaking media, gave the disaster front-page headlines. With such coverage of the disaster, public and legislative concern over the possibility of similar disasters became newsworthy.

The full environmental horror of oil pollution struck Florida in Tampa Bay with devastating force on February 13, 1970. That Friday, the Greek tanker, Delian Apollon, en route to Florida Power Corporation docks, ran aground not far from her destination. Thousands of barrels of thick “Bunker C” oil, products of Humble Oil Company,

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gushed from the hole in the tanker's port side. The resulting slick covered twenty-five square miles of Tampa Bay; its initial cleanup took four weeks and cost $93,000. The resulting news coverage was extensive and statewide.

Legal action began immediately. Attorney General Earl Faircloth filed a $200,000,000 suit against Shipping Development Corporation of Panama, the owner of the Delian Apollon, on February 16, 1970; later Humble Oil Company, the charterer of the Delian Apollon, and Florida Power Corporation, the receiver of the oil, joined as intervening plaintiffs.

The effects of the spill were not limited to the costs of cleanup, news coverage, and a lawsuit. The spill generated interest throughout the state; it became an example to Florida residents of what could happen in any bay or along any waterfront. Since the multibillion-dollar tourist industry is Florida's lifeblood and Florida's main tourist attraction is its hundreds of miles of beaches, the state's interest in its environment was not without its pragmatic economic overtones. Consequently, the fouling of a rich tourist area by the oil from the Delian Apollon precipitated considerably more than rhetoric in a comparatively short period of time.

7. Id.
8. See memorandum from Randolph Hodges to Vincent D. Patton (Mar. 31, 1970) reporting the cumulative damage figures from the Tampa Bay spill as of that date. Many of the letters, reports, miscellaneous publications, and drafts of legislation documented in this article are materials used by the Florida House of Representatives Ad Hoc [later Select] Committee on Oil Spill Legislation during hearings in 1973 and 1974. These materials are available through the Florida Legislative Library Service, Tallahassee, Florida. Materials located in the committee files will be documented as [Comm. file].
9. Id. Florida Department of Natural Resources (DNR) expenses: $45,057.90; local government expenses: $44,114.80; Florida Department of Air and Water Pollution Control expenses: $3,032.22. Letter from Walter E. Starnes, Air and Water Pollution Control, to Harmon Shields, Director, Division of Marine Resources, Florida Department of Natural Resources (Dec. 9, 1970) [Comm. file].
12. Id. The suit was later settled for $150,000 plus interest, costs, disbursements, and attorney's fees.
13. The Florida Department of Commerce estimates that over 23,000,000 tourists in Florida in 1970 spent more than $3,600,000,000 while visiting the state. FLORIDA DEPARTMENT OF COMMERCE, FLORIDA TOURIST STUDY (1970) (not paginated) [Comm. file]. The same study indicates that 67% of tourists sampled in 1970 listed the beaches as Florida's main attraction.
B. 1970 Legislative Action

When the 1970 Florida Legislature convened for its sixty-day session on April 7,14 only six weeks after the Tampa Bay spill, government action to prevent spills and to punish their perpetrators was imminent. The first oil spill legislation was formally introduced on April 7, 1970; it required a report of an oil spill by any person responsible for the discharge and imposed criminal penalties on the perpetrator of such spills.15 Several bills were proposed, all differing widely in penalties and definitions.16 At least one bill was touted as part of Governor Claude Kirk's17 "get tough" legislative program.18 A committee substitute for one of the bills eventually became law.19

The toughest aspect of the new law made the spillor absolutely liable for all costs of cleanup and damages.20 The law provided for no limitation of liability for those responsible for oil spills. All terminal facilities and vessels were required to establish and maintain evidence of an ability to meet the financial responsibility imposed by the law.21 Once such information was filed, the state was given the right to file a claim for the costs of cleanup and damages against the insurer, a bond posted by an owner or operator, or any other person providing a terminal facility or vessel with evidence of financial responsibility.22

Procedurally, the law subjected terminal facilities to a regulatory and licensing system.23 The law required licensing under the Department of Natural Resources (DNR) of all terminal facilities24 and de-

15. Id.
16. Seven bills were proposed: four in the House of Representatives—Fla. H.R. 3535, 3652, 3740, and 4909 (1970); and three in the Senate—Fla. S. 434, 450, and 460 (1970).
19. The Oil Spill Prevention and Pollution Control Act, ch. 70-244, 1970 Fla. Laws 740 (current version at FLA. STAT. § 376.12 (1975)) [Hereinafter the codified version is cited as (current version at § 376.12). All references are to FLA. STAT. (1975).]. Senate Bill 450 was introduced on April 7, 1970, and the Committee on Natural Resources recommended a committee substitute on May 27. FLA. S. JOUR. 64, 579 (1970). The committee substitute was passed by the Senate and sent to the House, where fourteen amendments were added. Id. at 709; FLA. H.R. JOUR. 1058-59, 1067, 1069, 1170 (1970). The Senate refused to concur in five of the fourteen amendments; the House receded from those amendments. FLA. S. JOUR. 775-76, 850 (1970). The bill finally passed both houses in the waning hours of the 1970 session.
20. The Oil Spill Prevention and Pollution Control Act, ch. 70-244, § 12, 1970 Fla. Laws 740 (current version at § 376.12).
21. Id. § 14 (current version at § 376.14(1)).
22. Id. (current version at § 376.14(2)).
23. Id. § 6 (current version at § 376.06).
24. Id.
fined “terminal facilities” as waterfront or other facilities used for or capable of being used for the storage or transfer of other pollutants. In order to be licensed, a terminal facility had to show that it had the equipment to prevent, contain, and remove an oil spill. The law also created the Florida Coastal Protection Fund, to which were credited all license fees, fines and other funds accruing to the State under the Act. The monies in the Fund were to pay all administrative expenses of implementing the law and to pay for the removal and cleanup costs of any oil discharge for which the spillor would not take immediate responsibility.

DNR was assigned responsibility for the enforcement of the provisions of the law in case an oil spill occurred. In the event of any spill, the spillor was required to undertake removal and cleanup to DNR’s satisfaction; DNR was authorized to assist in the cleanup and was required to do so if no action had been taken by the spillor or if the spill was of unknown origin. The Coastal Protection Fund was designed to cover immediate expenses, but DNR was then required to seek reimbursement to the Fund of costs of cleanup and damages to either the State or any injured party from the perpetration of the spill. Because the law imposed absolute liability on the perpetrator to seek reimbursement DNR had only to prove the fact of the discharge, the resulting monetary loss, and the spill source. Only with DNR approval after a hearing were the four traditional common law admiralty defenses available: (1) an act of war, (2) an act of God, (3) an act of government, or (4) an act or omission of a third party.

Industry’s reaction to the proposed bill was slight, but in the pre-

25. Id. § 3 (current version at § 376.031(9)). “Pollutants” was defined as any form of oil, gasoline, pesticides, ammonia, chlorine or other hazardous substances. Id. (current version at § 376.031(8)). A subsequent opinion by Attorney General Robert Shevin held that the term “pollutants” includes any elements or compounds which, when discharged in any quantity into state waters, present an imminent and substantial danger to the public health and welfare. Even fresh water dumped into salt water in sufficient quantity to affect marine life could be construed as a pollutant. [1973] FLA. ATT’Y. GEN. ANN. REP. 730.
26. The Oil Spill Prevention and Pollution Control Act, ch. 70–244, § 6, 1970 Fla. Laws 740 (current version at § 376.06(6)).
27. Id. § 11 (current version at § 376.11).
28. Id.
29. Id.
30. Id. § 5 (current version at § 376.051).
31. Id. § 8 (current version at § 376.09).
32. Id.
33. Id. § 11 (current version at § 376.11).
34. Id. § 12 (current version at § 376.12).
35. Id.
36. Id. § 11 (current version at § 376.12(4)).
vailing atmosphere, even vigorous industry opposition probably would have been ineffective.\textsuperscript{37} The oil company inaction was due to administrative structure rather than to any political reason. The marketing branches of Exxon, Gulf, and Shell oil companies were apprised of the impending legislation. The intrafirm communication was vertical, not horizontal, however, and the marketing branches failed to confer with their respective marine transport companies, even though the shipping sections of the oil industry were those most directly affected by the proposed bill. Thus, no expert industry representatives were available to testify during the committee hearings on the bill in the spring of 1970.\textsuperscript{38}

This same lack of intrafirm communication crippled industry lobbyists, for they lacked their most effective legislative tool: properly disseminated technical information. To compound this problem, no well-developed expertise was available to the legislature in the field of admiralty or federal maritime pollution law. The 1970 Florida law imposed unlimited liability for damage from oil spills, unlike either federal maritime law\textsuperscript{39} or international conventions and treaties.\textsuperscript{40} The result was a bill with which Florida industry could not live.

\textbf{C. Industry Reaction: to the Courts}

Once the 1970 Oil Spill Law was passed, industry reacted to its failure to monitor the legislature adequately during the Act's passage. Less than nine months after the Oil Spill Law took effect,\textsuperscript{41} but before any administrative regulations were implemented, the American Waterways Operators, joined by several other transport and terminal facility firms,\textsuperscript{42} filed suit in \textit{American Waterways Operators, Inc. v.}

\begin{itemize}
  \item \textsuperscript{37} Chris Jensen, chief legislative liason for the Florida Petroleum Council, expressed the thought that public opinion was so strongly against the oil and shipping industry that no industry lobbying could have counteracted it. Author's interview with Chris Jensen, Executive Director and Chief Legislative Liaison for the Florida Petroleum Council (April, 1970).
  \item \textsuperscript{38} Id.
  \item \textsuperscript{39} See Section III-B \textit{infra}.
  \item \textsuperscript{40} See Section III-D \textit{infra} for a discussion of the international conventions.
  \item \textsuperscript{41} The act went into effect July 1, 1970. The Oil Spill Prevention and Pollution Control Act, ch. 70-244, § 24, 1970 Fla. Laws 740.
  \item \textsuperscript{42} The plaintiffs represented both Florida and international interests. The plaintiffs were the American Waterways Operators, Inc.; Gulf Atlantic Towing Corporation; Glidden-Durkee, a division of SCM Corporation; Dixie Carriers, Inc.; Oil Transport Co.; National Marine Service, Inc.; the Revilo Corporation; Eastern Seaboard Petroleum Company; Nilo Barge Line, Inc.; Steuart Transportation Company; Interstate Oil Transport Company; Federal Barge Lines, Inc.; Gulf Canal Lines, Inc.; and Ingram Ocean System, Inc. Complaint, American Waterways Operators, Inc. v. Askew, 335 F. Supp. 1241 (M.D. Fla. 1971) [hereinafter Complaint].
  \item In addition, the intervening plaintiffs were Suwanee Steamship Company; Com-
Askew, 48

In their complaint, the original plaintiffs alleged that the Florida law was unconstitutional and unenforceable 44 and sought either to enjoin the statute's enforcement or to have it declared unconstitutional. 45 The complaint was based on four federal constitutional grounds: 1) the commerce clause; 2) the federal judicial power in admiralty and maritime law; 3) the due process clause; and 4) the supremacy clause. 46

The plaintiffs alleged that Florida's statute burdened interstate commerce in several ways. First, plaintiffs argued that Congress had preempted the field of preventive safeguards, notice, penalties, cleanup, and reimbursement by enacting the Water Quality Improvement Act of 1970; 47 therefore the Florida law allegedly placed an additional and undue burden on interstate commerce. 48 Second, the plaintiffs urged, the Florida Act allowed a maze of local, county, and state regulations; if such regulations were ever enacted, the requirement to comply with them could also burden interstate commerce. 49 The plaintiffs claimed that the resulting difficulty in operating their businesses would constitute a taking of property and a destruction of business. 50

The Florida Act required the shipping companies to show that they were financially able to meet the liability limits imposed by the Act before being allowed to operate in ports under the state's jurisdic-
The companies alleged that it was impossible to obtain insurance to meet the requirements of the Florida Act because it imposed an unlimited liability for all damages incurred by anyone. As a result, the plaintiffs claimed they might not be able to do business in Florida ports.

The plaintiffs claimed that the Florida Act presumed to have jurisdiction over cases properly adjudicated under admiralty and maritime law in violation of the supremacy clause of the United States Constitution. Plaintiffs also claimed the Act imposed liability potentially greater than that allowed by the Federal Limitation of Vessel Owner's Liability Act.

The complaint alleged a violation of the due process clause of the fourteenth amendment of the United States Constitution. The Florida Act allegedly did not specifically provide notice to those responsible for a pollutant discharge before the state moved to clean up a spill, nor did it provide a defendant any opportunity to be heard when the state authorities were determining liability. Only after the defendant had been determined to be liable were the four common law defenses available. Even then the defenses could be raised only at the discretion of the state authorities.

Claiming further lack of due process, the plaintiffs alleged that the administrative findings by the state were "conclusive." The plaintiffs maintained that the state was under no obligation to adjudicate its claims in any court, and that no in-court hearing to assess a penalty was required. DNR had the power to assess a civil penalty of up to $50,000 for each day of the offense without a court hearing and without any enumerated guidelines by which to set the penalty; plaintiffs claimed these provisions violated both procedural and sub-
stantive due process rights. Throughout the complaint, whenever a difference between the federal and state statutes existed, the plaintiffs claimed that the Florida statute violated the supremacy clause.

The United States District Court for the Northern District of Florida granted a temporary injunction against the enforcement of the law on March 19, 1971. On December 10, 1971, Judge Gerald Tjoflat declared the law unconstitutional. Florida Attorney General Robert Shevin promptly appealed the decision. In the interim legislators attempted several times to study and revise the emasculated statute. On each occasion, Shevin intervened to ask that legislation on the matter not be pursued because subsequent legislation might jeopardize the appeal of the case. The legislature accepted this argument, agreeing to wait until the United States Supreme Court ruled. In April, 1973, a unanimous United States Supreme Court reversed the lower court decision.

D. Prelude to Change

In response to the Court's ruling, several members of the Florida House of Representatives suggested to House Speaker Terrell Sessums that it would be appropriate to appoint a committee to study possible revision of the oil spill laws. Sessums appointed an Ad Hoc Committee on Oil Spill Legislation to be chaired by Representative A. H. "Gus" Craig. The Ad Hoc Committee was changed in October, 1973, to a Select Committee, giving it the power to subpoena witnesses. Representative Craig began to hold hearings on the law

63. Id. at 10; see The Oil Spill Prevention and Pollution Control Act, ch. 70–244, § 16, 1970 Fla. Laws 740 (current version at § 376.06).
64. Complaint at 7, 13, and 15.
65. 335 F. Supp. at 1251.
66. Id. at 1250–51.
70. Dem.–Tampa.
71. Rep. Craig (Dem.–St. Augustine) had served two terms as the chairman of the House Committee on Natural Resources, and was at that time Speaker Pro Tem. of the Florida House of Representatives.
72. See Memorandum from Terrell Sessums to Gus Craig (Oct. 29, 1973) [Comm. file]. See also Memorandum from A.H. Craig to Terrell Sessums (Nov. 2, 1973) discussing the best way to report the change in status of the committee so as to encourage the participation of witnesses without resort to the subpoena power [Comm. file].
during the 1973 session, but the first hearings brought only limited appearances from industry. It was not until August, 1973, when the onerous effects of the law began to be felt that a concerted effort was mounted to change the law. Calls for a special session came from Jacksonville and Pensacola where major industries began to feel the weight of the 1970 legislation. Aside from the objections raised to the law on the basis of its incongruity with federal standards, the major problem with the legislation was the unlimited and absolute liability imposed on a spillor for costs and damages of an oil spill. The immediate tangible effect of this provision was that the plaintiffs in the litigation and almost all businesses engaged in shipping any sort of pollutant were unable to obtain insurance to respond to any potential liability under the 1970 law. Thus, shippers were forced to comply with the financial responsibility section of the statute by becoming self-insurers for at least part of the liability and by pledging all of their firms' assets to remedy possible spills.

In many cases, this massive incurrence of liability by a shipper entering Florida waters had ripple effects that were highly detrimental to the public interest: shippers refused Florida business or required their Florida contractees to hold the shipper harmless for any spills occurring in Florida waters. For publicly-owned Florida utilities, this

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73. The Jacksonville and Pensacola harbors are the two major Florida ports closest to out-of-state harbors. Shippers with contracts to deliver in those areas could go to ports in other states without the same legal consequences. Thus, the harbors at Jacksonville and Pensacola felt the economic impact of the 1970 law—shippers avoiding their docks—before other Florida ports did. See Aug. 1973 Hearing, supra note 68, at 27–30 (testimony of Jack Lee).


76. Id.

77. In the complaint in American Waterways Operators, Inc. v. Askew, 335 F. Supp. 1241 (M.D. Fla. 1971), the plaintiffs alleged that it was “necessary under the State Act that they jeopardize their entire assets to comply, with the demands of this one state.” Complaint at 12. The plaintiffs also alleged that a nonjudicial state agency had the authority to determine liability without considering any defenses, and that this “resulted in plaintiffs' inability to induce brokers representing insurance and bonding companies to write bonds or insurance for plaintiffs as contemplated by the State Act.” Id. at 12–13.

78. See Aug. 1973 Hearing, supra note 68, at 26–30 (testimony of Jack Lee concerning letters he had received from fuel companies explaining why they had not bid for the contracts to supply fuel to Jacksonville Electric Authority). See also answers
meant that liability for spilling no longer rested with the shipper but, by the terms of the contract, upon the utility's owners—the tax-paying public. 79

Orlando Utilities Commission (OUC) was confronted with this situation in July, 1973. New England Petroleum Company (NEPCO), the firm under contract to provide OUC fuel for electric generation, threatened to use its contract termination option unless OUC:

1) posted evidence of financial responsibility in the sum of $3,000,000 to cover NEPCO's barges that delivered OUC's oil to Port Canaveral;

2) agreed to indemnify and hold NEPCO and its related companies harmless for all liabilities and expenses resulting from the 1970 Florida Oil Spill Law and not covered by NEPCO's marine liability insurance; and

3) agreed to provide the same services for any firms with which NEPCO might need to make similar arrangements in the course of fulfilling its contract. 80

These precautions were required by NEPCO even though its vessels carried $14,000,000 in pollution liability insurance for costs of cleanup in conformity with federal statutes, and even though it subscribed to the Tanker Owner's Voluntary Agreement regarding Liability for Oil Pollution (TOVALOP), a voluntary liability agreement for the same purpose. 81 Jacksonville Electric Authority (JEA) and other publicly-owned utilities were faced with similar dilemmas. 82

In August, 1973, Senator Lew Brantley, Chairman of The Senate Commerce Committee, and Senator W.D. Childers, Chairman of the Senate Natural Resources Committee, 83 began holding joint hearings of their committees on the modification of the 1970 Oil Spill Law. At the first meetings, held in Jacksonville and attended by members of

to questionnaires received by the Ad Hoc Comm. on Oil Spill Legislation from various utility and oil companies concerning their difficulties in receiving oil shipments.


81. Id.


83. Dem.—Pensacola. Senators Brantley and Childers represented the two areas first affected by the 1970 Oil Spill Law.
the sponsoring Senate committees as well as by several House members and their staff, testimony was presented by officials from the state, federal, and local levels.84

The testimony indicated some of the problems created by the 1970 Oil Spill Law. Jacksonville Mayor Hans Tanzler and several officials of JEA testified about the details of JEA's fuel procurement problems. JEA had been able to procure only one bid for generating fuel, and that bid was double the price paid prior to implementation of the 1970 law. The bidder had specified the Florida Oil Spill Law as the reason for increasing its price.85 Further testimony revealed that the Monsanto Corporation of Pensacola had experienced significant difficulty in inducing independent barge transports to enter Florida ports.86

The House Ad Hoc Committee Hearings in September generated significantly greater interest and participation than had the August Senate committee hearings. In the meeting on September 11, the House committee members began to analyze the 1970 statute and its effects.87 This September hearing began the long, difficult process of proposal, counter-proposal, and conciliation of widely divergent interests. Before the Committee met for the last time, it had considered over 100 hours of testimony, most of a highly technical nature in one field or another.88 As the 1970 law was implemented, an increasing number of interests began to exert pressure to change the law. The Committee was faced with a balancing act: it was politically inexpedient to repeal

84. See Aug. 1973 Hearing, supra note 68.
85. See id. at 7–25. JEA had offered invitations to bid "to some of the thirty largest distributors of oil in the world." When only one submitted a bid, JEA solicited comment from the companies that declined to bid. The comments indicated that the companies refused to risk additional liability by shipping fuel to Florida. Id. at 11.
86. See id. at 63 (testimony of Daniel S. Dearing, Ass't Attorney General, State of Fla.); id. at 135–43 (statement of Jim Snyder, Ass't Plant Manager of Monsanto Textile Plant, Pensacola, Florida).
88. Meetings were held September 11, 1973; October 11, 1973; November 26, 1973; and January 28, 1974. The purpose of the September 11, 1973, meeting was to review the legal structures of oil spill legislation on international, national, and state levels, and the administrative and industrial implementation of these laws. See schedule for Sept. 11, 1973, Meeting of Ad Hoc Oil Spill Legislation Comm. of the Florida House of Representatives [Comm. file]. At the October 11, 1973, meeting, the Ad Hoc Committee members heard from all persons with statements about the economic and environmental effects of oil spills, and the industrial effects of the Florida Oil Spill Law. See Agenda, Ad Hoc Comm. on Oil Spill Legislation, Oct. 11, 1973 [Comm. file]. The testimony at the November 26 meeting covered the insurance aspects of the Florida Oil Spill Law. Representatives from throughout the United States and Europe presented their statements. See Agenda, Meeting of Select Comm. on Oil Spill Legislation. On January 28, 1974, the members met to consider the staff proposal for an amended oil spill law.
the act because Florida’s environmental interests and tourism contingencies precluded such an action, yet the 1970 Oil Spill Law had increasingly apparent economic repercussions.

II. TIME FOR CHANGE

As Section I has illustrated, when the House Committee began to draft a revision of the 1970 law, it was confronted with a welter of conflicting interests, facts, and goals. The excerpted testimony indicates the complexity of the situation which a single piece of legislation was to rectify.

A. Background To Change

When the 1970 bill was enacted, the public concern about the environmental impact of an oil spill had generated much political pressure. Although public interest in environmental concerns remained strong, by 1973 environmental issues no longer pervaded the political atmosphere as greatly as in 1970. The various committees involved in the 1973 hearings heard and received statements from interest groups about the ecological effect of an oil spill; a statement by Michael Stuart, a marine biologist, was representative of environmentally concerned testimony. He reminded the committee members

89. The Florida Defenders of the Environment and the Florida Audubon Society commissioned Cambridge Survey Research, a research company from Massachusetts, to do a survey on voter awareness of environmental issues. The research company conducted in-depth interviews with 600 Florida voters in March, 1974. The survey showed that 48% of the people interviewed favored a strict bill which required shippers to pay up to one half billion dollars for damages caused by oil spills; only 36% thought that a strict bill was unreasonable. Fifty-nine percent of the sample thought that environmental issues were the most significant problems facing the state at that time, whereas only 14% considered economic problems to be the most pressing. A majority of the sample also stated that it preferred to support candidates who supported environmental proposals. The report concluded that “Florida voters are extremely concerned about environmental problems and hold the coalition of politicians and industry responsible.” Report: Cambridge Survey Research at 1–6, released April, 1974 [Comm. file].

In addition, articles and editorials in newspapers indicated public concern with the intertwining problems of potential oil spills, the energy crisis, and the vision of the public paying for the environmental havoc wreaked by irresponsible multinational businesses. See Editorial, On A Platter, St. Petersburg Times, Feb. 27, 1974, at 22-A, col. 1; Editorial, Beware of Oil Spill Law Changes, WPLG (Miami, Florida), May 30, 1974, broadcast at 6:00 p.m. and 11:00 p.m. [Comm. file].

90. See Section I–A supra.

91. See Agendas, Ad Hoc Committee on Oil Spill Legislation, September 11, 1973, supra note 87, and October 11, 1973, supra note 75.

92. Mr. Stuart was also a member of the Executive Committee of the Florida Audubon Society and Chairman of the Oil Committee of Save Our Bays of Sarasota. Oct. 11, 1973 Hearing, supra note 75 (testimony of Michael Stuart at 1).
of the environmental, economic, and aesthetic dangers inherent in oil spills by stating:

[All] crude oils and oil fractions are toxic to marine organisms except for a few highly refined and purified fractions. In any one spill the reactions of members of the marine community to this toxicity may differ from one situation to another, but the potential for severe kills or the inhibition of normal organismal functions exists in every spill and because of this the threat of spills should not be treated lightly.

. . . .

The spills in Buzzard's Bay, Massachusetts certainly demonstrated that members of all phyla can succumb to the lethal effects of fuel oil and that the fuel oil will spread, cause kills at later dates, cause taste in shell fish, resist decomposition of the most toxic fractions and remain in large quantities as much as 4 years later. No one knows how long that oil will cause troubles since it has only been 4 years since the spill and the effects are still noticed. The research in general indicates that refined product spills are usually [disastrous] and that they are even more dangerous when they occur in shallow waters.

We shouldn't, however, give crude oil a clean bill of health, since it contains the fractions that are made in the refining process plus other dangerous fractions such as the water soluble component. Numerous water soluble components are very toxic and can be shown to have very adverse sublethal effects on organisms even when the components are in very low concentrations. The other low boiling point saturated hydrocarbons found in crude oil pose a threat to the environment as many are very toxic. The high boiling point fractions can also be a threat as many of these are carcinogenic.

Nevertheless, in most cases, the pugnacious composition of the environment and the high reproductive potential of most marine organisms, will allow the marine community to slowly recover from a single spill over a period of months or years. . . [However,] it is the chronic spill problem associated with oil operations that bothers me as a biologist. Whereas, systems usually recover from single spills the chronic spill problem, even though each spill may be only a few barrels, is another problem [altogether] since few systems can recover if they are constantly exposed. In areas of chronic spills all vegetation may be destroyed and only the very hardiest species will remain. . .

Another perplexing problem is what to do once a spill has occurred. Research on chemicals that are designed to break up the oil indicates that the chemicals used are frequently as toxic or more toxic than the oil itself. In many cases chemical by-products are

93. Typographical errors in the transcription have been corrected and placed in brackets.
formed that are also toxic. To date no dispersants have been found that are non-toxic to all or even most marine organisms. Usually, then, to clean up after a spill you are left with the pitifully inefficient mechanical methods which may only recover 50% in the best of conditions. Nature also helps with the clean up, but don't be misled, bacterial degradation of oil is by no means complete and is almost totally inhibited by a lack of oxygen. When plenty of oxygen is present the bacteria are very selective in their degradation and usually do not touch the most toxic fractions. Without oxygen, however, little or no decomposition occurs as would be the case a few inches down in the sand on a beach or in the mud of an estuarine bay bottom. Here after the first 10% is decomposed the remaining portion decomposes ['immeasurably slowly'] to quote one researcher. Truly this becomes a haunted dump, for the toxic elements will be slowly released to the surrounding water perhaps causing more fish kills after a 'norther' stirs up the bottom or to be uncovered by [winter] beach erosion only to cause another onslaught of blackened feet and ruined bathing suits.94

The environmental interest groups stressed constantly to the committee members the need to emphasize spill prevention and the need to insure spill prevention by imposing tight regulations.95 The Florida Chapter of the Sierra Club heartily endorsed and supported the unlimited liability provisions of Florida's 1970 statute, stating that "[i]t is only with such high performance standards that Florida has any chance to avoid oil-polluted coastal waters."96 Newspaper and radio editorials spoke out against any modification of the liability imposed by the 1970 law.97 The general sentiment of these editorials was that only strict standards would enable those in authority to prevent oil spills.98

The National Environmental Development Association advocated a more moderate approach to the 1970 law. This group supported "a balanced approach to environmental and economic opportunities,"99

95. See, e.g., Oct. 11, 1973 Hearing, supra note 75 (testimony of Michael Stuart).
96. See Statement, Dr. Shirley Taylor, Executive Committee of the Florida Chapter, Sierra Club (undated) [Comm. file].
97. See note 89 supra concerning newspaper and radio editorials.
99. Oct. 11, 1973 Hearing, supra note 75 (statement of Riley S. Miles, Chairman, National Environmental Development Association). The National Environmental Development Association was organized as a non-profit corporation in 1973, with the in-
and asked the Florida legislature to reconsider seriously the unlimited liability provisions of the 1970 law, suggesting that less stringent liability provisions would be adequate. The National Environmental Development Association also posed the questions whether recovery from an insurance company would be preferable to recovery from a corporation, and whether the indirect effect of increased energy prices for the consumer might be more costly than an oil spill. These questions were the primary issues the legislative committees entertained until the 1974 bill was passed.

B. Oil Spill Damages

In Florida, the fishing and shellfish industries also feel the direct effect of a spill. Yet the indirect damage that results is even more pervasive. At the October 11, 1973 hearing, Gordon Enk, Director of Research, Institute on Man and Science, an institute chartered by the Board of Regents of the University of the State of New York, spoke on the potential damages and cleanup costs resulting from an oil spill. He presented a concise report of an international symposium, "The Assessment of Social Impacts of Oil Spills," which had been held at the Institute of Man and Science in Rensselaerville, New York, only two weeks earlier.

In his presentation, Enk stressed that the cost of cleaning up an oil spill is much greater than is usually assumed, varying from $.50 to $15 per gallon of oil, depending on the time of the year, the location of the spill, and the type of oil that has been spilled. But these costs do not include the injury to fisherman, businessmen, beachfront residents on private beaches, and vessel owners. Each of these suffers a financial loss when spilled oil begins to coat the water and beaches, killing fish and sending tourists to other resort areas.

Enk presented an estimate showing losses from spills. Estimated losses from incidents in Japan in the 1950's ranged from $600 to $118,000. Recent spills in the United States were estimated to have resulted in losses reaching $15,000,000. A spill in a highly populated area would cause tremendous recreation losses. Assuming that the value of one man-use day of recreation was worth $1.50, an oil spill in Long Island Sound would result in damages of $30,000,000; the damages of a spill in Los Angeles would be $51,000,000.

tention "to find a middle ground . . . a balance between environmental progress and economic progress." Statement by Kenneth J. Bousquest, Executive Vice President of National Environmental Development Association and by Thomas A. Young, President (undated) [Comm. file].

100. Oct. 11, 1973 Hearing, supra note 75 (statement of Riley S. Miles).
These figures estimated losses only to the recreation industry. A complete assessment of the net cost of an oil spill to an area would add to the immediate expense of cleanup and recreation loss, the cost of community disruption, private losses, and aesthetic degradation. As Gorden Enk pointed out, the total cost would be "orders of magnitude higher" than the original estimates.\textsuperscript{101}

The sheer volume of oil and oil products shipped by sea makes the potential level of oil pollution immense.\textsuperscript{102} Some statistics about the size and future size of oil tankers were available to the Committee. In 1972, the shipping industry had tankers in service of 326,000 dead weight tons (DWT) and at least one tanker of 366,800 DWT. Even larger tankers were being constructed and delivered; at the time, a 447,000 DWT tanker was being built in Japan and orders had been placed in France for two tankers of 540,000 DWT each.\textsuperscript{103}

The actual amount of oil products shipped through Florida waters was not as well known.\textsuperscript{104} Eventually, information revealed that tanker and barge movements of crude oil and petroleum products from the United States Gulf Coast to the East Coast, requiring traffic near and into Florida waters, averaged 1.612 million barrels daily in 1972.\textsuperscript{105}

\textsuperscript{101} Oct. 11, 1973 Hearing, supra note 75.

\textsuperscript{102} [B]etween 1938 and 1967 world production of oil increased nearly seven times, from 278 million tons per year to 1,828 million tons. In 1967 it was estimated that more than 700 million tons of this annual production were being transported by sea.


\textsuperscript{103} Exxon Background Series, Safer Tankers and Cleaner Seas, at 5 (Nov. 1972) [Comm. file].

\textsuperscript{104} Part of a major shipping lane from South America and the Panama Canal to Europe and the east coast of the United States passes through Florida waters. Reasonably reliable statistics of the amount of oil products entering Florida's territorial waters were, and are, probably impossible to calculate.

Chris Jensen, Executive Director of the Florida Petroleum Council, reminded the Oil Spill Committee members of Florida's dependency on petroleum: 71\% of Florida's energy in 1971 was supplied by oil. In comparison, only 44.4\% of the total United States energy supply came from oil. Mr. Jensen noted that virtually all of Florida's fuel requirements (oil and coal) arrived by water since Florida had no refineries in 1973 and had to import many oil products from refining centers outside the state. For the transportation of the foreign crude oil to the refining centers and of the refined products to the consumer, suppliers relied on water transportation. Mr. Jensen estimated that 1,100 deliveries by tankers were made to meet Florida's petroleum needs in 1971. The shallow depths of Florida's harbors (25.5 to 37 feet) limited tanker size to 25,000 DWT. Hearings on Fla. Stat. ch. 376 Before the Natural Resources and Conservation Committee of the Florida Senate (Sept. 18, 1973) [hereinafter Sept. 18 Hearing] (presentation by Chris Jensen at 1–2 [Comm. file]).

\textsuperscript{105} AMERICAN PETROLEUM INSTITUTE, ANNUAL STATISTICAL REVIEW, PETROLEUM INDUSTRY STATISTICS, 1965–1974, at 46 (May, 1975) [Comm. file].
In the same year, the Florida ports took in 313,454,843 tons of petroleum and petrol chemicals.\textsuperscript{106}

The Oil Spill Committee was also interested in the number of pollutant spills in Florida waters and the frequency with which these spills were reported.\textsuperscript{107} DNR had been enjoined in May, 1971, from enforcing the 1970 law;\textsuperscript{108} funds for recording spills were not available to DNR. Consequently, DNR did not have precise statistics available for the Committee. The Department provided the oil spill committee with records of the number of spills reported before it was restrained from enforcing the 1970 law, thereby providing the Committee with a limited indication of the frequency and magnitude of spills in Florida waters. From July 1, 1970, through September 18, 1970, fifty-one spills, totaling 58,658 gallons, were investigated.\textsuperscript{109} One oil spill every seventeen hours was reported to DNR when the 1970 law was first implemented.\textsuperscript{110}

The Committee heard the testimony of a representative of the United States Environmental Protection Agency,\textsuperscript{111} which monitored spills in the inland waterways under the Federal Water Pollution Control Act\textsuperscript{112} and the Refuse Act of 1899.\textsuperscript{113} That agency provided spill frequency information to the Oil Spill Committee. The Committee learned that virtually none of the spills in Florida had been reported to the Environmental Protection Agency from 1971 to 1973; by contrast, in 1973 in North Carolina, approximately thirty spills had been reported to that agency each month.\textsuperscript{114}

The testimony made it clear to the Committee that the amount of potential pollution and the probable effects of a discharge, whether large, small, accidental, negligent, or intentional, required some means of recovery for parties that had suffered injury from that pollution.


\textsuperscript{107} See Sept. 11, 1973 Hearing, supra note 87, at 85–126 (presentations by Captain William Montgomery, Chief of Marine Safety Division, 7th District, United States Coast Guard, Miami, Florida; Al Smith, Region IV, Environmental Protection Agency, Atlanta, Georgia; and Harmon Shields, Director, Division of Marine Resources, Florida Department of Natural Resources).

\textsuperscript{108} The temporary restraining order was issued March 19, 1971, and was made permanent in the final order in December, 1971. 335 F. Supp. at 1251. See Sept. 11, 1973 Hearing, supra note 87, at 110 (testimony by Harmon Shields).

\textsuperscript{109} See report from Department of Natural Resources of the total pollutant spills in Florida from July 1 through September 18, 1970, by area (undated) [Comm. file].

\textsuperscript{110} Sept. 11, 1973 Hearing, supra note 87, at 109 (testimony of Harmon Shields).

\textsuperscript{111} Sept. 11, 1973 Hearing, supra note 87, at 95 (testimony of Al Smith).


\textsuperscript{114} Sept. 11, 1973 Hearing, supra note 87, at 97 (testimony of Al Smith).
In his statement before the Committee, Tom Post, Port Warden of the Port of Miami, expressed the opinion that the law in its then-existing state offered few acceptable means of recovery. He gave a quick overview of the various possible tort causes of action for private relief, dismissing the usefulness of the torts of trespass, negligence, and public or private nuisance.115

Additional testimony outlined the national and international concern over the costs of oil pollution of the oceans; the huge spills of the late 1960's had prompted many governments to establish programs to facilitate cleanup processes and to reimburse the cleanup costs.116 Very few of these programs gave compensation for the damage caused by oil pollution or made provisions for private relief; those that did, such as the CRISTAL fund and the 1971 Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, provided for only limited recovery.117

The Florida Legislature saw the lack of means of compensation for damages as an obvious problem. In Florida, where the livelihoods of many depend on the attractiveness of the beaches and the fertility of the oceans, a major oil spill could be an economic and environmental disaster. Florida needed some means of insuring that the individual would not suffer unduly from some shipping firm's pollution.

Thus the need for an effective bill became clear. There had to be some means of providing compensation to individuals for pollutant spill damage. The bill needed not only to encourage but also to require spill prevention. The bill could not, however, be so stringent as to cripple Florida business. The 1970 Oil Spill Law had addressed the prevention of oil spills and the compensation of individuals, but it had failed to meet economic realities.

C. Concerns of Industry

Pressure for amending the 1970 Oil Spill Law came from a variety of sources. Several organizations of business, including the National Federation of Independent Businesses (through Associated Industries of Florida), Florida Petroleum Council (an affiliate of the American Petroleum Council), Florida Roofing, Sheet Metal, and Air Conditioning Contractors, and the Florida Chamber of Commerce were heavily involved in the effort.118 Individual firms such as Eastern Seaboard

116. For a discussion of these legislative acts, agreements and international conventions, see Sections III-C, D, & E infra.
117. See Sections III-C & D infra for information about these funds.
118. See National Federation of Independent Business (NFIB) Special Survey (1974) [Comm. file]. In this survey, tallied April 26, 1974, the NFIB asked its Florida
Petroleum Company, Belcher Oil, Western Fuels of Tampa, Gulf, and Exxon expressed their opinions and made their expertise available. In addition to these efforts, Governor Reubin Askew and several Florida cabinet members, notably Attorney General Robert Shevin, took extensive interest in the proceedings. The offices of key legislative leaders were extremely active.

As the hearing progressed, key problems with the 1970 Oil Spill Law consistently emerged:

1. Lack of a cap on liability, which resulted in:
   a. Unavailability of marine pollution insurance;
   b. Reluctance or refusal of independent shippers to enter Florida;
   c. Contract stipulations holding shippers harmless for spills and refracting this liability to the product recipient;
2. The preemption of the four common law tort defenses of act of war, act of God, act of government, and acts or omission of third parties;
3. The lack of a mechanism whereby private entities could recover damages; and
4. The absence of an effective method of financing response and cleanup efforts, much less damages, because the fund created in 1970 had proven to be totally inadequate.

As early as October the committee staff began developing alternative approaches to the problems outlined. A stumbling block in this process was that regional and Florida industry spokesmen could not members to complete a ballot, asking their opinions on several issues. One general question—"[s]hould Florida modify its present unlimited liability Oil Spill Law?"—elicited a response in which 62% answered in the affirmative and 28% responded negatively.


121. R.A. Pierpont specifically stated that "the Florida Oil Spill Law is creating extreme difficulties in scheduling ships since charter ships normally used to deliver products to Florida are increasingly unavailable." Id. (testimony of R.A. Pierpont at 6).
122. See also the statement by Bill Newburn, Sales Manager for Jacksonville Shipyards, Inc., a subsidiary of Fruehauf Corporations. Id.
123. Id.
125. See Sept. 11, 1973 Hearing, supra note 87 at 109-26 (testimony of Harmon Shields, Director, Division of Marine Resources, Florida Department of Natural Resources).
speedily respond to proposals since the national home offices had to review and instruct the regional representatives as to appropriate responses. The Florida Petroleum Council representative, for example, could not enunciate a formal position on any proposal until a consensus from the entire organization (twelve major oil companies) was reached. This was understandably a slow process. In addition, during the time of the committee hearings Florida's Attorney General had filed a claim of antitrust violations against those entities most affected by the 1970 Oil Spill Law, including most of the larger shipping firms. The affected entities were apparently rather nervous about testifying, since their statements could conceivably be used against them.

It should also be noted that the effects of the law were aggravating the energy shortage; this resulted in calls for a special session by several key legislators, among them Senators Russell Sykes, W.D. Childers, Lew Brantley, Senate President Mallory Horne, and Representatives Earl Dixon and Mary Singleton. However, Committee Chairman Craig and House Speaker Terrell Sessums consistently declined to request the special session. Even when the legislature convened a special session in January, 1974, to consider changing to standard time and other energy related matters, the leadership opposed attempts to expand the purview of the special session to consider oil spill law revision. Craig and Sessums feared that a hasty yes-no vote of the type common in the rush of special sessions would produce results similar to the 1970 session when the Oil Spill Law was enacted; they wanted no compounding of previous errors.

127. This claim was brought as a counterclaim; it was filed on April 21, 1971, by the defendants in American Waterways Operators, Inc. v. Askew, 335 F. Supp. 1241 (M.D. Fla. 1971), rev'd, 411 U.S. 325 (1973).
128. The counterclaim was brought against the intervening parties plaintiff. See note 42 supra. Other persons, firms and corporations were alleged to be co-conspirators.
129. Rep.—West Palm Beach.
130. Dem.—Tallahassee.
131. Dem.—Jacksonville.
132. Dem.—Jacksonville.
133. See St. Augustine Record, Sept. 12, 1973 [Comm. file]. See also the report by Senator Russell Sykes of a telegram to Governor Askew sent on January 16, 1974, urging the Governor to call a special session to revise the Oil Spill Law. St. Petersburg Times, Jan. 17, 1974, at 14-B, col. 1.
134. See St. Augustine Record, Jan. 29, 1974 [Comm. file].
135. See St. Augustine Record, Nov. 27, 1973, at 7 captioned: “Representative Craig Remains Opposed to Session on Oil Spill Law.” The story stated that Rep. Craig “didn't want to tinker with the law 'because I'm afraid we won't do a good job for the people.'” [Comm. file].
D. 1974 Legislation

From October through February the Committee wrote at least eleven drafts of a proposed oil spill bill, gradually refining its "balancing approach" to oil spill prevention and control. The Coastal Protection Fund grew from merely an administrative source of funds to a major means of providing immediate satisfaction for claims.136 There were questions whether the transfer of pollutants through underwater pipelines was a hazardous undertaking. Eventually the phrase "and through underwater pipelines" was removed from the proposed section on the legislative intent,137 which found that transfers of pollutants to, from, and between terminal facilities were "hazardous undertakings."138 Yet, in the final legislation, underwater pipelines were indirectly included in that provision, for they remained in a later section within the definition of "terminal facilities."139 A struggle occurred over defining the transfer of pollutants as a "hazardous" or "ultra-hazardous" activity. The 1970 law had deemed the transfer of oil a "hazardous" activity.140 The initial drafts in 1973 described it as "ultra-hazardous" but, by February 4, 1974, the transfer of pollutants became "hazardous" again141 and those transferring pollutants were not absolutely liable for any damages incurred from an oil spill.

Many other provisions were contemplated, discussed, rejected, or refined. During the deliberations in 1973 and 1974, industry was much more sensitive than in 1970 to the dynamic processes of legislative change. Activity from the construction and fuel industries increased.142

137. See proposed § 376.02(3)(a), Feb. 8, 1974, draft of Select Committee legislation [Comm. file].
138. See FLA. STAT. § 376.021(3)(a) (1975) (originally enacted as The Oil Spill Prevention and Pollution Control Act, ch. 70-244, § 2, 1970 Fla. Laws 740).
139. Id. § 376.031(9) (1975).
140. The Oil Spill Prevention and Pollution Control Act, ch. 70-244, § 2, 1970 Fla. Laws 740.
141. Compare the October, 1973, Committee Drafts nos. 65-88a, 65-93, with the Feb. 4, 1974, Draft [Comm. file].
142. The Florida Petroleum Council, through Executive Director Chris Jensen, submitted suggested changes in the provisions of the Select Committee's proposed oil spill bill adopted on February 25, 1974; some of the suggestions were adopted. See Memo from Chris Jensen to Rep. Gus Craig (undated) [Comm. file]. The Gulf Atlantic Transport Corporation also sent letters to Senator Brantley and Representative Craig, expressing the opinion that "for Florida to have an effective oil spill law it should enact Federal oil cleanup regulations giving the usual natural defenses and eliminating the other burdensome and conflicting requirements . . . ." Letter from H.C. Williams, Ch'mn, Environmental Control Comm., The American Waterways Operators, Inc. to Sen. Lew Brantley, at 3 (Jan. 30, 1974) [Comm. file].
American Waterway Operators submitted a draft bill in October, 1973, limiting all claims and liabilities to those established by federal act. Exxon also proposed a draft bill in February which significantly affected the procedural provisions of the bill in its final form. Industry was constantly alert to the possibilities of removing state control over the transporting of pollutants altogether and hoped to conform the Florida law to federal standards.

Senator Lew Brantley and Representative Earl Dixon formally introduced legislation in April, 1974, which attempted to amend the 1970 Oil Spill Law to conform with federal liability limits. The proposed legislation granted the four common law defenses and limited liability to $14,000,000 for cleanup costs. Since the bills would limit Florida law to federal specifications, industry seized the opportunity to encourage their adoption.

On the same day that Senate Bill 132 was introduced in the Florida Senate, the Senate Committee on Commerce recommended a committee substitute for the bill and placed it on the Senate calendar. On April 9, 1974, the Senate took up Committee Substitute for Senate bill 132.

Several amendments to the committee substitute were then proposed from the Senate floor. An amendment by Senator Brantley was adopted which deleted the provision for recovery of damages by parties other than the state injured by an oil spill, leaving recovery only for the cost of cleanup or other damage incurred by the state up to $14,000,000.

Senator Sayler attempted to amend the substitute bill to give the Department of Natural Resources added enforcement powers, but his amendment failed. Senator de la Parte substituted a more limited amendment to the same effect which was adopted.

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145. See note 142 supra.
146. Fla. S. 132 was introduced by Senator Brantley and others on April 2, 1974, and referred to the Commerce Committee. Fla. S. Jour. 21 (1974). Fla. H.R. 2566 was introduced by Representative Dixon and others on the same date; it was referred to the Select Committee and to the Committee on Environmental Protection. Fla. H.R. Jour. 70 (1974). This bill died in committee.
147. Id. at 95.
148. Id.
149. Rep.—St. Petersburg.
151. Dem.—Tampa.
152. Fla. S. Jour. 95-96 (1974). The adopted amendment provided that any employee
committee substitute was further amended to provide for licensing fees and for penalties for operation of a terminal facility without a license.\textsuperscript{154} An amendment making the operation of a pollutant-carrying vessel without a certificate of financial responsibility a misdemeanor failed, as did an amendment making mandatory the collection by the Department of a reasonable fee for the processing and verification of terminal facility license applications.\textsuperscript{155}

Senator Saylor attempted to reinstate liability of an owner or operator for \textit{all} damages resulting from an oil spill, to any person or entity, public or private (as opposed to recovery only of the cost of cleanup incurred by the State), and to allow for recovery against the Coastal Protection Fund for pollution caused by unknown sources.\textsuperscript{156} Consideration of this amendment was deferred.\textsuperscript{157}

On April 15, 1974, House Bill 3388 was introduced in the House of Representatives and read for the first time by title. The bill was referred to the Committees on Environmental Protection, Finance and Taxation, and Appropriations.\textsuperscript{158} House Bill 3388 was the bill finally drafted by the Select Committee; its terms expressed the conclusions of the committee based on hundreds of hours of research and testimony. The bill added the transfer of pollutants between terminal facilities to the list of hazardous undertakings set forth in the 1970 Act,\textsuperscript{159} but still referred to pollutant transfer activities as hazardous, rather than ultra-hazardous, undertakings.\textsuperscript{160} Terminal facilities owned and operated by governmental entities acting as agents of public convenience for certain operators were exempted from the act.\textsuperscript{161} The bill gave the Department of Natural Resources the power to seek judicial enforcement of any liabilities imposed under the act.\textsuperscript{162} The bill required, as had the 1970 Act, that applicants for terminal facility registration certificates show they could provide all necessary equipment to prevent, contain, and remove discharges,\textsuperscript{163} but the bill gave the department added in-

\begin{itemize}
\item 155. \textit{Id.}
\item 156. \textit{Id.}
\item 157. \textit{Id.}
\item 158. \textit{Fla. H.R. Jour.} 322 (1974).
\item 161. \textit{Id.} § 3.
\item 162. \textit{Id.} § 5.
\item 163. \textit{Compare} \textit{Id.} § 6 \textit{with} The Oil Spill Prevention and Pollution Control Act, ch. 70-244, § 6, 1970 Fla. Laws 740. Fla. H.R. 3388 also referred to registration certificates for terminal facilities, rather than licenses, the term used in the 1970 Act. \textit{Compare} Fla.
spection powers relating to this requirement.\textsuperscript{164} In response to the shipping industry's complaints, House Bill 3388 featured a new provision which directed that DNR could not require vessels to maintain spill prevention and containment gear in excess of federal requirements.\textsuperscript{165} 

House Bill 3388 revamped the Florida Coastal Protection Fund to "provide a mechanism to have financial resources immediately available for cleanup and rehabilitation after a pollutant has been discharged, to prevent further damage by the pollutant, and to pay for damages."\textsuperscript{166} House Bill 3388 also added language to this portion of the act which indicated the intent of the legislature that this section be construed liberally in light of danger to the environment and resources.\textsuperscript{167} The Fund was limited to $200,000,000, as opposed to the $50,000,000 limit set forth in the 1970 Act.\textsuperscript{168} The Fund was to be created from excise taxes, registration fees, and judgments relating to the act.\textsuperscript{169} The liability of the Fund would be limited to $100,000,000 per occurrence,\textsuperscript{170} and monies could be disbursed for items described in the 1970 Act, as well as for all provable costs and damages which were the proximate results of the discharge of pollutants covered by the act.\textsuperscript{171} Any person claiming damages could thus apply to the Fund and could be confident of recovery for all provable damages. Claimants were also given the right to sue for any remedy allowable under law against a vessel or terminal facility, with the Department being subrogated to any cause of action to the extent of any payments made from the Fund.\textsuperscript{172}

\begin{itemize}
\item H.R. 3388, § 6 (1974) with The Oil Spill Prevention and Pollution Control Act, ch. 70-244, § 11, 1970 Fla. Laws 740.
\item 165. Id.
\item 166. Compare id. § 11 with The Oil Spill Prevention and Pollution Control Act, ch. 70-244, § 11, 1970 Fla. Laws 740.
\item 169. Fla. H.R. 3388, § 11 (1974). House Bill 3388 also provided for the levy of excise taxes upon registrants for the privilege of operating a terminal facility and handling pollutants. Id. The 1970 Act had channeled registration fees into the fund. The Oil Spill Prevention and Pollution Control Act, ch. 70-244, § 11, 1970 Fla. Laws 740.
\item 170. Fla. H.R. 3388, § 12 (1974). If total awards exceeded $100,000,000, they were to be distributed on a pro rata basis.
\item 171. Id. § 11. DNR could disburse monies from the 1970 Coastal Protection Fund for administrative expenses, personnel expenses and equipment costs of the Department related to enforcement of the Act, all costs involved in the abatement of pollution hazards, and all costs of cleanup and rehabilitation of water fowl and wildlife. The Oil Spill Prevention and Pollution Control Act, ch. 70-244, § 11, 1970 Fla. Laws 740.
\end{itemize}
In contrast to the 1970 law which established no limit on liability, House Bill 3388 provided that vessels responsible for a discharge be liable to the fund for all costs of cleanup in an amount up to $14,000,000 or $100 per gross registered ton, whichever is less. House Bill 3388 also granted the four common law defenses which had been included in the 1970 law.

Finally, the bill required owners or operators of terminal facilities or vessels to establish evidence of financial responsibility pursuant to federal laws and regulations, in contrast to the 1970 law, which had required financial responsibility based on the capacity of the terminal facility or the tonnage of the vessel.

House Bill 3388 had been introduced on April 15, 1974; on April 18, 1974, the Senate again took up consideration of Committee Substitute for Senate Bill 132. Senator Sayler withdrew his pending amendment regarding liability of licensees, and Senators Brantley, Barron, and de la Parte offered Amendment 11 to the bill. Amendment 11 amended Committee Substitute for Senate Bill 132 to near conformity with House Bill 3388, except it limited the Florida Coastal Protection Fund to $35,000,000, rather than the $200,000,000 limit proposed in House Bill 3388, and provided for a lower excise tax to support the fund. Amendment 11 concomitantly limited the amount of recovery against the fund to $35,000,000 per occurrence, but provided, as did House Bill 3388, for pro rata distribution in the event total awards exceeded the limitation. Amendment 11 did not provide, as did House Bill 3388, for any appropriations from the general revenue fund as initial funding of the Florida Coastal Protection Fund. Senator

173. Compare Fla. H.R. 3388, § 12 (1974) with The Oil Spill Prevention and Pollution Control Act, ch. 70-244, § 12, 1970 Fla. Laws 740. House Bill 3388 also provided that discharges which were the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, or agent of the vessel would subject the owner, operator, or agent to liability for the full amount of funds expended for cleanup. Additionally, House Bill 3388 limited liability for discharges from terminal facilities to $8,000,000 in the absence of willful negligence or misconduct. Fla. H.R. 3388, § 12 (1974).


175. Compare id. § 13 with The Oil Spill Prevention and Pollution Control Act, ch. 70-244, § 14, 1970 Fla. Laws 740.


177. Dem.—Panama City.


Sayler later attempted to add this provision to Committee Substitute for Senate Bill 132, but his amendment failed.\textsuperscript{181}

Senators Ware,\textsuperscript{182} Sayler, and Myers\textsuperscript{183} immediately offered an amendment to Amendment 11 which provided that claimants not recovering the full amount of their damages from the fund because of proration shall have the right to recover the remaining damages in court proceedings.\textsuperscript{184} This amendment was adopted.\textsuperscript{185} An amendment making a violation of the act a misdemeanor was later rescinded.\textsuperscript{186}

Senator Sayler again attempted to reinstate liability of owners or operators for damages other than cleanup costs, and suggested limiting the defenses available to registrants, as well as increasing the limitation of liability to $30,000,000.\textsuperscript{187} This composite amendment failed.\textsuperscript{188}

The Senate later adopted another amendment to Amendment 11, which made underwater pipelines terminal facilities for purposes of the act.\textsuperscript{189} Other amendments to Amendment 11 increased the excise tax levied on registrants and provided for appropriation of $10,000,000 from the general revenue fund as initial funding for the Coastal Protection Fund.\textsuperscript{190}

Amendment 11, as amended, was adopted. Committee Substitute for Senate Bill 132, as amended, was referred to the Committee on Ways and Means on April 22, 1974.\textsuperscript{191} There was not sufficient support available to retrieve the bill from committee until the following day, when Committee Substitute for Senate Bill 132 was withdrawn from committee by a two-thirds vote.\textsuperscript{192}

On April 25, 1974, Amendment 11 was read for the third time by title.\textsuperscript{193} After a rules skirmish, several minor amendments, and one more unsuccessful attempt by Senator Saylor to increase the limitation of liability of spillors, Committee Substitute for Senate Bill 132 as amended was passed by the Senate by a 33–7 vote.\textsuperscript{194}

\begin{itemize}
\item \textsuperscript{181} FLA. S. JOUR. 196 (1974).
\item \textsuperscript{182} Rep.—St. Petersburg.
\item \textsuperscript{183} Dem.—Miami.
\item \textsuperscript{184} FLA. S. JOUR. 183 (1974).
\item \textsuperscript{185} Id.
\item \textsuperscript{186} Id. at 184, 196.
\item \textsuperscript{187} Id. at 196.
\item \textsuperscript{188} Id.
\item \textsuperscript{189} Id. at 198.
\item \textsuperscript{190} Id. The amendment provided that the money was to be returned to the general revenue fund within five years of transfer.
\item \textsuperscript{191} Id. at 199.
\item \textsuperscript{192} Id. at 199, 222.
\item \textsuperscript{193} Id. at 266.
\item \textsuperscript{194} Id. at 267.
\end{itemize}
Senator Lori Wilson, who voted against the passage of the committee substitute, voiced the reasons for her opposition:

I have some very basic concerns with CS for SB 132. In my opinion, the third party defense leaves a large loophole for oil spilers to get off the hook. The $14,000,000 cap is a far cry from the suggested possible damage figure of over two billion dollars reported by the federal government on the Maritime Administration Tanker Program of the U.S. Department of Commerce.

The argument that the shippers cannot get insurance simply will not hold water, much less oil! None of us can go out and buy unlimited liability insurance; yet every time we drive a car or someone walks on our property, we face unlimited liability.

Florida must take into consideration its expanse of beaches which generates income from tourism. Its coastal waters are a source of revenue from sports and commercial fishing. Beach development represents billions in investment dollars and in tax returns.

Let us review the situation. I think the people have reached the limits of their endurance with the oil companies. Isn't it strange that we didn't have an energy crisis until we as a people became concerned about our environment? Isn't it strange that under the auspices of an "energy crisis" the oil companies are now writing their own ticket? Under the guise of the energy crisis the oil companies have received:

1. The Alaskan pipe line;
2. Off-shore oil drilling;
3. Price increases on oil products;
4. Limited liability on oil spills?

Many people find it quite ironic that the gasoline shortage seemed to go away with the outlandish price increases on a gallon of gasoline. I am not surprised that the oil shippers readily agree to a tax to be placed in a clean-up fund. We have all already seen how these taxes have a way of being passed on to the consumer. This is just another way of saying let the people of Florida pay.

Any mother knows that the best way to begin to teach children to be careful and responsible is to say "You spilled it—you clean it up".196

The bill as passed was certified to the House of Representatives, where it was referred to the Committees on Environmental Protection, Finance and Taxation, and Appropriations.197 Once Committee Substitute for Senate Bill 132 was available to the House for consideration, comparatively little floor debate occurred before it was passed.

195. Ind.—Merritt Island.
The title of the Coastal Protection Fund was amended to Florida Coastal Protection Trust Fund.198 Other amendments revealed the issues which divided the House of Representatives. Liability of terminal facility (as opposed to vessel) operators for cleanup costs had been limited to $8,000,000 by Committee Substitute for Senate Bill 132 as amended. Representatives Becker199 and Roger Wilson200 attempted to increase the limit to $14,000,000, but the amendment was tabled by a 69–39 vote.201 Representative Becker introduced an amendment which prohibited hold-harmless agreements between vessels or terminal facilities and governmental agencies or subdivisions. After some delay and parliamentary maneuvering, the amendment was passed by 13 votes.202 There was an attempt by Representative Rude203 to limit the life of the section limiting liability. That amendment, which was tabled, would have made the limitation of liability provision null and void on July 1, 1976, and incapable of being reenacted.204 After final debate on May 31, 1974, the bill was, as amended, passed by the House by a vote of 91–28.205

On the same day, the Senate, upon motion by Senator Brantley, concurred in the House amendments to the bill, and Committee Substitute for Senate Bill 132 passed by a 30–7 vote.206 The bill was approved by the Governor on June 27, 1974.207

III. ALTERNATE OIL SPILL REMEDIES

A. Tort Law

Some of the initial testimony at the hearings came from lawyers who spoke about the difficulty of obtaining relief under the normal tort causes of action. Tom Post, Port Warden of the Port of Miami, spoke at those hearings, but at a later symposium208 he capsulized the problems involved with finding an appropriate cause of action by stating:

198. Id. at 1176.
199. Dem.—Miami.
200. Rep.—Seminole.
202. Id. at 1180–1239.
203. Rep.—Ft. Lauderdale.
205. Id.
Under current legal standards of liability, great difficulties await private parties seeking to recover damages caused by a vessel’s discharge of oil on the navigable waters of the United States. Today, in most states, injured parties must rely primarily on traditional concepts of tort liability intertwined with various aspects of maritime law as a basis for recovery. In this regard, the common law tort concepts of trespass, negligence, and nuisance may be available to an individual initiating an action in either federal or state courts. However, aside from the enormous expenditures of time and money involved in such a lawsuit, the injured party also faces the difficult problem of bearing the burden of proof.

Trespass may be an effective means for recovering compensation for owners of oil-damaged beachfront property, piers, oyster beds or sea farms. However, the claimant must prove that the discharge of oil which resulted in his damage was intentionally or negligently caused. Moreover, because trespass must involve actual entry or intrusion onto property this would preclude its use by those who can show no actual oil invasion of their property, such as non-beachfront restaurant or gas station owners and the like. Negligence, while one of the principal means for recovering damages for the maritime tort of oil pollution, poses a great burden to the claimant in that he must prove the existence of a legal or proximate cause of his damage. This may be particularly onerous for the non-beachfront owner whose only actual damage may be economic. Nuisance theory may also be a means for compensation recovery if the claimant can prove that his damage is distinct from that of the public at large. Yet, the problems of proving the intentional or negligent cause of the interference with the claimant’s use and enjoyment of his land, which gives rise to the theory, and the origin of the oil discharge make this a difficult means of recovery. The maritime doctrine of unseaworthiness has also been suggested as a possible means for recovery, but the courts have yet to accept it.209

B. Admirality

An attorney wishing to bring a claim in federal court for pollution damage may find reparation available under admiralty law.210


210. This article will not deal extensively with remedies in admiralty for oil pollution damages. For a discussion of admiralty remedies for oil spills, see Roady, Remedies in Admiralty for Oil Pollution, 5 FLA. ST. U.L. REV. 361 (1977) infra. For a survey
The United States Supreme Court has held that the fact that a damaging incident occurs in navigable waters (the locale test) is insufficient to vest admiralty jurisdiction and that the wrong must bear a "significant relationship to traditional maritime activity." Thus, compensation may be available for on-shore pollution damage caused by a mid-sea collision of two pollutant-carrying freighters (shipping is a traditional maritime activity), but may not be available for the same damage caused by the explosion of an off-shore oil-drilling rig (not a traditional maritime activity). Any action brought in admiralty will face the application of the Federal Limitation of Vessel Owner's Liability Act. This act limits a vessel owner's liability for damage resulting from the vessel's operation (which occurs without the owner's privity or knowledge) to the value of the vessel plus the value of the freight then pending. The United States Supreme Court has qualified this limitation, construing liability as being limited by the value of the vessel and freight at the termination of the voyage during which the damaging incident occurred.

The Limitation of Liability Act may affect certain rights of recovery created by various states. If a suit has been filed in state court and the claimant later contests the shipowner's right to limit liability, federal court becomes the appropriate forum. However, a shipowner's recourse to the Limitation of Liability Act is restricted in that the shipowner must file a petition for limitation within six months of receipt of notice of claim.

The implications of this act are sobering for anyone preparing a claim for damages from pollution or for recovery of cleanup costs. If the aggregate sum of damage claims resulting from pollution discharge from a vessel exceeds the value of the vessel and the onboard cargo, many claimants may go without full compensation if the limitation is
applied. If a vessel discharging oil sinks or is destroyed and rendered worthless and the owner is allowed to limit liability, spill claimants may be left with no hope of compensation.

The act could breed inequities; its usefulness is questionable in light of insurance and modern corporate structures which could lessen the impact of a claim. The late Justice Black expressed the thought that "[j]udicial expansion" of the Limitation of Liability Act was "inappropriate." Yet when the Supreme Court was presented with the issue of the relationship of the Limitation of Liability Act with federal and state laws which set liability limits which could conceivably exceed the limits of the act, the Court sidestepped the opportunity to settle the question. Thus, the limitation may remain in effect. Any direct action to impose liability on persons responsible for pollution damage, whether in the courts or in the legislature, must deal with this issue.

C. TOVALOP-CRISTAL

Once the attempts to receive compensation for the costs of cleaning up the Torrey Canyon oil spill highlighted the inadequacies of tort remedies, government and business accelerated their efforts to develop answers to the legal problems created by pollutant spills. Several oil transporting companies organized themselves into the International Tanker Owners Pollution Federation in December, 1968, to create and administer a plan for the compensation of oil spill damage and cleanup expenses. Just two weeks later the terms of the Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution (TOVALOP) were finalized and signed by the seven

220. For example, after the Torrey Canyon disaster, the Liberian owner of the ship, Barracuda Tanker Corporation, and the charterer, Union Oil Company of California, filed a petition for limitation in federal district court in New York. Limitation was allowed as to Barracuda, leaving $50, the value of the one remaining lifeboat, to be the limit of Barracuda's liability. However, Union Oil Company, the time charterer of the vessel, was not allowed to limit liability, for the Act applies only to owners and bareboat charterers. In re Barracuda Tanker Corp., 281 F. Supp. 228 (S.D.N.Y. 1968), rev'd in part, 409 F.2d 1013 (2d Cir. 1969). See also Note, A Proposal to Protect Maine from the Oilbergs of the '70's, 22 MAINE L. REV. 481, 494-95 (1970).

221. See The Princess Sophia, 61 F.2d 339 (9th Cir. 1932), cert. denied, 288 U.S. 604 (1933).


224. Memorandum and Articles of Ass'n of the Int'l Tanker Owners Pollution Federation, Ltd. (Incorporated December 24, 1968), cl. III, para. (A) [Comm. file].

original tanker owner sponsors. By October 6, 1969, there were sufficient signatories to bring TOVALOP into operation, and by 1974 owners of ninety-nine percent of the free world's tanker tonnage had signed the Agreement. One authority described it as "essentially... a self-insurance agreement among tanker owners which will provide instant funds to national governments for cleanup costs." When certain inadequacies of TOVALOP became apparent, the Contract Regarding Interim Supplement to Tanker Liability for Oil Pollution (CRISTAL) was developed to provide additional funds to compensate a wider range of claims. More an attempt to forestall radical judicial or legislative reappraisal of the limited liability acts of the various nations than a great exertion to correct an inequitable situation, TOVALOP and CRISTAL provided for the creation of a limited fund which, once applied for, would act as the only settlement of any claim, even if compensation were not complete. Thus, the two agreements serve as private limitation of liability acts and exist as a form of insurance for participating members.

TOVALOP allows reimbursement only to governments for their cleanup costs while CRISTAL provides compensation for damages to individuals and governments. Because CRISTAL is the supplement to TOVALOP, TOVALOP must be explained before CRISTAL can be understood.

In TOVALOP, each participating tanker owner agrees to "establish and maintain his financial capability" to withstand a limited liability


227. Note, A Proposal to Protect Maine from the Oilbergs of the 70's, supra note 220, at 497 (citations omitted).

228. Contract Regarding Interim Supplement to Tanker Liability for Oil Pollution [hereinafter CRISTAL], Preamble. (Published by Oil Companies Institute for Marine Pollution Compensation Ltd., Hamilton, Bermuda, Aug. 1, 1975.) (Original version published at 10 INT'L LEGAL MATERIALS 137 (1970).)

229. TOVALOP provides only for a limited liability based on a rebuttable presumption of negligence, and applies only to the contamination of the shoreline. It does not cover fire, explosions, ecological and other consequential damages. The members of TOVALOP are aware of the well documented damages caused by spilled oil and are aware that private parties are severely restricted by the Limitation of Liability Act. Therefore, the purpose behind TOVALOP can only be construed as a feint in the direction of industrial reform to head off significant governmental reforms, and as an inexpensive means of meeting the financial responsibility sections of the recent federal legislation.

Note, A Proposal to Protect Maine from the Oilbergs of the 70's, supra note 220, at 498. But see Becker, supra note 226, which presents a more favorable analysis of TOVALOP and CRISTAL.

230. TOVALOP, supra note 225, cl. VII, para. (F).

231. Id. cl. IV, para. (A).

232. CRISTAL, supra note 228, cl. IV, para. (A).

233. TOVALOP, supra note 225, cl. II, para. (C). Financial capability may be
for claims. The recovery process provided by TOVALOP is simple. By signing TOVALOP, a participating tanker owner agrees to report any discharge of oil to the Tanker Owners Federation and to describe the action taken to remove the oil. The Tanker Owners Federation then contacts the government of the country affected by the oil spill, informing it of the TOVALOP provisions and its options under TOVALOP. If the government chooses to seek recovery under TOVALOP, it files notice of a claim against the participating owner for reimbursement for the costs of cleanup or prevention of damage by a spill, within one year from the date of the offending oil spill. If the tanker owner and the government claimant agree on the liability involved, the tanker owner reimburses the government as full settlement of that government's claims against the tanker owner. If the parties cannot agree or if the tanker owner refuses to accept responsibility for an oil spill, TOVALOP provides for arbitration proceedings to settle the matter. Under TOVALOP it is possible for an arbitration board appointed and acting according to the conciliation and arbitration rules of the International Chamber of Commerce to enforce liability.

There are certain standards regulating the determination of fault and the imposition of liability. The TOVALOP rules impose a presumption of negligence which the tanker owner must overcome by proving that the discharge occurred without the fault of the tanker. The claimant government, however, has the burden of proving that the oil causing damage was discharged from the particular tanker.

A tanker owner's liability is limited under TOVALOP. The maximum reimbursement for a negligently caused oil spill is the lesser of $100 per gross registered ton (g.r.t.) of the offending tanker or established "through arrangements either with a P & I Club, an insurance company or the International Tanker Indemnity Association Limited, a company formed specifically for the purpose of providing TOVALOP cover, or otherwise as may from time to time be determined by the Federation." Id., Foreword. A "P & I Club" is an insurance company known as a "mutual protection and indemnity club"; most tankers are insured through such clubs. Who Pays for Pollution Cleanup?, 21 EXXON MARINE 18 (1976) [Comm. file].

234. TOVALOP, supra note 225, cl. VI.
235. Id. cl. VII, para. (A).
236. Id. cl. VII, para. (B).
237. Id. cl. VII, para. (C).
238. Id. cl. IV, para. (A).
239. Id. cl. VII, para. (D).
240. Id. cl. VII, para. (F).
241. Id. cl. VII, para. (E).
242. Id. cl. VII, paras. (E) & (K).
243. Id. cl. IV, para. (B).
244. Id. cl. VII, para. (K).
If several governments are involved, the owner's maximum allowable liability to a particular government is determined by the proportion of that government's removal expenses to the sum of the various governments' removal expenses. The maximum liability limitation includes any cost incurred by the tanker owner in cleaning up the oil spill. Thus, if a tanker owner and one or more governments incur removal expenses which in total exceed the liability limitation, each is entitled to a proportional share of the maximum liability amount.247

TOVALOP is available only to national governments for reimbursement of funds expended in preventing impending damage caused by an oil spill or in cleaning up the spill248 and to tanker owners for reimbursement for cleanup costs.249 It does not allow compensation to private parties or for damage from "fire or explosion, consequential damage, or ecological impairment."250

TOVALOP has one very positive function: it encourages tanker owners to clean up spillage. Before TOVALOP, tanker owners had little reason to incur the added expense of removing an oil spill. With TOVALOP, the shipowner's insurer reimburses the shipowner for cleanup costs. With this assurance, tanker owners are more likely to respond promptly to the oil spillage.251

In view of the possible consequences of an oil spill, such limitations on a government's claims may seem too strict, especially when the maximum liability allowed is $10,000,000. The cost to the fund and to the English and French governments of cleaning up the oil spilled by the Torrey Canyon in 1967 was in excess of $16,000,000.252 Although the

245. Id. cl. VI, para. (A).
246. Id. cl. VI, para. (B).
247. Id. cl. VI, para. (C) provides:

If, however, a Participating Owner and a Government (or Governments) incur Removal expenses as a result of the same Incident, then the Participating Owner's liability shall in no event exceed that part of the limit prescribed in Paragraph (A) hereof [$100 per gross registered ton or $10,000,000, whichever is less] which the Government's (or Governments') Removal expenses bear to the aggregate of the Government's (or Governments') Removal expenses and the Participating Owner's Removal expenses.

248. Id. cl. IV, para. (A).
249. Id. cl. V.
250. Id. cl. I, para. (H).
251. See id. cl. V; Who Pays for Pollution Cleanup? supra note 234, at 18, 21.
252. Post, supra note 3, at 27. The Torrey Canyon was carrying 880,000 barrels of crude oil when she broke up; within three days after the grounding the slick was 35 miles long and 18 miles wide. These estimated cleanup costs were those expended only by the French and British governments; estimated costs to private individuals were not included. Comment, Post Torrey Canyon: Toward a New Solution to the Problem of Traumatic Oil Spillage, 2 CONN. L. REV. 632 (1970).
French and English governments mishandled the cleanup operation so that it cost more than it needed to, and although scientific advances have reduced the cost of cleaning up oil in the event of a breakup of one of the supertankers cruising the ocean today TOVALOP liability limitations seem small. The TOVALOP provisions might adequately and efficiently compensate a government for the costs to clean up an average spill.

Although TOVALOP pays claims for costs of cleaning up an oil spill, more loss than mere cleanup costs is usually involved when a spill occurs. Tanker owners recognized this deficiency in TOVALOP, and in January, 1971, reached a supplemental agreement: CRISTAL. Under the terms of CRISTAL, funds are available to provide some compensation for oil pollution damage suffered by anyone, whether an individual, partnership, or public or private body, from an oil pollution incident involving oil owned by a member of TOVALOP. Each participating oil company is assessed to create a compensation fund, thereby enabling CRISTAL to satisfy damage claims. The amount of money each member is to contribute is related to each company's percentage of the total oil shipped by all participating companies. CRISTAL came into effect on April 1, 1971, and continues to be effective on a year-to-year basis. There are various contingent provisions for termination of CRISTAL, but it terminates definitely upon either the termination of TOVALOP or upon the ratification of an international compensation fund.

253. The basic aim in any cleanup operation is either somehow to collect the oil or to disperse it over as great a volume of open sea water as possible so that bacterial action will eventually destroy it. The problem is one of both organization and technology.

The grounding of the "Torrey Canyon" and the resultant spillage of over 100,000 tons of oil into the sea well illustrates the magnitude of the technological problem. Several different methods were used to dispose of the oil: bombing (several bombs failed to detonate and now litter the ocean floor), burning, sinking, containment and detergents. Not one of the methods used was wholly satisfactory, and some seemed to create more pollution than the oil itself.


254. See Comment, Oil Pollution of the Sea, supra note 253, at 356-58.

255. See text accompanying note 103 supra.

256. See Note, Liability for Oil Pollution Cleanup and the Water Quality Control Improvement Act of 1970, supra note 253, at 982 n.78; 938 n.82.

257. CRISTAL, supra note 228, cl. IV, para. (A).

258. Id. cl. I, para. (B).

259. Id. cl. IV, para. (A).

260. Id. cl. V, para. (2).

261. Id. cl. III, para. (C)(I)(iii).
Although the initial Fund was $5,000,000, the Oil Companies Institute for Marine Pollution Compensation, Limited (Institute), the management for CRISTAL, assured that up to $30,000,000 would be available for compensation claims for pollution damage. However, the compensation plan is computed so that less than the full $30,000,000 is actually available for damage claimants. Before the Institute will release any funds from CRISTAL, it subtracts the following four amounts from the maximum of $30,000,000 that is available:

(1) The owner’s or bareboat charterer’s maximum liability for said pollution damage under TOVALOP;

(2) The amount of expenditures that the owner or bareboat charterer was entitled to make for “removal of oil” (as defined in TOVALOP) and to receive reimbursement for as provided in TOVALOP;

(3) The maximum liability of owner or bareboat charterer with respect to such damage under applicable law, statutes, regulations or conventions; and

(4) The maximum amount to which such persons sustaining pollution damage were entitled from any other person or from the ship or from any other vessel under applicable law, statutes, regulations or conventions providing for compensation for all or part of said damage.

Finally, CRISTAL funds are available only if the claimant has exhausted all other remedies for compensation.

The combination of the prerequisites to reimbursement could result in very little money available for multiple claimants. A tanker which incurred the maximum liability under (1) and (3) above would immediately reduce the available amount by $24,000,000, thus leaving only $6,000,000 of the $30,000,000 fund; the $6,000,000 could be further reduced or eliminated by items (2) and (4).

D. International Law

The international community has developed its own means of holding tanker owners responsible for pollution damage caused by their

262. Id. cl. V, para. (1).
263. Id. cl. IV, paras. (A) & (B).
264. Id. cl. IV, para. (B)(1)–(4).
265. Id. cl. IV, para. (D).
265.1 Maximum liability under (1), TOVALOP, is $10,000,000. Under item (3), maximum federal liability would be $14,000,000. See Section III–E infra. As those two amounts total $24,000,000, the theoretical $30,000,000 CRISTAL liability is immediately reduced to $6,000,000, subject to further reduction under items (2) and (4).
ships. In 1969, representatives from nineteen countries signed the International Convention on Civil Liability for Oil Pollution Damage and returned with it to their respective countries for ratification. The 1969 conference participants drafted a resolution urging the establishment of an international compensation fund to supplement the 1969 Convention. In 1971, the Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage was drafted and signed.

If the 1969 Civil Liability Convention is ratified, it may preempt all other means of recourse for compensation for damages. It provides that: "No claim for compensation for pollution damages shall be made against the owner otherwise than in accordance with [the] convention." Also, under this same provision, claims against an owner's servants or agents are barred.

One author asserts that the 1969 Convention is the only workable long-term solution. The Convention states that “the owner of a ship... shall be liable for any pollution damage caused by oil which has escaped or been discharged from the ship..." The 1969 Convention allows a shipowner to limit liability for oil spill damage if he will constitute a fund equaling the limit of his liability. Under the terms of the 1969 Convention, a shipowner can limit liability for all damage claims from any one accident to an aggregate amount of 2,000

266. The text of the 1969 Convention is published at 9 INT'L LEGAL MATERIALS 45 (1970). The nineteen countries signing the Convention in November of 1969 were Belgium, the Cameroon, the Republic of China, the Federal Republic of Germany, France, Ghana, Guatemala, Iceland, Indonesia, Italy, Ivory Coast, the Malagasy Republic, Monaco, Poland, Portugal, Switzerland, the United Kingdom, the United States, and Yugoslavia. 9 INT'L LEGAL MATERIALS 20-21 (1970). As of January 1, 1977, 31 nations had ratified the Convention. VI R. CHURCHILL, M. NORDQUIST & S. LAY, NEW DISCRETIONS IN THE LAW OF THE SEA 790-95 (1977). The Convention has not yet been ratified by the United States.


268. The Convention is the result of the International Conference on the Establishment of an International Compensation Fund for Oil Pollution Damage, held in Brussels from November 29 to December 18, 1971. 11 INT'L LEGAL MATERIALS 284 (1971). See id. for the text of the Convention. The United States has not ratified the Convention, nor was it in force as of January 1, 1977. R. CHURCHILL, M. NORDQUIST, & S. LAY, supra, note 266, at 790-95.

269. International Convention on Civil Liability for Oil Pollution Damage, Nov. 29, 1969, art. III, para. 4, supra note 266.

270. Id.

271. See generally Becker, supra note 226.

272. International Convention on Civil Liability for Oil Pollution Damage, Nov. 29, 1969, art. III, para. 1, supra note 266. The term "damage" is not defined in the Convention.

273. Id. art. V, para. 3. This can be accomplished directly by the shipowner or through insurance. Id. paras. 3, 11.
francs for each ton of the ship's tonnage, with a maximum liability of 210 million francs. \textsuperscript{274} Limitation is not allowed if the owner was actually or by privity responsible for the incident. \textsuperscript{275} The Convention requires the owner of a ship carrying more than 2,000 tons of oil in bulk cargo to maintain insurance or some other financial security in the amount of the limits of liability under the Convention. \textsuperscript{276}

Thus the 1969 Civil Liability Convention assures that some claimants in a signatory nation will have an available source of funds as compensation for damages. For those injured by oil spills, procedures for receiving compensation for damages or for the cost of cleanup are simpler under the 1969 Convention than through a common law tort action. A state does not have to seize another ship or property owned by the responsible ship owner to be assured that claims will be satisfied. In fact, under the 1969 Civil Liability Convention such seizure is not allowed. \textsuperscript{277}

A claimant must bring suit in a court within whose jurisdictional territory the damage occurred, giving reasonable notice to the defendant. \textsuperscript{277} Once jurisdiction has been established, \textsuperscript{279} the court has exclusive control over the fund constituted by the defendant. \textsuperscript{280} The 1969 Convention has made oil transportation a hazardous activity and holds a vessel owner liable for any pollution damage caused by oil which has escaped or been discharged from the ship. \textsuperscript{281} The only defenses available to the owner are those similar to the four common law defenses; the defenses wholly release the owner from liability. \textsuperscript{282} Another defense, "that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from negligence of that person," may release the owner wholly or partially from liability. \textsuperscript{283} However, liability is limited to the amount of the required fund. If there are multiple claimants, any recovery will be distributed in proportion to their respective claims. \textsuperscript{284} No other claims are allowed, \textsuperscript{285} and

\begin{itemize}
\item \textsuperscript{274} \textit{Id.} art. V, para. 1.
\item \textsuperscript{275} \textit{Id.} art. V, para. 2.
\item \textsuperscript{276} \textit{Id.} art. VII, para. 1.
\item \textsuperscript{277} \textit{Id.} art. VI, para. 1.
\item \textsuperscript{278} \textit{Id.} art. IX, para. 1.
\item \textsuperscript{279} "Each Contracting State shall insure that its Courts possess the necessary jurisdiction to entertain such actions for compensation." \textit{Id.} art. IX, para. 2.
\item \textsuperscript{280} \textit{Id.} art. IX, para. 3.
\item \textsuperscript{281} \textit{Id.} art. III, para. 1.
\item \textsuperscript{282} \textit{Id.} art. III, para. 2. The four common law defenses—act of God, act of war, act of third party, and act of government—have been consolidated to three defenses in the 1969 Convention. Act of God and act of war constitute one defense.
\item \textsuperscript{283} \textit{Id.} art. III, para. 3.
\item \textsuperscript{284} \textit{Id.} art. V, para. 4.
\item \textsuperscript{285} \textit{Id.} art. III, para. 4.
\end{itemize}
a claimant cannot "exercise any right against other assets of the owner in respect of such claim." 286

The fund established by the 1971 Convention provides additional compensation for those unable to collect their claims fully and adequately under the terms of the 1969 Civil Liability Convention. 287 The Fund will also reimburse the owner for losses incurred in voluntarily preventing or minimizing pollution damages. 288

The 1971 Fund is limited in that it will not pay for pollution damage from tankers caught in the midst of wars, nor will it pay if the claimant cannot prove the damage resulted from an incident involving one or more ships. 289 The Fund may be exonerated from liability to the extent that the claimant wholly or partially caused the damages himself, either intentionally or negligently. 290

The practicing attorney should be aware of the 1969 and 1971 Conventions, for if they are ratified by the United States they will offer potential avenues of recovery for pollutant-damaged claimants.

E. Federal Water Pollution Control Act

The Water Quality Improvement Act of 1970 291 limited a vessel owner's liability to the lesser of $100 per gross registered ton or $14,000,000, and held the spiller absolutely liable with the exception of the four common law defenses. 292 Allan I. Mendelsohn, a consultant on maritime law, described the Water Quality Improvement Act of 1970 as "the first significant inroad that had ever been made [on] the limitation . . . of ship owners liability . . . ." 293

The Water Quality Improvement Act of 1970 was amended by the

286. Id. art. VI, para. 1(a).
288. Id. art. IV, para. 1.
289. Id. art. IV, para. 2(a)-(b).
290. Id. art. IV, para. 1(a) and 3. The 1971 Convention also exonerates the Fund to the extent that the 1969 Civil Liability Convention releases a spiller from liability in case of sabotage. Id.
Water Pollution Control Act of 1972. The 1972 Act increased the responsibility of the oil transport industry for some of the costs suffered due to its activities. The Act specifically stated that there shall be "no discharges of oil . . . into or upon the navigable waters of the United States" and provided for penalties. The 1972 Act does, however, provide limits of civil liability. If the spillor owns or operates a vessel which has discharged oil, liability is limited to $100 per gross registered ton of such vessel, with a maximum of $14,000,000, and if the discharge was from either an onshore or offshore facility, the owner's or operator's liability is limited to $8,000,000. Liability can be additionally restricted by the reasonable costs incurred in the removal of the oil discharged from the vessel or facility. If, however, the government proves that the discharge was the result of willful negligence or willful misconduct, the spillor will be liable for the full cost.

Criticism of the federal liability limits is similar to that made of the limits set by TOVALOP and the 1969 Civil Liability Convention. For small spills and discharges that happen daily, such limitations are probably reasonable. Were a large spill to occur, however, the limited liability might not provide adequate compensation, and the United States government would have to bear the excess cost of cleaning up the pollutants. Considering the growing size of supertankers and the increasing use of offshore deep water tanker platforms, the chances of mammoth spills are high. The liability limits in such cases are of questionable desirability.

Another similarity to TOVALOP and the 1969 Civil Convention lies in the requirement that owners and operators establish proof of financial responsibility. The Water Pollution Control Act of 1972 requires that vessel owners or operators establish and maintain evidence of financial responsibility equivalent to their maximum liability limits. Evidence of responsibility is required before any vessel over 300 gross registered tons can use any port, place, or navigable waters of the United States. The United States government would therefore be able to recover a judgment against a vessel owner upon establishing the

296. Id. § 1321(f)(1).
297. Id. § 1321(f)(2).
298. Id. § 1321(i)(1).
299. Id. § 1321(f)(1) and (2).
300. See text accompanying note 103 supra.
301. See also notes 220-23 supra and accompanying text.
303. Id.
liability; it would not have to seize another vessel or other property in order to satisfy a claim.

The federal government now also has a $35,000,000 revolving fund for the control of pollution. This fund is available to establish the National Contingency Plan for the removal of oil, to supply funds to the federal government for its cleanup expenses, and to reimburse spillors who acted to remove an oil discharge for which they were not responsible. The federal government appropriated the initial monies for the federal fund and maintains it with fines and liability reimbursement payments. Costs not reimbursed to the government are supplied from general revenue.

The 1972 Act differs from the proposed international programs in that recovery under any international agreement releases the defendant from claims filed in any other forum by the same claimant. On the other hand, while the federal government’s recovery under the Federal Act is limited to its cleanup costs, the Act also specifically allows other parties and agencies to sue a spillor for damages to any publicly- or privately-owned property caused by an oil discharge or the removal of any oil. Under the same section of the Federal Act, states retain the power to impose requirements or liabilities for a discharge of oil within the waters of the state.

IV. THE CHALLENGE TO THE FLORIDA LAW—
Askew v. American Waterways Operators, Inc.

The 1970 Florida Oil Spill Law was passed in April, but its validity was challenged prior to full implementation of the provisions of the Act. The United States Supreme Court settled some of the constitutional questions regarding that law in Askew v. American Waterways Operators, Inc. The 1970 Florida law held vessel owners and operators to a standard of absolute liability and imposed unlimited

304. *Id.* § 1321(k).
305. *Id.*
306. *Id.* § 1321(d).
308. The revolving fund is available only to the federal government to create and implement the National Contingency Plan, to clean up polluted areas, and to reimburse the owner or operator of a vessel or terminal facility which was the source of an unavoidable spill. See 33 U.S.C. § 1321(k) (Supp. V 1975).
309. *Id.* § 1321(o)(1).
310. *Id.* § 1321(o)(2).
311. Although the Act went into effect July 1, 1970, the regulations were not fully written and implemented by March, 1971. American Waterways Operators, Inc. filed its complaint March 11, 1971.
liability for cleanup costs and damages from oil pollution.\textsuperscript{313} American Waterways Operators contended that the Florida law conflicted with the Federal Act, that it intruded into federal maritime jurisdiction, and that it unconstitutionally regulated foreign commerce.\textsuperscript{314}

In a unanimous decision, the United States Supreme Court ruled that the statute was fully constitutional.\textsuperscript{315} Justice Douglas, writing for the Court, said that the Water Quality Improvement Act of 1970, as amended in 1972, not only did not preclude, but in fact allowed, state regulation of the shipping industry’s liability for oil spills. He quoted 33 U.S.C. § 1161(o):

- Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly-owned or privately-owned property resulting from a discharge of any oil or from the removal of any such oil.
- Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil into any waters within such State.
- Nothing in this section shall be construed . . . to affect any State or local law not in conflict with this section.\textsuperscript{316}

\textit{Askew v. American Waterways Operators} made it clear that a state statute similar to the Florida Oil Spill Law is constitutionally permissible so long as it is not in conflict with the terms of the federal law. The Court pointed out that the provision in the Florida law which allowed claims for damages (other than cleanup costs) incurred by the state and for damages to private persons did not conflict with the Federal Act since the Federal Act reaches only the costs of cleanup.\textsuperscript{317} Because “Congress had dealt only with ‘cleanup’ costs,”

\begin{itemize}
  \item \textsuperscript{313} See text accompanying note 20 \textit{supra}.
  \item \textsuperscript{314} For a more complete discussion of the bases of the complaint, see Section I-G \textit{supra}.
  \item \textsuperscript{315} 411 U.S. at 328.
    
    “[A]ny State would be free to provide requirements and penalties similar to those imposed by this section or additional requirements and penalties. These, however, would be separate and independent from those imposed by this section and would be enforced by the States through its [sic] courts.”

\end{itemize}

411 U.S. at 329 (emphasis added by Court).

317. 411 U.S. at 331. \textit{See} The Oil Spill Prevention and Pollution Control Act, ch. 70-244, § 12, 1970 Fla. Laws 244.
the Court said, "it left the states free to impose 'liability' in damages for losses suffered both by the states and by private interests." The Court also noted that the Limitation of Liability Act had no bearing on the provision of the Florida statute regarding liability of terminal facilities. "Moreover," the Court pointed out, "[section] 12 has not yet been construed by the Florida courts and it is susceptible of an interpretation so far as vessels are concerned which would be in harmony with the Federal Act. Section 12 does not in terms provide for unlimited liability."

However, the full impact of the Limitation of Liability Act and of the federal pollution statute on state pollution control statutes is not yet known. The Court in Askew left open the questions whether Florida was restricted to the amount specified in the Federal Act in recovering the cost of cleanup, and whether the Federal Pollution Act removes the limitations imposed by the Limitation of Liability Act. Thus, if an oil transport vessel were to break open off the coast of Florida, spill its cargo, and sink worthless to the bottom of the sea, several intriguing legal questions arise. Would the Federal Limitation of Liability Act apply, leaving state and federal governments as well as individuals unable to recover their cleanup costs, or would the higher liability limitation of the Federal Pollution Act apply despite the Limitation of Liability Act? In addition, it is not clear whether the total claims of state and federal governments for cleanup costs are limited by the Federal Act to $14,000,000 or $100 per gross registered ton, or if the state's cleanup costs may be considered independently of the federal $14,000,000 limit. The Supreme Court ventured no definitive answers to these questions:

If Florida wants to take the lead in cleaning up oil spillage in her waters, she can use § 12 of the Florida Act and recoup her costs from those who did the damage. Whether the amount of costs she could recover from a wrongdoer is limited to those specified in the Federal Act and whether in turn this new Federal Act removes the pre-existing limitations of liability in the Limited Liability Act are questions we need not reach here. Any opinion on them is premature. It is sufficient for this day to hold that there is room for state action in cleaning up the waters of a State and recouping, at least within federal limits, so far as vessels are concerned, her costs.1

318. 411 U.S. at 336.
319. Id. at 331.
320. Id. (emphasis in original).
320.1 Id. at 332.
Furthermore, the Court did not address the issue of whether the Limitation of Liability Act is applicable to those damages other than the cost of cleanup suffered both by the State and by individuals.

Having resolved that Florida's statute was not in conflict with the federal Water Quality Improvement Act, the Court turned to the problem of conflict between the Florida law and federal admiralty jurisdiction. The Court framed the issue as "whether a state constitutionally may exercise its police power respecting maritime activities concurrently with the federal government." 321

The Supreme Court noted that early decisions broadening the scope of exclusive admiralty jurisdiction had been limited, 322 and in support of that proposition referred to Just v. Chambers, 323 in which Chief Justice Hughes had stated:

[T]he principle was maintained that a State, in the exercise of its police power, may establish rules applicable on land and water within its limits, even though these rules incidentally affect maritime affairs, provided that the state action 'does not contravene any acts of Congress, nor work any prejudice to the characteristic features of the maritime law, nor interfere with its proper harmony and uniformity in its international and interstate relations.' 324

The Askew Court declined to carry the early cases giving admiralty a wide exclusivity "shoreward to oust state law from situations involving shoreside injuries by ships on navigable waters." 325

Moreover, the Court refused to allow the Admiralty Extension Act 326 to preempt state law in that same situation. While conceding that Congress had indeed extended admiralty jurisdiction beyond the boundaries contemplated by the Framers, the Court cautioned:

[I]t hardly follows from the constitutionality of that extension that we must sanctify the federal courts with exclusive jurisdiction to the exclusion of powers traditionally within the competence of the States. One can read the history of the Admiralty Extension Act without finding any clear indication that Congress intended that sea-to-shore injuries be exclusively triable in the federal courts. 327

321. Id. at 337.
322. The Court referred to Southern Pacific Co. v. Jensen, 244 U.S. 205 (1916), and to Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 (1919), where the Court had held that a state could not make a workmen's compensation award to an injured maritime worker because the remedy in admiralty was exclusive. 411 U.S. at 337–38.
323. 312 U.S. 383 (1940).
324. 411 U.S. at 339, citing 312 U.S. at 389.
325. 411 U.S. at 344.
327. 411 U.S. at 341 (citations omitted).
V. Florida Law

With this background, the interested attorney can appreciate the unique effectiveness of the Florida Pollutant Spill Prevention and Control Act for the individual claimant. The legislation has two major purposes: to provide quick, inexpensive relief for pollutant-damaged victims, and at the same time, to create standards and limits for liability acceptable to the shipping insurance industries.328

To accomplish these divergent goals, the 1974 law provided adequate funding methods for the Florida Coastal Protection Trust Fund (Fund) and significantly expanded access thereto. Monies for the Fund come from the oil industry; a two cents per barrel tax on pollutants transferred to or from a terminal facility is levied on each owner or operator of a terminal facility in the state for the privilege of operating the facility.329

The Fund was established to assure that there will be a complete settlement of all valid claims. A two cents per barrel tax is levied until the balance in the fund equals or exceeds $35,000,000; in the following fiscal year no tax is levied unless the fund drops below $35,000,000. In that event, taxing is resumed in the next fiscal year.330 The tax may be increased by emergency action to pay damages from a catastrophic spill.331 Thus, if a major spill creates monumental claims which exceed the Fund’s limit, claimants will be paid a pro rata share until their claims are satisfied.332

The Fund is available to pay for any immediate costs of cleanup and all provable costs and damages proximately resulting from a discharge of pollutants, whether the claimant is a public, private, or corporate party.333 The Fund then aggregates the claims paid and subrogates the total damage claims and the cleanup costs to the limits of liability against the spillor.334

The 1974 law makes the transfer of potential pollutants a hazardous activity,335 eliminates the necessity of proving negligence in any action for damages or for recovery of cleanup cost,336 and makes the Fund

328. See Fla. Stat. § 376.021 (1975) (legislative intent); id. § 376.12(1) (liability limits). See also Section I supra, describing the many economic and political pressures brought to bear on the Florida Legislature and on the committees reviewing the 1970 Oil Spill Law prior to passage of the 1974 law.
329. Fla. Stat. § 376.11(4)(a) and (b) (1975).
330. Id. § 376.11(4)(b)(1).
331. Id. § 376.11(4)(b)(2).
332. Id. § 376.12(2)(b) and (6).
333. Id. § 376.11(1) and (5). See generally id. § 376.12(2)(a) and (c).
334. Id. § 376.12(1).
335. Id. § 376.021(3)(a).
336. Id. § 376.12(1).
absolutely liable for all proven damage claims without limitation. However, the 1974 law allows a spillor the four common law defenses in a subrogated action for damages, cleanup, or abatement expenses brought by the Fund. It also sets the limits of liability for cleanup costs at the amounts specified in the Federal Act and demands no evidence of insurance coverage other than that required by the Federal Act.

As far as a claimant is concerned, the procedures provided by the 1974 law are not difficult. The claimant has two avenues of relief through which to collect his claim: filing suit directly against the alleged spillor or filing a claim against the Fund with the Florida Department of National Resources (DNR) within one year from the first date of the offense. Because the 1974 law makes the transfer of oil a hazardous undertaking, the only issues presented in a suit directly against the offending ship owner, facility owner, or facility operator are the prohibited discharge and damages. The claimant need not plead or prove negligence. A claimant must be aware, however, that the 1974 law allows the defendant to use the four common law defenses. Additionally, the claimant must face the fact that the Federal Limitation of Liability Act limits recovery against vessels. This might preclude complete recovery if the damage was the result of a major disaster.

If the claimant, in the alternative, chooses to file a claim with DNR, the statute practically assures an immediate recovery. If the claimant, the person determined by DNR to be responsible for the spill, and DNR can agree to the damage claim, settlement is quick and the claimant is paid from the Fund with the spillor reimbursing the Fund. This settlement precludes all other actions.

337. Id. § 376.12(2)(e).
338. Id. § 376.12(4).
341. Id. § 376.205.
342. Id. § 376.12(2).
343. Id. § 376.021(5)(a).
344. Id. § 376.205.
345. Id.
346. Id. §§ 376.12(4), 205.
348. Fla. Stat. § 376.021(4)(c) (1975) expresses a legislative intent that the "fund . . . guarantee the prompt payment of . . . damage claims . . . ."
349. Id. § 376.12(2)(a) (1975).
350. See id. § 376.12(2)(d) and (4).
351. Id. § 376.12(2)(a).
If the parties cannot reach an agreement, the claim is submitted to arbitration. The 1974 law provides for a three-member board of arbitration. One arbitrator is chosen by the claimant, one is chosen by the alleged spillor, and one is a neutral member who is also the chairman. This neutral member is designated by the first two members. If the designation is not made within ten days, the American Arbitration Association (AAA) makes the designation. If either party fails to name an arbitrator within thirty days of the claim, the AAA will choose all arbitrators. These arbitration proceedings are informal. The claimant waives all other remedies, and the Florida circuit court in the circuit where the discharge occurred has jurisdiction for immediate review.

Once a settlement is reached, either by agreement or arbitration, the claimant's award is paid from the Fund. If the total amount of proven damages from all claimants exceeds the amount available in the Fund, the claimants receive pro rata portions from the Fund. Even then, since the Fund is absolutely liable to all proven costs and damages, the claimants have the right to receive a pro rata share of all monies received by the Fund until all claims are satisfied.

The Fund itself is reimbursed in a more complicated manner. DNR, as administrator of the Fund, must seek reimbursement to the Fund for any cost to the state for cleanup or damages; in addition, individual claims paid by the Fund are subrogated to DNR. In the subrogated action, DNR proves its damages by submitting to the court a written record of all amounts paid or owed to claimants by the Fund. DNR then only needs to prove that the discharge giving rise to the claims occurred and the source thereof.

The defending owner and/or operators, however, are not absolutely liable to the Fund. They may use the four common law defenses to escape liability for damage and cost of cleanup. They can also limit

352. Id. § 376.12(2)(b).
353. Id. § 376.12(3).
354. Id.
355. Id. § 376.12(3)(a).
356. Id. § 376.12(3)(b).
357. Id. § 376.12(2)(b).
358. Id. § 376.12(3)(c).
359. Id. § 376.12(2)(a), (b) and (e).
360. Id. § 376.12(6).
361. Id.
362. Id. § 376.12(4).
363. Id. § 376.12(2)(d).
364. Id.
365. Id. § 376.12(4).
366. Id.
their liability for the cleanup and abatement costs to the amount established by the 1974 law.\textsuperscript{367} If a vessel is involved, the limitation of liability is the lesser of $14,000,000 or $100 per gross registered ton of the discharging vessel, or $8,000,000 if a terminal facility has discharged the pollutant.\textsuperscript{368} This limitation is fixed, unless DNR can prove that the "discharge was the result of willful or gross negligence or willful misconduct within the privity or knowledge of the owner or operator."\textsuperscript{369} A defendant who has been grossly negligent or guilty of willful misconduct cannot limit his liability.\textsuperscript{370}

Objectors to the 1974 law protested the limitation of liability provisions and argued that those who profit from the transportation of pollutants should bear the full costs of oil spills as a part of the risk of doing business.\textsuperscript{371} This criticism, though popular, is not realistic. While it is true that oil companies and shippers profit from transporting pollutants and that their activity poses substantial threats to the ecology, the shipping industry is not the only segment of society to benefit from the transportation of oil. Modern society requires oil; every member of society benefits from its transportation by sea. Surely it is reasonable to expect society to accept responsibility for some of the risks involved in order to meet its needs.

In addition, the 1974 law does not excuse a spillor's negligence or management practices. Vessel and terminal facility operators and owners under the Florida law escape liability for the cleanup costs of a spill and the damage it causes only if its occurrence was completely outside the spillor's control.\textsuperscript{372} Although the limited liability for cleanup costs may not suffice for a large or catastrophic spill, it appears more than adequate for the average spill in the light of modern technology.\textsuperscript{373} Thus a spillor will be held responsible for the cleanup costs of most spills. Any release from financial responsibility that a vessel owner or operator might enjoy will probably be the result of the Limitation of Liability Act.\textsuperscript{374}

Admittedly the transportation of pollutants by sea creates possibility of extreme damage; government has the duty to provide some protection for society against the risks involved.\textsuperscript{375} The Florida Pollutant

\textsuperscript{367} Id. § 376.12(1).
\textsuperscript{368} Id.
\textsuperscript{369} Id.
\textsuperscript{370} Id.
\textsuperscript{372} FLA. STAT. § 376.12(4) (1975).
\textsuperscript{373} See Comment, Oil Pollution of the Sea, supra note 253, at 355–59.
\textsuperscript{374} See Section IV supra.
\textsuperscript{375} See FLA. CONST. art. II, § 7 (1968). See also FLA. STAT. § 376.021 (1975).
Spill Prevention and Control Act of 1974 appears to meet this governmental obligation. Once there has been damage, the 1974 law provides a ready source of funds to abate oil spills and facilitates recovery by claimants of their damages.

The 1974 law has additional provisions designed to prevent pollution damage. DNR is empowered to adopt and enforce regulations relating to discharges of pollutants into the waters or onto the coasts of the state. It places terminal facilities under a licensing system that requires compliance with state and federal plans and regulations for abatement and control of spills. The Florida statute provides for a state response team which is responsible for the creation of a contingency plan of response, organization, and equipment for handling emergency cleanup operations. The response team is to act independently of federal agencies, but is directed to cooperate with any federal cleanup operation.

Spillors are encouraged to comply with the provisions of the 1974 law by means other than the judicial enforcement of claims for damages. The 1974 law imposes civil fines on anyone who does not comply with all its requirements. Prohibited spills, failure to report a spill for which that party is responsible, and failure to remove such a spill are punishable by a maximum fine of $50,000 for each day during which the offense occurs. The person in charge of a vessel or terminal facility discharging a pollutant is guilty of a third degree felony if the discharge is not reported to the nearest Coast Guard Station. The vessel which reports the discharge must remain in the jurisdiction a sufficient time for DNR to determine financial responsibility. The pilot or master of a vessel who fails to remain in the jurisdiction for a reasonable time after notice of a discharge is guilty of a third degree felony.

The 1974 Florida law is not without its problems. Fortunately, there has not yet been a severe test of its mechanisms; no cataclysmic disaster has occurred to test the procedures and thus reveal possible faults.

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376. FLA. STAT. § 376.07 (1975).
377. Id. § 376.06.
378. Id. § 376.07(2)(e).
379. Id.
380. Id. § 376.041.
381. Id. § 376.07(2)(g).
382. Id. § 376.09(1).
383. Id. § 376.16(1).
384. Id. § 376.12(8).
385. Id.
386. Id.
The application of the Limitation of Liability Act to the 1974 law is also uncertain. The 1974 Florida law still holds vessels liable for cleanup costs up to $14,000,000 or $100 per gross registered ton, whichever is less. In Askew v. American Waterways Operators, the Supreme Court did not address the propriety of the application of the Limitation of Liability Act; future judicial review may further mitigate its harshness, negate its applicability, or nullify the sections which limit liability on vessels.

While some legal issues remain to be settled, the Florida Pollutant Spill Prevention and Control Act offers an appealing model for future legislation in other states. A bill strongly resembling the Florida law was introduced in 1975 in the United States Senate. Because the Senate bill died in committee that year leaving the states to enact their own legislation, many states may wish they were in Florida's position regarding oil spills: that of a legal entity which has experienced a problem and has taken sensible, rational steps to provide for the future.

387. See discussion in Section IV supra.
390. Id. at 332.
392. The bill was referred to the Commerce Committee, the Interior and Insular Affairs Committee, and the Public Works Committee.