

1975 WL 29576 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 10, 1975

*1 The Honorable Ernest F. Hollings
United States Senator
Senate Office Building
Washington, D. C. 20517

Dear Senator:

Thank you for your letter of January 16, 1975, requesting a synopsis of any judicial decisions or pending legislation in this State which would relate to compensation and liability for oil damage inflicted by the discharge of oil in the territorial waters of this State.

Act 1157 of the 1970 Acts and Joint Resolutions for South Carolina (the South Carolina Pollution Control Act) is couched in such terminology as may well make it applicable to oil spill situations involving the territorial waters of the State of South Carolina. Specifically, Section 13A of that Act provides as follows:

It shall be unlawful for any person, directly or indirectly, negligently or willfully, to throw, drain, run, allow to seep, or otherwise discharge into any of the waters of the State organic or inorganic matter that shall cause or tend to cause a condition of pollution.

In turn, the definition of 'waters' includes 'the Atlantic Ocean within the territorial limits of the State.' As 1916 South Carolina Attorney General's opinion pointed out, at that time under existing statutes, the jurisdiction of South Carolina did not extend beyond the water line or low water mark of the ocean. However, it did conclude that it is within the powers of the General Assembly by proper act to assume jurisdiction of the ocean to such an extent as is recognized by the law of nations. Very frankly, my familiarity with international law is limited, at best; however, in the case of Toomer v. Witsell, 73 F. Supp. 371, affirmed in part and reversed in part 68 S. Ct. 1156, 334 U.S. 385, 393, 92 L. Ed. 1460, 1470, rehearing denied 69 S.Ct. 12, 335 U.S. 837, 93 L. Ed. 389, it was concluded that ' . . . the State has sufficient interests in the shrimp fishery within three miles of its coast so that it may exercise its police power to protect and regulate that fishery.' The territorial limits of this State and other Atlantic Seaboard states is now pending for determination before the United States Supreme Court. Arguments were held on February 24, 1975.

Assuming, however, that the South Carolina Pollution Control Act therefore does extend its applicability to the three-mile limit off the coast of South Carolina, it is important further to note that Section 13B of the Pollution Control Act provides for liability in cases where a discharge into the waters of the State causes damage or destruction of fish, shell fish, aquatic animals, wild life, or plant life indigenous to or dependent upon the receiving waters of such discharge. Such an action would be brought by the State in its own name or in the name of the Department of Health and Environmental Control. Additionally, such a discharge as earlier pointed out would constitute a violation of law which would subject the violator to the criminal and civil penalties provided for in Sections 35 and 35.1 of the Act which provide for up to \$25,000 per day for a continuing offense in a criminal prosecution and for a penalty of up to \$5,000 per day of a continuing violation in a civil prosecution.

*2 As a practical matter, however, the Department of Health and Environmental Control has not become involved in environmental spills into the territorial waters of the State, inasmuch as the U.S. Coast Guard and the Environmental Protection Agency have responsibility in that area as well as more efficient and effective mechanisms for assessing and

collecting penalties and damages. I have been requested by the Department of Health and Environmental Control to investigate the possibility of drafting environmental spill legislation which would provide a better mechanism for the State to become involved more actively in the environmental spill problems in the State and to assess and collect penalties and damages administratively.

Legislation is at the drafting stage in at least one agency of this State to deal with the potential problem of oil and gas production in offshore areas and it is reasonable to assume that provisions would be included in such legislation so as to deal with the problem of oil spills in every context.

Very truly yours,

Daniel R. McLeod
Attorney General

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