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89-32 **CONNALLY HOT OIL ACT AMENDMENT**

GOVERNMENT

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**HEARING**  
BEFORE THE  
**SUBCOMMITTEE ON COMMUNICATIONS  
AND POWER**  
OF THE  
**COMMITTEE ON  
INTERSTATE AND FOREIGN COMMERCE**  
**HOUSE OF REPRESENTATIVES**

EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

**H.R. 10860**

A BILL TO PROMOTE THE GENERAL WELFARE, PUBLIC  
POLICY, AND SECURITY OF THE UNITED STATES

APRIL 19, 1966

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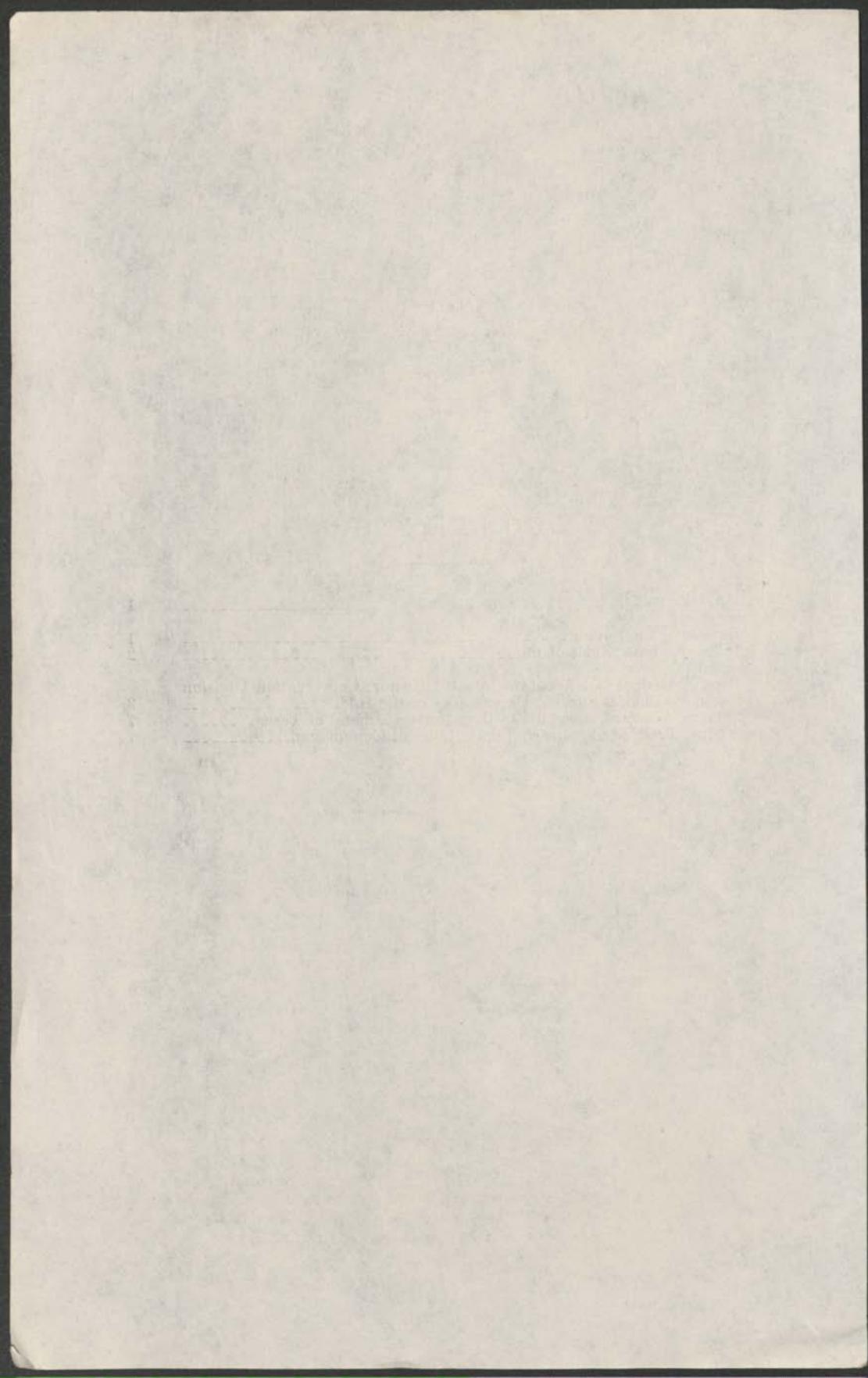
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## CONNALLY HOT OIL ACT AMENDMENT

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TUESDAY, APRIL 19, 1966

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMUNICATIONS AND POWER  
OF THE COMMITTEE ON INTERSTATE  
AND FOREIGN COMMERCE,  
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 2218, Rayburn House Office Building, Hon. Walter Rogers (chairman of the subcommittee) presiding.

Mr. ROGERS of Texas. The Subcommittee on Power and Communications will come to order for the consideration of pending business, which appears to be bill H.R. 10860, which I introduced last year, and which would amend the Connally Hot Oil Act to redefine contraband oil to exclude petroleum or any of its constituent parts, title to which has been acquired by States pursuant to its laws.

The purpose of this legislation is to permit disposal of contraband oil which has been confiscated by a State and otherwise would be ineligible for interstate or foreign commerce under the Connally Act.

The record will include a copy of the bill together with the reports from the Department of the Interior and the Bureau of the Budget. As I understand it, the Justice Department was requested to make a report but they had no recommendation on it.

(The bill, H.R. 10860, and reports thereon follow:)

[H.R. 10860, 89th Cong., 1st sess.]

A BILL To promote the general welfare, public policy, and security of the United States

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the definitions of the Connally Hot Oil Act (Acts, February 22, 1935, chapter 18, sec. 1, 49 Stat. 30, being United States Code, title 15, chapter 15A, sec. 715a) be amended by adding the following to subsection (1) thereof: "Except petroleum or any of its constituent parts, title to which has been acquired by a State pursuant to its laws."

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EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington, D.C., March 28, 1966.

HON. HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Rayburn House Office Building,  
Washington, D.C.

DEAR MR. CHAIRMAN: This will acknowledge Chairman Harris' letter of September 9, 1965, requesting the views of the Bureau of the Budget regarding H.R. 10860, to promote the general welfare, public policy, and security of the United States.

The bill would amend the Connally Hot Oil Act definition of contraband oil to exclude petroleum or any of its constituent parts, title to which has been acquired by a State pursuant to its laws.

The Department of the Interior, in a separate report to your committee, indicates that the apparent purpose of this legislation is to permit disposal of contraband oil confiscated by the State of Texas which would otherwise be ineligible for interstate or foreign commerce under the Connally Act. The Department does not believe that the relatively small amount of oil which would be affected if this bill were enacted would adversely affect the purposes stated in the Connally Act.

For the reasons set forth in the Interior report, the Bureau of the Budget would have no objection to enactment of H. R. 10860.

Sincerely yours,

WILFRED E. ROMMEL,  
*Acting Assistant Director for Legislative Reference.*

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DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., March 18, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR MR. STAGGERS: Your committee has requested a report on H. R. 10860, a bill to promote the general welfare, public policy, and security of the United States.

We have no objection to the enactment of the bill.

This bill would amend the Connally Hot Oil Act (15 U.S.C. 715a(1)) to exclude from the definition of the term "contraband oil" illegally produced petroleum or any of its constituent parts the title to which has been acquired by a State under its laws.

The Connally Hot Oil Act prohibits "the shipment or transportation in interstate commerce from any State of contraband oil produced in such State" (15 U.S.C. 715b).

The apparent purpose of the bill is to permit the shipment in interstate commerce of oil produced in excess of State laws and regulations after title to the oil has been acquired by a State under its confiscation or other laws. Such legislation is required to permit the interstate transportation of oil in such circumstances because of the decision of the U.S. Court of Appeals for the Fifth Circuit in *Hurley v. Federal Tender Board No. 1*, 108 F. 2d 574 (1939) which held that under the Connally Act contraband oil which had been forfeited to the State of Texas and confiscated by the State and sold remained "contraband" oil and ineligible for interstate or foreign commerce.

At the time the Connally Act was enacted, there were a substantial number of markets exclusively within a State where oil could be sold for strictly intrastate distribution. Changing conditions, however, have rendered it almost impossible to sell oil within a State with the refined products used exclusively within the boundaries of the State. Under today's marketing system, it is virtually impossible for oil shipped by pipeline not to enter into interstate commerce either as crude oil itself, constituent parts thereof, or the products manufactured therefrom. Progressively, interstate pipelines have been built to facilitate the movement of crude and refined products to large markets often at great distances from the State where it was produced. It is highly unlikely, therefore, that an exclusively intrastate market for crude oil could be obtained today.

Unless illegally produced oil acquired by a State under its confiscation or other laws is permitted to be transported in interstate commerce almost invariably such oil will have to remain in storage, where it is subject to deterioration or loss from tank breakage or fire. It would appear that it would be in the interest of conservation that such oil be put to a useful purpose.

Enactment of the bill would solve a long-standing difficulty, especially in Texas where we understand some contraband oil has been in storage for many years.

We do not believe that the relatively small amount of oil which would be affected if this bill were enacted would adversely affect interstate or foreign commerce contrary to the purposes stated in the Connally Act.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

GLIN A. COWAN, JR.,  
*Under Secretary of the Interior.*

Mr. ROGERS of Texas. Mr. Younger, did you have anything?

Mr. YOUNGER. No, sir, but those reports; are they favorable? I have not read them.

Mr. ROGERS of Texas. Actually the reports are "no objection" reports. There is a witness here from the Department of the Interior who will testify today and the Bureau of the Budget has no objection.

Our first witness this morning is Mr. George M. Paulus, Assistant to the Director of the Conservation Division and Geological Survey of the Department of the Interior.

Mr. Paulus, if you will come forward you will be recognized.

#### STATEMENT OF GEORGE M. PAULUS, ASSISTANT TO THE DIRECTOR OF THE CONSERVATION DIVISION AND GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

Mr. PAULUS. Mr. Chairman and Mr. Younger, my name is George M. Paulus. I am Assistant to the Chief of the Conservation Division of the Geological Survey, Department of the Interior. I am here in behalf of the Department of the Interior in response to a request I understand was made by the committee to have someone present to answer questions, if necessary. The Department of the Interior has made its formal report, as you mentioned, on the bill on March 18, I believe, in which they reported no objection to enactment.

In addition I have a short statement which I believe covers the matters requested by the committee. I will be glad to read it.

Mr. ROGERS of Texas. I think it will be well if you did, it is short and I think pretty much to the point.

Mr. PAULUS. From time to time during the past 15 years the office of the attorney general of the State of Texas and legal counsel for the Railroad Commission of Texas, have requested the Federal Government, through the Federal Petroleum Board (now branch of Connally Act compliance) to authorize the sale and movement in interstate commerce of illegally produced crude oil seized and confiscated by the State pursuant to its confiscation statutes.

The States authorities have contended that there is no suitable intrastate market for the oil, and that unless it can be sold into interstate commerce, the State is unable to utilize its confiscation authority in a reasonable way by selling the oil at fair market price. Some confiscated oil has been used in the past for inferior purposes, such as road oil.

The answer given by the Interior Department to the State of Texas requests has always been the same, that is, that the Interior Department is without authority to certify or approve the movement of confiscated oil in interstate commerce.

Such movement is prohibited by section 3 of the Connally Hot Oil Act, as held applicable to confiscated oil in the case of *Hurley v. Federal Tender Board No. 1*, 108 F. 2d 574 (1939). H.R. 10860 would remove the prohibition.

The most recent inquiry or request from the State authorities was in 1963. Interior's reply of October 4, 1963, through then Assistant Secretary John M. Kelly, reiterated Interior's lack of authority to acquiesce in the interstate movement of confiscated oil.

Mr. Kelly further suggested that the State bring the problem up for discussion in the Interstate Oil Compact Commission and explore with the Commission the possibility of recommending amendatory legislation to the Congress. We do not know whether that suggestion was followed, but assume that the present bill, H.R. 10860, results from views of the State of Texas authorities that a legislative solution of their confiscated oil problem is needed.

I will correct that last sentence since we do now know that the State did take the matter to the legal committee of the Interstate Oil Compact Commission, and, as I understand, met with no objection.

Interior's files do not reflect that the problem of movement of confiscated oil has come up in any State other than Texas. We are not aware that any other State has made any extensive use of confiscation as a means of enforcing oil conservation laws.

Interior does not have up-to-date data on the amount of confiscated oil, or oil subject to confiscation by Texas, that would be affected by enactment of H.R. 10860. We understand that the State has knowledge of approximately 135,000 to 140,000 barrels reportable as confiscatable oil but that it has not completed its study or survey.

Now, the following is on the Connally Act administration. Do you want me to read that?

Mr. ROGERS of Texas. Yes, sir, I think it is quite important.

Mr. PAULUS. A brief history of administration of the Connally Hot Oil Act has been in three phases. The first phase covered the early years after enactment in 1935. The full powers of the act were used by means of establishment of Federal tender boards for issuance of "certificates of clearance." No oil could move in interstate commerce from the principal fields of the Southwest until cleared for movement by the Federal Government.

The second phase dates from 1942, when the Federal tender system was abolished. The field organization for administration was reduced to an investigative staff, and active enforcement was limited to a "designated area," consisting of southeast New Mexico, most of Texas, and all of Louisiana. During the past 10 years (fiscal 1956 through 1965) successful prosecutions have averaged about seven per year. Fines imposed by the Federal courts during that period have averaged about \$53,700 per year with a high of \$120,576 in fiscal 1958.

The third phase of Connally Act administration dates from January 29, 1965, when the Secretary of the Interior limited active enforcement by revoking the designation of the specific areas in which special enforcement procedures had been applicable.

Phasing out of the work has taken place during the past year, and the branch of Connally Act compliance will be terminated June 30, 1966. The termination action, as the amending order noted, was taken as a result of the increased capability of the States to enforce their own conservation regulations.

Mr. ROGERS of Texas. Thank you, Mr. Paulus.

Mr. Murphy, do you have any questions?

Mr. MURPHY. Mr. Chairman, we have fines here imposed by the Federal courts of \$53,000 and \$120,000 that is in addition to the confiscated value of the oil?

Mr. ROGERS of Texas. That would be true, wouldn't it, Mr. Paulus?

Mr. PAULUS. Yes.

Mr. ROGERS of Texas. That is in addition to the value of the confiscation?

Mr. PAULUS. Yes, but the proposal under this bill would be a State action. This is purely a Federal action, these fines. These Federal prosecutions have all taken place after the oil has moved. There is not any oil in the tank you could confiscate, it has already been moved and sold in violation of the act.

The Federal prosecution is for the interstate violation. That has already taken place and there is no confiscation.

Mr. MURPHY. Were there any jail sentences?

Mr. PAULUS. There have been over the years a few prison sentences. Most of them, I believe, have been suspended. I really don't know of any single case of time served, although I understand there was one case when someone spent some time in a penitentiary. I can't verify it. By and large it has been a matter of fines.

Mr. MURPHY. What Federal agency polices this?

Mr. PAULUS. The present Federal agency is called the branch of Connally Act compliance. It is under the jurisdiction of the Director of Geological Survey and he in turn is under the Secretary of the Interior. All these powers are by delegation from the President.

Mr. MURPHY. How many investigators does he have?

Mr. PAULUS. Right now I think there are about four. In 1948 I believe they had a staff of 92 people. In 1958 when the Geological Survey took over the work when it was transferred to the Survey from the Office of Oil and Gas, there were 23 people, I believe, and of those I think maybe a dozen were investigators.

About 2 years ago I think the staff numbered about 34 altogether, with, in the range of 18 investigators. Now it is down to a few, and by June there won't be any.

Mr. ROGERS of Texas. Will the gentleman yield?

Mr. MURPHY. Yes.

Mr. ROGERS of Texas. Actually the Connally Hot Oil Act in the first instance was, with Federal support, to make it possible for the States to enforce their State statutes with regard to production and movement of hot oil.

Mr. PAULUS. Yes.

Mr. ROGERS of Texas. This has developed through the years where the States have with the assistance of the Federal agencies with regard to shipment or transportation of oil and gas it has worked out where the States can enforce their laws effectively without further need of Federal help, wouldn't that be true?

Mr. PAULUS. That is the position the Interior Department takes, that at the present time, at least, the effectiveness of the State conservation laws and regulations is really not dependent upon enforcement action by the Federal Government.

Mr. ROGERS of Texas. Actually the economics of this situation is not of great import or great merit, it is a situation of where you have actually a small amount of oil hanging in suspended animation be-

cause it cannot be put into interstate commerce because it is still contraband oil having been confiscated under the Connally Act.

Mr. PAULUS. You are talking about the oil in tanks today or which might be in tanks in the future?

Mr. ROGERS of Texas. Yes.

Mr. PAULUS. I understand a lot of this oil is not yet confiscated, it is what you might call frozen oil; there is no authority for its movement, the State has not allowed its movement, and the State has not felt that it should go in and confiscate it because once they do under the way it has worked in the past, they can't move it, they can't sell it in interstate commerce.

Mr. ROGERS of Texas. They do have some confiscated held in storage and nothing can be done with it except to use it to oil roads or something like that, which is a waste.

Mr. MURPHY. No further questions.

Mr. ROGERS of Texas. Mr. Younger?

Mr. YOUNGER. As I understand the picture, your fines are imposed where the oil has already been shipped, is that right?

In other words they do not make a practice of confiscating the oil and imposing the fine also?

Mr. PAULUS. Well, the Connally Act itself has provision in it for confiscation by the Federal Government. It also has provision by which the Federal Government can enjoin the movement of oil. Now that latter power, I think, has been used on occasion to enjoin the movement of oil but I don't know of any case in which the Federal Government has ever confiscated oil under the Federal statute.

I think the reason for that is, as I have said, most of the prosecutions are after the fact. The oil has already moved; there is nothing to confiscate.

Mr. YOUNGER. And the only penalty they can impose there is the fining?

Mr. PAULUS. Yes.

Mr. YOUNGER. But if they do find the oil is contraband oil and has not been shipped then they can confiscate it, as has been the case of some they have on hand at the present time?

Mr. PAULUS. The State has confiscated from time to time.

Mr. YOUNGER. The Federal Government does not have any oil on hand that has been confiscated, it is the State that has it?

Mr. PAULUS. Yes. The State has that confiscation remedy.

Mr. ROGERS of Texas. Will the gentleman yield?

Mr. YOUNGER. Yes.

Mr. ROGERS of Texas. What Mr. Younger is getting at is this, I think this will clear it up, the cases in some instances where the oil was confiscated under a State law, the violators could still be prosecuted if they had shipped any in interstate commerce, they could be prosecuted under the Connally Hot Oil Act.

What he is talking about is that the Federal Government has not prosecuted anyone under the Connally Hot Oil Act. In the case where they have confiscated oil and now have oil in storage, that is contraband.

Mr. PAULUS. They might have prosecuted some for false reports.

Mr. ROGERS of Texas. Do they have any oil in storage now that is contraband, the Federal Government?

Mr. PAULUS. No.

Mr. YOUNGER. It is owned by the State which you want to release and permit the State to sell or move it into interstate commerce.

Mr. ROGERS of Texas. If the gentleman will yield further, the oil that will be released to the State is oil that was confiscated by the State as contraband oil and the reason it was confiscated, as I understand it, under State law, was because it was oil that was being shipped in violation of the Connally Hot Oil Act.

It cannot be shipped because it is still contraband oil whether it is owned by the State or an individual, is that right?

Mr. PAULUS. That is right.

Mr. ROGERS of Texas. The oil is the property of the State, it was confiscated by the State and not the Federal Government. The Federal Government does not get any oil out of this at all.

Mr. PAULUS. That is right.

Mr. YOUNGER. That is all.

Mr. ROGERS of Texas. Thank you for your presentation, Mr. Paulus.

Now we have present Mr. Linward Shivers, assistant to the attorney general of Texas and Mr. Fred Young, legal counsel of the Railroad Commission of Texas.

Mr. Shivers, do you care to testify or was Mr. Young going to make the presentation?

Mr. SHIVERS. Mr. Young.

**STATEMENT OF FRED YOUNG, LEGAL COUNSEL, TEXAS RAILROAD COMMISSION; ACCOMPANIED BY LINWARD SHIVERS, ASSISTANT TO THE ATTORNEY GENERAL OF TEXAS**

Mr. YOUNG. Thank you, Mr. Chairman.

Mr. ROGERS of Texas. Will both of you come up, there may be some questions and if there are we can get them all cleared up at once.

Mr. YOUNG. Before I start I would like to put this before you, this is our recent amendment of State law defining unlawful oil.

Mr. ROGERS of Texas. Mr. Young, you may proceed.

Mr. YOUNG. I am Fred Young and I am chief legal counsel for the Texas Railroad Commission, but for the fact the commission has its statewide meeting at this time, a commissioner would have been present today.

The Texas Railroad Commission is the legally constituted State agency responsible for administration of regulation of the oil and gas producing and oil and gas pipeline transportation industry. Its activities include the policing of production and transportation of illegal oil; that is oil produced in violation of State law, which is known generally as hot oil.

In 1935 when the Connally Hot Oil Act was enacted by the U.S. Congress a problem of absence of any control of the movement of oil in interstate commerce made impossible the effective enforcement of State laws directed to the elimination of production and movement of illegally produced oil.

The act was a simple but well designed structure that made the transportation of illegal oil in interstate commerce a Federal offense. From the date of enactment forward the State agencies and the Connally Act Compliance Agency worked as a team to eliminate the movement of hot oil in interstate commerce.

Overlap in jurisdiction was not a problem because the act itself leaves entirely to the States the complete control of their oil and gas conservation laws, rules, and regulations, but puts the Federal agency to work on movements of oil in interstate commerce. History has proven that the system as designed and enforced was extremely effective and the production and the movement of hot oil was reduced to a minimum.

Because of this act, and its active enforcement since 1935, conditions have changed dramatically in Texas, and in all other States. The States through use of their own regulatory channels have attained the ability to enforce compliance with the conservation laws of the individual States. The effectiveness of local enforcement has been shown by the phaseout of the Connally Act Compliance Agency offices as recently ordered by the U.S. Department of the Interior.

However, one of the more practical enforcement tools that Texas and other States have established—that is, the right of the State by judicial process to take title to oil that is proven to be illegally produced, or is not identifiable as legally produced—has been made ineffective by the Connally Act.

This tool has been blunted because a reasonable exception was not provided for in the act. By definition oil produced in violation of State law or regulation was contraband oil and the Department of Interior took the position that the act makes no exception of, or provision for, the shipment of oil which, because it was illegally produced, has been forfeited to the State.

This position was upheld by the U.S. court of appeals in *Hurley v. Federal Tender Board No. 1*, 108 F. 2d 574, and in that case the court said, "Nothing in the Federal act excepts or purports to except from its terms, contraband oil forfeited to the State."

It may have been true at the time the act was adopted, that such stringent no-exception regulation was needed, but that time is past, and instead of such interpretation aiding the States, it makes ineffective a State's most important enforcement tool and causes waste. Certainly it cannot be shown that a State regulatory agency has failed in its responsibility to enforce its regulations, but it can be shown that the blunting of an effective tool has rendered the State's enforcement less potent.

In the State of Texas there are numerous accumulations of oil that have been frozen in stock tanks perhaps forever or at least without hope of movement under the present law, because legality of production has been questioned. The Texas State auditor has commented on this item after each audit made of the commission records, and the typical comment is shown by the 1961 audit in which it was stated that in several oil accumulations that have been frozen for from 13 to 23 years there is in excess of 90,000 barrels of oil.

Numerous attempts have been made to emancipate this oil, but each has met with total frustration. The auditor's reports generally recited this problem and concluded that the condition was deplorable because this oil should be put to beneficial use, but that since disposition was blocked by both State and Federal law additional legislation would be needed at both levels of government.

In March 1963 at the direction of the commission a letter was sent to Mr. John Kelly, Deputy Secretary, Mineral Research, Department of the Interior, to explain the problem and seek relief.

Mr. Kelly kindly replied that the Department was fully appreciative of the problem but that it was bound by court-approved departmental interpretation of the act. He did suggest that the matter should be an early discussion item of the Interstate Oil Compact Commission (IOCC).

Pursuant to this suggestion the matter was presented to the IOCC legal committee at its formal session at the June 1965 meeting in Pittsburgh, Pa., and received no opposition. Subsequent to that date, Mr. Walter Rogers on September 2, 1965, introduced H.R. 10860, the amendatory act under consideration.

Again at the IOCC legal committee at its formal session at the December 1965 meeting in Corpus Christi, Tex., reference was made to the introduction of this amendatory legislation and Chairman Langdon, after explanation of the bill, urged the several members of the committee to encourage passage by direct contact with their congressional representatives.

At all junctures there was no apparent opposition to the proposed amendment, and it appears to the railroad commission that all parties who know the intent of the proposed amendment are of the opinion that it will strengthen local enforcement of conservation regulation, by providing an outlet for beneficial use to frozen stocks of oil that might otherwise remain in the same tanks to destruction by tank failure and wasteful flow over the countryside. In addition, these unattended stocks are serious fire hazards.

As a collateral matter it should be mentioned that the Texas Legislature at its last session took notice of this problem and adopted an amendment to the conservation laws that would dovetail with the proposed amendatory legislation proposed here. Texas' definition of unlawful oil has been changed to read as follows:

When any oil has been retained in storage for a period of more than 6 years without being used, consumed, or moved into the regular channels of commerce, it shall be presumed that such oil is unlawful oil. This presumption shall be rebutted by proof \* \* \*.

It can be seen that the first step has been taken to emancipate these old frozen stocks of oil, but the second step, and a very important one, is this proposed amendatory legislation, for without the ability to move the oil in interstate commerce, the State would be performing an exercise in futility to take title to the oil by judicial process. The oil would belong to the State, but would remain in storage because it could not be moved.

In the State of Texas today there are several major frozen accumulations and that could be subject to the new definition of an unlawful oil, there are also many small accumulations frozen in lease tanks that are destined to county road use, an inferior use merely to free tanks and properties of storage burden, unless this amendatory legislation is passed.

At my request, a hurried survey was made to determine the extent of the problem. Commission records show at least 108,443 barrels of oil in four major accumulations and 34,542 barrels in the 70 east Texas field accumulations. There are numerous other accumulations in frozen lease tanks throughout Texas, but time would not permit the survey of production reports for this meeting.

These oil stocks would be released for beneficial use if the proposed amendment would be adopted and a reasonable exception to the act

for oil owned by the individual States be provided by amendment of the act as follows. This is a quote from the act itself:

Except petroleum or any of its constituent parts, title to which has been acquired by a State pursuant to its laws.

The railroad commission urges speedy approval of H.R. 10860.

Mr. ROGERS of Texas. Mr. Young, to get a little history into the record, which I think is quite important to clarify some people's understanding of this, this storage started actually back when the east Texas field in Texas was discovered, which at that time was reported to be the largest oil field in the world.

Now at that time Texas adopted some conservation laws because the full production of a well destroyed the bottomal pressure and would permit this oil to flow out of there so fast and furiously that the well would quickly turn to salt water and the result would be that you had sold a tremendous amount of oil at as low as 10 cents a barrel. If my memory serves me correctly, it went down that low and something had to be done to conserve this as a natural resource and these conservation laws were passed for that purpose and there was a question then about their constitutionality.

This constitutionality question was answered affirmatively for the laws, or States action in it, but in the meantime there were a bunch of people over there producing this oil in violation of these conservation laws and putting it into interstate commerce and avoiding any full enforcement by the State of its own conservation laws which, as I recall, was the reason for the Connally Hot Oil Act in the first instance, it was to prevent shipment in interstate commerce.

This, of course, made it possible for the State to confiscate this oil itself if it was produced unlawfully. It has been held in some instances, as I understand it, I believe you said 23 years?

Mr. YOUNG. Yes, sir, 29 years now.

Mr. ROGERS of Texas. There are some instances where it has just been held in storage and nothing can be done with it and unless some amendment is made to the present act in conformity with the bill pending here, this oil simply can't be sold. About the only thing it could be used for would be uses in intrastate operations such as oiling roads.

As I understand it some has been given to counties in the State for oiling roads to keep down dust. To me that is somewhat of a waste.

Mr. SHIVERS. May I say something?

Mr. ROGERS of Texas. Yes, sir.

Mr. SHIVERS. Of this 140,000 or 150,000 barrels of oil in Texas—and I want to be sure the committee understands the State has not confiscated this oil—it is frozen oil, it can't be moved in the State of Texas or in commerce.

We have not initiated proceedings against this oil yet, primarily for the reason once we confiscate it when we go to resell it it has no retail value so we feel we are not accomplishing anything by confiscating this oil and what we have done in the past is work out with the local or county commissioners and offer to give this oil to them providing all parties concerned like the ones having it in their tanks, are agreeable and they are agreeable in order to use their tanks.

If not, it just sits there. That is one of the problems with confiscating it and reselling it, we have not been able to do that to date.

Mr. ROGERS of Texas. You are saying if this bill passes the next

action of Texas will be to pursue your confiscation procedures where parties might have an adverse claim and will have an opportunity to be heard?

Mr. SHIVERS. Yes, sir, as pointed out in the last legislative session we have amended our law. In case of 30 years ago, all the witnesses are now dead, and/or if alive they no longer know anything about it, or have scattered, so confiscation is impossible under our conservation laws, so we have put in an amendment that oil in storage and not put into commerce in 6 years is assumed to be unlawfully produced and the operators certainly have a right to come in and rebut it. If they cannot, then the oil would be confiscated by the State.

Mr. ROGERS of Texas. Mr. Younger?

Mr. YOUNGER. Yes, I am wondering how the State gets control of this oil if they do not confiscate it. What process do you use to stop the oil from being sold?

Mr. SHIVERS. I think the railroad commission can answer that, they have extraordinary powers and can prevent movement off a lease.

Mr. YOUNGER. Do you just serve notice to the producer not to move that oil?

Mr. YOUNG. Yes, sir, we have authority to sever pipeline connections when we find any production in violation of our regulations, we sever the pipeline connection and it can't be reconnected until they straighten out the problem or until such time as we would confiscate that oil. That is why we have some stocks frozen for years because it is illegally produced oil and has been sitting there for a long period of time.

We have not proceeded with confiscation procedures because it is an exercise in futility, the State takes it but can't move it. It can give it to counties for road oil but counties don't want road oil any more, they almost fight you but there is a procedure by which the State can take it providing then it can move it into interstate commerce as State property.

Mr. YOUNGER. When we had the hearing on the oil compact commission itself, as I understand, Texas, New Mexico, and Louisiana are the only States that have those conservation laws, California does not have a conservation law of that kind.

Mr. YOUNG. There are more States than that, Mr. Younger. California is in the minority, it is one of the States that does not have conservation laws. We have something like 30 States with conservation laws.

Mr. ROGERS of Texas. Mr. Springer.

Mr. SPRINGER. I just want to be sure I have this problem in a nutshell. What you are faced with is a State owns some oil, where they got it through confiscation. What you want to do is sell that in interstate commerce?

Mr. YOUNG. That is right. That is why we need an amendment.

Mr. SHIVERS. Once the State has the oil it can be sold to the highest bidder and he can sell it anywhere he wants. Now if we sell to the highest bidder at the courthouse steps it must be used within the State. That is virtually impossible once the oil goes into a refinery the Federal Petroleum Board has taken the presumption that oil is going into interstate commerce and is in violation of the Connally Hot Oil Act.

So when you sell that oil in the State it is more or less limited to use on roads or in boilers.

Mr. SPRINGER. Let me ask, how much have you got down there now in the State of Texas, a hundred eight thousand?

Mr. YOUNG. A hundred and thirty to forty thousand barrels at the present time. I say probably more, I know there are more, we have not run the records. We have to go to each production record of every lease in the State.

Mr. SPRINGER. You have 180,000 in four places about 25,000 average in each of those four places?

Mr. SHIVERS. One has about 8,000.

Mr. SPRINGER. That means the others have roughly 5,000 to 6,000?

Mr. SHIVERS. Yes, sir.

Mr. SPRINGER. 34,500 barrels in east Texas, that would be near the Louisiana line?

Mr. SHIVERS. The east Texas field.

Mr. SPRINGER. So you have a total of around 150,000 barrels. How much is that oil worth a barrel if you could sell it now?

Mr. SHIVERS. \$3 a barrel.

Mr. SPRINGER. In other words a half million dollars?

Mr. SHIVERS. That is right.

Mr. SPRINGER. How much would it get selling on the courthouse steps?

Mr. SHIVERS. 50 or 75 cents a barrel. Maybe a dollar, we have not sold any in years.

Mr. SPRINGER. \$100,000 or \$75,000 involved?

Mr. YOUNG. We don't know, we have been faced with this law.

Mr. SPRINGER. If you sold it for a dollar it would only be \$150,000, is that what you are fighting for?

Mr. YOUNG. No, we are fighting for a procedure to use so that we can confiscate it and move it into commerce. If we confiscate it now it just stops there and is held in that tank and we give it to the county for road use or we don't confiscate it.

Mr. SPRINGER. Really what you are asking for is not just a solution for this 150,000 but you are asking for a procedure—

Mr. SHIVERS. We are asking for a way to enforce our conservation laws, we feel we need this in order to have an effective program.

Mr. YOUNG. This is a continuing matter, it continues all the time, where we have oil illegally produced.

Mr. SPRINGER. Are any other States faced with the same problem?

Mr. YOUNG. Yes.

Mr. SPRINGER. Do the other 30 States have the same kind of confiscatory features?

Mr. YOUNG. I don't know.

Mr. SPRINGER. What about Louisiana, your next door neighbor, how do they handle it?

Mr. SHIVERS. I don't know. I know there have been fines for violation of the Hot Oil Act but I don't know if the State of Louisiana has means of taking that oil.

Mr. SPRINGER. Is there going to be more testimony?

Mr. ROGERS of Texas. Not that I know of.

Mr. SPRINGER. I want to be sure there is not something in the background we don't know about that we should have before us. This sounds innocent the way you explain it, I take you in good faith when you come here and I accept it in good faith but I just wonder if there is something else.

Mr. YOUNG. I would like to give one example because of what has happened in the past in west Texas, this was a west Texas operation. The Connally act compliance agency and the railroad commission working together rounded up some hot oil, illegally produced oil, about 8,000 barrels. The State went ahead and confiscated that oil and had it in the tanks on the lease where it was produced and the State went to the courthouse and auctioned it off and it sold at almost the price of the good oil at the time.

I believe Texaco purchased the oil but then it could not get permission from the Federal Petroleum Board to move that oil and had to let it stay in the tank and the sale was canceled. Five or six years later that tank broke and the oil ran down the countryside. The State picked it up and then had 3,000 or 4,000 barrels. The State put it in another tank on that lease and 3 or 4 years later when the tank was about to go again we practically forced the county commissioners to take the oil.

Mr. ROGERS of Texas. Will the gentleman yield?

Mr. SPRINGER. Yes.

Mr. ROGERS of Texas. At the time this problem came up there were no pipelines, the big inch was not in operation at that time and the question of oil getting into interstate commerce was a much simpler question, it was not as complex then and the courts held certain uses were intrastate uses where as the advent of the pipelines, the advent of the gas controversy on the production at the wellhead, and the action of the ICC actually brought everything into interstate commerce whether you wanted it to be or not.

Mr. YOUNG. Yes, the last few years the definition of interstate commerce has expanded considerably.

Mr. SPRINGER. I note in 1963:

Assistant Secretary John M. Kelly reiterated Interior's lack of authority to acquiesce in the interstate movement of confiscated oil. Mr. Kelly further suggested that the State bring the problem up for discussion in the Interstate Oil Compact Commission and explore with the Commission the possibility of recommending amendatory legislation to the Congress. We do not know whether that suggestion was followed, but assume that the present bill, H.R. 10860, results from views of the State of Texas authorities that a legislative solution of their confiscated oil problem is needed.

Was this taken up with the Interstate Oil Compact Commission?

Mr. YOUNG. Yes, sir, in two separate meetings.

Mr. SPRINGER. What was the position?

Mr. YOUNG. No opposition after the first meeting and then Mr. Rogers introduced the bill. In the second meeting it was brought back to the attention of the committee and they were urged to contact the Congress to get passage of the bill. We thought that was the Commission responsibility.

Mr. SPRINGER. Does the Commission have a consensus of opinion with reference to recommended legislation?

Mr. YOUNG. They might.

Mr. SPRINGER. There was no official action taken on this proposal, is that right?

Mr. YOUNG. No official action taken, that is right. It was just presented to them and no vote taken by the committee.

Mr. SPRINGER. Was there any opposition?

Mr. YOUNG. No.

Mr. SPRINGER. Was everybody represented? Are there 30 members, roughly?

Mr. YOUNG. Yes.

Mr. SPRINGER. Were roughly 30 members there?

Mr. YOUNG. At least that.

Mr. SPRINGER. There was no opposition, insofar as you know then, to this proposal although there was no vote taken as to whether or not to recommend the proposal?

Mr. YOUNG. No opposition at either meeting.

Mr. YOUNGER. Will the gentleman yield?

Mr. SPRINGER. Yes.

Mr. YOUNGER. They did have representation to ask their Congressmen to vote for the bill, so to that extent they did take some action?

Mr. YOUNG. It was taken in this way, the chairman of the committee again explained the bill to the group and asked for comments. There were no comments and then he urged that each of the members contact their own Congressman to encourage passage of the bill.

Mr. SPRINGER. Is my State a member of that committee?

Mr. YOUNG. Yes, sir.

Mr. SPRINGER. Is California a member?

Mr. YOUNG. No, sir.

Mr. SPRINGER. I think that is all.

Mr. ROGERS of Texas. Mr. Harvey.

Mr. HARVEY. I don't have very many questions but just out of curiosity what definition is being recommended here? I don't have in front of me the United States Code and we are speaking of subsection 1 which is apparently one of the definitions, I take it. How are you changing that?

Mr. YOUNG. It is adding this exception, as it stands the States are like everybody else, any oil that is produced in violation of State regulations is illegal oil and cannot be moved in interstate commerce. We are suggesting or the bill suggests where States confiscate illegal oil and take it in the name of the State, the State be allowed to move it in interstate commerce.

Mr. HARVEY. If I understand correctly you have had possession of the oil but you have not been able to sell it, is that right?

Mr. YOUNG. That is right, we have possession, but we have not actually gone through confiscation proceedings because at the present time we have a blank wall in front of us.

Mr. HARVEY. By blank wall you mean the present law?

Mr. SHIVERS. It says any oil produced in violation of any State conservation law, rule, or regulations shall be confiscated and not permitted to move in interstate commerce. Once that oil is produced in violation of the laws or rules of conservation it must remain in the State and can never be put in interstate commerce.

Mr. SPRINGER. Will the gentleman yield?

Mr. HARVEY. Yes.

Mr. SPRINGER. Will this be possible in the bill, say the Smith Oil Co. in McDowell, Tex. was the company in violation, they had oil in their tanks for 16 years, and you sell it at the courthouse steps. Could the Smith Oil Co. come in and bid on its oil?

Mr. SHIVERS. Yes, sir, it goes to the highest bidder. The State has a right on this to reject a bid, but assume it was the highest bid.

Mr. SPRINGER. If a violator could profit by his own act, this is one of the things I would think about, is that possible?

Mr. SHIVERS. If he has to turn around and pay market value for the oil he won't profit. We also have, in addition to the confiscation, we have a penalty act we could use if we see fit, up to a thousand dollars a day for each violation.

Mr. SPRINGER. The reason I ask is this, these figures are turning over in my head, if he bought at 50 cents a barrel could he then turn around and sell it to Texaco for \$3 a barrel?

Mr. SHIVERS. Yes, if he bought it at the courthouse steps and if we approved the sale.

Mr. YOUNGER. One question, I can't see how a man profits, he has already been to the expense of producing the oil to start with, the producer has paid for the cost of producing and then he has to go and buy his own oil again, he has been to the additional expense so I don't see how he can profit very much.

Mr. SHIVERS. He is in a way because he is able to get oil say at 60 cents a barrel. In other words that oil is not his to start with, that belongs to the reservoir, he has produced  $x$  number of barrels above his allowable and it costs a nickel or 10 cents to produce it and he pays 60 cents, he is getting 55 cent oil when he should be paying \$3.

If only one man bids, you have no bidders, certainly I think the judge, this is under the court sale, the judge is certainly going to allow the State to reject a bid which is not reasonable market value.

Mr. SPRINGER. This is the only part, I am rather inclined to sympathize with your thought, you are looking for a procedure to get out of a difficult situation but I would hate to have the committee accused of perpetrating some kind of bill where he could buy his own oil for 50 cents and make \$2.50 on his purchase.

Mr. HARVEY. This is where you would use your penalty.

Mr. SHIVERS. Certainly, or reject the sale.

Mr. SPRINGER. If you only had one fellow show up this is probably what would happen.

Mr. SHIVERS. I don't think so, where you have an auction at the courthouse steps and this is going into interstate commerce, I think you could get a reasonable price.

Mr. ROGERS of Texas. If the man who buys this oil can put it into interstate commerce he is not going to get that oil for 55 cents, he is going to have to pay pretty close to the market value.

Mr. SHIVERS. Yes; I think competition will take care of that.

Mr. SPRINGER. I understood you were talking about 50 or 75 cents?

Mr. YOUNG. That is the way it is now. It is not 50- or 75-cent oil if this bar is lifted, it is competitive with regular production.

Mr. SHIVERS. If it is intrastate then it is at a depressed price.

Mr. ROGERS of Texas. The reason it sells for 50 to 75 cents now is because that is the actual market value it would be for the use put to, on a road or highway. But as use for oil it would never sell for that price.

Mr. SHIVERS. That is right.

Mr. HARVEY. There are laws on the books which give States the right to acquire property unlawfully used in gambling, including title to automobiles, or other personal property, and to take and dispose of that property.

This is essentially what you are asking for, for the State to be able to acquire this oil unlawfully produced?

Mr. SHIVERS. No, sir; we have that authority. What we are trying to do, when the Federal Government passed the Connally Hot

Oil Act one way of enforcing was saying any oil in violation was contraband oil and subject to confiscation and a fine. After that was passed, when the States came in to also help enforce their conservation laws, they ran into this problem of once they confiscate this oil the Federal Government, under the Connally Hot Oil Act and through the court interpretation, says all that is produced in violation of any State law cannot be moved into interstate commerce so we ended up with any oil we confiscate must be used within the State.

That may have been fine for a few years because you had a lot of local refineries that would grind that oil up and use it within the State of Texas or within the State of Louisiana. Since that date the presumption now is when any oil goes into any refinery and is taken out and sold to filling stations or any other outlet and used to travel throughout the United States, any oil going to refineries, the presumption is that it is going into interstate commerce.

Mr. HARVEY. That is what you are asking?

Mr. SHIVERS. We are asking that when the State acquires title to the oil it can be sold and put in commerce.

Mr. HARVEY. Do you still have to go through the confiscation procedure to gain title?

Mr. SHIVERS. Yes; the State does.

Mr. HARVEY. There is no possibility by our passage of this act that you are possibly going to be able to put a cloud on someone's title to some oil he might have without going through this procedure?

Mr. YOUNG. No, sir. Texas has recently amended its law to provide that any oil that has stayed in a storage tank for a period of 6 years or longer is subject to confiscation, that is a presumption of illegal oil but that is a presumption and would have to be proven in court.

Mr. HARVEY. No other questions.

Mr. ROGERS of Texas. Mr. Young, one further question, and I think the record ought to show it. Why has it been so long or so much time permitted to elapse before a movement was made to get this law changed?

Mr. YOUNG. Well, Mr. Shivers has been with the attorney general's office 9 years and I have been with the railroad commission for 17 years and we have been working to try to get something done. We have come to the Department of the Interior a couple of times as Mr. Paulus stated and it was this most recent time when Mr. Kelly suggested we go through IOCC and indicated there was some thought of giving the State this authority.

We went to the IOCC and came on here.

Mr. ROGERS of Texas. You were trying and hoping, as I understand it or as it was explained to me, I have known of this problem for sometime, there is not a great amount of oil involved to where anyone was very much inconvenienced but you felt it could and should be settled at the Secretary level, but as the matter developed it became clear it would require amendment of existing law.

Mr. SHIVERS. Since the Interior or the Federal Petroleum Board is more or less getting out of this type of law enforcement, or enforcing conservation of the oil and other byproducts, we feel this is something the States need to enforce their conservation program and without it we are still going to be hamstrung as far as confiscation of oil is concerned.

Mr. ROGERS of Texas. As to the future?

Mr. SHIVERS. Yes, as to the future. In the past the Federal Petroleum Board could come in and levy fines on these boys running oil in violation of the conservation law and we feel we need this in the future.

Mr. ROGERS of Texas. Any further questions?

(No response.)

Mr. ROGERS of Texas. Thank you, gentlemen, for your presentation. There seem to be no further witnesses and that would conclude the public hearings on this matter.

(Whereupon, at 11:05 a.m., the subcommittee recessed, subject to the call of the Chair.)



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