

apply where the court finds that the discharger willfully violated the prohibition against discharging oil and such discharge did not fall into one of the exceptions mentioned above." Again, Mr. Chairman, I am somewhat mystified as to how you can "willfully" violate a provision of law that purports to impose liability "regardless of fault".

All those ambiguities should be resolved or endless litigation will inevitably result. And I respectfully suggest that subsection 19(b) should be amended so that negligence would have to be proven to establish a violation. Indeed, were it not for the language of the Report quoted above, I am firmly of the belief that an unlawful spilling under 19(b) would be one resulting from an *avoidable* accident or, in other words, happening which but for the lack of reasonable care would not have occurred.

#### CLEANUP PROVISIONS

However, Mr. Chairman, the provisions of subsection (e), with respect to cleanup, are of the utmost concern to the shipping industry. They read:

"(e) The owner or operator of a vessel or shore installation from which oil is discharged into or upon the navigable waters of the United States or adjoining shorelines shall remove such discharged oil immediately from such waters and shorelines in accordance with regulations prescribed by the Secretary under this section. If such owner or operator fails to so act, the Secretary may remove the oil or arrange for its removal from such waters and shorelines, and such owner or operator and, as appropriate, the vessel and the shore installation shall be liable, *notwithstanding any other provision of law*, to the United States, in addition to any penalties prescribed in this section, for the full amount of the actual costs incurred by the Secretary under this subsection: *Provided*, That there shall be no such liability where such discharge was due to an act of God. Clearance of a vessel liable for such costs from a port of the United States may be withheld until such costs are paid or until a bond or other surety satisfactory to the Secretary is posted. Such costs shall constitute a maritime lien on such vessel which may be recovered by action in rem in the district court of the United States for any district within which such vessel may be found." (Emphasis supplied.)

Basically, subsection (e) does two things: (1) It imposes upon the owner or operator of a vessel or shore installation from which oil is discharged into the navigable waters of the United States or adjoining shorelines an obligation to remove the discharged oil immediately. And if the owner or operator fails to do so, the Secretary of the Interior may remove the oil, in which case the vessel or the shore installation shall be liable for the full amount of the actual cost of cleanup; and (2) All existing legal limitations upon shipowners' liabilities would be removed in the case of cleanup obligation.

#### LIABILITY WITHOUT FAULT

To put it mildly, Mr. Chairman, this is a far-reaching proposal, which could have devastating effects both nationally and internationally. You will note that the only exemption from liability is where the discharge is due to an act of God. Thus, liability is imposed where the owner is absolutely without fault in a myriad of situations. For example, a small tanker owner, whose vessel was proceeding in broad daylight, could find himself bankrupt under this section should his vessel be rammed by another vessel. Or, a vessel could run aground due to negligence on the part of the United States Government in misplacing a buoy or other aids to navigation. It would seem to us—as serious as the problem is—this kind of legislation is not only unwarranted but grossly unjust.

Of course, we recognize that innocent victims want protection from oil spills regardless of how they are caused. And we subscribe wholeheartedly to that. But at the same time the answer is not to protect one innocent party by making another innocent party pay.

#### NO LIMITATION OF LIABILITY

As far-reaching as are the provisions of subsection (e) in the imposition of liability without fault, the key language—and that which troubles us most—is the phrase "notwithstanding any other provision of law." This language, Mr. Chairman, would remove the traditional conception of permitting shipowners to limit their liability, at least with respect to oil spills, and has caused great