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## IT'S TIME TO GET ORGANIZED

by John Havelock



The time is already long overdue for Alaskans to take charge of the recovery effort in Prince William Sound. The existing departments of state government are not suited to this task. Each was designed to manage some aspect of the ordinary business of government; this is an extraordinary business. The Department of Environmental Protection, for example, is primarily a regulatory agency, not an operations agency.

Departments are set up to cover a single aspect of government. The disaster calls for an holistic, multidisciplinary effort, encompassing expertise found in many departments and outside government. The Prince William sound disaster is of a magnitude surpassing the reach of government as usual. A new instrumentality of the state, a Prince William Sound Recovery Authority, is required to manage the recovery in all its aspects over the long term.

The restoration of Prince William Sound and related areas of Southcentral Alaska is a long term responsibility and resources and personnel committed exclusively to the disaster as a program are necessary. These costs should not be borne by the regular budget of the state or departments and should have a scope determined only by the scope of the disaster. Already there are signs that other areas of the state are exposed to risk and loss of service because of the draw of this disaster.

We cannot continue to have Exxon and its contractors substituted for the state in taking responsibility for the recovery. A person run over by a drunken driver does not hand over to that driver the primary responsibility for determining the type of medical treatment, the hiring of the doctor and the determination of therapy.

Exxon is there to pay the bills as presented by the state, not to decide on the recovery program. The corporation's conflict of interest is monumental. Exxon's primary concern, as it always was, is to husband the shareholder's resources. This is not to discourage or disparage any effort Exxon may make in mitigation, but it is for the state to decide on the overall assessment of damage and the course of the recovery program. This is our state, not Exxon's, it is our fish, our waters, our plant life, our marine mammals and our people that have been hurt. It is our job to prescribe and carry out the cure.

By the same token this is not a federal task. We are retreating to the old colonial attitude in saying, "let the federal government, or the Coast Guard, or the army, or the Interior Department do it". Further, without sounding too cynical, who do you think has more influence with the federal government, Exxon or the citizens of Alaska?

Least of all should we be worrying about spending a little or a lot of money. The existing state statutes require that Exxon must pay all state costs including environmental restoration, the replenishment of degraded resources, loss of income for individuals and institutions, loss of means of producing income, the loss of economic benefit including the cost of replacement foods for subsistence persons and the state government's administrative costs, without limitation. The hundred million dollar lid is only on the civil fine.

We do what needs to be done and if Exxon balks at paying the bill without litigation, we the people are a state and these are necessary expenditures. We can tax the oil moving through the Sound to pay all our bills until the money is recovered from Exxon.

*Environment*  
The State Authority should gear up, using contractual methods wherever feasible to avoid oversizing, to perform three main tasks. First we must take charge of the biosphere recovery effort. Secondly, we need to deal with people needs and the economy. Thirdly, we need to set up our own oil spill security force.

The biosphere recovery effort should be implemented through two functional divisions. We should acquire a staff of biological and oil spill experts, the best from around the world and from our own people for developing damage assessment programs and restoration and recovery programs. Field administration is the second function, implemented by identifying a person with state authority responsible for action on each sector of the battlefield. As the cleanup activity stabilizes, plans should be drawn up for the restoration or replacement of resources and economic rehabilitation. In this function the biologists must be joined by economists and professionals in business administration.

The State Authority should include an administrative system for the quick disposition of preliminary claims. The function of this claim disposition should be not so much to hand out money for loss, though something like first class unemployment insurance should be available to anyone put out of a job by the disaster who is not employed in the recovery. But the larger role should be to recapitalize the persons effected, in much the same way that the SBA did after the Alaska Earthquake. In this case, grants for capitalization make more sense than loans because the spill was not an act of God. Exxon is legally obliged to provide the funds for capital replacement.

Though Exxon's interest is different, it is in the best interest of the state to channel the money into recovery and redevelopment projects rather than liquidated damages which often escape the region. The Authority will be in a position to provide grant and claim disposition or mitigation moneys which may be part of a package with federal loan monies, etc. to provide an enhancement of

environmental or economic benefit in implementation of a long term recovery program.

A collective response is necessary to many injuries, at least for part of the claim, rather than individualized treatment. Interposition is also necessary. Claimants should not be differentially treated because of their superior access to legal or other resources, their interrelationships with the oil industry, etc.. The State should move to head off a lawyer feeding frenzy.

Lastly it is the state that should set up its own spill security force to prevent this from ever happening again. Don't contract out the fire department. Exxon and Alyeska have shown that giving them the sole responsibility is asking the foxes to guard the hen house. Our own regulatory oversight has shown itself as too exposed to industry avoidance or subversion and underfunding. The Coast Guard's efforts show the same weaknesses in spades. Notwithstanding warnings, Administration mandated budget cuts set the Coast Guard's service up for failure. It can happen again.

It is important to get this underway immediately to test the bona fides of Exxon and Alyeska, while they are still in the public limelight. A standby oil tax structure should be put in place.

It is amazing what individual Alaskans have accomplished through their own efforts and out of their own pockets, but they are like workers from the fields rising to the defense of their country with pitchforks and hoes. We are already late to recognize that this is like a war, requiring the mobilization of professionalized forces on a broad scale and for the long pull. A Recovery Authority should be put in place and a funding mechanism set up before the legislature adjourns. It is not too late to show that we Alaskans are in charge of our own destiny.

(The author was Attorney General of Alaska at the time the pipeline project, limited entry and the Native Claims Act were put together.)

## Amendments to 6-1190E

- 1.) p. 3 line 5 after "region" insert,  
"and other impacted areas"
- 2.) p. 3 line 13 amended to read,  
"poses, included land, water and other resources and peoples indirectly affected by the spill."
- 3.) p. 3, line 22. after "authority" insert,  
"shall assess the full range of consequences of the spill and"
- 4.) p. 3 after (b), line 27, add a new paragraph (c) to read,  
"The authority shall gather information relating to the environmental safety of the region, the causes of the March 24, 1989 spill and other risks to environmental quality and shall make recommendations to appropriate authorities regarding emergency planning and preventive measures."
- 5.) p. 4, line 12, after "studies" insert  
"monitoring and assessing the consequences of the spill, methods for assessing damages and"
- 6.) p. 4, line 19 after "purposes" add a new sentence to read,  
"The authority shall establish a seven

of the greatest impact."

NOTE: subregion representatives would most likely be from Wittier, Valdez Cordova Tuttluk Seward etc.)

- 7.) p. 4, line 19 after "establish" insert "other"
- 8.) p. 5, line 8 after "offer" insert "coordinate"  
p. 5, line 8 after "programs" insert,  
"and counseling and technical assistance services"
- 9.) p. 5, line 24 after "its" insert "assessment"

April 10, 1989

TO: House and Senate Resources Committees and their staff  
FROM: Representative Mark Boyer and Staff  
RE: Oil Spill Disaster Legislation

The recovery from the Exxon Valdez mishap will take decades and will be fought on many separate, yet conjunctive fronts. The impact, it's assessment, and final mitigation will be a long process of cooperation and conflict.

The legislature's role must be a unified omnibus effort. Changes in legislation and the carrying out of current law should be unified. Nearly every state agency and many federal and non-profit entities will be affected on the beaches, in the communities and in the court rooms. What is the role of the legislature? Is it to appropriate money up front to the DEC? Is it to alter existing law to prevent future spills? Is it to appropriate money to the Law Department for a litigation pool? Is it to create a commission to facilitate claimant advocacy? Is it to assist the governors office in their efforts? Is it to establish funding for scientific assessments upon request? Is it to plan for future displacement and loss? Is it to decide who does what and when? How about all of the above?

This current and upcoming mass of activity, both human and ecological, will fallout; all from human error. The law is clear on liability. The question facing us is how to collect and how to come up with the money and resources to act in response to the disaster. What are we to do?

The call is that agreements were not met and the result is an ecological and social cataclysm of global scale. Who comes to the aid when bucks are needed now, and not after a settlement ten years down the road? It is our responsibility as public servants to rise to the occasion and oversee that justice is served. Not only the people of Alaska are watching the fragile image of our state government; the nation and the world are watching as well.

I propose that we build a comprehensive and separate entity to direct and conduct a long term recovery effort in every dimension of life on the planet: environmental, legal, financial, commercial, social and psychological and above all practical. Such an organization would affect chapter after chapter of statutes and would be underpinned by policy calls. Policy decisions would be made by a Board consisting of state officials and governor appointed citizens. Implementation of policy would be carried out by an executive director and his divisions.

From its inception through to its dissolution, energy would shift from emergency response to clean up; from restoration of the habitat to prevention of further damage; from early mitigation to long term litigation requiring extensive scientific proof; from commercial redevelopment to social assistance and care. An immediate goal and responsibility of the legislature is the creation of one or more Alaska Regional Spill Control Centers.

Coordination between the state, the federal government, the Coast Guard and all other groups entering Alaska's domain must be conducted by the state. The chairperson of the Board must act as or delegate an official spokesperson for the State of Alaska: the nation and the world are listening and watching.

What is the scope of the liability? How can damage be proven? What facts about natural science and physical truths will be employed in the courts? Every leading edge of scientific technology will be challenged; Bio-chemistry, Economics, Physics, Petrol-sciences, Organic chemistry, Cultural integrity and transformation, Social change, Commercial functions and dis-functions, Hydraulics, Fluid dynamics, Mechanics of materials, Environmental quality, etc.

No person is unaffected by the Exxon spill in this hemisphere. The engineer who thinks of the response, the greenie in Colorado who devotes a summer to clean up, the school teacher who tries to explain it to his/her class and the attorneys who argue the definitions of terms that didn't exist 25 years ago.

Are we to depend on the expertise of our senior economists and scientific advisors?

Are we to assume that our industry lobbyists and commerce executives tell the whole picture, a picture deserving reference to a holistic understanding of what is before us? Are we going to believe every word and position statement because we don't have the wisdom to seek more than one opinion? Could the legislative solution be that easy?

The key to our direction is both diversity of opinion and universality of scope. We are forced from the outside to show leadership and forced from within to sacrifice prejudice.