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DIVISION OF LEGAL SERVICES

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MEMORANDUM March 25, 1991

SUBJECT: Exxon Settlement; Sectional Analysis of Plea Agreement (Work Order No. 7LS-1053)

TO: Senator Dick Eliason

FROM: Pamela Finley
Assistant Revisor of Statutes

SECTIONAL ANALYSIS OF PLEA AGREEMENT

I. INTRODUCTION. This section sets out the crimes in the indictment against Exxon and Exxon Shipping that Exxon and Exxon Shipping will be pleading guilty to.

Exxon Shipping is pleading guilty to

(1) negligent discharge of pollutants (oil) into Prince William Sound without a permit (a violation of the Clean Water Act, carrying a fine of $2500-$25,000 per day);

(2) discharge of refuse (oil) into Prince William Sound (a violation of the Refuse Act carrying a fine of $500-2500), and

(3) killing migratory birds (a violation of the Migratory Bird Act, carrying a fine of $500.)

Exxon is pleading guilty to

(1) killing migratory birds (a violation of the Migratory Bird Act, carrying a fine of $500.) The basis for Exxon's liability is that Exxon owned the oil that Exxon Shipping discharged that killed migratory birds.

II. DEFENDANTS' AGREEMENT AND UNDERSTANDING. This lists the attorneys representing the defendants and sets forth the facts that the government would have to prove for conviction of the counts to which the defendants are pleading guilty. It also sets forth the defendant's agreements that there is a legal basis for the fines and restitution. This statement is made for the purpose of the plea

agreement only. The defendants also recognize that by pleading guilty they are admitting the essential elements of the charges in the counts (i.e., the essential facts.)

Finally, the U.S. agrees to ask the court to dismiss (once the court has accepted the plea agreement) other counts against Exxon Shipping and Exxon, namely the ones to which they are not pleading guilty.

Question.

1. What counts will be dismissed?

III. AGREEMENTS REGARDING IMPOSITION OF SENTENCE. First, the U.S. agrees not to make additional criminal charges or seek civil or administrative penalties for various acts relating to the oil spill against

(1) Exxon, its present or former officers, directors, or employees;
(2) any of Exxon's wholly-owned subsidiaries or their present or former officers, directors or employees; or
(3) Alyeska Pipeline Service Company or any of its shareholders or owner companies or present or former shareholder representatives.

The government reserves the right to take civil or administrative action (other than for penalties or under criminal laws) against the above persons and entities. (This reserves the federal government's rights to take action relating to suspension, debarment, or listing.)

This section also lists the fines. Exxon Shipping is to pay $75 million, half of which is remitted (not paid). Exxon agrees to pay $25 million, half of which is remitted (not paid). The remission is based on the defendants' recognizing their responsibility, cooperating with the federal government, and making past payments for cleanup ($2 billion) and for injuries to claimants (in excess of $300 million.)

Question.

1. Who are Exxon's wholly owned subsidiaries?

2. Why is Alyeska Pipeline Service Company included in the entities against whom criminal charges will not be brought and from whom civil or administrative penalties will not be sought?

IV. AGREEMENTS REGARDING RESTITUTION. Exxon and Exxon Shipping agree to pay the State of Alaska $50 million in restitution within 30 days after the court accepts the plea agreement. The payments are to be used by the State

exclusively for restoration projects relating to the oil spill. The state is to control the use of the money, and upon payment the money shall be available for use by the state for restoration projects without objection, challenge, or judicial or administrative review.

Restoration (for which the money may be spent), includes (1) restoration, replacement, and enhancement of resources affected by the oil spill; (2) acquisition of equivalent resources and services; and (3) long-term environmental monitoring and research programs directed to prevention, containment, cleanup, and amelioration of oil spills.

V. GENERAL PROVISIONS. Exxon guarantees the payments Exxon Shipping is to make.

If the court rejects the plea agreement or does not dismiss the charges the U.S. has said it will move to dismiss, each defendant will be permitted to withdraw its guilty plea.

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