

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1928 SCOMM 76: HOUSE SPEC. COMM. EXXON VALDEZ OIL SPILL. 1991-92

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2) Additionally, I strongly believe that the MISDEMEANOR criminal charges against

Exxon Corporation and Exxon Shipping Company are being settled far too cheaply for the great, extensive damages to wildlife over a 700 mile region. It is my understanding that the ALLIED CHEMICAL case was the largest, previous U.S. settlement for environmental damages, at \$13 million. However, this was also 10% of Allied's earnings for that year. EXXON's yearly SALES are over \$100 BILLION; their reported net, yearly earnings are \$5 BILLION; and their NYSE traded stock has gone up 13 points in the last two years, at a estimated value of \$1 BILLION per point. This huge corporation is in effect being given a pittance fine by the plea-bargain, and it in no way should be viewed as a properly negotiated fine for either the extent of damages or the worth of the corporation. Also, as you may be aware, Mr. Lawrence Rawl of Exxon has repeatedly stated to the press that the fines and settlement will in no way impair or harm his company, and that all costs will be immediately passed on the consumer in pump prices. Finally, the overall terms of the settlement, payments over ten years, are an affront to Alaskans and the nation as a whole; once Mr. Rawl 'passes on the costs', consumers will in effect be paying over and over for Exxon's corporate liabilities, while the corporation makes token payments for it's environmental assault on the nation's common resources.

3) Finally, I strongly believe that civil and criminal charges, both felony and misdemeanor, against Exxon, Exxon Shipping and ALYESKA should be reinstituted and pursued by the federal and state governments, based on the complicity, culpability and liability of Exxon and the owner companies of Alyeska to secretly plan non-compliance with terms of agreements struck with the federal and state governments to immediately respond and clean up ANY spill in Prince William Sound. The documents obtained and verified by U.S. Congressman George Miller amply demonstrate that collusion on the part of Exxon and Alyeska to ignore the existing contingency plan was commonplace, and an active topic of discussion among the owner companies in 1987-88, even to the point of written, internal memos that materials, personell and marine transport were not on-hand to address but the most minor spills in Port Valdez and Valdez Arm. The June, 1988 owners meeting of Alyeska in Phoenix, Arizona, as referenced by Stanley Factor, Vice-President of Arco Marine, Inc., states clearly the Alyeska HAD NO INTENTION of responding to a spill in Prince William Sound, except with dispersents that were not on hand, with no properly fitted aircraft to utilize them. On March 24, 1989, in the early PM hours, one of the first calls made by Mr. Iarossi, upon hearing of the spill in Houston, was to Southern Air Transport of Miami, for a C-5 aircraft, specially fitted for dispersent application, to be airborne, fly to New Mexico to pick up the dispersent ("ADDS PACK") and proceed to Anchorage. As the record shows, dispersent was not on-hand in Alaska, the plane was in Miami. The Valdez personell were not trained or available, the barge was empty, and whatever small booms and skimmers on-hand were buried in snow. I term these circumstances as criminal acts on the part of Alyeska and owner companies who were far more interested in tanker turn-around times and under manning than taking any responsibility for the consequences.

In summary, I trust you take these points into consideration, and I do appreciate the opportunity to comment. The Alaska Legislature is holding daily hearings on these vitally important issues, and I hope you are able to see the wisdom in recommending rejection of these present settlement terms, as a judicial officer responsible for determining the fairness of the settlement for immediate and long-term damage to national resources.

Sincerely,



Theodore P. Thoma

In Exxon Deal, Transportation Chief Wins Another One for the President

By KEITH SCHNEIDER

Special to The New York Times

WASHINGTON, March 20 — A week ago Tuesday, Lawrence G. Rawl, the chairman of Exxon, flew to Washington. In an informal ceremony at the Justice Department just before midnight he signed a \$1.1 billion settlement that he hoped would put the nation's worst oil spill, and the two years of civil and criminal cases that followed, behind him and his company.

Standing with Mr. Rawl, Gov. Walter J. Hickel of Alaska — the lawyers for the Department of Justice was Transportation Secretary Samuel K. Skinner.

Once again Mr. Skinner had pulled it out for the White House, bringing to a successful conclusion talks that by all accounts could easily have tipped the other way.

"I viewed my job as a facilitator," said Mr. Skinner, a former United States Attorney from Chicago. "You had a huge amount of egos and interests that had to be blended together."

"In my experience I've found that if the principals don't want to settle they look for an opportunity to get out. In this case everybody wanted a deal because they knew the alternatives didn't make sense."

A 52-year-old lawyer and protégé of James R. Thompson, the former Governor of Illinois who at one time was considered as a potential national Republican figure himself, Mr. Skinner has made his career in the capital handling domestic political issues without embarrassing the President. His background as a litigator has helped. So has his instinct for the spotlight and his good feel for the Washington social circuit.

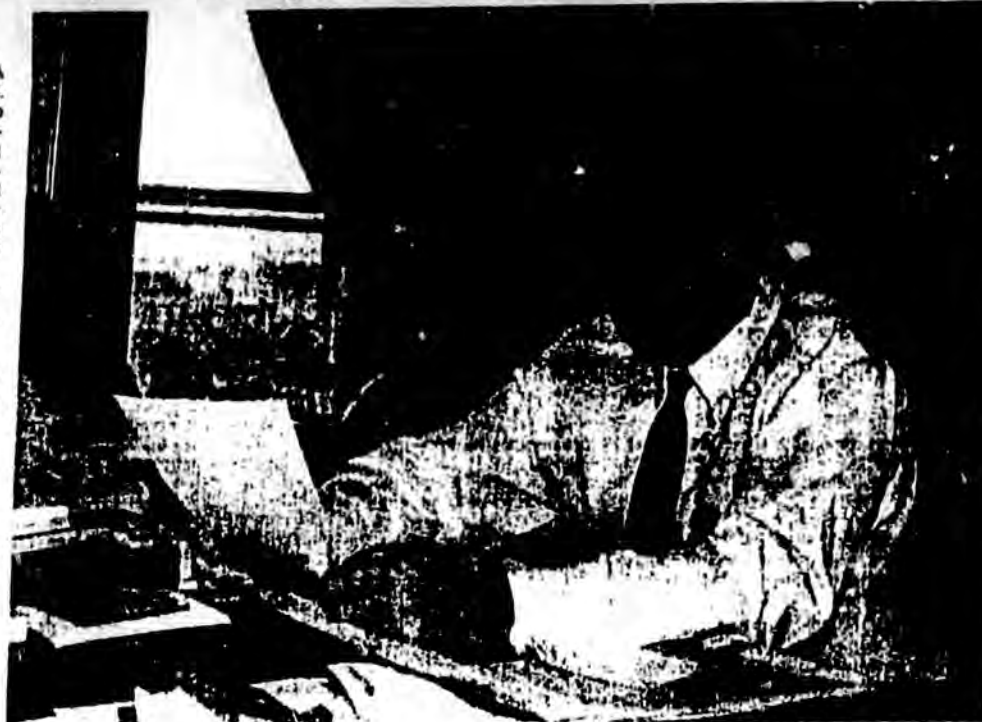
In Response to Disasters

When the tanker Exxon Valdez struck a reef in Prince William Sound in Alaska on March 24, 1989, spilling 11 million gallons of Alaska crude into the sound and turning beaches into a chaos of oil-soaked birds and dying otters, it was Mr. Skinner who was dispatched to supervise the Government's response.

Earlier that month, when machinists at Eastern Airlines went on strike, President Bush tapped Mr. Skinner instead of Elizabeth Dole, then Secretary of Labor, to handle the strike. Mr. Skinner's advice to the President: stay out of the struggle.

In September 1989 Hurricane Hugo swept through the Caribbean and struck the mainland in South Carolina, killing 24 Americans and causing immense property damage. A month later a powerful earthquake hit the San Francisco Bay Area, killing 59 people. In both disasters Mr. Skinner was called in.

Now there is the Exxon deal. With his company facing a criminal trial in April and civil litigation afterwards being prepared by the Justice De-



Marty K. / for The New York Times

"I viewed my job as a facilitator," said Transportation Secretary Samuel K. Skinner of Exxon's Justice Department settlement. "You had a huge amount of egos and interests that had to be blended together."

partment, Mr. Rawl had been ready for months to talk. "It's been a burden to us," the Exxon chairman said in a news conference on March 13 in Irving, Tex.

Eager for a Settlement

Governor Hickel, an independent, wanted a consistent source of money to continue recovery work in Prince William Sound, the source of a prosperous fishing and tourism industry.

The Federal Government was eager to settle, too. The civil case against Exxon was expected to take at least five years to litigate, and in the criminal case, scheduled to begin April 10, the Justice Department was going to be testing new applications of environmental law. Nobody knew how a jury would respond.

"The cleanup efforts Exxon had made in the sound made a significant difference," Mr. Skinner said. "Nature had also done a tremendous job there. Scientists were telling everybody this was not a multibillion dollar damage suit."

Mr. Rawl and Lee R. Raymond, Exxon's president, flew to Juneau, Alaska, on Jan. 15 at Governor Hickel's invitation. The state and the Federal Government had agreed three weeks earlier to work together, he told them. Mr. Raymond called Mr.

An experienced litigator finds a way to satisfy everybody.

Skinner and told him that the Governor was seeking an agreement.

Mr. Skinner said he believed that a successful negotiation was possible, but only if it was conducted at the Cabinet level. "I said this case will not be settled by lawyers," Mr. Skinner said. "First of all, they don't know how to settle it. Second, they have a built-in conflict of interest. This could go on for years."

The Chairman Cools His Heels

On Feb. 5 Mr. Rawl and Mr. Raymond were asked to come to Washington for a meeting at the Commerce Department with the Federal and state negotiators. Mr. Skinner, Manuel Lujan Jr., Secretary of the Interior, William K. Reilly, Administrator of the Environmental Protection Agency, John Knauss, Administrator of the National Oceanic and Atmospheric Administration, Govern-

Hickel and Charles E. Cole, the Alaska Attorney General.

Mr. Rawl, a combative executive whose four-year tenure as Exxon's chairman had been marred by the oil spill, was in a sour mood, several negotiators recalled. After being asked to wait outside a conference room for 30 minutes while the government officials finished a meeting, Mr. Rawl became furious.

"I went out twice and asked them to please be patient," said Thomas A. Campbell, general counsel of the National Oceanic and Atmospheric Administration, who organized the meeting. "Rawl said: 'Just tell them they don't need to take much time. What I'm going to say is short and sweet.' He was going to tell them he's had it, he'll see them in court."

Mr. Skinner said that when the Exxon chairman entered the room he lashed out at the negotiators, saying he was sick and tired of how the company had been treated by the Government, the news media and the people of Alaska. Exxon had spent \$2 billion to help clean up Prince William Sound, Mr. Rawl said, more than had ever been spent by any company for an environmental restoration project, and had received no credit.

Nobody responded until Mr. Skin-

ner disarmed Mr. Rawl, according to participants.

"Look, Larry," said Mr. Skinner, whose department includes the Coast Guard and who has developed a personal relationship with Mr. Rawl in the two years since the spill. "Let's not relive it. If we do, we'll never get past it."

'Reopener Clause' Is a Snag

Over the next 90 minutes, participants say, the broad outline of a settlement of the civil claims was established. Following Mr. Hickel's lead, the state and the Federal Government said they were looking for at least \$1 billion. Mr. Reilly insisted that the settlement include \$300 million more to be put into a special fund if more damage was found, a provision that came to be known as the "reopener clause."

Mr. Rawl and Mr. Raymond said that they wanted the settlement to make Exxon immune to any more state and Federal claims, that they did not want to pay the money in a lump sum and that they hated the reopener clause.

Three more meetings were held in Washington in February and early March before lawyers were dispatched on March 3 to put the agreement into legal language. With Washington gripped by the Persian Gulf war, the group was able to work undistracted by reporters or environmental groups or other interests.

"This had to be handled by the principals only, and it had to be handled in a short period," Mr. Skinner said.

Through February, the talks were never far from collapse. "We knew the longer the discussions went on the harder it would be to put it together," the Secretary said.

Justice Department lawyers and other participants credit Mr. Skinner with keeping Exxon and government officials at the table.

When Mr. Rawl and Mr. Raymond almost walked out because of Mr. Reilly's insistence that the agreement should have a reopener clause, Mr. Skinner told them the E.P.A. administrator's signature on the agreement was vital politically. Without it, the Secretary said, the Bush Administration and Exxon would have a hard time justifying the settlement to environmental groups.

And when Exxon insisted that Mr. Reilly be barred from attending a meeting on Feb. 24, Mr. Skinner assured Mr. Reilly that the Government would not negotiate something the E.P.A. administrator was unable to accept. In the end, Exxon and Mr. Reilly accepted a provision that called for the company to spend up to \$100 million after the year 2001 if more work in the sound was needed.

Mr. Skinner also kept the White House informed. During a meeting at the White House, John H. Sununu, the President's chief of staff, remarked that the \$1.1 billion deal sounded "like

an awful lot of money," Mr. Skinner said. But he assured Mr. Sununu that the agreement between the Government, Alaska and Exxon would be a good deal for everybody.

Exxon and its shipping subsidiary pleaded guilty to four criminal misdemeanor violations of environmental law and agreed to pay a \$100 million fine. It was the largest penalty ever assessed in a pollution case, more than three times higher than the \$29.7 million that the Government collected in 1990 for all environmental crimes. Even more, from the White House point of view, it makes good on Mr. Bush's campaign promise to penalize polluters.

From the state's point of view, the cost of the settlement, \$1.1 billion, will keep Exxon involved in the restoration of Prince William Sound for at least a decade.

Exxon, like any corporation (or person, for that matter), would have preferred not to spend any money. But Mr. Rawl said last week that he thought the settlement was good for the company. Paid out annually over 10 years, the payments reach a maximum of \$100 million this year, and then drop to \$70 million each year from 1994 to 2001.

To a corporation with an annual revenue of \$100 billion, the cost of the settlement each year is roughly the same as drilling two difficult offshore wells. "It will not curtail any of our plans," Mr. Rawl said.



APRIL 15, 1991

TO: House Special Committee on the EXXON VALDEZ Settlement

FR: Chip Thoma, #2 Marine Way, Juneau 99801

I'd like to thank the House Committee for its trip to gather testimony from spill affected areas. As you heard over and over, people feel the settlement is HASTY, that many damages are UNKNOWN, and for those that are known, the settlement terms appear INADEQUATE. In some cases, such as the Trustee arrangement, dropping charges, and relief for Alyeska for resource damages, IMPROPER.

I have again gone over the Alyeska paperwork submitted to Judge Holland by Rep. George Miller, and to me, without any doubt, the sequence of events in early 1988, especially the owners meeting in Phoenix, attended by Commissioner-designee Heinze, among others, is proof-positive that criminal conspiracy did exist to not comply with the 1987 contingency plan. The plan holder, Alyeska, did not have trained personell, booms, skimmers, boats, dispersents, or the inclination, to respond to any but the smallest spills. The owner companies, ALL OF THEM, knew the full extent of this inadequacy by memo after memo, yet did no more than talk and argue among themselves about it.

Consequently, two arguments FOR this settlement need addressing; the pace of and monies for RESTORATION. It was stated over and over by Commissioners Cole, Sandor and Rosier, the Trustee-designees, that restoration STUDIES must proceed, to replace the damage assessment studies that have been performed for the last two years. This is Mr. Sandor's agenda which he is pushing at the Trustee Council level, and has no real basis of necessity except that often-heard phrase to 'put this behind us'. But first these DA studies have to come BEFORE us. These important studies, most conducted by ADF&G and NOAA, should properly go forward in their entirety; this is the first summer of returns of the fish directly affected by the spill, and there are many questions by scientists and fishermen alike that need answering, much less the release of this data to the public.

The 1991 State/Federal Natural Resource Assessment and Restoration Plan, the 'pink book' cited by Mr. Sandor on your trip, consists of 7 pages on Restoration studies, none of which, in my view, are so important to downgrade damage assessment and accept this proposed settlement. I urge you to review these proposed restoration studies and decide for yourself whether the study of rockweed and wildrye by the Forest Service and DNR are worth the terms of this settlement.

And finally, the contention by Mr. Cole that the costs of litigation to continue, which he describes as between \$12 and \$20 million a year, will not be approved by the Legislature IS FOR THE LEGISLATURE TO DECIDE, and should not be the basis of Mr. Cole's assertion that these costs are what's driving the settlement. The State of Alaska will win it's suits against EXXON and ALYESKA, and they will be paying the costs of litigation when that day comes. And even if it is ten years from now, this Legislature has kept the faith and trust of the people and resources affected by this tragic, criminal act. You, as legislators, have important decisions to make in the next few weeks, and I think you have heard from your constituencies to not accept the settlement on these terms.

TO: Honorable H. Russel Holland

April 10, 1991

United States District Judge
U.S. District Court
222 W. Seventh Avenue, No. 4
Anchorage, Alaska 99513

RE: A 90 - 015 CR

FR: Theodore P. Thoma

#2 Marine Way
Juneau, Alaska 99801

RE: CRIMINAL PLEA BARGAIN PROCEEDINGS

concerning EXXON CORPORATION, EXXON SHIPPING, ALYESKA SERVICES

For the record, I am a self-employed environmental lobbyist and have been closely involved in Alaska resource issues for over 20 years. As such I was a chief proponent for the re-design of the Alyeska pipeline, for an all land route through Canada, and for full environmental safeguards to protect state and national/international waters connected with the eventual marine terminal and tanker route emanating from Valdez. As you are aware, the pipeline and marine route escaped full NEPA court review as a result of Congressional action instigated by the Alaska delegation in 1973. I still believe that NEPA review would have addressed the basic environmental safety and compliance responsibilities that were the root cause of the EXXON VALDEZ disaster, and subsequent inadequate response. My direct comments follow:

- 1) I oppose the agreement to drop the FELONY criminal charges against Exxon Corporation and Exxon Shipping Company (A90-015). I strongly believe that the pursuit of these grand jury charges and probable convictions are the only way to reform the inadequate staffing and competency levels aboard U.S. tankers that service Valdez and the West Coast to Panama. From the week-long live broadcast of the National Transportation Safety Board (NTSB) hearings in the summer of 1989, it was obvious that:
 - A) Mr. Frank Iarossi, former chairman of Exxon Shipping, knowingly cut back the number of crew members aboard the EXXON VALDEZ, compromising safety, stretching the physical ability of crew to competently man this carrier of dangerous, toxic material;
 - B) That Mr. Iarossi, Exxon Shipping, and Mr. Hazelwood, the ship's master, allowed Mr. KAGAN, a known incompetent, to serve aboard the EXXON VALDEZ, against the wishes and counsel of competent crew members who knew of his mental and physical problems, and caused KAGAN to steer the vessel through dangerous, ice-choked waters, resulting in the crash of the EXXON VALDEZ and resultant spillage of 11 million gallons of oil;
 - C) That Mr. Iarossi, Exxon Shipping, and Exxon Corporation knowingly allowed Mr. Hazelwood to operate the EXXON VALDEZ without monitoring his acute alcoholism, and in fact fabricated the small amounts of paperwork in Exxon files relative to Hazelwood's condition. These two reports were without dates or signatures, yet purported to show that monitoring of Hazelwood did occur;

Consequently, I believe that counts IV & V (A90-015) should be reinstated and litigated, and actively pursued by the federal government, as these circumstances were the BASIS of state testimony before the NTSB. The agreement to bring these charges for litigation by the federal government was done in lieu of applicable state laws covering crew safety and competence.

2) Additionally, I strongly believe that the MISDEMEANOR criminal charges against Exxon Corporation and Exxon Shipping Company are being settled far too cheaply for the great, extensive damages to wildlife over a 700 mile region. It is my understanding that the ALLIED CHEMICAL case was the largest, previous U.S. settlement for environmental damages, at \$13 million. However, this was also 10% of Allied's earnings for that year. EXXON's yearly SALES are over \$100 BILLION; their reported net, yearly earnings are \$5 BILLION; and their NYSE traded stock has gone up 13 points in the last two years, at a estimated value of \$1 BILLION per point. This huge corporation is in effect being given a pittance fine by the plea-bargain, and it in no way should be viewed as a properly negotiated fine for either the extent of damages or the worth of the corporation. Also, as you may be aware, Mr. Lawrence Rawl of Exxon has repeatedly stated to the press that the fines and settlement will in no way impair or harm his company, and that all costs will be immediately passed on the consumer in pump prices. Finally, the overall terms of the settlement, payments over ten years, are an affront to Alaskans and the nation as a whole; once Mr. Rawl 'passes on the costs', consumers will in effect be paying over and over for Exxon's corporate liabilities, while the corporation makes token payments for it's environmental assault on the nation's common resources.

3) Finally, I strongly believe that civil and criminal charges, both felony and misdemeanor, against Exxon, Exxon Shipping and ALYESKA should be reinstituted and pursued by the federal and state governments, based on the complicity, culpability and liability of Exxon and the owner companies of Alyeska to secretly plan non-compliance with terms of agreements struck with the federal and state governments to immediately respond and clean up ANY spill in Prince William Sound. The documents obtained and verified by U.S. Congressman George Miller amply demonstrate that collusion on the part of Exxon and Alyeska to ignore the existing contingency plan was commonplace, and an active topic of discussion among the owner companies in 1987-88, even to the point of written, internal memos that materials, personell and marine transport were not on-hand to address but the most minor spills in Port Valdez and Valdez Arm. The June, 1988 owners meeting of Alyeska in Phoenix, Arizona, as referenced by Stanley Factor, Vice-President of Arco Marine, Inc., states clearly that Alyeska HAD NO INTENTION of responding to a spill in Prince William Sound, except with dispersents that were not on hand, with no properly fitted aircraft to utilize them. On March 24, 1989, in the early am hours, one of the first calls made by Mr. Tarossi, upon hearing of the spill in Houston, was to Southern Air Transport of Miami for a C-5 aircraft, specially fitted for dispersent application, to be airborne, fly to New Mexico to pick up the dispersent ("ADDS PACK") and proceed to Anchorage. As the record shows, dispersent was not on-hand in Alaska, the plane was in Miami. The Valdez personell were not trained or available, the barge was empty, and whatever small booms and skimmers on-hand were buried in snow. I term these circumstances as criminal acts on the part of Alyeska and owner companies who were far more interested in tanker turn-around times and under-manning than taking any responsibility for the consequences.

In summary, I trust you take these points into consideration, and I do appreciate the opportunity to comment. The Alaska Legislature is holding daily hearings on these vitally important issues, and I hope you are able to see the wisdom in recommending rejection of these present settlement terms, as a judicial officer responsible for determining the fairness of the settlement for immediate and long-term damage to national resources.

Sincerely,



Theodore P. Thoma

Legislative Hearing State of Alaska Settlement
with Exxon.

4/12/91

Dear Legislators,

I'm not in agreement with the State of Alaska settlement with Exxon, I feel the amount is not enough to cover cost of the oil spill Exxon disaster. Due to the cost of travel I will not be able to attend the hearing in person.

When the Exxon disaster first occurred it was painful to watch on TV the oil come closer and then on us.

I worked on the oil spill in Wendy Bay. The beaches were badly oiled and I became ill while on the job. I was sent to Anchorage with chest pain & steadily got worse. I missed 2 weeks of work. The working conditions on the beaches were horrible, the fuel fumes ~~was~~ so strong we could taste it in our mouths.

I saw a lot of dead sea life and plant - which emotionally affected me. The oil was deep -

I strongly believe as a native Subarctic user my usage has been hindered and

Due to the spill I had to depend on the
grocery stores more when traditionally I
used subsistence.

With the depth of the oil I feel it going
to be a long while before the beach are clean
again and life returns -

When I became ill I had to pay out
of my own pocket medicine, medical care
and travel and room & board, which
you know is very expensive.

Fred E. Toko
Port Graham Alaska

CHENEGA CORPORATION

General Delivery
Chenega Bay, Alaska 99574-9999
(907) 573-5118

April 12, 1991

The Oil Spill Litigation Committee
of the Alaska Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Ladies & Gentlemen:

I am President of Chenega Corporation, the village corporation for Chenega, located in Prince William Sound. We have 72 shareholders, most of whom live in Chenega Bay and other communities in Prince William Sound. For the past two years, we have been dealing with the impact of the oil spill, and the evidence that the oil spill still pollutes our beaches.

We have read the Exxon settlement papers. We are concerned, if the State does settle with Exxon, that that settlement will mean that Exxon has no reason to settle with the little people, including Chenega Corporation and its shareholders, for many years. The State of Alaska and the Federal governments have the most significant resources to bring against Exxon. We are a very small village corporation, our resources are devoted to insure the continuation of Chenega's unique culture and lifestyles. We do not have the resources to fight a giant like Exxon alone. In this case, because the State's Attorney General is insisting upon concealing the studies and assessments which would otherwise establish resource damage and estimates of recovery on the ecosystem, we have no idea how long or when the seals, otters, and other marine life, as well as land animal populations will recover.

Chenega and its lands are located in the southwestern part of Prince William Sound, and received the full impact of the 11 million gallons of oil spilled from the Exxon Valdez. 70% of our shorelines were oiled, and areas of our shoreline show no recovery whatsoever from 1989. We have devoted

enormous resources of our own in order to assist with the cleanup effort, and we have been the situs of enormous studies by the state and federal government over the course of the past two years. We feel Chenega had a big part in making the state's case for it.

The proposed settlement with Exxon leaves us on the beach, completely stranded. We don't have the resources to fight Exxon, nor do we think the damaged resources and ecosystems will be restored with the amount on the table, and which you are considering.

We have insisted, for the past two years, that damages to the resources were far greater than Exxon released studies. Studies released by the federal government within the past week established that we were right, and the once rich resources in our area of the country are destroyed. But those studies only relate to marine mammals. They do not show the extent of damages. Nor, have studies been released which will establish damages to other sea-life, including fish, crustaceans, a mollusk population on account of the 11 million gallons of oil degrading into the seabed, and below the surface and tidal areas.

The agreement also says that Alyeska won't be sued on account of resource damages. We have heard the Attorney General say that the State will still be pursuing Alyeska for misrepresentation and fraud, but we note that the settlement agreement requires the state to repay Exxon over 20% of any recovery the state might get from Alyeska.

The settlement agreement fails to answer the most basic questions, including the extent of damages to resources and the amount of time, if ever, those resources can be restored, or the ecosystem rebalanced. The settlement agreement also does not address Exxon's responsibilities to the citizens of this state, including Chenega Corporation and its shareholders. Nor, does the settlement agreement address the other small people and Exxon's responsibility to them, the villages, fishermen, cannery workers, area business, all of whom have been devastated by this spill.

We don't think you ought to let Exxon off this easily. Nor, do we think that you ought to let the Executive Branch of government conceal essential background information from you while you attempt to arrive at a decision concerning a matter which will impact the lives of many of Alaska's residents for many years. We can't put the spill behind us, and we think it is ludicrous for the Governor to insist that

the settlement agreement will permit the state to put the spill behind it. We will still be out there, still fighting with Exxon, and still trying to recover against an oil giant for the destruction of our resources and way of life.

Thank you,

Very truly yours,

CHENEGA CORPORATION

By: Charles W. Totemoff
Charles W. Totemoff

[Ltr-490]

CHENEGA CORPORATION

General Delivery

Chenega Bay, Alaska 99574-9999

(907) 573-5118

April 10, 1991

Mr. Tom Van Brocklin
Legislative Aid
c/o Representative Gene Kubina
P.O. Box V
Juneau, AK 99811

Dear Mr. Van Brocklin:

Thank you for talking with us on Wednesday, April 3rd. This letter will concern a list of matters which the Community of Chenega Bay believes must be addressed, with regard to continuing problems with the oil spill and our perceptions of the State's change of attitude.

First, we believe that the legislature as well as the individual communities in the Sound must obtain the scientific studies and assessments in order to determine the nature and extent of damages to the natural resources, as a matter of public policy. The studies and assessments are important not only to determine whether or not the monies to be received from the settlement are adequate for the purposes of restoration, but also to determine the extent to which the continued contamination poses a threat to the public health of the communities of Prince William Sound, particularly to Chenega Bay. In addition to the oil contamination, the studies and assessments should yield information as to health risks posed by the various agents which have been used for the past two years on the oil, together with whether or not those agents were effective. From a statewide perspective, it would also appear that the legislature itself is requested buy a pig in a poke. Recent reports appearing the Washington Post indicated that damages were estimated to be between 3 1/2 and 8 billion dollars to resources alone.

Second, the State's Oil Spill Response Office has, over the past month, become increasingly adversary to the Local Response Programs in Prince William Sound, not only Chenega's. All communities have received a letter from Mr. Piper indicating that this will be the last year of a coordinated oil spill cleanup

April 10, 1991

effort, that preapproved budget items have been determined as unnecessary, that assessment teams from the community are no longer invited to observe ADEC surveys which are now ongoing, and that preapproved funds will be turned back to the 470 Program.

In the case of Chenega Bay, the State's position has changed dramatically and suddenly within the past several days. As late as February 15, 1991, we were assured of additional expenditures. We were told that our efforts were appreciated and important. We presented the state a computation of our efforts through October 1990, which indicates 40 tons of oil debris were taken from several sites on North Evans Island, alone. We have attach a copy of the report, which Mr. Piper had told us would be presented to the Legislature this year.

As late as March 28, 1991, Mr. Piper told us that a Chenega Bay Local Response person would in attendance during ADEC's survey at Point Helen and Sleepy Bay. For the past two years, Chenega Corporation has assisted coordinating such activities, which occur on lands owned or adjacent to Chenega Corporation lands. This year, we were told on April 3rd, the date the survey was to occur, that the Local Response Program coordination effort was not desired by the state, and that any land managers Chenega Corporation might wish to send would be at Chenega Corporation's expense.

These few examples of broken promises and cancellations of a preapproved work plan are indicative of the state's new approach. The Oil Spill Response Office knows that Chenega needs those programs, that Chenega's interest in continued removal of oil and related contamination is great, that the crisis is not over because a lot of oil remains, and that Prince William Sound Communities cannot put the Exxon Valdez oil spill behind them until they don't have to deal with oil contamination on a daily basis. The state also knows that Chenega Bay's Local Response Program yielded the largest volume of oily waste (in one short month) of any community program in Prince William Sound.

We do not understand how the state, without assessing the oiled sites, can determine that no further work will be necessary after this year. The oil is still there. The people are still threatened. The only thing that has changed over the past two months is that there is now a proposed settlement between the

State, the Federal government and Exxon. However, that proposed settlement does not remove the oil from the Prince William Sound environment.

We request that the legislature appropriate funds for continued oil spill response work by the Local Response Programs, including Chenega Bay's.

Third, the State is presently surveying selected sites in Prince William Sound. As mentioned above, those sites include Point Helen and Sleepy Bay. In the past, Chenega Corporation land managers and representatives from the Local Response Program have accompanied the state on such surveys. This year, we have been disinvented. We understand that also the state does not want the media to be present at such site during its survey, and is concerned about public sensitivity.

None-the-less, based on its past association with the local community, Alaska Lands Act provisions, and Prince William Sound Area Plan requirements that adjacent land owners' land managers be provided with notice of state activity, the state's disinvention appears to be outside the normal legal process, and violative of our trust in the state process. In addition, we feel used, in that the state needed us in the past, but now that it is cosyng up to Exxon, has determined that we are more of a hindrance than a help. Yet, we don't think the Executive Branch could have accomplished the settlement without our earlier involvement as allies of the state against Exxon.

We request the legislature to perform its own survey and fact findings of Prince William Sound, and we specifically invite you to Chenega lands and adjacent state tideland.

Fourth, this state's ability to undertake scientific studies and assessments was on account of community assistance. On Chenega Bay's part, we provided the state with volumes of videos, photographs, daily reports on living conditions, oil segments, degradation and destruction of resources, and dead animal reports. We also sent the state cartons of dead animals, we participated in subsistence studies activities, our community threw its doors open to state workers with questionnaires, our community was besieged with numerous scientists conducting studies on behalf of the state. We did all of this because we

thought we were allied with the state, and the state would assist us in our time of need, just as we assisted the state. The truth of the matter is that most of the information which the state is now concealing from you and from us was gathered on account of our direct involvement and your appropriations.

We believe that the legislature, through its audit process, should, at a minimum, obtain those studies and assessments, seek an extension of time from the Federal Court regarding the Consent Decree, for public comment purposes 120 days, and allow the Legislature access to the studies to determine whether the settlement is really in the best interest of the state.

We also think you could help all of us, not only Chenega, by requiring the state to insist on an global approach in resolving the claims arising out of the oil spill. Such a global approach should also include continuing funding for cleanup activities.

Finally, we are attaching a joint of the corporation for your review.

Very truly yours,

CHENEGA CORPORATION

By: Charles W. Totemoff
Charles W. Totemoff, President

By: Gail Evanoff by C.W.T.
Gail Evanoff, Vice President

CWT:cbs (4/5.2:cc3)

CHENEGA CORPORATION
RESOLUTION NO. 91- 09

WHEREAS Chenega Corporation is an ANCSA village corporation composed of residents of Chenega with cultural, social, and family ties to the community of Chenega Bay; and

WHEREAS the community of Chenega, consisting of the tribe, the corporation, the residents and shareholders have a continuing interest in the restoration of Prince William Sound in general and the land and resources belonging to, held in trust for, and pertaining to, or managed by the corporation and/or the tribe; and

WHEREAS the Exxon Valdez oil spill destroyed much of the resource and ascetic beauty of Prince William Sound, and in particular, areas surrounding Chenega Bay; and

WHEREAS the State of Alaska and the United States government have announced settlement with Exxon, which settlement is subject to legislative approval; and

WHEREAS oil contamination is still present over approximately 70% of the land owned or appurtenant to lands owned by Chenega Corporation as well as traditional use lands;

NOW THEREFORE be it resolved by Chenega Corporation that the legislature be encouraged to seek an extension of the comment period before entry of the proposed consent decree between the State of Alaska, the United States, and Exxon in order that the legislature may obtain studies and assessments concerning resource damage which occurred, is occurring or will occur on account of the wreck of the Exxon Valdez and the consequential spilling of 11 Million gallons of oil into Prince William Sound; and

BE IT FURTHER RESOLVED that the legislature undertake to and conduct its own investigation concerning remaining oiled shorelines in Prince William Sound; and

BE IT FURTHER RESOLVED that the legislature appropriate funds to continue local response project activities in the event the Executive Branch discontinues those activities, which, in view of the events of the past week, is highly likely.

Adopted this 12th day of April, 1991 at
Anchorage, Alaska at which a quorum was present by a
vote of 5 in favor and 6 opposed.

CHENEGA CORPORATION

By: Philip J. Schemm
Secretary

Attest:

Charles W. S. S. S.
President

[resira.doc]

read
into
file
4/15/91

The Alaska Legislature
Oil Spill Litigation and
Settlement Committee
P.O. Box V
Juneau, Alaska 99811

Written Testimony of Charles W. Totemoff

Good Evening Ladies & Gentlemen:

My name is Charles W. Totemoff. I am President of Chenega Corporation and Chairman of Chenega Bay I.R.A. Council. I will be presenting the views of Chenega Corporation with regard to the proposed settlement. I have also been requested to present views on behalf of Port Graham Corporation and English Bay Corporation, two village corporations with extensive holdings and selections on land adjacent to the Gulf of Alaska, and into the Kenai Fjord's. Their comments will therefore be included in my testimony.

The village corporations, Chenega, Port Graham and English Bay, are involved in litigation against Exxon Company U.S.A., Exxon Shipping Company, Exxon Pipeline, Alyeska, the consortium of companies which own Alyeska Company, as well as other defendants on account of damages suffered when the Exxon Valdez hit Bly Reef. Chenega Corporation has incurred hundreds of thousands of dollars in expenses in dealing with the oil spill and its effect upon our shareholders, the vast majority of whom are subsistence users. Chenega is a small village corporation, with only 72 shareholders and 76,000 acres of land conveyed or to be conveyed in Prince William Sound. 70% of our coast line was oiled, much of it extensively and heavily oiled. The oil spill caused an immediate and we believe irretrievable loss of lifestyle and destroyed Chenega Corporation's ability to provide lands and appurtenant interests for the purpose of subsistence activities.

There are no stores in Chenega Bay; before March 24, 1989, we were by and large a subsistence economy. There are only two or three limited entry permits owned in the village; before March 24, we were not a cash economy. In order to address the needs of our shareholders, Chenega Corporation was forced to respond quickly, by insisting upon oil spill related jobs. Overnight, the village was forced to shift

from the subsistence to a cash economy and we are continuing to deal with the resulted upheaval.

Subsistence was the number one priority of Chenega's land management program. Now, our number one priority is to cleanup the environment. The community standards of sharing, however, have given way to competition for scarce jobs. Hunting and gathering activities have virtually ended, because we are uncertain of the effect of eating polluted fish and game.

We do not know what impact the spilled oil or that remaining spilled oil has on the ecosystems on which our people depend. We do not think the Alaska Legislature has sufficient information, either. Do you really know what the cost of restoration will be? Do you know what choices will be made because of shortfalls, and because studies and assessments scheduled for this year and into the future may not be completed? For instance, is it not more likely that, if a choice is made between cleaning-up clam-beds or creating a state maritime park, the choice will be made to create the park and to forego the less sexy projects? We all know that advisory committees' functions are pretty limited under the best of circumstances; under the broad sweep of the settlement agreement, what input into restoration projects, studies, or assessment will an advisory committee have in this agreement?

In addition to the uncertainty as to the nature and extent of damages, whether funds agreed upon are sufficient, and whether damages will be ongoing for years into the future, we believe that the agreement also ignores language which Judge Sporkin in Washington D.C. had believed would be included in the agreement. For instance, paragraph 13(c) of the settlement agreement preserves only a present right, title or interest in lands; Chenega, Port Graham and English Bay have future rights in lands and resources still in interim jurisdiction until conveyed. The village corporations and their shareholders, as well as fishermen and others dependent on natural resources have rights relating to future events which appear to us to be compromised by the agreement. Judge Sporkin viewed such an approach as Un-American. We also believe that the agreement, at paragraph 13(b), with regard to Alaska Native Village Claims as trustees, creates artificial limitations, and compromises important rights under ANCSA and ANILCA. We ask, why not just preserve all claims of private litigants?

With regard to natural resources, the settlement agreement misstates that only governments may recover natural resources damages under the Clean Water Act. This of course is not true. Moreover, the agreement fails to address the likelihood of polluted ecosystems to recover, and whether the ability to recover is even possible. In addition, in

paragraph 6(c) and 6(d) of the agreement the governments appear to compromise all users' claims for damages. Why? At paragraph 6(g) the agreement is unequivocal that it settles all consequences of damages to natural resources.

The agreement therefore binds us, as owners of natural resources, including lands, hand and foot, and blindfolds us and hands Exxon the club to beat us with. The Attorney General has announced that he will not provide studies or assessments to either the legislature or to the user groups to determine what happened, at what costs, and what needs to be done and at what costs. The agreement gives Exxon numerous opportunities to pummel us with the language of the agreement.

In addition, the agreement resolves natural resources damages claims against Alyeska. Why is the state giving up anything as to Alyeska, and what is it receiving? Why does the agreement explicitly allow Exxon to recover TAPPA money? We have all assisted the state during the spill, opening our doors and our knowledge of the area and its resources to the state. Why does the state, in its rush to settlement, give so much and apparently receive so little? And ultimately, why would the state and federal government offer Exxon such neutralizing weapons as are contained in this agreement? Judge Sporkin believed such tactics were Un-American.

As many of you are aware, the oil is still out there, at Sleepy Bay, Point Helen, and other areas around Chenega's selection areas; around and into the Gulf of Alaska selection and Windy Bay, Rocky Bay, Dog Fish Bay, and into the Kenai Fjords, all Port Graham and English Bay selections. This year, the state and federal governments are bearing the tab if the settlement goes through, and it is unlikely that any more oil will be recovered after this year. You are therefore buying E. n's oil, and, at what price?

I am presenting with this written testimony the views of Gail Evanoff, of Chenega Bay and Vice President of Operations for Chenega Corporation. I am also presenting written comments received from English Bay.

Thank you,

Charles W. Totemoff
Charles W. Totemoff

[Chuck.doc]

Philip Totemoff
4/12 Seward Test.

To: Oil Spill Litigation Committee of
the Alaska Legislature

From: Philip Totemoff

Testified
in Seward

P.O. Box 64

Chenega Bay, AK 99574

Date: April 12, 1991

Ladies + Gentlemen,

My name is Philip Totemoff, I am a lifelong resident of Prince William Sound, currently living in Chenega Bay. I am a subsistence user, I grew up practically on subsistence foods, it is my diet.

The Exxon Oil Spill of March 1989 ruined my way of life, lifestyle, culture and subsistence.

The Federal Government's Oil Spill Studies recently released show what I knew from the beginning that my subsistence foods are contaminated and are unsafe to eat. The seals, sealions, fish and shellfish were all affected as

the studies have shown.

It is my utmost concern that Exxon and the State of Alaska will consider us and not forget us and restore the damage done to our resources and lands, which will be many years before it is back to normal.

In the mean time I would like to see Exxon or the State of Alaska to compensate Chenega on a monetary or anyway possible to carry us through on this critical issue.

HOWARD VILLEY

Afognak Joint Venture

214 Rezanof West Kodiak, Alaska 99615
(907) 486-6014 FAX (907) 486-2514

April 13, 1991

Representative
Chairman
House Special Committee
on Exxon Valdez Settlement Claim
Alaska State Senate
Juneau, Alaska

Dear Representative Gruenberg:

We are Native corporations who are major landowners and land managers on Afognak Island in the Kodiak Archipelago. We have questions and concerns regarding the use of Exxon Settlement Funds.

We do not understand how decisions to use the Fund would be coordinated among the Fund administrators. It is our understanding that there is a time period within which the Fund's managing entities must develop a plan.

We are concerned that too much or all of the Fund could be used to pay costs of administration, costs of studies that will not result in benefits to the environment, costs of restoration where the funds expended will not result in commensurate benefits, or the costs of development projects that are unrelated to habitat protection. We urge that the use of funds include acquisition of habitat resources, or studies that could lead to habitat acquisition for protection. We believe there are special opportunities to acquire habitat. This habitat could be identical to what was damaged by the oil spill. It could also be habitat that is associated or similar to that damaged by the spill and was in the geographic area affected by the spill. On this theme we wish to encourage that the acquisition, or study for acquisition, of lands on Afognak be undertaken.

We have ideas regarding how the acquisition or studies could be accomplished, and we would welcome discussing these with the Fund's decision makers.

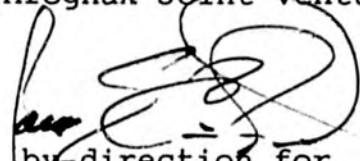
Representative Max Gruenberg
April 13, 1991
Page 2

Thank you for this opportunity to comment.

Respectfully yours,



Howard W. Valley
Chairman
Afognak Joint Venture



by direction for
Uwe L. Gross
Chief Executive Officer
Koniag, Inc.



Ruth A. Dawson
President
Afognak Native Corporation

cc: Representative Cliff Davidson

**TESTIMONY OF
MAYOR BOBBY VAN BROCKLIN,
CITY OF CORDOVA,
BEFORE THE ALASKA HOUSE SELECT COMMITTEE
ON EXXON VALDEZ SETTLEMENT
APRIL 14, 1991**

Committee Members, Attorney General Cole, Commissioner Rosier and Commissioner Sandor:

I would like to start my testimony with Cordova's point of view based on a little history.

The people of Cordova have expressed concern about the Trans-Alaska Pipeline System from the time of its conception. After a hard-fought battle, the System was approved by a margin of one vote by the U.S. Senate. During the time of operation until the Exxon Valdez spill, Cordova continued to express its concerns and always were assured that "the best equipment, material and expertise will make operations at Port Valdez and in Prince William sound the safest in the world."

On March 23, 1989, all our concerns plus some we hadn't thought of started to become a reality. Even under good weather conditions, for the first three days, Alyeska or Exxon couldn't live up to their promises. Not even close. Less than 3,000 of the 260,000 barrels were recovered. And, with a weather change, the Exxon Valdez spill would eventually soil over 1,000 miles of Alaska's coastline, inflicting one of the worst wildlife disasters in our nation's history, and disrupting the lives of thousands of Alaskans who depend on the natural resources of this region.

We all know that the Trans-Alaska Pipeline provides 25% of the nation's oil and 80% of the State of Alaska's revenue. Everyone enjoys the benefits of the oil. However, only a few coastal communities share the risk posed by the transportation of this oil along our coast. The risks and benefits are not shared proportionately. Cordova's economy is based almost entirely on Prince William Sound's resources, especially commercial fishing. Through years of efforts, we have tried to enhance these resources through the Prince William Sound Aquaculture Corporation and 1989 was the first year the plan was to be in full production. I remember a conversation I had with a local fisherman a week or two before the spill. The conversation went like this. I was asked, well what do you think the season's going to be like this year? My reply was last year we had great fish prices, but only 10,000,000 fish; this year the price will probably drop some, but the prediction is 40,000,000 fish. Even if half the fish don't return for some crazy reason, it will be better than last year, which wasn't bad. Cordova's expectations were of a good to great fishing season which would mean our economy would be thriving. On March 23, we went from being optimists to pessimists because our world as we knew it started to fall apart. Next started a time of more promises and harsh reality. The mighty resources of Alyeska and Exxon, the State of Alaska and the federal government couldn't put Humpty Dumpty back together. The community tried rage, cooperation, begging and blind faith and again we got more promises. Don Cornett from Exxon made his famous quote in Cordova: "Trust us. We will make you whole." I think Mr. Cornett's definition of "whole" is a little different than the folks of Cordova or the folks from other oil affected areas.

The Vice President, the Governor, and countless Senators, Congressmen, Admirals, cabinet members, State Senators and House members, environmentalists, reporters and lawyers came. Some made promises. Some made statements. Others just listened. But little was ever done to address the impacted people. By law, it's my understanding that

people don't qualify as a resource, so their needs haven't been addressed. If the testimony you hear today seems a little harsh, you will know why. Our mistrust in government and the oil industry is based on the fact that promises are not kept. So please don't ask us to trust you. We would prefer it in writing, backed up by a letter of credit. So much for the history lesson. Let's get to specifics on the proposed settlement.

Since we are to fend for ourselves in recovery of people damages and city governments are closer to the people than the State, I have some statements and questions that the people of Cordova and the municipality would like answers to.

The State is the trustee of all the studies and legal preparation for Exxon Valdez damages, but now the people are being put in the position to sue just to get the information. This doesn't set well when you come to us now and say the federal and state governments will fix or restore the damage if we go along with the settlement. Mr. Attorney General, tell me why I should trust the state or federal government to repair my environment and natural resources? Please give me examples of what the trustees would do and give me a equal number of examples of the trustees will not do?

What about full study of the spill? Will this be completed or curtailed because of settlement?

Why has the State, especially at paragraph 13(c), on page 15 of the agreement and consent decree, not adopted the language that it represented it would to Judge Sporkin? The State in its settlement agreement purports to reserve only the "rights and obligations, if any, of legal entities or persons other than the Governments who are holders of any present right, title or interest in land or other property interest affected by the oil spill." What does the word "present" mean in that case? Is the State trying to support Exxon's view that the only recovery available to fishermen and others dependent on natural resources is what they would have recovered in 1989, but that otherwise, the recovery belonged to the State, and that has been compromised through the settlement?

Much the same concern is raised by paragraph 13(b) which purports to preserve certain aspects of Alaska Native claims. Why not just preserve whatever Alaska Native claims which are available? Why has the State tried to give the benefit of certain language to Exxon, to the detriment of certain private plaintiffs?

Why is the State sacrificing some of the availability of the Trans-Alaska Pipeline Liability Fund, by explicitly allowing Exxon to try to recover some of its losses from that fund, to the detriment of the various private plaintiffs, who may have no other source of recovery if Judge Holland is right about Robins Dry Dock?

What do the provisions at paragraphs 24-30 mean? It looks as if Exxon is free to have the governments be responsible for a portion of the fault, but that the governments are not free to bring in Exxon. Paragraph 30.

Did the State have any responsibility to its municipalities and to its citizens (be they fishermen, landowners, kayakers, businessmen, or Alaska Natives) when they are facing a litigant of Exxon's size not to settle its claims alone, but to make more of an attempt to try to get Exxon to the settlement table and compensate the individuals who were really hurt most by the spill?

The State says its settlement does not affect any other parties' rights, but this ignores the realities of litigation. With the State in the case, Exxon recognizes that it is facing a

group of plaintiffs with formidable assets and resources, not otherwise available to private plaintiffs.

Why does the State seem to go out of its way to help support Exxon's legal positions, e.g. (a) representing that only the "Governments" may recover natural resource damages under the Clean Water Act [Par. 4 of the introduction]; (b) defining Natural Resources or Natural Resource Damages broadly to appear to cut off other parties' rights [Par. 6(c),(d)]; or (c) suggesting that the agreement settles "all consequences" of the spill (paragraph 6(g))?

The municipalities were able to get a State grant for an impact analysis to look at effects of the spill on municipal finance and other "people issues." The State should continue to fund this effort both to assist municipalities with their damage case, and to help the State and municipalities plan for future catastrophic disasters. This study was the Oiled Mayors' Study. Mr. Attorney General, have you examined the Oiled Mayors' Study? Do you know why the recommendations in the study funded by a million dollars by the State of Alaska haven't been acted upon?

Can we trust the State or Federal government to be adequate trustees of the environmental claims when they are not just pursuing those claims as trustees, but also alleged to have been a party which has violated the trust through its malfeasance? It is inconceivable that a trustee would be allowed to settle a claim for a beneficiary when it is implicated in the wrongdoing. Mr. Attorney General, last session the oiled communities tried to have the legislature advance raw fish tax claims to municipalities. This was shot down in Senate Finance--Exxon told them they would fix us up. That hasn't happened. Without State studies, can you tell me if Exxon were to agree to settle with us tomorrow, what would be a fair number without knowing the study information?

Can you clarify how municipalities will be asked to prosecute their raw fish tax claims against the defendants for maximum recovery?

Why is the State allowing Alyeska peace on certain issues, when Alyeska is still free to both sue the State (paragraph 20, last sentence), and argue that the State is responsible for most of the damages to private plaintiffs? [Paragraph 22 makes it obvious that this alternative will be open to Alyeska.]

ISSUES OF PARTICULAR CONCERN TO LEGISLATURES LOOKING AT THE SETTLEMENT FROM THE VIEW OF ALL CITIZENS OF THE STATE

1. Don't the people of the State need a much better understanding of the real effect of the money package?

(a) The real value of the money being given to the State by Exxon -- this is the whole "present value" idea. Exxon agrees to pay money over time. It is basically paying back a loan of the "Present value" of the money. What interest rate should be used in the real calculation?

(b) The real costs which the State and feds have accumulated so far --

(1) We need not just the total cleanup cost to the State and feds, but when those costs accumulated, because to the extent the State and feds don't get interest on the amount due, they are being underpaid.

(2) We need the same for attorneys fees,

(3) We need the same for the trustee and other science costs;

(4) We need a realistic estimate of what the rest of the cleanup costs will be for which a commitment has been made to pay Exxon when they do the work from their own money in the form of a credit; do we have any data on what was spent last year for cleanup to use as a guide ?

(5) The caps that the State and federal government put on the amount of the trust money which will be allocated to State and federal costs (in Par. 10 of the agreement) are not necessarily the actual value of those costs. To the extent they are not, a subsidy is being given by the people to Exxon.

(6) The federal government is not apparently seeking any money for litigation costs. Is that not just a subsidy to Exxon, or is the federal government being reimbursed from some other source?

(c) We need to really understand the tax value of this settlement to Exxon, because that affects the federal public fiscally as well. Exxon appears to have gone out of its way to force the State and federal government to spend the "leftover" money for certain projects only. How much of a tax break will that mean for Exxon? Otherwise wouldn't they have to pay taxes on this money since it would be earnings?

(d) We need to decide what is really going to be done with what, if any, money is left:

(1) Is it going to be used for projects, such as timber purchases, which might hurt local communities, e.g., Seward, more than help them?

(2) In what areas is it going to be used? Is there any understanding now of how it should be spent?

(3) Who will have control over the trust fund? It appears to be 3 federal and 3 State people, whose choice is left completely to the Governor;

- (4) What controls will there be on the trustees? There appear to be none now.
2. Can a responsible citizen or legislator now assess the appropriateness of the settlement since neither knows:
 - (a) The liability case against Exxon, and Alyeska (this is to be found largely in the work product of Preston and the AG);
 - (b) The damages case against Exxon, and Alyeska [this is to be found largely in the science from the trustees, a summary of part of which was first made available a few days ago, but the bulk of which has not been made available];
 - (c) The downside of continuing with the litigation
 - (1) The costs for attorneys? Has any serious analysis been done of the Preston and AG costs: have they been cost effective; what would it cost if a "tight ship" were set up from here on out? Is there any foundation for the representations from the Governor that it would take 10 more years to litigate the case? Is the case that complicated? What would be the real costs that are being forgone through settlement?
 - (2) The impact of not settling on other State projects (e.g., ANWR and other development projects). The assumption is that the State wants to put Exxon, and certain other tax litigation behind it so that development can occur. How valid is this position? Do the people of the State really want that development? Has this issue been really looked at?
 - (d) The case against the State for its own negligence (which for the most part may remain open as a result of the settlement given that there is a significant risk that the State will be exposed to a damage verdict).
 - (e) The effect of a settlement of some of the State claims on those that remain--is the State worse off now in terms of its potential liability to private plaintiffs than it was before? Is there a bigger chance it will have to pay than if it was in the case at a trial against Exxon?
 - (f) Can we trust the State or the Federal government to be adequate trustees of the environmental claims when they are not just pursuing those claims as trustees, but also alleged to have been a party which has violated the trust through its malfeasance? It is inconceivable that a trustee would be allowed to settle a claim for a beneficiary when it is implicated in the wrongdoing.
 3. The reopener clause appears to have severe problems:
 - (a) The reopener may be used in very limited circumstances, and only if "the injury to the affected population, habitat, or species could not reasonably have been known nor could it reasonably have been anticipated by any Trustee from any information in the possession of or reasonably available to any Trustee on the effective date" of the agreement. Is there any reasonable possibility that this clause is of any value to the State. Why was it even bargained for?
 - (b) The reopener clause invites litigation again. If the State asserts its validity, nothing stops Exxon from fighting its application, and again, "settling" differences with the State. It lacks any objective standards.

- (c) There is no scientific evidence presented from which one can make a judgment about the usefulness of the reopener clause.

4. The indemnity provisions seem to put the State in a worse position than it was prior to the settlement with respect to liability and with respect to exposure for attorneys' fees. Whereas the State had not been sued prior to the settlement and probably would not have been sued had it secured the agreement of Exxon that it would not assert that the State was responsible, or had it obtained Exxon's agreement to indemnify the State, it now has been sued by hundreds of parties who did not want to sue the State. The cost of defending the case may well exceed the cost of prosecuting the case. The State is now looking at serious potential exposure for damages, or, alternatively, with the ridiculous notion of fighting its own citizens in a liability battle, and trying to belittle their injuries suffered from the spill.

5. How does the State control billing by Exxon for post agreement spill costs? The language in paragraph 11(b) seems to cover everything in the world; including Exxon's attorneys' expenses [i.e., "other professional expenses."] Is there no control in the agreement for Exxon's accountability to the fund it itself created through a settlement with the State?

6. Why is there the tension between paragraphs 12(a) and (b)? Which is the paragraph which more probably will apply because of what we expect Exxon to actually expend, and what does that paragraph mean?

7. Why is the State allowing Alyeska peace on certain issues, when Alyeska is still free to both sue the State (paragraph 20, last sentence), and argue that the State is responsible for most of the damages to the private plaintiffs? (Paragraph 22 makes it obvious that this alternative will be open to Alyeska)

8. Is there any serious attempt at deterrence through the amount of penalty involved, especially when Chairman Rawls telling the media that the settlement and criminal penalty will have no noticeable effect on Exxon's bottom line? The \$421 million present value which Exxon is paying is just 4/10 of 1% of Exxon's annual revenues of \$95 billion.

9. What deterrent effect is there for Alyeska which avoids any liability for its part in the damage to the environment through this settlement?

10. Should the legislature be concerned with what has appeared to be an intentional withholding of information from the legislature and the citizens of the State by Exxon and the State of the information necessary to make an informed judgment about the settlement?

11. Do the recent revelations of Alyeska's conscious indifference to the need for a realistic contingency plan to deal with large spills make any difference in assessing the settlement?

12. Have the people of the State, who are just now getting an idea of what the settlement document says, and its economic ramifications had enough time to make a Judgment, or to provide you with political input into what should be done?

13. Is it constitutional for the State to enter into a plan committing to trustees, without legislative scrutiny, the discretion to spend what may be large amounts of money?

14. What is the joint conduct agreement described in paragraph 35?

WHAT SHOULD THE LEGISLATURE DO AT THIS JUNCTURE?

The legislature should postpone any approval of the settlement until:

- a. It has sufficient information, and time, to assess whether the settlement provides enough money to fix the long-term damage to the Alaskan environment;
- b. provisions are added to give the oil affected areas, a voice in how the money is spent;
- c. Exxon and Alyeska settle the compensatory and punitive damages claims of the people and entities injured by the spill, or if that cannot be accomplished within 30 days, Exxon and Alyeska agree that they will not put the State on trial in absentia when those damage claims go on trial.

W-Z

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

W-Z



Joni Whitmore

oral
4/13

GREEN PARTY OF ALASKA

P. O. Box 141474 Anchorage, AK 99514-1474 (907) 278-7436

Ecology
Responsibility
Nonviolence
Base Democracy

Homer, AK Public Hearing
House Special Committee, Exxon Settlement
P.O. Box V
Juneau, AK 99811

Ecological Wisdom
Grassroots Democracy
Personal and Social Responsibility
Nonviolence
Decentralization
Community-based Economics
Postpatriarchal Values
Respect for Diversity
Global Responsibility
Future Focus/Sustainability

Good Morning:

The Green Party of Alaska requests that the proposed settlement in the Exxon case be denied. There are a number of problems which need to be considered before such a settlement should take place.

There is the question of Alaska's indigenous peoples. Although they have the right to pursue their claims independently of this proposed settlement, there is a clear question whether the State of Alaska is operating in the best interest of its citizens when it excludes the concerns of citizens most affected. There is also the question of jurisdiction with the tribal governments that represent people who suffered damage as a result of the Exxon Valdez spill.

There are many inadequacies in the settlement that throw open the question of public interest. There appears to be no justification for negotiating the settlement behind closed doors and then providing a very short time for the public to comment with almost no information available. If the public was really destined to participate, facts and information could have been provided to the public for the past four months. Important information is just beginning to emerge that the public needs to understand in order to make reasonable comments on the case. It seems reasonable to the Green Party that the public should have additional time to consider information recently released by the Federal Government entitled "Summary of the Exxon Valdez Oil Spill on Natural Resources" dated March 1991. Serious allegations were also raised by U.S. Representative George Miller of California in a letter to the court dated April 8, 1991. The State and Exxon have not released their studies. Alaskans in general have not had the opportunity to consider adequate information.

If the settlement were to go forward, Alyeska Pipeline Service Company would be absolved for potential wrongdoing associated with the damages caused. It would be a legal and moral travesty to let Alyeska off the hook before discovery could illuminate their role in the case. As Representative Miller said, it would tell corporations they can lie because there will be no effective punishment.

The financial aspects of the proposed settlement are very unsettling. It begs the question of how the judicial system can actually punish a corporate offender. Please consider that tax write-offs combined with the spread of payments over 10 years essentially allows Exxon to pay as little as \$300 million. Add

in the fact that Exxon's stock has gone up approximately five dollars per share during the last month, in anticipation of getting the settlement off their books, increasing the value of the company approximately \$6 billion. There is no effective deterrent to offenders.

What can be done? Should the corporate executives go to jail? Since the damages are many times more than originally anticipated, should the settlement price be raised to \$4 billion with \$1 billion up front immediately? Should the settlement include a percentage of all oil Exxon takes from Alaska in the next 20 years? These are the types of things that would make potential offenders take notice. It seems clear that it is almost impossible to punish Exxon for the wrongdoing they have admitted. Even if they didn't have write-offs, increased prices of their products would simply be passed on to consumers to cover the costs. How can justice be done?

The Coastal Coalition had proposed a \$2 billion trust fund that emphasized acquisition of equivalent resources such as buying timber rights to assure future protection. The Coastal coalition proposal also included direct restoration, research, education, and sustainable economic development -- reasonable ideas, processes and implementations.

The proposed agreement has the appearance that the State, and its poorly communicating arms of bureaucracy, is setting itself up together with large oil companies and against the very citizens it is supposed to represent. Of course people will argue that it's better to take a little money now rather than continuous litigation that may net the State of Alaska very little in the end. We are talking about justice here, and it doesn't appear that the money offered is adequate compensation for even a small portion of the damages, and it doesn't appear that the wrongdoer suffers any serious consequences for one of the world's largest oil disasters. The Green Party of Alaska believes that given enough time, Alaskans could reach consensus on what a fair settlement would be. The quick and secretive nature of the proposed settlement has prevented this type of approach. Two corporations might settle out of court in the proposed manner, but the State of Alaska is not a corporation, and a different approach should be considered.

The 10 key values of the Green Party of Alaska, (grassroots democracy, personal and social responsibility, global responsibility, respect for diversity, nonviolence, ecological wisdom, post-patriarchal values, decentralization, community based economics, and future focus), are values most people hold in high esteem. The responsibility of Exxon as a corporation is not reflected in the proposed settlement. The lack of information and public input really makes it very difficult for a democratic society and a free press to help find a solution.

What will the settlement teach us about personal, social and

global responsibility? There is no way to penalize a transnational oil corporation in a free market. Consumers and the environment will bear the entire burden. Nor could there ever be a regulatory bureaucracy large enough to monitor these conglomerates. Possibly the only way to break the hold Big Oil has on Alaska, the only way to ever get true retribution for our great losses, might be to seize a portion of their assets for every crime they make against nature. Very little will prevent the oil industry from continuing to ruin our environment until the people of Alaska have a real voice in their process. These companies agreed to respect our environment - they have not. They agreed to completely clean up any oil spills wherever they may have occurred - they have not. They can not. No complete settlement can be made until the true and total costs of the spill are known and the people of Alaska are allowed to speak.

The Green Party of Alaska believes that the Exxon proposed settlement is inadequate, not in the public interest, and leaves the court without all the facts relevant to the balance of justice. We urge you to postpone settlement, allow the cash damage award to be substantially raised based on the emerging evidence showing greater damage. We also ask that the proposed settlement be reconsidered with the addition of widespread public input after significant information becomes freely available.

Joni Whitmore, Chair
Green Party of Alaska
106 W. Bunnell Avenue
Homer, AK 99603
(907) 235-7558

THE FOLLOWING DOCUMENT MAY NOT FILM
LEGIBLY BECAUSE OF THE POOR QUALITY OF THE
ORIGINAL

CAROL Wilson

April 15, 1961

The Oil Company
of the
P.O. Box
Juneau

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VIOLET YEATON

4-12-91

Alaska Legislative Hearings on The Exxon Settlement

Dear Legislators

I am writing in response to the Exxon Settlement. and why we were not ^{included} ~~included~~ with the state settlement. Why have they excluded our claim? It was our lands that were affected, our people that suffered because we were unable to continue our subsistence lifestyle. Since the oil spill our lives have been turned up-side down. Why have they ~~to~~ chose to just look away from our devastation?

I think you are all aware of the damage done to the land and how our subsistence life style has suffered and is still suffering. The information made by the federal government studies in the newspaper have confirmed our fear as subsistence users.

My husband and I are parents to and 1 and 2 year old. We want them to grow up and to be able to live off the land. What kind of future is ahead of them? My husband has to re-locate and look for what ever job he can find. Please be understanding to our situation
Thank you. Violet Yeaton

MARIE Young

4-12-91

Alaska Legislative Hearings on the Exxon
Settlement.

Dear Legislators,

I am responding to the settlement the State of Alaska has made with Exxon. The amount of damage done to our lands is not equal to the dollar amount.

As an elder I have lived off the sea all my life. I depend on my subsistence life style to help me carry thru the difficult winters. I have never seen such devastation to our land and our people. I still feel the sadness for my people and our land, just like it was yesterday.

I filled out application's to work and of course I didn't work because I was elderly and they needed strong young people to work the beaches. But I felt the need to get out and clean the beaches affected in our area because I knew it would have long time affects afterwards. So I sat back helplessly and watched the damage.

be done. To this day it is still affecting me and my people. We are struggling for a settlement that will never compensate for the damage that the oil spill has done.

As an elder, I am living off longevity bonus that is threatened by cuts and my Social Security. My husband is also ~~an~~ elderly receives the same. He is 78 years old and still he has to go fishing every year just to make ends meet. Every year he takes a loss and since the oil spill, it has been total devastation for him because of the price of fish.

Please try to be understanding of our situation and our struggles.

Thank you.

Maria A. Young

SCOMM

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**POTENTIAL APPROACH TO SETTLEMENT WITH ALYESKA ASSUMING
RELEASE OF NATURAL RESOURCE DAMAGE CLAIM PURSUANT TO
THE EXXON SETTLEMENT AGREEMENT**

1. Counts in State Complaint involving Alyeska/Owner Companies:

- a. Count I - Negligent or Intentional Failure to Contain or Clean Up
- b. Count III - Negligent or Intentional Misrepresentation
- c. Count VII - Breach of State Right of Way (ROW) Lease
- d. Count VIII - Public Nuisance
- e. Count IX - Private Nuisance
- f. Count XII - Restoration Costs under AS 46.03.780
- g. Count XV - Civil Penalty Under AS 46.03.760(a)
- h. Count XVI - Emotional Distress
- i. Count XVII - Punitive Damages

Note: Count XII (Restoration Costs) is subject to the release. Whether the nuisance actions are covered by the scope of the release is an open question. No theory under AS 46.03.760(a) (Count XV) was ever developed against Alyeska.

2. Remaining Damage Claims to Pursue Against Alyeska:

- a. Past damage assessment, response costs and attorney's fees to the extent that the total amount incurred exceeds the \$72.0 million dollar cap established by the Exxon Settlement Agreement (ESA).
- b. Future response costs and Exxon clean up credit. The State might be able to construct an argument that either or both of these amounts deducted from the amount otherwise available from the settlement monies for restoration should be compensated by Alyeska as effectively unreimbursed expenditures.

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- c. **Future Litigation Costs:** Includes costs of DOL Civil Section, outside counsel and experts not reimbursed by Exxon. Depends on position taken by private plaintiffs and whether or not a quick settlement with Alyeska is obtainable.
- d. **Lost oil revenues from taxes and royalties arising out of TAPS shut down due to failure to contain clean up.**
- e. **Lost fish tax revenues from Fisheries Business Tax, AS 43.75, from Salmon Enhancement Tax, AS 43.76 and Seafood Marketing Assessment, AS 16.51.160.**
- f. **Punitive Damages.** Difficult to assess merits of case given stage of discovery. Best case relates to Alyeska's woeful state of preparedness at time of spill and its lackadaisical response during first days of the spill.

3. **Other Remedies Arguably Available Against Alyeska:**

- a. **Indemnification Responsibility of Alyeska pursuant to Paragraph 13 of State ROW Lease:** Still may be a bargaining chip especially, since indemnification of third party claims was not a part of the ESA.
- b. **Injunctive Relief:** Impose requirements for more clean up or later degree of preparedness. (Note: DEC is currently happy with state of Alyeska's Contingency Plan).

Alaska State Legislature

House of Representatives



Official Business

P.O. Box V
State Capitol, Rm. 218
Juneau, Alaska 99811
(907) 463-3718

House Special Committee on the Exxon Valdez Oil Spill Claims Settlement April 19, 1991

M E M O R A N D U M

TO: Members, House Special Committee on the
Exxon Valdez Oil Spill Claims Settlement

FROM: Pat Williams *Pat*
Committee Secretary

SUBJECT: Minutes of Committee Meetings

Enclosed for your information is a copy of the draft minutes for the following meeting.

April 3, 1991

Copies to:

Andy Hemenway
Juneau LIO
Anchorage LIO (Heidi)
Fairbanks LIO

HOUSE SPECIAL COMMITTEE ON THE
EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT
April 3, 1991
12:00 p.m.

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MEMBERS PRESENT

Rep. Max Gruenberg, Chairman
Rep. Dave Donley, Vice Chairman (arrived 12:45 p.m.)
Rep. Cliff Davidson
Rep. Bill Hudson
Rep. Gene Kubina
Rep. Mike Navarre (arrived 12:25 p.m.)
Rep. Gail Phillips

MEMBERS ABSENT

Rep. Ramona Barnes
Rep. Fran Ulmer

OTHER REPRESENTATIVES PRESENT

Rep. David Finkelstein
Rep. Pat Carney
Rep. Mark Boyer

COMMITTEE AGENDA

- I. Committee Announcements
- II. Testimony of Attorney General Charles Cole

Handouts

Tentative Committee Meeting Schedule

WITNESS REGISTER

Charles E. Cole
Attorney General
State of Alaska
P. O. Box K
Juneau, AK 99811
Phone: 465-3600

ACTION NARRATIVE

TAPE 7, SIDE A
Number 000

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Chairman Gruenberg called the meeting to order at 12:35 p.m. in the House Resources Committee Room. The Chairman noted the members in attendance. Also in attendance were Andy Hemenway, staff attorney, Gregg Erickson, economic consultant to the Committee, and committee secretary Pat Williams.

I COMMITTEE ANNOUNCEMENTS

Committee Handouts

The Chairman announced that the handouts in front of the members consists of an Oil Spill Chronology, a proposed meeting schedule, drafts of two letters, one being sent to Judge Holland and the other being sent to the federal government attorneys (DeMonaco) from Chairman Gruenberg and a letter to Attorney General Thornberg from Congress (Congressmen Hertel and Studds, dated March 26). In addition, staff will distribute copies of an Attorney General's opinion concerning the authority of the Governor to enter into the Exxon Valdez settlement. These are attached to the minutes.

Chairman Gruenberg welcomed Attorney General Cole to the meeting and asked him to proceed with an overview and history of the Exxon settlement.

Mr. Cole described the background surrounding the decision on the part of the administration to work jointly with the federal government to settle the claims settlement. This included many meetings with the United States Department of Justice and other federal agencies and Exxon representatives. He felt that Exxon would have preferred to have the federal and state governments taking different courses of action, because they could then get the two governments in a crossfire.

Mr. Cole said the biggest issues were (1) the amount of money Exxon would pay; (2) the period of time over which they would pay it; (3) the provisions for a re-opener clause, and the maximum amount for which Exxon would be liable under the terms of the reopener clause. Early on there were discussions about the release of Alyeska.

Representatives Davidson, and Carney arrived at the meeting.

The Chairman directed the Committee's attention to the MASTER LIST OF ISSUES for the CONSENT DECREE (9 pages, rev. 3/29). The Committee will proceed down the list and direct marked questions to the Attorney General.

Number 300

Rep. Navarre asked the Attorney General to explain how the \$1.1 billion figure was arrived at. What did the Governor base the number on? Mr. Cole replied that he thinks the Governor had a strong intuitive feeling about where the settlement ought to come

strong intuitive feeling about where the settlement ought to come out. He said he accepted the Governor's intuitive judgment, and never spoke to him about it.

Rep. Navarre then asked if Mr. Cole analyzed the spill settlement data and the numbers that are attributed there, i.e., whether or not \$1.1 billion is a proper settlement figure. Was the Governor thinking that the amount would settle the state's share or the federal and state share together? Mr. Cole replied that he believes the Governor was thinking that the amount would cover both the state and federal claims.

Rep. Navarre asked if the Governor spoke with anyone in the federal government before he came up with those numbers. Mr. Cole replied "not to my knowledge."

Rep. Finkelstein arrived (12:55 p.m.)

Number 340

Chairman Gruenberg, following up on Rep. Navarre's question, asked if Mr. Cole knew whether any of the figure contemplated would be considered a fine, or was the fine supposed to be in addition to the figure? Also, was the figure intended to include any reopener? Mr. Cole said he didn't think that when the Governor mentioned that figure he thought about provisions for reopener. He is not certain whether he considered the fine as being within that number. He is not sure whether the Governor contemplated resolution of the criminal case within that maximum financial figure.

Chairman Gruenberg asked if there was any written or taped record of the negotiations. Mr. Cole replied "no."

Chairman Gruenberg noted that these documents appear to be fairly similar to other settlements that have been entered into between the federal government and oil companies. Who drafted the consent decree? Mr. Cole said he does not think it could be said that a single person drafted the document. There was participation during the drafting process by the Departments of Justice and law; largely and specifically Barbara Herman, Greg Tillery, Assistant Attorney Generals in the Oil Spill Section and Jo Donohue. There obviously was some involvement by Exxon lawyers. But, the principal "scribner" was the representative from the Department of Justice, Bill Brighton.

Chairman Gruenberg asked if Mr. Brighton used as a model any of these previous settlement agreements. Mr. Cole stated that he does not have actual knowledge, but he is reasonably certain that he did avail himself of materials used in other clean water actions.

Number 388

Rep. Kubina remarked that he would like to compliment Exxon on their skill in negotiating a good settlement for themselves. He said he, as a representative of Prince William Sound, is concerned about the State allowing Prince William Sound to be held hostage by the State's refusal to release the scientific data. Mr. Cole replied that "If you think that way, then you should immediately approve this settlement."

Rep. Kubina pointed out that the scientists and the people of the villages don't know what the results are of the studies. How can we vote for it without that information coming to us? He stated that they (legislators) had some private hearings on that information; but, in his opinion, they didn't get any information in those hearings that really let them know what the effects of the oil was in that area.

Mr. Cole replied that he is firmly convinced that this settlement is in the best interests of the State and the Prince William Sound communities. He said it has nothing to do with whether he publicly released the data so it can be used in the prosecution of claims against the State. He said the decision to put his name on this document was a very informed one, represented by nearly 40 years of trial practice in Alaska. He stated he wanted to see the people of the State be able to take advantage of the restoration of resources before such a long period elapsed that there really wasn't any point in trying to restore them. He added that this represented a lot of hard bargaining with Exxon, and there was a lot of resistance to putting in the provision that the Legislature must approve the document.

Number 456

Rep. Navarre wanted to know whether the Legislature has any ability to negate the agreement. Mr. Cole replied that the Governor has clearly announced that if the Legislature does not approve the Consent Decree, the State will not proceed, and will withdraw from the settlement.

Rep. Kubina remarked that many people in the communities feel like they have been closed out of the negotiations and the results of the scientific data. Why does Mr. Cole feel so strongly that this is the best way for Prince William Sound to be restored? Mr. Cole replied that the basic issue is: Is it in the best interests of the State? Mr. Cole believed it was. He added that whether or not it is in the best interests of the State does not turn exclusively on the scientific data.

Number 494

Continuing, Mr. Cole said that in mid-January 1990, the State had spent at that time 18 months in the prosecution of its claims, which were broadly-based claims. At that time the State had spent

about \$20 million in prosecution of those claims. Also, at that time the federal government had not filed any claims against Exxon. In some ways one might say the State was 18 to 20 months ahead of the federal government in the prosecution of the civil claims. Mr. Cole said he thinks it is fair to say that if one looks at other similar cases it might take from 8 to 12 years to complete litigation. For example, the Dinkum Sands case has been in litigation for 13 years, and is not yet resolved.

Number 526

Rep. Donley arrived at the meeting at 1:10 p.m.

Mr. Cole said we should also bear in mind that by the time the case had gone through the Superior Court and Supreme Court, the likelihood of error in the record would be great because of the number and complexity of the issues. It would be almost impossible for a judge to try the case without error. There is a high percentage of reversal in cases in the Alaska Supreme Court which do not involve issues anywhere near as complex as this, or in an area of the law that is as unsettled as this.

Mr. Cole said another thing to consider is the expense to the State to prosecute the case. It could run \$12 to \$15 million per year. Over a period of six years, that would be \$90 million. He stressed that this area of the law is wholly unsettled. There have been only two or three cases dealing with the Clean Water Act. There are very few judicial or statutory roadmaps to follow. In addition, Exxon is almost an "institutional litigant." It can carry on this litigation almost indefinitely.

Mr. Cole remarked that he has been evaluating litigation for 40 years, and it is one thing he does well. To quote him, "You can look it up."

Rep. Kubina said he felt from the beginning that a settlement was the best way to go; however, he feels some of the terms of the settlement present problems. Mr. Cole, in explaining his views, stated that the real problem in the case from the State standpoint is "what natural resource damages does the State have the right to recover under the Clean Water Act or any private common law doctrine of a public resource trustee, separate and apart from the federal government?" This is the issue that had to be addressed before any evaluation of how much the state could be expected to recover. And, there are some very major problems.

TAPE 7, SIDE B
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One of the problems, for example, are the sea otters, which we know were damaged. The question is: Can the state recover for damage to the sea otters under the Marine Mammal Protection Act, or does

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tactically proceed with its litigation against Exxon without the federal government at its elbow? You know what Exxon would say. Exxon would say during the course of litigation when the state's witness is on the stand: "Object to that evidence. That recovery is held by the federal government under the Marine Mammals Protection Act." A similar problem arises concerning the loss of eagles, which is covered under the federal Bald and Golden Eagle Protection Act. Can the state recover for damage to the eagle population? Can the state recover for damage to the migratory waterfowl under the Migratory Bird Protection Act? It is a legal problem.

Further examples followed, and Mr. Cole read from the federal regulations under 40 CFR 300.605. At this time, the Chairman, quoting Mae West, interrupted Mr. Cole to say "I get your drift."

Mr. Cole then continued to give examples of the Secretary's trusteeship. In conclusion, Mr. Cole said as one evaluates how much we could recover, they had to evaluate the elements of recovery the state would be entitled to receive. If we had gone our own route, we would be faced with Exxon's objection to every one of these elements of recovery, saying those elements of the recovery are held by the federal government.

Rep. Kubina asked if the federal regulations stated that we need to keep our scientific data secret. Do we have to take the side of someone we are suing against the people of our state? He acknowledged that the settlement was complicated and there would be great problems in taking it to court; however, how do we help the citizens of Alaska through this settlement?

Mr. Cole replied that the only way restoration money would be made available to affected citizens would be if this settlement was approved. If the case is litigated, it would probably take ten years in court, and there would not be \$700 million available in the next ten years, and the people would suffer. He added that, hopefully, some resources would be restored naturally.

(Representative Navarre left the meeting at 1:30)

Representative Hudson said he appreciated the Attorney General's comments, but there are still lots of questions about the settlement for which the committee does not have answers.

Mr. Cole said that they (the administration) negotiated to get the maximum amount of money they could -- It is the art of the possible.

Representative Davidson wanted to know who drafted the agreements. Mr. Cole replied that he has probably read each agreement himself at least thirty times, and he knows each of the lawyers from the Oil Spill Section in Anchorage read them. He said he personally

Oil Spill Section in Anchorage read them. He said he personally cleaned up a lot of the language and spent a lot of time reviewing the agreements. The Exxon people also read the documents, and asked for changes, some of which we acceded to and some not.

Rep. Finkelstein inquired about the disclosure of information. Although he could understand the Attorney General's position, he felt it was reasonable that state residents wanted disclosure of all information on the settlement. Mr. Cole replied that the state gets sued several times a day by its residents. In the course of defending against those claims, the state pays money, and generates a "work product", comprised of expert opinion and legal research. Under the rules of civil procedure, we're entitled certain of those work products and materials. The State does that in every litigation it's involved in. He says he sees no reason that this case is different other than the fact that more state residents are suing the state than usual, from any other case with respect to opening up its work product. He said they will release information to the extent they can under the Rules of Civil Procedure.

Following up, Rep. Finkelstein said they passed legislation last year that would allow open access to information. His reading of that legislation is that this information (the scientific information) should be made public. He felt that someone could get access to it if they pursued the matter.

Mr. Cole said he is not saying it is unreasonable. However, he feels it is his statutory obligation under law to preserve and protect the state's legal rights and he is simply following the law, in his view.

Chairman Gruenberg said he understood the Attorney General has agreed to review the records to back up the \$72 million figure related to past State expenditures. Is that correct? Mr. Cole stated that he would get a report on that to the committee, perhaps by tomorrow.

Rep. Hudson asked if Mr. Cole thought it helped or hurt when the Governor announced the target figure. Mr. Cole said he felt it helped. Rep. Hudson observed that normally, one doesn't release the dollar amount early on during or before actual negotiations have begun.

Mr. Cole said he thought the art of settlement is to present in advance a figure that gets attention but does not drive the other party away from the table. That easily could have happened here. He said he thought they got Exxon's attention, but did not drive them away.

Chairman Gruenberg said he would like to go through the list of written questions. He asked if the state could still sue Exxon for violation of state criminal laws. Mr. Cole replied "yes." He

added that it does not intend to do so.

Chairman Gruenberg asked how long the statute of limitations would run on that. Mr. Cole said he did not know, but he told Exxon in writing that the state has no intention of suing criminally.

Chairman Gruenberg wanted to know if that would be binding on this and future administrations. Mr. Cole replied that it was a representation made in good faith. However, if he is relieved of his position, some other attorney general may want to change the state's representation.

In answer to Chairman Gruenberg's question, Mr. Cole stated that a representation was made by him as attorney general to Exxon that the state did not intend to sue Exxon. As long as he is the Attorney General, the State does not intend to sue.

Rep. Kubina asked when Mr. Cole gave those assurances to Exxon. Mr. Cole replied he did so before the settlement was signed.

Rep. Kubina remarked that newspaper articles indicate that the figure of \$1.2 billion was arrived at quite early in the negotiation process. Is that accurate? Mr. Cole said that is reasonably accurate. The first issue they addressed was: How much money is Exxon willing to pay?

Chairman Gruenberg read Question No. 3 which relates to paragraph 3 on page 3 of the Consent Decree:

"The Parties recognize that the payments called for in this Agreement are in addition to those described above. . ."

The Chairman asked if that phrase means that for purposes of the Consent Decree, the amounts recovered are not subject to Clean Water Act limitations.

Mr. Cole replied "no."

Chairman Gruenberg referred to Question No. 5 on the MASTER LIST OF ISSUES:

"Why are the natural resources damages of the state not separated from the natural resource damages of the federal government?"

Mr. Cole said that was because it was impossible to segregate those resource damages. The advantage to that joint arrangement is that we will avoid possible litigation over which government owns which resource. He said the State wanted to avoid that, and we did.

Rep. Hudson asked about natural resource damage standards and the

rights of municipalities to sue. Mr. Cole replied that this is a difficult legal question; however, third parties, including municipalities are free to pursue their claims against Exxon.

Chairman Gruenberg asked if all recoveries would have to come under the Clean Water Act. Mr. Cole replied, "no." He said recovery would not have to be entirely under the Clean Water Act. However this settlement is entirely under the Clean Water Act.

Rep. Phillips asked why the state chose to settle under the Clean Water Act. Was that most beneficial to the state? Mr. Cole replied "yes." He said the major element resulting from the spill is damage to natural resources of the area. We have some possible claims for lost revenues, but major damage is to natural resources.

As a matter of law the holders of those resources are the State and Federal governments. The problem is how to make the maximum recovery to restore those damages. He said it is his view that it is most effective to proceed under the Clean Water Act to avoid problems of a hassle with the federal government over who owns what rights. Under the arrangement in the settlement, the federal government agrees that the state has an equal voice in recovery and expenditures of the funds. It is one of the singular successes of this settlement. We have veto power over federal actions.

Rep. Kubina asked if there was any consideration given to this as a way of circumventing the legislative appropriation process. Mr. Cole replied "NO." He added that there are provisions in this agreement stating that the legislature must approve the settlement. This provision is something he fought very hard for.

Rep. Carney asked if Mr. Cole had a dollar estimate of the financial losses to fishermen in the communities. In reply, Mr. Cole posed the question: "Do fishermen hold rights to recover of does the state?" He added that it is a difficult economic problem.

Rep. Carney felt that there was a potential liability to these people who have suffered economic losses. He asked if they could sue the state. Mr. Cole Exxon may have already paid some of those private claims. He said fishermen have their own rights to sue and we hope they are successful.

Rep. Hudson pointed out that the issue of third party claims may extend beyond Alaska, Puget Sound fishermen for example.

Rep. Kubina said he would like to hear how Mr. Cole believes the state can facilitate helping Alaska citizens in settling the entire issue. Mr. Cole replied that they (third party claimants) should dismiss the claims against the state. It is the single best means to do that.

Chairman Gruenberg posed a question that he said was prepared by staff: Are Clean Water Act recoveries limited in terms of so many

will ask the question at a later time.

ADJOURNMENT

The Chairman adjourned the meeting at 2:05 p.m.

ATTACHMENTS TO MINUTES

Oil Spill Litigation Chronology (April 2, 1991)

Draft letter dated April 3 from Gruenberg to Judge Holland

Draft letter dated April 3 from Gruenberg to Charles DeMonaco

Letter from Congressmen Hertel and Studds to Dick Thornburgh, dated
March 26, 1991

Attorney General's Opinion dated April 2, 1991 re Authority of
Governor and Attorney General to Enter into Exxon Valdez
Settlement Agreement

April 17, 1991

M E M O R A N D U M

TO: Max Gruenberg, Chairman
House Special Committee on the
Exxon Valdez Oil Spill Claims Settlement

FROM: Chip Thoma

SUBJECT: Dropping of Felony Counts

I spoke with Mr. Richard Stewart at the break today about the felony charges. I told him I was disturbed that in the "Government's Memorandum in Aid of Sentencing" that the entire Introduction and Factual Background sections, pps. 1-6, related directly to the felony charges having to do with crew competency and safety violations by Exxon management; yet on P. 22 the government simply states that ". . .the decision (to drop charges). . .is one committed to the discretion of the prosecutors."

I related to him my concern that without the felonies pursued, the ability to reform these serious management flaws that compromise crew safety and competence are lost. He said he fully understood my position. I then related that the state's brief before the NTSB and subsequent testimony by Frank Iarossi regarding the monitoring of Joseph Hazelwood showed that large gaps in monitoring occurred and that paperwork without signatures and dates were produced by Iarossi at the 7/17/89 NTSB hearing. I told him it was the State's and my contention that this paperwork was fabricated to show monitoring, however, when non did occur. He said he was interested in any information along those lines.

His final statement was that ". . .in the course of negotiations, sometimes these things get dropped."

TO: Honorable H. Russel Holland

April 10, 1991

United States District Judge
U.S. District Court
222 W. Seventh Avenue, No. 4
Anchorage, Alaska 99513

RE: A 90 - 015 CR

FR: Theodore P. Thoma

#2 Marine Way
Juneau, Alaska 99801

RE: CRIMINAL PLEA BARGAIN PROCEEDINGS

concerning EXXON CORPORATION, EXXON SHIPPING, ALYESKA SERVICES

For the record, I am a self-employed environmental lobbyist and have been closely involved in Alaska resource issues for over 20 years. As such I was a chief proponent for the re-design of the Alyeska pipeline, for an all land route through Canada, and for full environmental safeguards to protect state and national/international waters connected with the eventual marine terminal and tanker route emanating from Valdez. As you are aware, the pipeline and marine route escaped full NEPA court review as a result of Congressional action instigated by the Alaska delegation in 1973. I still believe that NEPA review would have addressed the basic environmental safety and compliance responsibilities that were the root cause of the EXXON VALDEZ disaster, and subsequent inadequate response. My direct comments follow:

- 1) I oppose the agreement to drop the FELONY criminal charges against Exxon Corporation and Exxon Shipping Company (A90-015). I strongly believe that the pursuit of these grand jury charges and probable convictions are the only way to reform the inadequate staffing and competency levels aboard U.S. tankers that service Valdez and the West Coast to Panama. From the week-long live broadcast of the National Transportation Safety Board (NTSB) hearings in the summer of 1989, it was obvious that:
 - A) Mr. Frank Iarossi, former chairman of Exxon Shipping, knowingly cut back the number of crew members aboard the EXXON VALDEZ, compromising safety, stretching the physical ability of crew to competently man this carrier of dangerous, toxic material;
 - B) That Mr. Iarossi, Exxon Shipping, and Mr. Hazelwood, the ship's master, allowed Mr. KAGAN, a known incompetent, to serve aboard the EXXON VALDEZ, against the wishes and counsel of competent crew members who knew of his mental and physical problems, and caused KAGAN to steer the vessel through dangerous, ice-choked waters, resulting in the crash of the EXXON VALDEZ and resultant spillage of 11 million gallons of oil;
 - C) That Mr. Iarossi, Exxon Shipping, and Exxon Corporation knowingly allowed Mr. Hazelwood to operate the EXXON VALDEZ without monitoring his acute alcoholism, and in fact fabricated the small amounts of paperwork in Exxon files relative to Hazelwood's condition. These two reports were without dates or signatures, yet purported to show that monitoring of Hazelwood did occur;

Consequently, I believe that counts IV & V (A90-015) should be reinstated and litigated, and actively pursued by the federal government, as these circumstances were the BASIS of state testimony before the NTSB. The agreement to bring these charges for litigation by the federal government was done in lieu of applicable state laws covering crew safety and competence.

B. The Application of the Policy to Hazelwood

A review of Hazelwood's known dependency on alcohol starts with the "Individual Disability Report" date stamped by the Medical Department Exxon U.S.A. on May 14, 1985. Hazelwood Service Records, Exh. 5B. The President of Exxon Shipping Company testified that the Company discovered Hazelwood was undergoing or had completed an alcohol abuse program "just by chance" when an administrative manager, who was attempting to contact Hazelwood, was advised of his hospital treatment. Iarossi Tr. 921.

Exxon Shipping Company's chance encounter with the hospital which was treating Hazelwood for "drinking excessively, episodically" resulting in "familial and vocational dysfunction" (Hazelwood Service Records, Exh. 5B) suggests most strongly that Hazelwood was not intending to come forward voluntarily to his employer to take advantage of the rehabilitation program then offered by the Company.^{29/} Indeed, the timing of the "notification" to Exxon Shipping Company (i.e., after Hazelwood was entered into the rehabilitation program) indicates that Hazelwood was attempting to avoid advising his employer of his condition.

The ESC Policy states that employees who acknowledge their dependency and are willing to undergo rehabilitation will

^{29/} Exxon's Employee Health Advisory Program (EHAP) set out in Exhibit 5J was not in existence in 1985 although an informal employee assistance program was in operation and applied to Hazelwood at this time. Iarossi Tr. 921-922. Indeed, Hazelwood received certain benefits during the period of his sick leave. Hazelwood Service Records, Exh. 5B, p. 117.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

TO: Honorable H. Russel Holland

April 10, 1991

United States District Judge
U.S. District Court
222 W. Seventh Avenue, No. 4
Anchorage, Alaska 99513

RE: A 90 - 015 CR

FR: Theodore P. Thoma

#2 Marine Way
Juneau, Alaska 99801

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2) Additionally, I strongly believe that the MISDEMEANOR criminal charges against Exxon Corporation and Exxon Shipping Company are being settled far too cheaply for the great, extensive damages to wildlife over a 700 mile region. It is my understanding that the ALLIED CHEMICAL case was the largest, previous U.S. settlement for environmental damages, at \$13 million. However, this was also 10% of Allied's earnings for that year. EXXON's yearly SALES are over \$100 BILLION; their reported net, yearly earnings are \$5 BILLION; and their NYSE traded stock has gone up 13 points in the last two years, at a estimated value of \$1 BILLION per point. This huge corporation is in effect being given a pittance fine by the plea-bargain, and it in no way should be viewed as a properly negotiated fine for either the extent of damages or the worth of the corporation. Also, as you may be aware, Mr. Lawrence Rawl of Exxon has repeatedly stated to the press that the fines and settlement will in no way impair or harm his company, and that all costs will be immediately passed on the consumer in pump prices. Finally, the overall terms of the settlement, payments over ten years, are an affront to Alaskans and the nation as a whole; once Mr. Rawl 'passes on the costs', consumers will in effect be paying over and over for Exxon's corporate liabilities, while the corporation makes token payments for it's environmental assault on the nation's common resources.

3) Finally, I strongly believe that civil and criminal charges, both felony and misdemeanor, against Exxon, Exxon Shipping and ALYESKA should be reinstituted and pursued by the federal and state governments, based on the complicity, culpability and liability of Exxon and the owner companies of Alyeska to secretly plan non-compliance with terms of agreements struck with the federal and state governments to immediately respond and clean up ANY spill in Prince William Sound. The documents obtained and verified by U.S. Congressman George Miller amply demonstrate that collusion on the part of Exxon and Alyeska to ignore the existing contingency plan was commonplace, and an active topic of discussion among the owner companies in 1987-88, even to the point of written, internal memos that materials, personell and marine transport were not on-hand to address but the most minor spills in Port Valdez and Valdez Arm. The June, 1988 owners meeting of Alyeska in Phoenix, Arizona, as referenced by Stanley Factor, Vice-President of Arco Marine, Inc., states clearly the Alyeska HAD NO INTENTION of responding to a spill in Prince William Sound, except with dispersents that were not on hand, with no properly fitted aircraft to utilize them. On March 24, 1989, in the early am hours, one of the first calls made by Mr. Iarossi, upon hearing of the spill in Houston, was to Southern Air Transport of Miami, for a C-5 aircraft, specially fitted for dispersent application, to be airborne, fly to New Mexico to pick up the dispersent ("ADDS PACK") and proceed to Anchorage. As the record shows, dispersent was not on-hand in Alaska, the plane was in Miami. The Valdez personell were not trained or available, the barge was empty, and whatever small booms and skimmers on-hand were buried in snow. I term these circumstances as criminal acts on the part of Alyeska and owner companies who were far more interested in tanker turn-around times and under manning than taking any responsibility for the consequences.

In summary, I trust you take these points into consideration, and I do appreciate the opportunity to comment. The Alaska Legislature is holding daily hearings on these vitally important issues, and I hope you are able to see the wisdom in recommending rejection of these present settlement terms, as a judicial officer responsible for determining the fairness of the settlement for immediate and long-term damage to national resources.

Sincerely,



Theodore P. Thoma

B. The Application of the Policy to Hazelwood

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be offered the opportunity to do so free of fear of Company sanction. The Policy goes on to state that, if an employee request for rehabilitation is made after the discovery of a violation of the Policy, the Company may take disciplinary action, including termination. In other words, the opportunity for paid rehabilitation is lost under such circumstances. ESC Alcohol and Drug Use Policy, Exh. 5H, p. 2.

It is ESC policy to encourage employees to step forward and affirmatively seek help before a violation occurs.^{30/} However, there is no evidence that ESC questioned why Hazelwood had not come to it prior to secretly seeking treatment for his alcohol dependency. If, as the President of Exxon Shipping Company claims, Exxon Shipping Company has taken a tough stand on alcohol abuse (Iarossi Tr. 917), it would have been both reasonable and advisable for the Company to carefully question Hazelwood, who holds the highest ocean-going position within the Company, about his reasons for not confiding in the Company. If Hazelwood was called to Company headquarters in Houston, or if any senior manager directly conferred with Hazelwood about his problem, President Iarossi was unaware of it. Iarossi Tr. 924.^{31/}

^{30/} The process by which an individual voluntarily acknowledges alcoholic dependency is the first step on the often difficult road to rehabilitation. Individuals who are not prepared to admit their dependency are poor candidates for rehabilitation.

^{31/} It is reasonable to assume that Mr. Iarossi would have sought to uncover the basic facts about Hazelwood's alcohol dependency and the reactions of ESC to the discovery prior to testifying at the Board's well-publicized hearing.

In any event, the Exxon Shipping Company devised a system by which it apparently hoped it could monitor the activities of Hazelwood to insure compliance with the Company's Policy and to insure his continued participation with Alcoholics Anonymous, as recommended by Hazelwood's physician and as required by ESC. Hazelwood's Service Records, Exh. 5B; Iarossi Tr. 924, 926. However, the monitoring system devised by ESC was totally ineffectual and was doomed to failure at the very outset as ESC should have known. The supervisory system consisted of scheduled meetings with Hazelwood by two supervisors (the Fleet Manager and the Ship Group Coordinator) upon the return of Hazelwood's ship to the lower forty-eight states, usually in Long Beach or San Francisco. Iarossi Tr. 924, 927-928. No attempt was ever made by ESC to visit Hazelwood while he was in Valdez. Iarossi Tr. 927. Nor was there any attempt to verify whether Hazelwood continued to abstain from drinking during the six months of the year Hazelwood was off duty or to verify whether he attended the required AA meetings. Iarossi Tr. 926.^{12/}

Although Iarossi attempted to take credit for having consistently monitored Hazelwood "right up to his last voyage," the Company did so under a flawed program that caused Hazelwood to be observed by his supervisors (on a schedule known to Hazelwood) only 12 days out of 365 days a year. The opportunities to use deception or guile on the part of Hazelwood were legion.

^{12/} Hazelwood's schedule called for him to be at sea for six months and off duty for six months. Iarossi Tr. 927.

Indeed, the monitoring system was so ineffective that the fact that Hazelwood had his driver's license revoked because of a "DWI" (driving while intoxicated) conviction in New Hampshire in August of 1985 went completely undetected. So, too, did the revocation of Hazelwood's New York driver's license under a reciprocity program. Human Performance Factual Report, Exh. 2B, p. 5.

Not only did ESC design a "monitoring system" which could be easily defeated because of its uniformity and regularity, but ESC also failed to exercise any of the random monitoring and testing techniques expressly called for in ESC's formal Alcohol and Drug Policy. ESC policy provides that the Company has the discretion to conduct unannounced alcohol and drug searches of vessels in operation when the use of alcohol or drugs could create an unsafe condition, or when there is reasonable cause to suspect such substances may be present. ESC Alcohol and Drug Policy, Exh. 5H, p. 3. Although a random search of Hazelwood's quarters could have been conducted under this provision, no such random search was ever performed. Iarossi Tr. 928.

Formal ESC policy also provides that the Company may require employees to submit to medical evaluation or other testing where reasonable cause exists to suspect substance misuse. ESC Alcohol and Drug Policy, Exh. 5H. Although Mr. Iarossi dismissed the notion that ESC had cause to test Hazelwood (Iarossi Tr. 958), Hazelwood's prior history of alcohol abuse could have and should have been considered cause under the policy. Mr.

Iarossi's interpretation of the policy would unreasonably preclude ESC from testing Hazelwood or any other confirmed alcoholic employee, under the terms of the program.

With further regard to ESC's formal policy, the top company official in charge of its enforcement, Mr. Iarossi, failed to correctly understand its key provisions. One such provision states that an employee can be relieved of his or her duties if there are "observable physical signs of impairment," which include, among other signs, the smell of alcohol on the breath. Iarossi testified that, in addition to having the smell of alcohol on an employee's breath, the employee would also have to be found unfit for duty, before he or she could be relieved of duty. Iarossi Tr. 965-966. In fact, the Policy clearly states that:

In such instances [where observable physical signs of alcohol use are present] or where there is other reason to believe an employee's unfitness for work results from the use of alcohol or drugs, the employee should immediately be relieved of his or her duties. (Emphasis added.)

This provision is written in the disjunctive and states precisely that physical signs of use of alcohol (such as the smell of alcohol on the breath) are grounds for being relieved of duty irrespective of the employee's fitness for duty.

Perhaps the single most significant deficiency of the ESC Alcohol and Drug Policy, is that it totally fails to accommodate the situation where the problem individual is the ship's Master. Mr. Iarossi admits that the post-rehabilitation supervision of a Master is "more difficult." Iarossi, Tr. 1000.

While Hazelwood may indeed have believed himself to be the single most scrutinized ESC employee (Iarossi Tr. 997), the monitoring system's architecture permitted him to easily avoid detection.

Iarossi testified that the two Hazelwood monitors talked to other crew members in an attempt to corroborate Hazelwood's statements regarding his abstinence from alcohol. Iarossi Tr. 947. However, ESC has no formalized method of protecting crew members from possible retribution if they were to bypass the Master and report directly to senior management about some aspect of the Master's conduct or behavior. Id. Captain Deppe, with several years of Master experience on the line for ESC, rejected the notion that crew members would pass on to management derogatory information about a Master:

I can't imagine too many people who report over their immediate supervisor to someone else.

Deppe Tr. 1092. Deppe also stated that a crew member will not go around the chain of command:

. . . unless there is either a special relationship [to someone in senior management] or unless there is some protection mechanism set up. . .

Deppe Tr. 1093.

Deppe conceded there is no such protection system and that in this case, the surveillance techniques employed by ESC failed to detect the alcohol problem plaguing Hazelwood. Deppe Tr. 1095.

In short, the monitoring system ESC designed to insure Hazelwood was competent to hold a command position was flawed in two fundamental respects: first, it was incapable of detecting

any deviation of Hazelwood from required behavior, either on or off duty; and, second, no system existed which would allow a subordinate of Hazelwood to notify management of inappropriate behavior.^{33/}

The general ESC Policy was flawed in other significant respects. Clearly loaded for the question asked of him, Mr. Iarossi testified at the hearing that ESC had aggressively carried out a policy of random alcohol and drug searches on board its ocean-going vessels. Iarossi stated that thirty shipboard searches (a few based on suspicion, but the majority randomly selected) were conducted over a span of six and one-half years. Iarossi Tr. 917-918, 960. Iarossi also testified that 55 individuals were disciplined for violations of the Alcohol and Drug Policy and that 34 of the 55 employees were terminated, although five of these cases were arbitrated and the Company was ordered to rehire the employees in question. Iarossi Tr. 919.

The Sea Carrier Initiative Search Guidelines (Exh. 5I), representing an agreement between ESC and the U. S. Customs Service, provided for searches of Exxon Shipping Company vessels in foreign trade (such as Panama) and likewise resulted in vessel searches. Iarossi Tr. 919.

While the State of Alaska has no reason to question the technical veracity of these statements by Mr. Iarossi, they con-

^{33/} Aside from the whistle-blower protection issue, the confidential nature of the rehabilitation program (Iarossi Tr. 1009-1010) precluded subordinates from knowing of the problem and supplying management with information regarding Hazelwood's observable rehabilitation efforts.

trast sharply with the hearing testimony of the EXXON VALDEZ crew members. Five officers or unlicensed personnel were asked whether they had ever been searched while going aboard their assigned vessels or had experienced a ship-wide search for alcohol or drugs. All responded in the negative. The officers and crew testifying have been employed by ESC, cumulatively, over a span of 38 years--and yet, not a single employee could testify that their ships, their quarters or their person had ever been subjected to a search called by ESC.^{34/}

The dangers associated with substance abuse cannot be imparted to safety-related personnel by the mere sending of a form letter to their residences, as was done by ESC. Iarossi Tr. 968. The battle to control the ravages of alcohol and drug abuse must be fought every day. On this front, the policy of ESC was merely to react to situations as they became known to it or to cause ineffective searches to be made, although never in a manner to uncover alcohol or drug abuse of the single most important crew member and the one to whom ESC entrusts the safety of the

^{34/} See testimony of the following crew members:

<u>Name</u>	<u>Years Employed by Exxon</u>	<u>Search Performed</u>
Jerzy Glowacki	19 years	No--Tr. 870- 871
Robert Kagan	15 years	No--Tr. 348
Maureen Jones	1.5 years	No--Tr. 311
Paul Radtke	1.5 years	No--Tr. 277- 278
Harry Claar	1 year	No--Tr. 224

crew, the ship, the cargo and the environment--the Master. Exxon Shipping Company's failure to carry out a forceful, or even a marginally adequate, alcohol and drug abuse effort, or to effectively monitor Hazelwood after May 1985 for alcoholic recidivism, contributed to the probable cause of the accident.

C. Hazelwood's Judgment Was Impaired by
Alcohol Before and After the Grounding

The failure of Exxon Shipping Company to properly monitor the activities of Hazelwood resulted in Hazelwood being able to engage in uncontrolled intake of alcoholic beverages only hours before the departure of the EXXON VALDEZ at 2121 on March 23, 1989. The physical evidence clearly indicates that approximately ten hours after the grounding of the ship, Hazelwood's blood alcohol concentration was .061%. Back-calculating to the time of the grounding, Hazelwood's blood alcohol concentration percentage was estimated to have been .22%. While it is possible that Hazelwood may have consumed alcoholic beverages between the time the ship left Valdez and the grounding, or, between the time of the grounding and the time blood was taken from him at approximately 1050 on March 24, the weight of the evidence is to the contrary. First, with the exception of two empty Mousy beer bottles, there is no physical evidence that Hazelwood consumed any other alcoholic beverages while on board the ship. Second, there is considerable direct testimony that Hazelwood had several rounds of drinks while in Valdez on the afternoon and evening of March 23, 1989. Third, knowing Coast Guard officers would be coming on board the vessel (they arrived

M E M O R A N D U M

TO: Special House Committee on
Exxon Valdez Settlement

FROM: Chip Thoma

DATE: April 16, 1991

RE: Federal Felony Charges proposed to be dropped
under settlement

Here is some background on helmsman KAGAN and violations of vessel manning standards aboard the Exxon Valdez, which eventually were the basis of federal grand jury indictments against Exxon.

BEFORE THE
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C.

In the Matter of the Investigation of the	:	
Accident Involving the Grounding of the	:	Docket No.
Tankership EXXON VALDEZ in Prince William	:	DCA 89 MM 040
Sound, Alaska, on March 24, 1989	:	

PROPOSED PROBABLE CAUSE, FINDINGS
AND RECOMMENDATIONS OF THE STATE OF ALASKA

Comments with respect to this document should be addressed to:

Robert E. LeResche
Oil Spill Coordinator
STATE OF ALASKA
124 West 5th Street
Juneau, Alaska 99811
(907) 465-2062

July 17, 1989

an average knowledge of ship handling characteristics. In a somewhat later review (for the period December 11, 1987 through January 12, 1988), Cousins was rated by Hazelwood as having excellent navigational skills and only an average knowledge of ship handling characteristics. Id.

C. Robert M. Kagan - AB

Robert M. Kagan is 46 years old and has been employed by the Exxon Shipping Company for thirteen years. ESC produced nine "Employee Evaluation and Development" forms for Kagan, each covering one- to two-month periods from February 1986 through February 1989. The evaluation forms uniformly characterize Kagan as capable of satisfactorily performing more menial shipboard tasks (tank cleaning, painting), but as having difficulty in executing seaman-related jobs which call for a higher degree of technical knowledge. Kagan Service Records, Exh. 5D. Kagan consistently required a good deal of supervision. Kagan was reported as having a short attention span and tending to easily get bogged down in trivial matters, even to the point of compromising safety. The last evaluation of Kagan's performance (for the period January 20, 1989 through February 14, 1989) stated that even though Kagan was sailing as an AB, he needed to improve his overall performance and he "lacks the necessary skills to do the AB's job." This evaluation also noted that Kagan required too much supervision to be a productive crew member. Despite this negative evaluation, ESC permitted Kagan to continue to serve as an AB. Consequently, on March 24, Kagan was

on watch as helmsman while the EXXON VALDEZ was in the ice-laden and confined waters, even though Kagan was "nervous" at the prospect of being the helmsman in Prince William Sound. LeCain Tr. 775-776.

D. Maureen C. Jones - AB

Maureen Jones is 24 years old and has been employed by the Exxon Shipping Company since September 1987. She is a graduate of the Maine Maritime Academy. ESC produced eight evaluations of Jones which uniformly rate her as a capable and competent AB who generally exceeds the requirements of the position. Jones Service Records, Exh. 5E. From the evaluations provided, it appears Jones was an energetic member of the crew who was interested in advancing to Mate and higher. In her effort to achieve advancement, Jones was eager to take on overtime tasks. It appears that Jones' interest in a career at sea and in advancing to higher positions strongly influenced those officers who evaluated her.

Other EXXON VALDEZ officers possessed various licenses as set forth in Exhibit 2B. This Exhibit indicates that the Board investigators would be reviewing Coast Guard and Merchant Mariners' documents to assess the level of experience of the ABs. As of the date of this submission, the State has not received any such further NTSB analysis.

Alyeska did not perform its duties consistent with the plan on the morning of the grounding. This failure of performance was not the result of any weakness in the State approved plan. Mr. Kelso testified that, with the benefit of hindsight, no changes to the Contingency Plan would have rectified the mistakes made by Alyeska in its negligent performance under the plan. Kelso Tr. 1169.

VIII. VESSEL MANNING STANDARDS

A. Coast Guard Manning Level Statutes and Requirements

One of the significant issues raised by the grounding of the EXXON VALDEZ concerns the manning levels of tanker vessels. The EXXON VALDEZ had issued to it a U. S. Coast Guard Certificate of Inspection which required a minimum of fourteen officers and crew (fifteen if a radioman was required by FCC regulation),^{47/} excluding stewards. The EXXON VALDEZ was required to and did carry a radioman. In addition, two stewards and two oilers were on the journey from Valdez on March 23, 1989, for a crew of twenty.

Section 3309 of Title 46 of the United States Code requires the Coast Guard to issue tank vessels Certificates of Inspection, the terms and conditions of which must be observed by the ship operators. Among the limitations to be placed in the Certificate of Inspection are minimum manning levels. 46 U.S.C. § 8101-8105; 46 C.F.R. § 15.101-15.915. The Coast Guard regula-

^{47/} The FCC requires a licensed radioman when the vessel is over 300 gross tons.

tions do not specify, and the Coast Guard has not established, standards of manning levels for merchant ships. 46 C.F.R. § 15.501-525; § 15.801-915; Grady/Barton/Steen Interview, Exh. 10E, p. 1. According to the Coast Guard, the manning levels established for each ship are determined on a case-by-case basis. The "minimum crew level" specified in the Certificate of Inspection is defined by the Coast Guard as the crew complement that cannot be further reduced and still provide for the safe operation of the vessel. Id.

The specific job-by-job manning level guidelines are set forth in 46 C.F.R. § 15.801 et seq. A vessel the size and displacement of the EXXON VALDEZ is required to have one master, §15.805, three licensed mates, §15.810(a)(1) and a chief engineer, §15.820(a)(1). The Coast Guard determines the overall manning requirements by setting the number of assistant engineers and able seamen, based on (1) the size and type of vessel, (2) the installed equipment, (3) the proposed routes of operation, (4) the cargo carried, (5) the type of service of the vessel, (6) the degree of automation, (7) the use of labor saving devices, and (8) the organizational structure of the vessel. 46 C.F.R. § 15.501(b), § 15.825, § 15.840. Additionally, the FCC requires vessels over 300 gross tons, such as the EXXON VALDEZ, to have a licensed radio operator. 47 U.S.C. § 353, 47 C.F.R. 80.159(b).

Any deviation from the manning levels set forth in a vessel's Certificate of Inspection renders the vessel without legal authorization to operate. 46 U.S.C. § 8101(d), 46 C.F.R.

§ 15.515(a). To effect a change in the manning level, requests must be made by the master or agent of the vessel to the Coast Guard pursuant to 46 C.F.R. § 15.505, and such changes, once approved, must be endorsed on the Certificate of Inspection by the Coast Guard. 46 C.F.R. § 31.15-1(a).

B. Establishment of Manning Levels for
the EXXON VALDEZ

Exhibit 10G contains a series of correspondence and memoranda relating to the ESC request to the Coast Guard to reduce the manning levels for both the EXXON VALDEZ and its sister ship the EXXON LONG BEACH. The culmination of this correspondence is a copy of a USCG letter dated May 27, 1988, to Paul Myers of ESC, issuing amended Certificates of Inspection authorizing reduced manning levels and the operation of unattended engine rooms. Reduced Manning Correspondence, Exh. 10G, p. 21-22. The authorizing letter also approves Exxon's proposal to implement a Maintenance Department on both vessels. Although this Coast Guard approval is granted by letter dated May 27, 1988, the Certificate of Inspection for the EXXON VALDEZ reproduced in Exhibit 3A is dated November 18, 1988. It cannot be determined from the record what, if any other, manning level changes were made to the Certificates of Inspection in the period from May to November. The Certificates of Inspection set out in Exhibit 3A reflect the operation of a Maintenance Department, although, according to the Third Mate, the Maintenance Department had been disbanded for approximately one year prior to the grounding. Cousins Tr. 25. ESC's failure to adhere to its Cer-

tificate of Inspection is a violation of 46 U.S.C. § 3309.

The Coast Guard's approval of reduced manning levels for the EXXON VALDEZ was the product of bureaucratic misdirection. It appears from Exhibit 10G that the Coast Guard inadvertently issued to the EXXON VALDEZ a reduced manning Certificate of Inspection without first having properly completed the standard Coast Guard review process. The process requires approval of the local Coast Guard field office (Officer in Charge of Marine Inspection (OCMI)) and the Coast Guard Merchant Vessel Personnel Branch (MVP). Grady/Barton/Steen Interview, Exh. 10E, p. 2; Flyntz Tr. 1025. In the case of the EXXON VALDEZ, the MVP was never initially asked to review the decision of the OCMI to reduce the EXXON VALDEZ manning levels, which had been inadvertently authorized by the OCMI. Vessel Manning Correspondence, Exh. 10G, p. 13. Consequently, the Coast Guard, which was in the process of evaluating ESC's request to reduce the manning level of the EXXON LONG BEACH, advised Exxon that its determination on the EXXON LONG BEACH would control both vessels. Id. ESC apparently agreed with this approach and submitted additional documents supporting its request for reduced manning levels of the EXXON VALDEZ and EXXON LONG BEACH, Id., pp. 15-18. This additional data appeared to satisfy the Coast Guard, which ultimately issued amended Certificates of Inspection to both vessels. Id.

C. The Exxon Shipping Company Approach
to Manning Levels

The reduction in the manning levels of the EXXON VALDEZ is consistent with the policy of ESC to reduce manning on all its major vessels to minimum levels and to utilize its licensed and unlicensed crew in as flexible a manner as possible and as a cost savings device. Iarossi Tr. 892-894.

In a paper titled "Surrendering the Memories" dated June 1988, Mr. Iarossi stated that it is ESC's policy to reduce by the year 1990 its standard crew complement to sixteen on its fully automated diesel powered vessels (such as the EXXON VALDEZ), down from twenty in 1984.^{48/} While Iarossi notes that other ships, mostly foreign flag ships, have successfully operated at such low crew levels, the paper makes little mention of considerations of ship safety or crew fatigue. By focusing the crew manning debate solely on the issue of economics, ESC does a disservice to the public.

The lengths to which ESC has gone in pursuit of its economic goal of crew reduction are recorded in several other manning-related documents. These documents reflect the fact that Exxon pursued a demanning and crew flexibility strategy designed to maximize cost savings. It as well appears that the decisional criteria employed by the Coast Guard in analyzing demanning re-

^{48/} The State of Alaska requested this and other manning-related documents accompany the record in this investigation. See letter of Robert E. LeResche to L. A. Colucciello dated June 9, 1989, copies (with enclosures) of which were served on all parties.

quests does not include crew fatigue, except for a cursory analysis of crew overtime records. Grady/Barton/Steen Interview, Exh. 10E, p. 1.

ESC was apparently all too aware of the weight the Coast Guard placed on ship overtime levels. As a result, ESC, by internal direction, instructed its masters to manipulate overtime levels to reduce them to "zero" so as to better justify to the Coast Guard the elimination of all unlicensed crew from the Engine Department.

Three internal Exxon memoranda, all from S. W. McRobbie to various ESC ship masters, orders the masters to purposefully reduce overtime in order to satisfy Coast Guard overtime concerns. In one memo, McRobbie states:

When the Engine Department shifts to day work, it is imperative that Engine Department unlicensed overtime be essentially nonexistent. . . .

because:

. . .the UMS [unmanned engine room status] diesel ships have already had their initial demanning requests denied due to the volume of unlicensed engine room overtime, regardless of type.

ESC Memoranda from S. W. McRobbie, undated.

In another memo, McRobbie states:

Yet in order to establish the type of overtime pattern which will demonstrate to the U.S.C.G. that the vessel can be safely operated without the QMED ratings, you must strive to control the amount and type of overtime used by these routings.

ESC Memorandum from S. W. McRobbie to Captain/EXXON BAYTOWN, October 25, 1988. In yet another memo, McRobbie states:

Whereas your vessel is earmarked for . . . UMS approvals. . . and QMED demanning when the UMS is achieved, we need to immediately begin closely allocating and managing all Engine Department overtime.

The goal is to closely control all operational overtime and extra manpower which will have a direct bearing on how the Coast Guard will assess manpower requirements for safely operating as a UMS vessel.

This heavy-handed attempt to manipulate the facts regarding manning levels is indicative of ESC's cavalier approach to manning levels.

ESC's deliberate manipulation of overtime records for the purpose of gaining Coast Guard approval has fortunately been counteracted. According to the senior staff of the Coast Guard Office of Vessel Manning, it has gone to the extraordinary lengths of requiring ESC masters and chief engineers to warrant to the Coast Guard that overtime records submitted as demanning justification are, in fact, "representative" of normal overtime activity and not an artificially low level as ordered by management. Grady/Barton/Steen Interview, Exh. 10E, p. 4. The NTSB should recommend that the Coast Guard review any decisions authorizing lower manning levels or unmanned engine room status to insure the data supplied by ESC was not manipulated solely to gain Coast Guard approval of its cost-savings requests.

Other serious allegations have recently been pressed by Exxon's Seamen's Union regarding both Exxon demanning strategies and Coast Guard approval procedures as reflected in Union documents which Alaska by its letter dated June 7, 1989 requested accompany the record. While Alaska has no desire to inject it-

self or the Board into any industrial dispute, the Union's letter dated March 7, 1989, raises issues the NTSB has wisely agreed to address in the interest of safe shipping.

The NTSB Interviews of John Hillman and John Spencer, two of the six members of the Board of Governors of the Exxon's Seamen's Union, raise a host of manning and safety issues. For example, Hillman makes a strong case that Exxon manipulated overtime records solely to justify the ESC's demanning requests. Hillman Tr. 14-19. Hillman and Spencer also explain that, by making officers part of management, Exxon has made officer overtime impossible to document, and that work previously performed by unlicensed personnel (often on overtime) is now being accomplished by officers with no overtime being recorded. Hillman Tr. 12-13; Spencer Tr. 10. Hillman notes also that, in addition to the almost daily overtime Exxon's crews are asked to work, ESC has extended their tour of duty from 60 days to 90 and 100 days, thereby further exacerbating the crew fatigue factor. Hillman Tr. 22,39. Hillman testified that ESC has refused to come to terms with the Union because of its insistence that the Union agree to demanning levels the Union believes are inherently unsafe. Hillman Tr. 40-41. Hillman also raised a new issue involving a recent change in ESC procedure, which requires that while in port or during lightering operations a minimum crew of eight--four officers and four unlicensed (two of which must be ABs)--must remain onboard the vessel in case of emergency. With a reduced complement of AB's, and given routine watch standing

requirements, this new ESC directive requires the AB's be on board or on watch, thereby further compounding the crew fatigue factor. Hillman suggests, with considerable logic, that this new directive is indicative of the need for increased manning levels. Hillman Tr. 48-49.

Alaska believes it to be in the public interest and the national interest that the U. S. tanker fleet be properly crewed and that manning levels not be based solely on owner/operator cost or competitive considerations, as Exxon approaches the issue.

D. The Relationship Between Manning Levels and Safety

The question of crew manning level is not just an economic issue. It is obviously inextricably interrelated with the core concept of shipping safety. If manning levels are pushed to unreasonably low levels, then crew workloads increase, as does crew fatigue. Inattentive or exhausted crew members do not work at peak efficiency. The Coast Guard, recognizing this fact, has underwritten a study of safety and its relationship to reduced manning levels. The Study is titled "Shipboard Crew, Fatigue, Safety and Reduced Manning." Grady/Barton/Steen Interview, Exh. 10E, p. 4. The interview summary stated that the findings of this and another study titled "Effect of Smaller Crews on Maritime Safety" will be incorporated in the Coast Guard reduced manning decision process "in the future." Id. In other words, at least up until now, the decisional criteria used by the Coast Guard to approve reduced manning requests placed more emphasis on

the availability of automation and labor-saving devices (46 CFR § 15.501(b); § 15.825 and § 15.840) than on basic safety considerations.

E. Crew Duty Time Limitations

Although they appear to be mainly honored by ESC in the breach, the Congress has established limits on the time officers and crew can continuously be on duty or at work. As these rules relate to the EXXON VALDEZ, they provide that:

- (A) An owner, operator or master may not permit an officer to take charge of the deck watch on a vessel when leaving or immediately after leaving port if the officer has not been off duty for at least six hours within twelve hours immediately before the time of leaving.
- (B) A licensed individual or a seaman may not be required to work more than eight hours in one day except when needed for
 - (1) maneuvering, shifting the berth of, mooring or unmooring the vessel;
 - (2) performing work necessary for the safety of the vessel, its crew or cargo;
 - (3) saving life on board another vessel in jeopardy;
 - (4) performing fire, lifeboat, or other drills in port or at sea

Captain Deppe was asked how ESC insured adherence to the law requiring at least six hours of rest for watch officers within the twelve hours prior to getting underway. Incredibly he responded that "We [ESC] don't have any program to give six hours of rest to any deck officer before we get underway." Deppe Tr. 1096. Yet, Mr. Flyntz, Assistant Chief of Merchant Vessel Personnel for the Coast Guard, testified that the Coast Guard relies