

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672

1930 SCOMM 76: HOUSE SPEC. COMM. EXXON VALDEZ OIL SPILL. . 1991-92

147

4/16 Heavy (pm) contd

6/21/89 Heavy letter
only "6" modem means available

his letter (doesn't know whether sent)

Asst AG Richard B Stewart
Gen Counsel ~~Norm~~ ^{Thos} Campbell - lead Tee

Asst AG Stewart
Gen Counsel Campbell

General responsibility as steward

Criminal patterned & judge said no
Rixon suggested plan agreement
US said to view crim & civil as "functionally
related", but judge said "no".

public will have input into regulatory
(Tee ship) process.

Their authority ^{to} is limited by CIOA. Could
only otherwise put Federal funds into US Treasury.

100 m is far greater than any other fee in evidence
Feds drafted

Wheat
Hester
Kuhin
Amarante
Horton
Halligan
Mo
Hudson
Chiff
Gibson
Mo
Sill

4/23 Greg Eubank
present value $\frac{1}{2}$ B.

value $\$3-8$ B

available $\$B$ the $\frac{1}{2}$ B settlement

3-5 B (probably on higher ^{end of} range)

Cases settled 25-40%

lower $25(25) \times 3 B =$

higher $40(40) \times 8 B = 3.2 B$

pre top of present settlement $500 + 150 = \underline{650 \text{ mil}}$

plus reimb state expenses.

700 mi

$\frac{700}{570}$ reimb for expenses

SFPay Keppan recovery $\$50/\text{gal}$
Chewer hyper

Naamre

subs

tapes

shareholders

1. We are heading in direction of rejecting unless
- a. release of state science, subject to State est's privilege
 - b. lump sum
 - c. Committee to disburse
 - ~~d. other minor issues -~~
~~to state taxes~~
 - d. resolution of Const'l problem
 - e. Minor issues
 - tax (Sato)
 - clarify 3d Party rights
 - ~~new~~ mandatory citizens advisory board
 - Fish enhancement tax

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EXTRA
FILE
CRIMINAL
CASE

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

EXXON CORPORATION; EXXON SHIPPING
COMPANY; ALYESKA PIPELINE SERVICE
COMPANY; AMERADA HESS PIPELINE
CORPORATION; ARCO PIPE LINE
COMPANY; EXXON PIPELINE COMPANY;
MOBIL ALASKA PIPELINE COMPANY;
PHILLIPS ALASKA PIPELINE CORPORA-
TION; BP ALASKA PIPELINES, INC.;
UNOCAL ALASKA PIPELINE COMPANY
and the T/V EXXON VALDEZ, in rem,

Defendants.

Case No. A91-082 Civ.

RESPONSE OF ALYESKA
PIPELINE SERVICE COMPANY
TO PUBLIC COMMENTS OF
CONGRESSMAN GEORGE MILLER

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ACE 417672

Congressman George Miller has submitted a letter to the Court, we assume as a public comment on the proposed Consent Decree. In it, he makes three principal points: (1) Alyeska Pipeline Service Company ("Alyeska") was aware that it could not prevent environmental damage if a major spill occurred in Prince William Sound, but did not disclose this fact, thereby misleading the State and other regulators; (2) Alyeska did not have the necessary equipment available at the time of the EXXON VALDEZ grounding; and (3) Alyeska had "secretly decided," prior to the EXXON VALDEZ grounding, that it would not respond to an oil spill in Prince William Sound.

We respectfully submit that Congressman Miller is wrong on each count. First, it was clearly stated in Alyeska's 1987 Oil Spill Contingency Plan ("OSCP"), and well known to the State and other regulators, that despite the best efforts of Alyeska and the ship owner, a major oil spill in Prince William Sound would result in significant environmental damage.

Second, Alyeska had available all of the equipment identified in the OSCP and responded in accordance with the OSCP. Third, as Alyeska's response to the EXXON VALDEZ grounding demonstrated, there was no decision on Alyeska's part -- secret or otherwise -- not to respond to oil spills in Prince William Sound.

It also is significant that the issues raised by Congressman Miller's letter have previously been aired and fully

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considered in public hearings, including hearings conducted by the National Transportation Safety Board ("NTSB"), the Alaska Oil Spill Commission, the General Accounting Office, and Congressman Miller's own Subcommittee on Water, Power and Offshore Resources of the Committee on Interior and Insular Affairs. For example, the NTSB heard testimony by ADEC Commissioner Kelso that he felt the OSCP contemplated a cleanup of the EXXON VALDEZ oil spill within 72 hours, a position quite similar to that espoused by Congressman Miller. Yet, the NTSB flatly rejected this interpretation. The NTSB correctly observed that the OSCP stated that in the event of a major spill in Prince William Sound, a long-term cleanup of the beaches would be required.¹

1. THE LIMITATIONS ON ALYESKA'S RESPONSE
CAPABILITY WERE PLAINLY DESCRIBED AND WELL-
KNOWN TO THE REGULATORS.

It has long been known that a major oil spill in Prince William Sound could cause substantial impact on the marine environment. In the 1972 Final Environmental Impact Statement for the Proposed Trans-Alaska Pipeline ("EIS"), for example, the Department of the Interior described the consequences of a major marine oil spill as follows:

¹ National Transportation Safety Board Marine Accident Report, PB90-916405, NTSB/MAR-90/04 ("NTSB Report"), at 150.

Present state-of-the-art equipment and techniques for containing and recovering spilled oil can recover less than 20 percent of oil spilled. Thus, unless extraordinary advances in oil containment and recovery techniques occur, almost all of the oil spilled by the tanker system would constitute an adverse impact on the marine ecosystem.

EIS at 224-25.

In the OSCP, Alyeska reiterated that significant environmental effects would result from a major oil spill in Prince William Sound. For example, under conditions assumed to be ideal for cleanup purposes, Alyeska described the anticipated response to and effect of a hypothetical 4,000-barrel spill in Prince William Sound.² OSCP at 3-50 to 3-53. In this hypothetical scenario, 1/60th the size of the EXXON VALDEZ spill, Alyeska suggested that nearly seven miles of beach would be heavily oiled, that only 1,000 barrels of oil would be collected through the use of skimmers and other oil spill containment equipment, and that the cleanup operation would last for approximately two months. Id. Alyeska also indicated that the

² The portion of the OSCP describing the hypothetical 4,000-barrel spill scenario is attached hereto as Exhibit A.

cleanup efforts would require assistance from private commercial vessels, oil spill cooperatives such as Cook Inlet Response Organization ("CIRO") and Alaska Clean Seas, private oil spill response companies, dispersants contractors, and possibly the U. S. Coast Guard Pacific Strike Team. OSCP at 3-51. Alyeska stated that a crucial element of its response to this hypothetical 4,000-barrel spill would be the use of dispersants, which would require approval of the government's on-scene coordinator before application could begin. OSCP at 3-51 to 3-53. As Alyeska noted, this scenario "presumed a dispersant decision is made soon enough to make application feasible." OSCP at 3-53.

Alyeska's OSCP also described the response to a hypothetical 200,000-barrel spill in Prince William Sound.³ OSCP at 3-54 through 3-56. This hypothetical scenario was again premised on ideal conditions for oil containment and cleanup. OSCP at 3-54.⁴ Yet, as Alyeska observed in its

³ The portion of the OSCP describing this hypothetical 200,000-barrel spill is attached as Exhibit B.

⁴ The seas were assumed to be calm, the winds moderate and the weather mild. The spill was assumed to occur at 6:00 a.m. on the longest day of the year, so that maximum daylight would be available during the initial response. OSCP at 3-54. By contrast, the conditions Alyeska encountered in responding to the EXXON VALDEZ spill were much less favorable. The spill occurred in the middle of the night, the days were short, the temperature was cold, and the snow was deep. Moreover, in less than 72 hours, a severe storm struck, forcing the fleet of response vessels to seek shelter.

OSCP, even under these ideal conditions the response would require the use of private commercial vessels and third-party aircraft, and the assistance of the U. S. Coast Guard Pacific Strike Team, all oil spill contractors in the State of Alaska, local oil spill cooperatives such as CIRO and Alaska Clean Seas, the Association of Petroleum Industry Co-op Managers, the International Bird Rescue Research Organization, and others. Id. Furthermore, as Alyeska pointed out, the effectiveness of a response to such a large spill would be largely dependent on the timely and effective application of dispersants. OSCP at 3-54 through 3-56.⁵

Alyeska explained that, even under ideal conditions, all available means of response would not be able to recover most of the oil before it impacted the shorelines. OSCP at 3-56. Alyeska went on to state that a "long-term cleanup of the spill on the various beaches of Prince William Sound" would, of course, be necessary. Id. In sum, the OSCP clearly described that a hypothetical 200,000-barrel spill, even under

⁵ The on-scene coordinator for the EXXON VALDEZ spill withheld approval for the full scale application of dispersants until more than 48 hours after the spill, apparently in response to objections by State officials.

ideal cleanup conditions, would result in significant environmental impact.

Moreover, the State and other regulators were well aware of the limitations of Alyeska's OSCP and understood that a major spill in Prince William Sound would have significant adverse consequences in the marine ecosystem. Although the evidence supporting this conclusion is too voluminous to cite here, one example should suffice to rebut accusation that Alyeska misled the State into believing that it could contain 200,000 barrels within 72 hours and prevent the oil from impacting the beaches.

As part of the Alaska Oil Spill Commission's investigation of the EXXON VALDEZ oil spill, an investigator for the Commission, Allan Adasiak, interviewed Paul O'Brien. From July of 1982 until February of 1989, Mr. O'Brien was the manager in charge of ADEC's oil pollution control program. In that capacity, he was responsible for the review of all contingency plans submitted to the State. Thus, Mr. O'Brien had oversight responsibility for the State's review of Alyeska's 1987 OSCP.

Mr. O'Brien clearly understood that Alyeska's OSCP did not contemplate the capability to eliminate environmental damage from a major oil spill in Prince William Sound as he candidly stated in response to Mr. Adasiak's questions:

. . . Even in hindsight, I think it is important for people to realize that we never required nor did we ever intend to require that Alyeska have the on-site capability to deal with a catastrophic event. That is an EXXON VALDEZ type of spill. We expected them to have the ability to deal with the more common, smaller operational spills: the 10 barrel, the 100 barrel spills, not the tens of hundreds or tens of thousands of barrels.

. . .

I would not require, even now, Alyeska to have that on-site -- and I keep stressing on-site -- hardware capability to deal with a 10 million gallon spill. No, I would not. Not unless it was a decision, a policy decision made above my level. That should be the place. I would say it is a valid policy call to make as to whether you have an Alyeska with that kind of capability, but you don't, under DEC's current regulations at least, there is no requirement that they have on-site capability to deal with the catastrophic event. So, in retrospect, no, I would still not require that unless it was a policy call made at much higher levels.

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Quite clearly, then, the State of Alaska understood, and any reader of Alyeska's OSCP should have understood, that Alyeska could not prevent environmental harm from occurring in the event of a major spill in Prince William Sound.

2. ALYESKA'S RESPONSE AND ITS EQUIPMENT
AVAILABLE FOR RESPONSE WERE IN ACCORDANCE
WITH THE OSCP.

The OSCP lists various items of oil spill response equipment that Alyeska would have available in the event of an oil spill. OSCP at 3-57. All of this equipment was available at the time of the EXXON VALDEZ grounding. See, e.g., Testimony of Theo Polasek before the Alaska Oil Spill Commission, Vol. II at 30-46 (August 31, 1989). As Mr. Polasek testified, "We had our equipment deployed, we had our boom out, and we had done what we promised to do." Id. at 41. The contention that Alyeska did not have the required equipment available at the time of the spill is incorrect.

Congressman Miller has also suggested, however, that Alyeska did not deliver its equipment to the scene of the spill as promptly as it suggested it might in one hypothetical scenario. Again, we must respectfully disagree with Congressman Miller.

As noted above, the difference between the actual event and the hypothetical scenario was, literally, the difference between night and day. It is not surprising that the actual delivery of equipment took longer under adverse conditions of winter, cold and darkness than under ideal conditions. Alyeska's performance must be judged in light of the actual circumstances, not against a hypothetical ideal.

Furthermore, in the hypothetical scenario it was assumed that there was no risk of the loss of the tanker or additional cargo and that containment would be the first priority. OSCP at 3-54. In the instant case, however, the Coast Guard and others at the scene quickly determined that the EXXON VALDEZ was potentially unstable and its remaining cargo of some 43 million gallons of oil was in jeopardy of spilling. Thus, the first priority became lightering, not containment. See, e.g., Alaska Oil Spill Commission, Vol. II at 34-35 (August 31, 1989); NTSB Report at 145.

In sum, the time required for Alyeska's response equipment to arrive on the scene was reasonable under the circumstances and consistent with the OSCP.

Furthermore, had Alyeska been able to respond more quickly, as Congressman Miller contends it should have, the consequences of the spill would not have been significantly

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ameliorated. As the NTSB concluded, "The 10-hour loss [of time] had no material impact on the cleanup because of the size of the spill." NTSB Report at 145.

3. ALYESKA NEVER DECIDED NOT TO RESPOND TO
A MAJOR OIL SPILL IN PRINCE WILLIAM SOUND.

Congressman Miller alleges that Alyeska's owners had secretly decided in advance of the EXXON VALDEZ grounding that Alyeska would not respond to spills in Prince William Sound. This contention is most readily refuted by the fact that Alyeska did respond to the EXXON VALDEZ grounding, which of course took place in Prince William Sound. To the extent, the ARCO Marine telex attached to Congressman Miller's letter, may be read as reporting that Alyeska would not respond to spills in Prince William Sound, it is simply wrong. No such decision was ever made.

During 1988, Alyeska was re-evaluating its oil spill response capabilities in an effort to determine how best to respond -- both immediately and long-term -- to various possible types of oil spills, including a significant spill in Prince William Sound. There were many who thought then, as many think now, that the most effective response to a major spill in open water is the application of dispersants. Another factor considered in these discussions was that it was appropriate to expect the shipper, with the assistance of various

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third parties and other oil spill response organizations, to take principal responsibility for the long-term response to a major oil spill. Indeed, both State and federal statutes imposed on the shipper the duty to clean up a spill. Moreover, the responsible State and federal regulators expected the shipper to promptly take responsibility for the long-term cleanup of a major spill, just as they had observed in Alyeska's 1988 "desk-top" drill in which it practiced the transfer of cleanup responsibility to the "spiller."⁶ It is against this setting that the material attached to Congressman Miller's letter should be read.

* * *

In sum, Alyeska's OSCP described, and the State and other regulators were plainly aware that, in the event of a major oil spill in Prince William Sound, substantial quantities of oil would impact the shoreline and environmental damage would occur. It was well understood that the cleanup of such a major incident would take an extended period of time and would require the assistance of numerous third parties and various

⁶ The EXXON VALDEZ Oil Spill -- A Report to the President from Samuel A. Skinner, Secretary, Department of Transportation, and William K. Reilly, Administrator, Environmental Protection Agency, at 13 (May 1989); Testimony of USCG Commander Steven McCall before the NTSB at 1357 (May 20, 1989).

response organizations. It was also understood that the shipper, and not Alyeska, would assume responsibility for the long-term cleanup of the spill.

Alyeska responded to the EXXON VALDEZ oil spill as rapidly and effectively as the situation permitted, and in accordance with the OSCP. Lightering to avoid the possible breakup of the vessel and an even larger spill was the first priority, and containment the second. Within 48 hours the orderly transition of responsibility from Alyeska to Exxon began, and Exxon continued the cleanup efforts initiated by Alyeska.

DATED: April 18, 1991.

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Assumptions

For the purposes of this scenario, the following assumptions have been made. The sea state and weather conditions are in and remain in a state conducive to oil containment and cleanup. Sea state is less than 5 feet, currents are less than 1.6 knots, waves are less than 2 feet, and visibility is equal to or greater than 2 miles.

Conditions

The simulated weather is sunny to overcast with some light rain, winds are from the southwest at eight knots, high tide is approximately 6 hours after the incident.

An outbound tanker experiences a steering casualty just prior to commencing a turn in the Valdez Narrows, northwest of Entrance Point. This simulated incident occurs on June 22, 1986, at 6:00 a.m. Within 15 minutes, the tanker goes aground on Potato Point. One wing tank is damaged and the loss of oil is approximately 2,000 barrels per hour for the first hour and 500 barrels for the next four hours. The tanker is able to transfer oil to other tanks to prevent further significant losses of oil. The tanker will move off of the shoal under its own power with tug assist with permission of the U.S. Coast Guard. It will then be moved back to the Valdez Marine Terminal where it will be berthed for offloading and inspection. Figure 306-3 is an oil spill trajectory for this scenario.

The purpose of this scenario is to illustrate how we would respond to this spill of approximately 4,000 barrels in Valdez Arm. Actually, the most likely spill volume for vessels underway in trade with the Valdez Marine Terminal during the expected 30-year operating lifetime of the Marine Terminal is 1,000 barrels. No attempt will be made to describe the circumstances responsible for the mechanical failure or the additional considerations of tanker off-loading, inspection or release from the berth for sailing to the Lower 48.

The majority of the oil impact will be at Potato Point. It will impact an area about 6,000 yards either side of the point of impact of the shoreline and will be approximately 600 yards wide. Within 24 hours, there is a slick in Valdez Arm approximately 1/4 mile wide and 2.4 miles long.

Immediate Response Action

The ship and shoreline, which is heavily oiled, will be boomed by 0900 hours and skimming operations will begin. The two mooring launches each with a Vikoma seapack and two 21-foot workboats will boom the ship and shoreline area. A reconnaissance helicopter is on site, originally our security helicopter which is relieved by an ERA helicopter with a crew out of Anchorage. A tug is on standby to assist the ship, if necessary. At the same time (0600-0900 hrs.), one 26-foot workboat and one 21-foot workboat are in the process of booming Shoup Bay.

By approximately 1100 hours, the barge has been moved into close proximity to the spill site by one of the tugs. The barge has on it various oil spill equipment including the sea skimmer, containment boom, sorbent boom, pumps, various hoses and various containers, such as barrels, bags or bladders. The sea skimmer is placed into a heavily oiled contained area next to the Vikoma boom and commences skimming oil and pumping it into the barge. The Class V and Class VII are in position to skim oil in the Vikoma seapack area, having been towed to the area by one of the tugs. One 19-foot workboat and 2 Jon boats are working in the proximity of the barge to begin washing down the beaches and picking up appropriate oil debris on the beach. The shoreline cleanup is initiated by using small pumps with approximately 50 to 100 pounds per square inch (PSI) pressure to wash down the gravelly beach and to skim the oil from the water surface. A Komara skimmer, working off of a 26-foot workboat, is picking up the oil as it is washed back into the water. At 1100 hours, the oil stops flowing from the tanker as the ship has transferred oil to prevent further loss of significant amounts of oil. By 1200 hours, Shoup Bay and Sawmill Bay have been boomed.

The appropriate government agencies will be notified immediately of the spill. It is presumed the response team will be organized. Alyeska Pipeline Service Company will make a request to apply dispersants to the spill immediately. Request for burning oil and debris along the contaminated areas of the affected shoreline will be made very soon in the response effort to the Alaska Department of Environmental Conservation. See Sections 404, 405 and 901 in the General Provisions for additional information on government relations.

Private commercial vessels from the Valdez small boat harbor would be employed to respond to the oil spill with booming and logistical support. Aircraft from our eleven on-call flight services contractors would be immediately employed to assist in the response with overflights, communication or logistical support. Oil spill cooperatives, such as (CIRO), Look Inlet Response Organization, or Alaska Clean Seas, and private oil spill response companies would be alerted to provide a backup to our initial response. The dispersants contractors would also be alerted to prepare for movement to Valdez. As an additional contingency, we would request the U.S. Coast Guard Pacific Strike Team to prepare for assisting in the spill response.

If oil was moving differently than the predicted impact area, exclusion booming would be extended to Gold Creek or Mineral Creek. Any change to the scenario weather and/or movement of oil would necessitate exclusion booming to other possible sensitive impact areas in Port Valdez.

By approximately 1800 hours, the high tide, along with an assist from a tug, allows the ship to move off of the shoal. The ship, with the assistance of the tug, returns to the Valdez Marine Terminal and is berthed for off-loading and inspection. The ship is followed back to the berth by the Class VII with 50' of boom, assisted by the one 26-foot workboat and one 21-foot workboat to skim any additional loss of oil. At this time, a fresh crew of contractor personnel are on-scene to replace the majority of Alyeska personnel, along with a relief crew of supervisors to continue the cleanup effort throughout the night.

Preparations are being made for Day 2 operation to be continued with rotating contractor personnel, both laborers and supervisors, from oil spill cooperatives and contractors available in the Anchorage and the West Coast area. Additionally, more boats are brought into the cleanup activity to assist logistically by providing support to run supplies and oil debris to and from the Marine Terminal. Efforts continue primarily on the west shoreline to wash down the gravelly beach and to skim the oil from the water. On Day 2, dispersant approval is given to apply dispersant to the 1/4 mile wide and 2.4 mile long slick in Valdez Arm.

Dispersants

Should a large spill occur in a likely dispersant application area, Alyeska would immediately notify our aerial dispersant applicator contractor, Biegert Aviation, Inc., in Chandler, Arizona to move to Valdez and be prepared to apply dispersants. Concurrently, Alyeska would request the on-scene coordinator to approve the use of dispersants. We would also notify Conair Aviation, Ltd., in Abbotsford, British Columbia to determine its availability and earliest arrival time in Valdez. Preference would be given to the contractor who could arrive in Valdez first. If necessary, we would also contact Air Response, Inc., in Mesa, Arizona. Another alternative is the Biegert Aviation ADDS pack, which could be mounted on a Hercules aircraft and used for dispersant spraying. Again, preference is given to that contractor which could respond in the shortest amount of time. If the Valdez Airport was not available, the base of operations would be Anchorage, Alaska. Various other application equipment could be used depending on the spill size and location; see Figure 306-1.

DISPERSANT APPLICATION EQUIPMENT

EQUIPMENT TYPE	SOURCE/LOCATION	REMARKS
Aircraft - Douglas DC-4	Biegert Aviation, Inc., Chandler, Arizona	9-17 hours response time
Aircraft - Douglas DC-6B	Conair Aviation, Ltd., Abbotsford, B.C., Canada	Must go through U.S. Customs
Vessel - 34-foot workboat	CIRO Raider Cook Inlet Response Organization (CIRO), Kenai, Alaska	Hercable, 50' swath
Helo - buckets	Simplex, CIRO, Kenai, Alaska	40' swath, 300 gal. payload
Large boat spraying package	CIRO Kenai, Alaska	40' swath Need large (125-185') vessel

DISPERSANT APPLICATION EQUIPMENT

Figure 306-1

Along with those notifications, a request would be made to Cook Inlet Response Organization and the Alaska Clean Seas Cooperative to move their dispersants to Anchorage or Valdez. We would also alert the following cooperatives, and would request their dispersants, if appropriate: Clean Bay, San Francisco, California; Clean Coastal Waters, Long Beach, California; and Clean Seas, Santa Barbara, California. Depending on the magnitude of the spill, we might also notify Exxon Chemical Americas in Houston, Texas, which produces Corexit 9527, for additional material. See Figure 306-2 for a summary of highway transport times.

DISPERSANT AVAILABILITY AND TRANSPORT BY HIGHWAY			
Location	Amount	Valdez	Anchorage
Valdez	2,475 gal.	0	10 hrs.
Anchorage	8,800 gal.	10 hrs.	0
Kenai	8,840 gal.	15 hrs.	4 hrs.
Deadhorse	550 gal.	28 hrs.	24 hrs.
San Francisco, CA	5,000 gal.	5 days	6 days
Santa Barbara, CA	14,290 gal.	5 days	6 days
Long Beach, CA	4,000 gal.	6 days	7 days
Houston, TX	50,000 gal./day	6 days	7 days

DISPERSANT AVAILABILITY AND
TRANSPORT BY HIGHWAY

Figure 306-2

Assuming that the on-scene coordinator approves dispersant application, Alyeska could have a plane in Valdez prepared to spray dispersants in as little as nine hours. Average response time is estimated to be 17 hours. The variance in time depends upon the contractors' equipment availability at the time of notification. There are 45 drums of Corexit 9527 available in Valdez. It would require approximately 10 hours to transport 160 drums of Corexit 9527 from Anchorage to Valdez, and approximately 15 hours to transport another 160 drums from Kenai to Valdez. We will make the assumption that approximately 1,000 barrels of oil in the Valdez scenario are in position for dispersant spraying. It has spread to an equilibrium thickness of approximately one-tenth of a millimeter (4×10^{-3} inches) and covers approximately 386 acres. This slick would be approximately 2.4 miles long by $\frac{1}{4}$ mile wide. At a dispersant-to-oil ratio (DOR) of 1 to 20 (1:20), 386 acres would require approximately 38 barrels or 2,090 gallons of dispersant. This dispersal could be accomplished by a DC-6 with a swath width of approximately 175 feet, in 8 to 10 passes. Assuming a payload of 3,000 gallons of dispersants, it would require one sortie, with an elapsed time of approximately $1\frac{1}{2}$ hours if based in Valdez, and 2 hours if based in Anchorage. The payload is the amount of dispersant an aircraft can carry depending upon weather, fuel load and the distance the plane must fly to apply the dispersant. The dispersant-to-oil ratio is determined by the thickness of the oil on the water; and, although oil spreads to varied thicknesses, one would use the thickness that is most representative of the oil in the dispersant area.

COMMUNICATION

Communication between Alyeska boats and aircraft will be accomplished by using VHF radios. Communication from the boats to the Valdez Emergency Center will be relayed through the U.S. Coast Guard in Valdez via the Potato Point repeater and telephone. Alyeska will continue to discuss with the USCG the possibility of the Valdez Marine Terminal tying directly into the Coast Guard radio repeater system during emergencies. This will eliminate the need for telephone relay.

Backup communication can be established using an aircraft on station to relay messages from the spill site to the Valdez Marine Terminal using the VHF radios.

A third method is to use a ship positioned near the spill to relay messages from the VHF radios via the satellite ship-to-shore telephone system.

Continuing Cleanup Activity

The beaches of the impacted areas are primarily rocky walls and gravelly-type beaches. These can probably be most efficiently cleaned by low to high pressure washing while containing the oil and recovering it with skimmers in the water. We anticipate approximately 10 percent of the lost oil will be consumed by weathering and evaporation. It is estimated we will conservatively collect approximately 1,000 barrels of oil in the skimmers, which will be returned to the Terminal via the recovered oil tanks. Approximately 1,000 barrels will be dispersed. Approximately 1,600 barrels will be deposited on the beaches with approximately 1,500 barrels of that recovered by the cleanup methods of washing, adsorbent use and skimming operations. Approximately 100 barrels of oil would not be recovered and will be naturally dispersed.

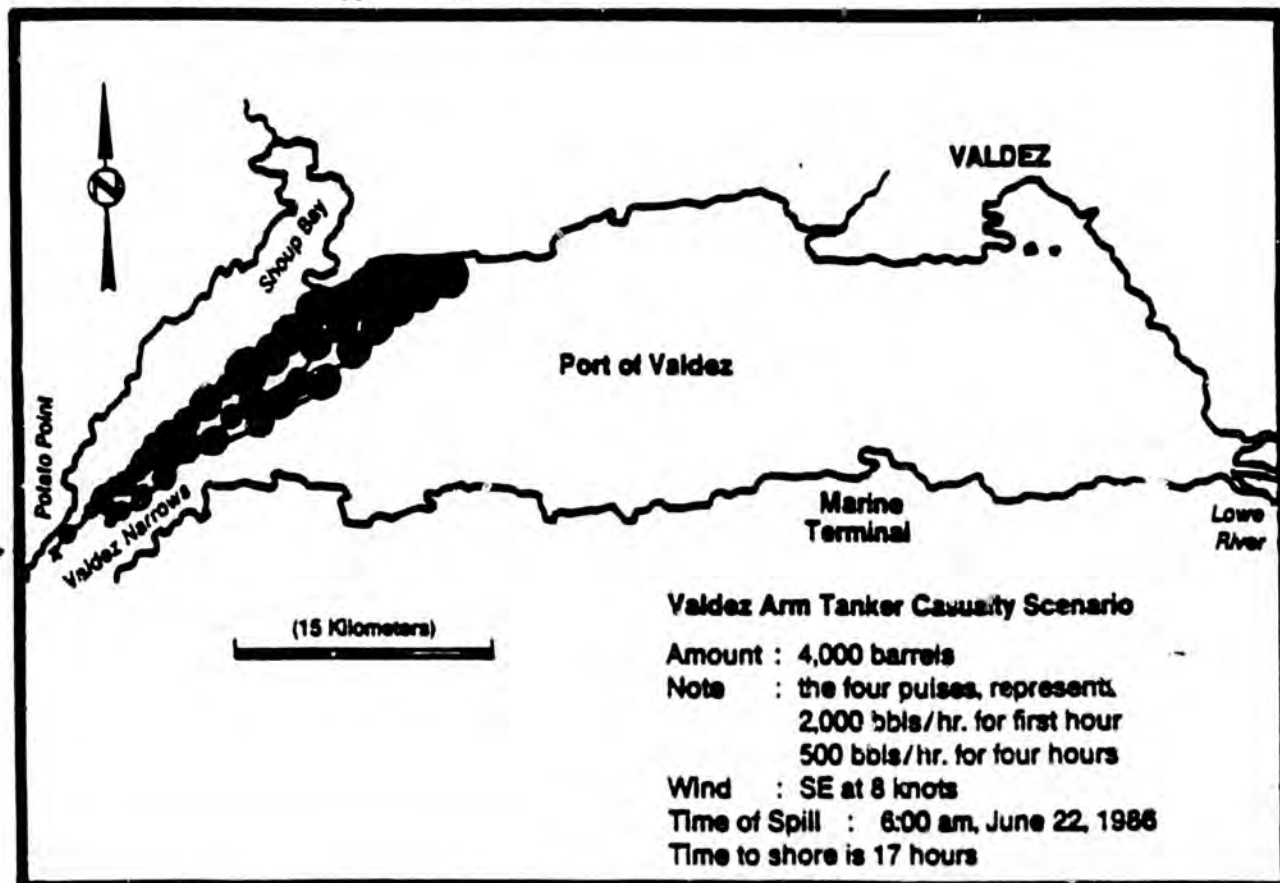
A bird cleaning area would be immediately set up in case there are any significant number of oiled birds affected by the spill. The IBRRC (International Bird Research Rescue Center) would be activated early in the spill to ensure that a facility is available for any oiled birds.

Conclusion

It is anticipated that the cleanup will continue for approximately 2 months. This is primarily to monitor the effects of an extreme high and low tide over a couple of tide changes.

Portions of the cleanup responsibility, for instance, the beach cleanup and/or protection of Sawmill and Shoup Bay, will be given to specific oil spill contractors, so as to release our own personnel back to the operations of the Terminal. Alyeska will supervise the entire cleanup operation. In addition to the above-mentioned resources, members of the Association of Petroleum Industry Co-op managers, a group of West Coast oil spill cooperatives, would be available to provide continuing support in specialized oil spill equipment or supervisory personnel.

The scenario does not address any other aspects of tanker casualties such as fire. It also does not address response during weather conditions which make mechanical recovery impossible. It is presumed a dispersant decision is made soon enough to make application feasible.



VALDEZ ARM OIL SPILL SCENARIO TRAJECTORY

Figure 306-3

Prince William Sound Tanker Casualty: Spill Amount 200,000 Barrels

Alyeska Pipeline Service Company has been requested to respond to a scenario of a 200,000-barrel spill in Prince William Sound. APSC believes it is highly unlikely a spill of this magnitude would occur. Catastrophic events of this nature are further reduced because the majority of tankers calling on Port Valdez are of American registry and all of these are piloted by licensed masters or pilots. Nonetheless, should such an incident occur, the following is our overview of the initial response to that scenario. Attached is an oil spill trajectory of the oil movement. A spill of this magnitude would require considerable resources and logistical operations, the minute details of which are not included in this scenario because the details are not useful in long-term response planning. This scenario will not address the circumstances responsible for the loss of cargo or of the fate of the tanker. Once a tanker is immobilized, the U.S. Coast Guard will determine future movement of the vessel.

Assumptions

The following assumptions are made in presenting the response to the scenario: The sea state and weather conditions are in and remain in a state conducive to oil containment and cleanup. For example, winds less than 15 knots, sea state less than 5 feet, currents less than 1.6 knots, waves less than 2 feet, visibility equal to or greater than 2 miles.

The spill incident occurs through some failure of the tanker crude tanks and does not discuss other disaster possibilities such as collision or fire.

Conditions

In addition to the above assumptions on sea state, the weather is assumed to be conducive to oil spill cleanup and remains in this mode for the response actions. For this particular scenario and trajectory input, the date of June 22 at 6:00 a.m. was chosen for the spill incident with winds from the east at 5 knots. The location is 60° 30' 5" North, and 147° 2' 0" West longitude. The tanker has a cargo amount of 550,000 barrels. The trajectories show two possibilities—one is an instantaneous spill of 200,000 barrels and a second is a 10,000 barrel per hour spill that continues for 20 hours. Figure 306-6 shows the trajectory oil spill movement. It is approximately 30 miles to the site from the Valdez Terminal; an average speed of 12 knots is used to determine the travel time to the area for the Crowley tugs. An approximate speed of 8 knots is used for towed equipment and 20 knots for the workboats without tows. Figure 306-4 is a summary of equipment capacity and response times. Figure 306-5 is a table of equipment in the first response effort.

Immediate Response Actions

On notification of the pollution incident, the following response actions would be simultaneously initiated. The closest empty or light loaded tanker will be directed to the spill site with an estimated maximum arrival time of 12 hours. The initial response would include moving containment booms, skimmer equipment, support equipment and personnel to the site. Additional backup personnel and equipment from the pump stations along the line would be mobilized. Private commercial vessels from the Valdez small boat harbor would be employed to assist in booming and logistical support. Aircraft in Valdez would be employed to assist in the response with overflights, communication or logistics. This would immediately be backed up with air support from our eleven on-call flight services contractors. APSC would request U.S. Coast Guard Pacific Strike Team assistance through the Valdez U.S. Coast Guard office. In addition, all oil spill contractors in the state of Alaska would be asked to mobilize and move to the site as soon as possible to respond to the spill. Also, a request to the local cooperatives, CIRO and Alaska Clean Seas, would be made for any additional equipment that they could supply to this area. See Figure 607-1 for a summary of air transport response times and Figure 607-2 for vessel response times. A request would be made to the Association of Petroleum Industry Co-op Managers to respond with available equipment and personnel that can be located in the West Coast area. The International Bird Rescue Research Organization would be immediately requested to mobilize and prepare for movement to Prince William Sound. A request would be made immediately to the OSC to apply dispersants to the oil slicks. Biegart Aviation and other dispersant contractors would be requested to mobilize in Valdez and be prepared to apply dispersants. A request to open-burn slicks on the ocean and debris and oil on the shoreline would also be made immediately to the OSC.

to open-burn slicks on the ocean and debris and oil on the shoreline would also be made immediately to the OSC.

It is expected the agencies response actions would include the following: The regional response team would be immediately mobilized. The decision process on dispersant application would be begun immediately. There would be a joint meeting between the U.S. Coast Guard, EPA, Alyeska, Alaska Department of Environmental Conservation, U.S. Fish and Wildlife Service and possibly other government entities, to keep all affected parties apprised of the situation and, hopefully, to facilitate the decision making on the response alternatives.

As a result of the initial coordination meeting, it was decided certain response priorities would have to be made as this would be a long-term impact and cleanup situation.

The trajectories indicate that oil will threaten Eleanor Island, Naked Island, Lone Island, Perry Island and the Pigot Bay area, Culross Island and the Main Bay area shorelines. Although it is unlikely oil will reach Main Bay, as a precaution the fish hatchery will be boomed immediately. Some of the exclusion area numbers 79 through 92 may be impacted by the oil movement. The first areas of consideration would likely be exclusion areas 81, 82 and 83.

Second considerations would include areas 79, 80, 89, 90, 91 & 92, and third consideration would likely be sites 84 through 88. These sites are considered sensitive, primarily because they are salmon spawning areas. Additional sites or other areas may have a higher priority, depending on the oil movement and other additional information that may become available. The oil spill trajectory indicates the above priorities are likely to be the most significant. This information is listed in Section 300. One of the oil spill response contractors would be directed to Whittier with the sole task of providing exclusion booming in these areas with the above-listed priority, unless other priorities were agreed to among the agencies and Alyeska at the coordination meeting.

PRINCE WILLIAM SOUND SCENARIO RESPONSE TIMES

Vessel	Storage Cap. (bbls)	Recovery Rate (bbls/hr)	Vessel Speed/Prep Time		Travel to Spill with Prep Time (hrs)
			(knts)	(hrs)	
Tugs	N/A	N/A	12	0	2.5
2 Mooring Launches	N/A	N/A	8	0.5	3
Towing:					
Marco Class V	40	428			
Marco Class VII	80	428			
2 Vikoma Seapacks	w/ 1500' boom each				
2-21' Monarks	N/A	N/A	20	0	1.5
1-26' Monark	N/A	N/A	20	0	1.5
1-26' Monark	N/A	N/A	8	0.25	2.75
Towing:					
1 Vikoma Seapack	w/ 1500' boom				
Tug & Contingency					
Barge with/	4700	N/A	8	2.5	5.0
Sea Skimmer	N/A	536			
Equipment	1976 (bladders)				
Towing:					
2 Vikomas	w/ 1500' boom each				

PRINCE WILLIAM SOUND SCENARIO RESPONSE TIMES

Figure 308-4

Distribution of Oil

It is estimated that approximately 50% of the oil will be recovered at sea, either directly after the spill or at a later time by being washed off of the rocks, contained and skimmed off of the water. Approximately 15 percent of the spill will evaporate during the time it is moving toward the shoreline and prior to removal. Of the oil that remains approximately 15 percent of the oil will be recovered from the shore, primarily by washing the oil off of the rocks and recovering it on the water. Fifteen percent of the oil will naturally disperse and approximately 5 percent will remain in the environment.

Environmental Considerations

Along with the salmon spawning areas and the sea bird colony areas there are some purse seine and drift gill net areas around Esther Island in the Port Wells area. There is also some ground fish activity on the west side of Naked Island, Eleanor Island, Ingot Island and the Port Wells area.

Section 600 of the Prince William Sound Contingency Plan gives us the Sea Bird colony areas that would likely be impacted by a spill of this nature. The Naked Island group, Eleanor Island, Bald Head Criss Island, Dutch group, Perry Island, Fool Island, Egg Rock, and Esther Rock are likely impact areas of the sea bird colonies. There is a possibility that Smith Island and Little Smith Island sea bird colonies may also be impacted with a slight wind change. The most likely effective protection of the sea bird colonies is to prevent the oil from impacting the shore lines at all. This can be done of course only by dispersing the oil at sea, or allowing an open burn of the oil at sea. Since the timely application of dispersants is so important it is necessary that the decision process for allowing dispersant application be approved prior to an incident such as this. It will allow the oil industry to stockpile the necessary dispersants and application means so that resources such as the sea bird colonies can be protected in the most reasonable manner.

This has been a brief initial response to the spill scenario of a 200,000 barrel catastrophic event. There would, of course, be a long term cleanup of the spill on the various beaches of Prince William Sound. In reviewing the aspects of this size spill it becomes very apparent how important it is to have dispersants approved so that they can be used very effectively to prevent the continuing input of oil into the small bays and shorelines in Prince William Sound. Burning also has to be looked at as a very good alternative to the cleanup in Prince William Sound on the various inlets and bays in which oil may accumulate.

PRINCE WILLIAM SOUND SCENARIO INITIAL EQUIPMENT

Initial Equipment to Prince William Sound Oil Spill:

2 Terminal Tugs and Two Mooring Launches

Contingency Barge B&R 126-1 with the following:

- Vikoma seaskimmer and power unit
- Marco power block
- Life raft
- Inflated fenders
- 2 Stop systems (Tanker Lightering Systems)
- 3,000 feet containment boom
- 1,000 feet sorbent boom
- 20 bales sorbent pads
- 1 50,000 gallon bladder
- 1 20,000 gallon bladder
- 1 10,000 gallon bladder
- 1 3,000 gallon bladder
- 2 3" diesel pumps (Komara skimmer pumps) & 100 feet 3" hose

2 21' Monark workboats

2 26' Monark workboats

Towed: { Marco Class V skimmer
Marco Class VII skimmer
5 Vikoma seapacks (7500' of boom)

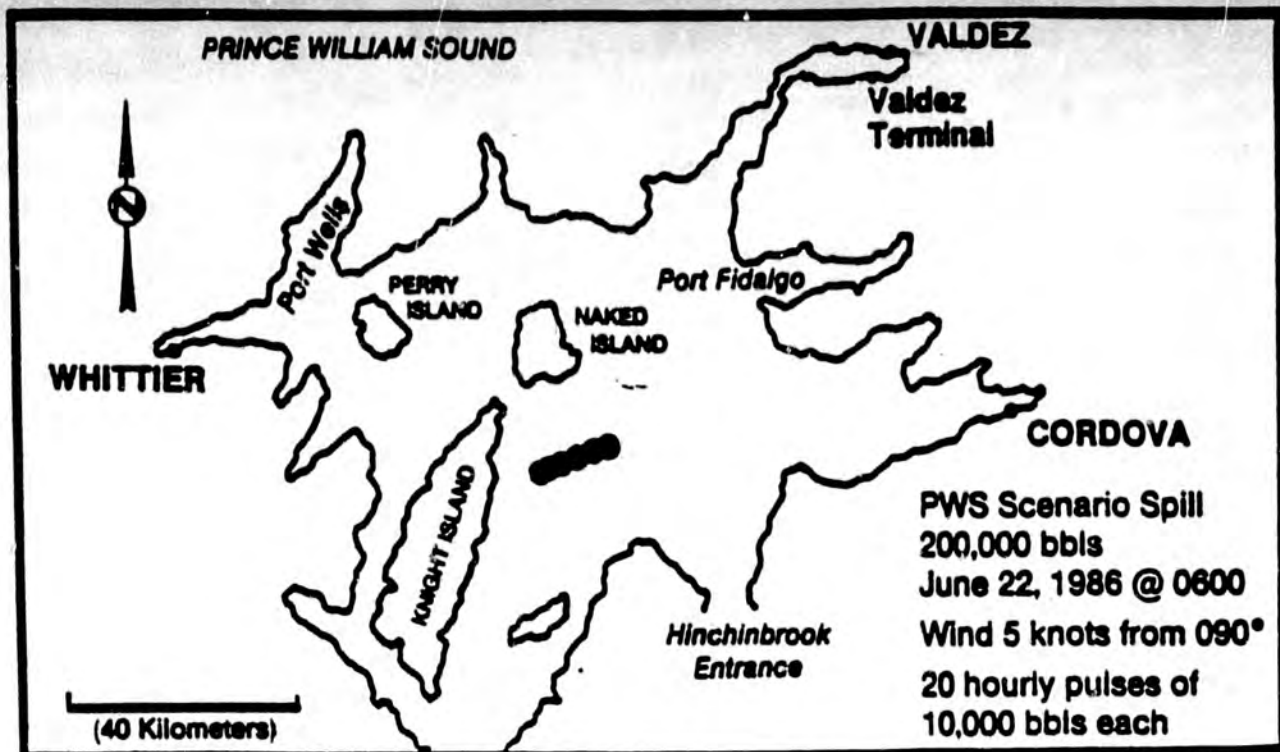
Initial Manpower: 15 minimum and tug crews

Supplies:

- Radios
- Fuel and oil
- Anchors and line
- Life lines
- Life jackets
- Rubber gloves
- Rain suits
- Rubber boots
- Plastic bags
- Cleanup tools
- Batteries

PRINCE WILLIAM SOUND SCENARIO
INITIAL EQUIPMENT

Figure 306-6



PRINCE WILLIAM SOUND OIL SPILL SCENARIO

Figure 306-6

EXHIBIT B

Page 5 of 5 Pages

ACE 417693

19 -
ent.

A M E N D M E N T

TO: HCR WO 7-LS1314/A Cook 4/29/91

Page 2, lines 2-4, delete existing language and insert:

Whereas the Senate special committee has issued a report raising a number of concerns regarding the proposed settlement; and

Whereas the House special committee has suggested that certain provisions of the proposed settlement be altered; and

Whereas an extension of the time for withdrawal from the proposed settlement would enable the parties to deliberate without undue haste concerning how best to respond to the actions of the federal district court and the Senate and House special committees; now, therefore:

Page 2, line 8: change "must" to "may"

Page 2, line 9, after "until", insert "at least"

Page 2, lines 12-13, delete existing language and insert language directing that copies of the resolution be sent to the Governor, Honorable H. Russel Holland (United States District Court, 222 West 7th Avenue #54), Richard Stewart (Assistant Attorney General, Environment and Natural Resources Division, Department of Justice) and Jack G. Clarke (Sr. Vice President, Exxon Corporation).

7-LS1314A-
Cook
4/29/91

HOUSE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON THE EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT

Introduced:

Referred:

A RESOLUTION

1 Relating to the proposed Exxon Valdez oil spill claims settlement.

2 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 WHEREAS the Attorney General has negotiated a proposed settlement of most of the state's
4 claims arising from the Exxon Valdez oil spill; and

5 WHEREAS, under the terms of the proposed settlement, the legislature has been granted an
6 opportunity to review the settlement and to express its approval or disapproval of it, but the period
7 within which the legislature must act on the matter will expire May 3, 1991; and

8 WHEREAS the House of Representatives and the Senate have established special committees
9 to consider the proposal and the committees have worked diligently on the issue; and

10 WHEREAS the proposed settlement of state claims arising from the Exxon Valdez oil spill has
11 been further complicated by the court's recent rejection of the plea agreement entered into by the parties
12 in United States of America v. Exxon Corporation and Exxon Shipping Company, No. A90-015 Cr.; and

13 WHEREAS, under the terms of the proposed agreement, any of the parties, including Exxon,
14 can terminate the proposed settlement on or before May 4, 1991, due to the court's rejection of the plea
15 agreement; and

16 WHEREAS, by letter dated April 25, 1991, Charles Cole, Attorney General, stated that he
17 believes action by the legislature to approve the proposal is not appropriate until Exxon decides whether

1 to terminate it; and

2 **WHEREAS** the legislature needs more time within which to consider the implications of the
3 rejection of the plea agreement and the possible effect of the proposed settlement on the state in light
4 of this rejection.

5 **BE IT RESOLVED** that the Alaska State Legislature requests the parties to the proposed
6 Agreement and Consent Decree signed March 12, 1991, relating to the settlement of State v. Exxon
7 Corporation, et al., United States District Court, District of Alaska, No. A91-083 Civ., to extend the date
8 by which the state and federal governments must withdraw from the agreement on the basis of the
9 legislature's disapproval until May 13, 1991; and be it

10 **FURTHER RESOLVED** that, unless an extension is granted to the legislature to consider the
11 proposed settlement, the Alaska State Legislature disapproves the proposed settlement; and be it

12 **FURTHER RESOLVED** that the Governor is respectfully requested to make copies of this
13 resolution available to the parties to the proposed settlement.

7-LS1324A

Cook

5/1/91

HOUSE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON THE EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT

Introduced:

Referred:

A RESOLUTION

1 Disapproving the proposed Exxon Valdez oil spill claims settlement.

2 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 **WHEREAS** the Attorney General has negotiated a proposed settlement of most of the state's
4 claims arising from the Exxon Valdez oil spill; and

5 **WHEREAS** under the terms of the proposed settlement the legislature has been granted an
6 opportunity to review the settlement and to express its approval or disapproval of it; and

7 **WHEREAS** the Attorney General has stated in a public meeting that if the legislature fails to
8 approve the proposed settlement the state will take action to terminate the proposal;

9 **BE IT RESOLVED** by the Alaska State Legislature that it disapproves the Agreement and
10 Consent Decree signed March 12, 1991, relating to the settlement of State v. Exxon Corporation, et al.,
11 United States District Court, District of Alaska, Civil Action No. A91-083; and be it

12 **FURTHER RESOLVED** that the Governor is respectfully requested to inform the United States
13 Department of Justice that the legislature has disapproved the proposed settlement.

4/11 -
CRIMINAL

Lloyd Benton Miller
SONOSKY, CHAMBERS, SACHSE, MILLER & MUNSON
900 West 5th Avenue, Suite 700
Anchorage, AK 99501
(907) 258-6377

Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

EXXON CORPORATION AND
EXXON SHIPPING COMPANY,

Defendants.

NO. A90-015-1CR

NO. A90-015-2CR

CIVIL PLAINTIFFS' COMMENTS ON PROPOSED SENTENCE

All plaintiffs in Case No. A89-095 Civil (Consolidated) before this Court, and all plaintiffs and the classes they represent in Case No. 3AN-89-2533 Civil (Consolidated) in the Superior Court for the State of Alaska, Third Judicial District (hereinafter referred to as "the Civil Plaintiffs"), pursuant to this Court's Order of March 22, 1991, hereby submit their comments on the sentence specified in the Plea Agreement entered into by the United States and Defendants Exxon Corporation and Exxon Shipping Company.¹ Civil Plaintiffs urge the Court to defer

¹ Civil Plaintiffs continue to ask the Court, as they did in their motion dated March 21, 1991, to enter an Order to Impound or Otherwise Preserve All Grand Jury Documents, Subpoenae and Transcripts. Civil Plaintiffs also support the assertions and positions set forth in the letter of U.S. Representative George Miller addressed to this Honorable Court

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accepting the Plea Agreement, pursuant to Rule 11(e)(2), F.R.Crim.P., until such time as a complete record is before the Court on the impact of the offenses committed by Defendants and their history of violations of the environmental laws.

The Proposed Sentence Cannot Be Properly And Adequately Assessed By The Court Without (1) Full Disclosure Of The Scientific Data and Analyses Accumulated But Withheld By The United States; And (2) After Such Disclosure, Providing An Opportunity For Non-Government Experts to Comment On The Sentence In Light Of The Data.

The Sentencing Reform Act of 1984, as amended, 18 U.S.C. §3553(a), mandates that the Court consider before sentencing: "(1) the nature and circumstances of the offense,..."; and "(2) the need for the sentence imposed- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense...." To make these determinations in this case the Court will need an extensive assessment by the scientific community of the nature, circumstances, and seriousness of the effects of the oil spill at issue.

That inquiry is not possible now because the government has failed to provide the scientific community, the Civil Plaintiffs who are victims of defendants' offenses, and the public in general with the significant and relevant data and analyses which the government has had in its possession for months. The import of the granite barrier to scrutiny that has been maintained by the government, despite persistent requests for disclosure, is described in detail in the Affidavits of eminent scientists Drs. Capuzzo, McElroy, and Teal, and Bruce W. Tripp, whose affidavits were submitted to the Discovery Master, the Honorable David B. Ruskin, as Appendices F through I to "Plaintiffs' Memorandum in Support of Motion for Disclosure of All Scientific Data on the Impact of the Oil Spill on Natural Resources" in Case No. 3AN-89-2533 in the Superior Court for the State of Alaska, Third Judicial District of Anchorage. Because of this barrier, experts

and dated April 8, 1991.

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outside the government have been unable to provide a full assessment to the Court on the nature, circumstances, and seriousness of the effects of the oil spill at issue. The Court should clearly desire to have such expert opinions in light of the gravity of the offenses, the victims' right to provide comments, and the fact that the government is not acting solely as the enforcer of the law, free of non-prosecutorial bias, but rather is also pursuing this Plea Agreement as part of an overall settlement in which it is a settling defendant.

Perhaps recognizing that this Court could not perform its duties in this criminal proceeding without such information, the U.S. Justice Department, only three days before these comments were due, lodged an 18-page *summary* of 58 scientific studies (reportedly costing \$70 million) with this Court in Civil Action A91-002. This Court should require the government to disclose the complete scientific record, and not just a purported summary. Accordingly, the Court should defer sentencing until: (1) the United States makes available to the Court, the Civil Plaintiffs, and the public the *complete* scientific record needed to appraise "the nature and circumstances of the offenses" involved and "the need for the sentence imposed to reflect the seriousness of the offense...and to provide just punishment for the offense;" and (2) the Court affords the opportunity for comment on the sentence in light of that record. In any event, the Court should defer sentencing until the victims of the offense and experts provide comments in response to whatever the government has released and whatever it and Exxon submit on April 16.

The Fine Agreed To Is Insufficient To Serve The Needs Of Deterrence.

In deciding on the adequacy of the sentence, the Court must decide on the impact of that fine. 18 U.S.C. §3553. Here, the impact of the proposed fine on Exxon will be minimal and few if any purposes of the sentencing statute will be met.

Numerous statements have already been made by Exxon officials observing that the criminal fine (indeed the overall settlement) will have no appreciable effect on the Company's earnings. See, *The New York Times*, Thursday, March 14, 1991, page A16. With the relatively small size of this penalty, the sentence is unlikely to "afford adequate deterrence to [Exxon's] criminal conduct" or "to protect the public from further crimes of the defendant." 18 U.S.C. §3553(a) (2)(B) and (C).² This point is reinforced by the fact that the proposed penalty pales in comparison to the maximum penalty under the proposed Sentencing Guidelines. Under those Guidelines, Exxon's sentence could have been four times the overall loss to the victims of the spill.³ At a minimum, the Justice Department's conservative figure of \$600 million (2 times the victim loss as repeated by the defendants) would have been a much more appropriate penalty. Accordingly, the Court should reject this plea agreement.

**Exxon's History of Offenses Must Be Evaluated
Before The Court Rules On This Plea Agreement.**

The history of defendants' offenses must be evaluated in deciding the appropriateness of the sentence and the Plea Agreement. Civil Plaintiffs urge the Court to obtain a full report on the defendants' history of violations of environmental laws given the considerable record of offenses that is already known:

- A. Destruction of Wetlands in Arthur Kill Waterway Caused By Criminally Negligent Pipeline Rupture

On January 1, 1990, an underwater pipeline ruptured from Exxon's Bayway Refinery near Newark, New Jersey, causing approximately 570,000 gallons of refined oil to pollute

² It is noteworthy that the cost of the government's scientific studies, reported as \$70 million, constitutes 70% of the total fine, \$100 million, stipulated in the Plea Agreement.

³ Indeed, if the sentences on all five charges were to be imposed consecutively, the aggregate statutory maximum for each defendant would be \$3 billion, not \$600 million, again without considering the damages in excess of the \$300 million paid by Exxon to date.

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miles of shoreline and kill hundreds of birds. A guilty plea to criminally negligent discharge of oil under the Clean Water Act was entered on March 20, 1991 and a criminal fine of \$5 million (including \$4.8 million restitution) was imposed. Exxon admitted that it was negligent in training its employees and maintaining the pipeline.

B. *Exxon Corp. v. Yarema*, 516 A.2d 990 (Md. Ct. Spec. App. 1986)

A punitive damage award was upheld based upon the negligent discharge of gasoline from underground storage tanks.

C. *In the Matter of Exxon Corp.*, No. 84-0914AG (Tennessee Dept. of Health and Environment)

Exxon was adjudged to have violated solid waste regulations through improper storage of hazardous wastes.

D. *Exxon Co., U.S.A., v. State of Texas*, 646 S.W. 2d 536 (Tex. Ct. App. 1982)

Exxon was found to be criminally liable for the discharge of catalytic dust from its refinery.

E. *Exxon Co. U.S.A. v. Dunn*, 474 So. 2d 1269 (Fla. Dist. Ct. App. 1985)

Exxon was found liable for personal and property damage caused by sulphurous gas emission and vibrations.

Once a full record on defendants' history of environmental violations is developed, the Court will be in a position to examine the extent to which the violations evidence a pattern of corporate indifference toward environmental issues. Only by engaging in such an inquiry will the purpose of 18 U.S.C. § 3553 be served.

DATED at Anchorage, Alaska this 11th day of April, 1991.

SONOSKY, CHAMBERS, SACHSE,
MILLER & MUNSON

By: 

Lloyd Benton Miller
Plaintiffs' Liaison Counsel

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COHEN, MILSTEIN, HAUSFELD & TOLL

DAVIS, WRIGHT & TREMAINE

STOLL, STOLL, BERNE & LOKTING

WILLIAMS, TRINE, GREENSTEIN & GRIFFITH

CASEY, GERRY, CASEY, WESTBROOK,
REID & HUGHES

DICKSTEIN, SHAPIRO & MORIN

SONOSKY, CHAMBERS, SACHSE & MILLER

Macon Cowles
TRIAL LAWYERS FOR PUBLIC JUSTICE

ON THE BRIEF:

H. Laddie Montague, Jr.

Janice Siegel

BERGER & MONTAGUE, P.C.

Charles S. Crandall
MILBERG, WEISS, BERSHAD, SPECTHRIE
& LERACH

CRIMINAL DOCKET - U.S. District Court

U.S.

(LAST, FIRST, MIDDLE)

Case Filed

Docket No.

Def.

 PO ☐ 97X 3 7X08 (R)
 Misd. ☐
 Felony ☒ District: Off Judge/Magistr.

 WRIT ☐
 JUVENILE ☐
 ALIAS ☐

EXXON CORPORATION

02/27/90

A90-015

 No of
 Del's 2 U.S. MAG.
 CASE NO.

U.S. TITLE/SECTION

OFFENSES CHARGED

ORIGINAL COUNTS

DISM NG GUILTY

 33:1311(a), 1319(c) (1)
 33:407, 411
 16:703, 707(a)
 33:1232(b) (1)

 CLEAN WATER ACT, CT I
 REFUSE ACT, CT II
 MIGRATORY BIRD TREATY ACT, CT III
 PORTS AND WATERWAYS SAFETY ACT,
 CT IV

 1
 1
 1
 1

 DISM NG GUILTY
 NOLO

46: 3718(b)

DANGEROUS CARGO ACT, CT V

1

SUPERSEDING INDICTMENT SAME AS ABOVE

 TRIAL
 TO
 OLLAND.

I. CHARGES

SUPERSEDING COUNTS

II. KEY DATE

INTERVAL ONE

END ONE AND/OR BEGIN TWO (OR RESTART PERIOD TO TRIAL)

END INTERVAL TWO

KEY DATE

arrest

sum'ns

custody

appears on

complaint

EARLIEST OF

KEY DATE

2/27/90

APPLICABLE

☒ Indictment
☐ filed/unsealed
☐ consent to Magr.
☐ trial on complaint
☐ Information
☐ Felony W/waiver

KEY DATE

 a) ☐ 1st appears on pend-
 ing charge /R40
 b) ☐ Receive file R20/21
 c) ☐ Supsdg: Ind Inf
 d) ☐ Order New trial
 e) ☐ Remand f) ☐ G/P Withdrawn

KEY DATE

Dismissal

Pled

guilty

After N

After no

APPLICABLE

Trial (voir dire) began

Jury

N.J.

1st appears with or

waives counsel

ARRAIGNMENT

1st Trial Ended

RE-

TRIAL

2nd Trial Began

DISPOSITION DATE

SENTENCE DATE

PTD

Notie

Pros

FINAL CHARGES DISMISSED

on S.T.

grounds

W.P. WOP

on de

moti

on g

moti

III. MAGISTRATE

Search Warrant	Issued	DATE	INITIAL/NO.	INITIAL APPEARANCE DATE	INITIAL/NO.	OUTCOME
	Return			PRELIMINARY EXAMINATION		
Summons	Issued			OR		
	Served			REMOVAL		
Arrest Warrant Issued				HEARING		
COMPLAINT				WAIVED	NOT WAIVED	Tape Number
Date of Arrest				INTERVENING INDICTMENT		

Show last names and suffix numbers of other defendants on same indictment/information:

D-2 EXXON SHIPPING COMPANY

ATTORNEYS

U.S. Attorney or Asst.

Peter Gamache (AUSA), 271-5071

Mark Davis

Defense: 1 ☐ CJA. 2 ☒ Ret. 3 ☐ Waived 4 ☐ Self. 5 ☐ Non / Other 6 ☐ PD. 7 ☐ CD

D-1:

~~William M. Bankston~~ w/d#34~~BANKSTON & McCOLLUM~~~~550 W. 7th Avenue, Suite 1800~~~~Anchorage AK 99501~~~~(907) 276-1711~~

Non-Resident for D-1:

Patrick Lynch/Warren Christopher

O'MELVENY & MYERS

400 South Hope Street

Los Angeles, CA 90071

and

Charles W. Matthews

Exxon Company, U.S.A.

1839 Exxon Building

800 Bell Street

Houston, TX 77002-4266

D-2:

Robert C. Bundy

Douglas J. Serdahely

BOGLE & GATES

1031 W. 4th Avenue, Suite 600

Anchorage AK 99501

(907) 276-4557

D-1: John F. Clough, III

CLOUGH & ASSOCIATES

431 Franklin Street, Suite 202

Juneau AK 99801 (907) 586-5777

***Charles W. Bender

FINE AND RESTITUTION PAYMENTS

Docket Entries Begin On Reverse Side

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

APPEALS FEE PAYMENTS

IV. NAMES & ADDRESSES OF ATTORNEYS, SURETIES, ETC.

RULE

20

21

40

In

C

BAIL • RELEASE

PRE INDICTMENT

Release Date

Bail

Denied

Fugitive

Pers. Re

AMOUNT SET

PSA

Conditions

Date Set

10% Dep

Surety Br

Bail Not Made

Collatera

Date Bond Made

3rd Prty

Other

POST INDICTMENT

Release Date

Bail

Denied

Fugitive

Pers. Re

AMOUNT SET

PSA

Conditions

Date Set

10% Dep

Surety B

Bail Not Made

Collatera

Date Bond Made

3rd Prty

Other

CRIMINAL DOCKET U.S. District Court

U.S.

(LAST, FIRST, MIDDLE)

Case Filed	Docket No.	Def
Mo. Day Yr.		
02 27 90	A90-00015	
No. of Def's	U.S. MAG. CASE NO.	
2		

PO	Assigned	WRIT
097X 3 7-08 (R)		
Misd.	Disp./Sentence	JUVENILE
Felony	Off	ALIAS
	Judge/Magistr.	

VS.	EXXON SHIPPING COMPANY
OFFENSE ON INDEX CARD	

I. CHARGES	U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS	DISM. NG	GUILTY NOLO
	33:1311(a), 1319(c)(1)	CLEAN WATER ACT, CT. I	1		
	33:407, 411	REFUSE ACT, CT. II	1		
	16:703, 707(a)	MIGRATORY BIRD TREATY ACT, CT. III	1		
	33:1232(b)(1)	PORTS AND WATERWAYS SAFETY ACT, CT. IV	1		
	46:3718(b)	DANGEROUS CARGO ACT, CT. V	1		
	SUPERSEDING INDICTMENT SAME AS ABOVE				

TRIAL
TO
HOLLAND

II. KEY DATE	INTERVAL ONE	END ONE AND/OR BEGIN TWO (OR RESTART PERIOD TO TRIAL)	KEY DATE	KEY DATE	END INTERVAL TWO
KEY DATE	arrest sum'ns custody appears-on complaint	KEY DATE 2-27-90 APPLICABLE	KEY DATE	a) 1st appears on pending charge / R40 b) Receive file R20/21 c) Supsdg: Indt Inf d) Order New trial e) Remand f) G/P Withdrawn	KEY DATE APPLICABLE
EARLIEST OF	1st appears with or waives counsel	ARRAIGNMENT	1st Trial Ended	RE-TRIAL	2nd Trial Began
				DISPOSITION DATE	SENTENCE DATE
				PTD Nolle Pros	FINAL CHARGES DISMISSED on S.T. grounds W.P. WOP

III. MAGISTRATE			
Search Warrant	Issued Return	DATE	INITIAL/NO.
Summons	Issued Served		
Arrest Warrant Issued			
COMPLAINT			
Date of Arrest	OFFENSE (In Complaint)	INITIAL APPEARANCE DATE	INITIAL/NO.
		PRELIMINARY EXAMINATION OR REMOVAL HEARING	OUTCOME:
		Waived NOT WAIVED INTERVENING INDICTMENT	DISMISSED HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

Show last names and suffix numbers of other defendants on same indictment/information:

D-1: EXXON CORPORATION

ATTORNEYS
U. S. Attorney or Asst.Peter Gamae (AUSA), 271-5071
Mark Davis

Defense: 1 CJA. 2 Ret. 3 Waived. 4 Self. 5 Non / Other. 6 PD 7 CD

Robert C. Bundy
Douglas J. Serdahely
BOGLE & GATES
1031 W. 4th Avenue, Suite 600
Anchorage AK 99501
(907) 276-4557

Non-Resident: D-2:

James F. Neal
James F. Sanders
NEAL & HARWELL
2000 One Nashville Place
150 Fourth Avenue North
Nashville, TN 37219
(615) 244-1713

Jan 1 1990

FINE AND RESTITUTION PAYMENTS

Docket Entries Begin On Reverse Side

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

APPEALS FEE PAYMENTS

IV. NAMES & ADDRESSES OF ATTORNEYS, SURETIES, ETC.

DATE DOCUMENT NO.		Docket No. Del		MASTER DOCKET - MULTIPLE DEFENDANT CASE PROCEEDINGS DOCKET FOR SINGLE DEFENDANT		PAGE OF		VI EXCLUDABLE DELAY			LIT		
		A90-015 CR						Start Date End Date	Ltr Code	Total Days			
1990		(OPTIONAL) Show last names of defendants		V. PROCEEDINGS								A. Exe for p car (18- (11)	
Feb 27	1	Fld INDICTMENT.											
27	2	Fld GRAND JURY MINS re: D-1. No bail set. Summons to be issued.											
27	3	Fld GRAND JURY MINS re: D-2. No bail set. Summons to be issued.											d. No USC C. Six men char- D. Int past E. Pre thor hear prob (11)
27	4	Fld MAG MO, re: arraignment as to D-1 is SET for 3/21/90, 9:30 a.m. cc: USA, USM, PO, J. Neal, MAG R.											F. Tra dist 20-2 Rov
27	5	Fld MAG MO, re: arraignment as to D-2 is SET for 3/21/90, 10:00 a.m. cc: USA, USM, PO, J. Neal, MAG R.											
27	--	ISSUED summons as to D-1. WITHDRAWN											
27	--	ISSUED summons as to D-2. WITHDRAWN											
28	6	Fld MAG MO re: arraignment as to both defts is VACATED and RESET for 4/9/90 at 2:30 pm for D-1 and 4/9/90 3:15 pm. for D-2. Status conference SET for both defts for 4/9/90 at 4:30 pm before Judge Holland. cc: USA, J. Neal, C. Mathews, USM, PO, Judge Holland Magistrate Roberts, TR & RW.											G. Pre admi esce after serv fired com H. Mi arra proc Dep detic SDale cutti 290. STran enot toff or hi on li (11)
Mar 1	--	REISSUED summons as to D-1.											7. Com Cou plea I. Pre by n (12)
1	--	REISSUED summons as to D-2.											M. Un fenc win N. Pe sca of o trial O. Pe com men P. Sup men char
14	7	RETURN exec summons to Exxon Shipping Co - 3-7-90.											R. De of c no se lion T. Co gran ute than low shu sup sup T1. F mou pro mou of a T2. C pre
14	8	Fld D-1's entry of appearance - William M. Bankston.											T3. In dren in X T4. C to ac tute reac prob U. Tai gath in C
14	9	Fld D-2's entry of appearance - Robert C. Bundy/Douglas Serdahely.											
14	10	Fld D-2's appli of non-res attys - James F. Neal & James F. Sanders.											
19	11	Fld MAG ORDER allowing non-res attys J. Neal & J. Sanders to practice in Dist of AK. Cy P. Gamache, Bankston, Bundy/Serdahely, J. Neal & J. Sanders.											
19	12	Fld D-1's appli of non-res atty Patrick Lynch.											
19	13	Fld D-1's appli of non-res atty Charles W. Matthews.											
22	14	Fld MAG ORDER allowing non-res atty C. Matthews to practice in Dist of AK. Cy P. Gamache, W. Bankston, C. Matthews & R. Bundy.											
22	15	Fld MAG ORDER allowing non-res atty P. Lynch to practice in Dist of AK. Cy P. Gamache, P. Lynch, W. Bankston & R. Bundy.											
26	16	RETURN exec summons to Exxon Corp - 3-8-90.											
27	17	Fld SUPERSEDING INDICTMENT.											

CONTINUED TO PAGE

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. 13

D-1: EXXON CORPORATION
D-2: EXXON SHIPPING COMPANY

A90-015CR

AO 256A

Yr. | Docket No. | Def.

DATE

PROCEEDINGS (continued)

V. EXCLUDABLE DELAY

(Document No.)

(a) (b) (c) (d)

1990

Mar 27

(18) Fld GRAND JURY MINS re SI as to D-1. Bail N/A, summons to be issued.

27

(19) Fld GRAND JURY MINS re SI as to D-2. Bail N/A, summons to be issued.

28

(--) Issued summons to D-1 & D-2.

27

(20) Fld D-1's appli of non-res attys W. Christopher & C. W. Bender.

30

(21) Fld MAG ORDER allowing non-res atty W. Christopher to practice in Dist of AK for D-1. Cy P. Gamache, W. Bankston, W. Christopher & R. Bundy.

30

(22) Fld MAG ORDER allowing non-res atty Charles W. Bender to practice in Dist of AK for D-1. Cy P. Gamache, W. Bankston, C. Bender & R. Bundy.

Apr 09

(23) Fld MAG CRT MINS re arrgnment on SI as to D-1. Pled NG, status conf @4:30 Judge H's chambers.

09

(24) Fld MAG CRT MINS re arrgnment on SI as to D-2. Pled NG, status conf @4:30 Judge H's chambers.

09

(--) Sent notices to Judge Holland re ST deadlines as to D-1 & D-2. Cy TR.

11

(25) Fld MO setting TBJ as to both defts for Mon, 6-18-90 @9:00 a.m. Deadlines set. Cy P. Gamache, W. Bankston, Bundy/Serdahely, Mag R, Jury Clerk, USM & PO.

11

(26) RETURN exec summons on SI to D-1 - 3-29-90.

11

(27) RETURN exec summons on SI to D-2 - 3-30-90.

20

(28) Fld D-1's mot to declare case complex litigation w/atch exhibit.

20

(29) Fld D-2's mot for cont & to declare case complex litigation w/atch auth & afdvt.

25

(30) Fld ORDER re pretrial proceedings. Deadlines set. Pretrial mots w/d from Mag. Cy Mag R, P. Gamache, W. Bankston, Bundy/Serdahely.

26

(31) Fld pltf's mot to permit defense inspec of GJ testimony w/mot on shorten time. (FILED UNDER SEAL).

27

(31) Fld ORDER granting pltf's mot to permit def inspection of GJ testimony (FILED UNDER SEAL).

Cy P. Gamache

Interval
(per Section II)

Start Date
End Date

Ltr. Total
Code Day

TRIAL
TO
OLLAND.

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

AO 258A

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
1990	(Document No.)				
Apr 27	(32) Fld pltf's resp to defts' mots for cont & to declare case complex litig.				
May 02	(33) Fld ORDER re complex case determination, further proceedings. TBJ cont to date to be deter later. Deadlines set. Cy P. Gamache, W. Bankston, R. Bundy/D. Serdahely, Jury Clerk, USM, PO & TR.	4-20-90		T2	ALL PR MOTION: JUDGE !
07	(34) Fld D-1's notice of w/d by firm of Bankston, McCollum & sub by Clough & Assoc.				
08	(35) Fld D-1's mot for bill of part w/atch memo & declaration.				
09	(34) Fld ORDER allowing firm of Bankston, McCollum to w/d & firm of Clough & Assoc. to sub as cnsl for D-1. Cy P. Gamache, W. Bankston, R. Bundy/D. Serdahely, J. Clough.				
10	(36) Fld D-1's errata w/atch exhibits not included w/#35.				
30	(37) Fld pltf's opp to D-1's mot for bill of part.				
Jun 08	(38) Fld parties joint prop for filing/briefing of mots.				
11	(39) Fld D-1's reply brief in spt of mot for bill of part w/atch exhibits.				
22	(40) Fld ORDER re sched & trial set. Oral argu on D-1's mot for bill of part on 7-20-90 @8:30 a.m. Decision will be entered 7-20-90. Deadlines for all mots. Oral argu on mots to dismiss 10-19-90 @8:30 am. Decision on/about 10-26-90. If req, hearing on pending mots set for 1-25-91 @8:30 am. Pretrial conf 1-25-91 @8:30 am, cr follow hearing, if held on pending mots. Trial 4-10-91 @9:00am. Cy P. Gamache, Bundy/Serdahely, J. Clough, Jury Clerk, USM, PO & TR.	4-20-90 6-22-90 8-22-90 4-10-91		E T	64 231
28	(41) Fld defts' acceptance of sched & waiver of ST rights.				
Jul 20	(42) Fld ORDER granting D-1's mot for bill of part. Deadline set. Cy P. Gamache & R. Bundy.	5-8-90 7-20-90		E	75
23	(43) Fld CRT MINS dtd 7-20-90 re oral argu on D-1's mot for bill of part. Mot granted.				
24	(44) Fld ORDER granting/denying D-1's mot for bill of part w/cy of req for parts w/deletions marked. Cy M. Davis, Bundy/Serdahely & J. Clough				

UNITED STATES DISTRICT COURT
 CRIMINAL DOCKET

U. S. vs

 D-1: EXXON CORPORATION
 D-2: EXXON SHIPPING COMPANY

A90-015CR

AO 256A @

Yr. | Docket No. | Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
<u>1990</u>	(Document No.)				
Jul 31	(45) Fld pltf's bill of part.				
31	(46) Fld stip to permit filing of bill of part on 7-31-90.				
Aug 01	(46) Fld ORDER granting stip re filing of bill of part. Cy M..Davis, Bundy/Serdahely & J. Clough				
13	(47) Fld D-2 application of E. Edward Bruce to appear and part and consent.				
16	(48) Fld ORDER re: GRANTING app to appear and part in 47. cc: M. Davis, R. Bundy, J. Clough.				DKT #
20	(49) Fld D-1's afdvt of svcs re mot to dismiss.				
20	(50) Fld D-1's afdvt of svcs re mot to dismiss ct 1.				
20	(51) Fld D-1's afdvt of svcs re mot to dismiss ct 2.				
20	(52) Fld D-1's afdvt of svcs re mot to dismiss ct 3.				
20	(53) Fld D-1's afdvt of svcs re mot to dismiss ct 4.				
20	(54) Fld D-1's afdvt of svcs re mot to dismiss ct 5.				
20	(55) Fld D-2's mot to dismiss ct 1 for failure to charge an offense w/atch memo.				
20	(56) Fld D-2's mot to dismiss ct 1 for lack of fair notice w/atch memo& exhibit.				
20	(57) Fld D-2's mot to dismiss ct 2 for failure to charge an offense w/atch memo & exhibits.				
20	(58) Fld D-2's mot to dismiss ct 3 for failure to charge an offense w/atch memo.				
20	(59) Fld D-2's mot to dismiss ct 4 for failure to charge an offense w/atch memo & exhibits.				
20	(60) Fld D-2's mot to dismiss or req an election due to dupl nature of ct 4 w/atch memo & exhibits.				
20	(61) Fld D-1's mot to adopt D-2's mot to dismiss ct 1 w/atch memo.				
20	(62) Fld D-1's mot to adopt D-2's mot to dismiss ct 2 w/atch memo.				
20	(63) Fld D-1's mot to adopt D-2's mot to dismiss ct 3 w/atch memo.				

Interval (per Section 11) | Start Date | End Date | Ltr. Total Code Days

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
1990	(Document No.)				
Aug 20	(64) Fld D-1's mot to adopt D-2's mot to dismiss ct 4 or req election w/atch memo.				
20	(65) Fld D-1's mot dismiss ct 5 for fail to charge a viol of the Dangerous Cargoes Act w/atch memo.				
20	(66) Fld D-1's mot to dismiss based on vicarious liability w/atch memo & exhibits. (MOTION IN RED FOLDER BEHIND CASE FILE)				
21	(67) Fld pltf's mot for ext of time to resp to D-2's mot to dismiss and for discvy.				
21	(67) Fld D-1's errata of memo in spt of mot to dismiss all counts based on vicarious liability (docket# 66).				
22	(68) Fld D-1's afdvt of service re# 67.				
Sep 20	(69) Fld pltf's resp in opp to D-2's mot to dismiss ct I lack of fair not.				
20	(70) Fld pltf's consolid resp in opp to D-1's mots to dismiss cts I-V.				
20	(71) Fld pltf's resp opp to D-2's mot to dismiss ct for failure to charge offense w/atch memo.	III			
20	(72) Fld pltf's resp opp to D-2's mot to dismiss ct or req an election due to its dupl nature.	IV			
20	(73) Fld pltf's resp opp to D-2's mot to dismiss ct for failure to charge an offense.	II			
20	(74) Fld pltf's resp opp to D-2's mot to dismiss ct for failure to charge an offense.	IV			
20	(75) Fld pltf's resp opp to D-2's mot to dismiss ct I for failure to charge an offense w/atch memo.	I			
20	(76) Fld pltf's resp opp to D-1's mot to dismiss all cts insofar as they attempt to charge offense based on vicarious liability.	cts			
26	(77) Fld pltf's not of errata for #76 as to D-1.				
26	(78) Fld pltf's resp opp to D-1's mot to dismiss all cts insofar they attempt charge offens based on vicarious liability w/atch memo.				
Oct 5	(79) Fld D-2's reply to pltf's resp in opp to D-2's mot to dismiss Ct I for failure to charge offense.				

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

D-1: EXXON CORPORATION
D-2: EXXON SHIPPING COMPANY

A90-015CR

AO 256A @

Yr. | Docket No. | Def.

DATE	PROCEEDINGS (continued)		V. EXCLUDABLE DELAY			
			(a)	(b)	(c)	(d)
<u>1990</u>	(Document No.)					
Oct 5	(80) Fld D-2's reply to pltf's resp in opp to D-2's mot to dismiss Ct I for lack of fair notice.					
5	(81) Fld D-2's reply to pltf's resp in opp to D-2's mot to dismiss Ct IV or require election due its duplicitous nature.					
5	(82) Fld D-2's reply to pltf's resp in opp to D-2's mot to dismiss Ct II for failure to chrg offense.					
5	(83) Fld D-2's reply to pltf's resp in opp to D-2's mot ti dismiss Ct IV for failure to chrg offense.					
5	(84) Fld D-2's reply to pltf's resp in opp to D-2's mot to dismiss Ct III for failure to chrg offense.					
5	(85) Fld D-1's reply memo in supp of mot to dismiss all counts as they attempt to charge offense based on vicarious liability.					
5	(86) Fld D-1's reply memo in supp of mot to adopt mots D-2's to dismiss Ct I on additional grounds applicable to this def.					
5	(87) Fld D-1's reply memo in supp of mot to adopt mot of D-2 to dismiss Ct II on additional grounds applicable to this def.					
5	(88) Fld D-1's reply memo in supp of mot to adopt mot of D-2 to dismiss Ct III on additional grounds applicable to this def.					
5	(89) Fld D-1's reply memo in supp of mot to adopt mots of D-2 to dismiss Ct IV or require election on additional grounds applicable to this def.					
5	(90) Fld D-1's reply memo in supp of mot to dismiss Ct V for failure to charge violation of the Dangerous Cargoes Act.					
9	(91) Fld MO setting status conference for Wed, 10-10-90 at 4:30 p.m. Cy M. Davis, J. Clough, R. Bundy, P. Lynch, C. Matthews.					
19	(92) Fld CRT MIN re oral argumnt on def's mot to dismiss; Crt ordered all mots deny, explain re deny to follow w/i 10 days. Cy M. Davis, J. Clough, R. Bundy.					
29	(93) Fld ORDER deny all mots to dismiss, grant D-2's mot to require election in Ct IV (#60). Cy M. Davis, J. Clough, R. Bundy, P. Lynch, C. Matthews.					

Interval (per Section II) | Start Date | End Date | Ltr. Total | Code Days

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

D-1: Exxon Corp.
D-2: Exxon Shipping

A90-015C

AO 258A

DATE		PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
			(a)	(b)	(c)	(d)
1990		(Document No.)				
Nov	2	(94) Fld Reporter's transcript re oral argument on def's mots to dismiss dated 10-19-90.				
	9	(95) Fld joint submission for minor modificat of crt's schedul order fld 6-22-90.				
	13	(96) Fld pltf's B/P elect basis of D-2's liability under Ct. IV.				
	13	(97) Fld ORDER re scheduling - new deadlines set; PTMs due 12-11-90, PTC set 1-28-91 at 8:30 A.M. Cy M. Davis, P. Lynch, C. Matthews, R. Bundy, J. Clough.				
Dec	11	(98) Fld pltf's mot in limine re post-ground changes in employee substan abuse and alcohol policy w/atch memo.				
	11	(99) Fld pltf's mot in limine to exclude evid & refer to lawful, post-ground kill of migratory birds by govt for scientific purposes w/atch memo.				
	11	(100) Fld pltf's mot in limine to permit govt to use lead questions on direct exam of witnesses I.D. w/adverse party & perclude use of lead questions w/atch memo.				
	11	(101) Fld pltf's mot in limine to exclude out-of-crt statemnts by govt employees w/atch memo.				
	11	(102) Fld pltf's mot for pre-trial ruling re fed pilotage law apply in Price Wm. Sound w/atch memo.				
	11	(103) Fld D-2's Req per Rule 12 for pretrial determine of applicabil of alter fine provision w/atch memo.				
	11	(104) Fld D-1's mot for sever of defs w/atch memo.				
	11	(105) Fld D-2's consolidat mots in limine w/atch memo.				
	11	(106) Fld d-1's consolidat mots in limine w/atch memo.				
	14	(107) Fld pltf's not of errata re #100 w/atch memo.				
1991						
Jan	7	(108) Fld pltf's mot for order short time w/mot - Fld Under Seal.				
	7	(109) Fld pltf's mot to seal - Fld Under Seal.				
	7	(110) Fld pltf's resp to def's mot for Kastigar Hearing Fld Under Seal. (Placed behind File)				
	7	(111) Fld pltf's resp to def's mot for Kastigar hearing w/atch memos and exhibits. (Placed behind file).				

Interval (per Section II) Start Date Ltr. Total
End Date Code Days

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

D-1: EXXON CORPORATION
D-2: EXXON SHIPPING

(5)

A90-015CR

AO 256A

Yr. Docket No. Def.

DATE	PROCEEDINGS (continued)		V. EXCLUDABLE DELAY			
	(Document No.)		(a)	(b)	(c)	(d)
1991						
2 Jan 7	(112)	Fld D-1's mot to acc briefs of D-2 in opp to pltf's mots in limine.				
13 7	(113)	Fld d-1's opp to pltf's mot in limine re post-grounding changes in employee policy.				
2 7	(114)	Fld D-2's mot to adopt resp of D-1 to pltf's mot in limine re post-ground changes in employee policy.				
4 7	(115)	Fld D-2's resp to pltf's mot in limine to exclude reference to/evid relat to pltf kill migratory birds.				
15 7	(116)	Fld D-2's resp in opp to pltf's mot in limine to exclude out-of-court statements by pltf's employees.				
16 7	(117)	Fld D-2's resp in opp to pltf's mot to use lead questions on direct exam of 14 witness & preclude def's use on cross-exam.				
54 7	(118)	Fld D-2's resp in opp to pltf's mot for pre-trial ruling re applic of fed pilotage law w/atch memo.				
9 7	(119)	Fld pltf's resp in opp to D-2's req for pretrial determination of applic of aternat fine provision.				
17 7	(120)	Fld pltf's resp in opp to D-2's mot to exci proof certain conduct describ in 4/18 B/P.				
15 7	(121)	Fld pltf's opp to D-1's consol mots in limine.				
8 7	(122)	Fld pltf's opp to D-2's mot to exclu evid of Captain's prior convic for DUI.				
11 7	(123)	Fld pltf's resp in opp to D-1's mot for sever of defs.				
10 7	(124)	Fld pltf's opp to D-2's mot in limine for crt to adopt certain proced in jury select process.				
	8 (125)	Fld ORDER grant pltf's mot (filed under Seal).				
	8 (126)	Fld ORDER grant pltf's mot to seal (filed under Seal).				
7 11	(127)	Fld pltf's reply to D-1's opp to pltf's mot in limine re post ground chng in employee policy.				
5 11	(128)	Fld pltf's repl to D-2's opp to mot in limine to exclude statements by govt employees.				
3 11	(129)	Fld pltf's repl to def's opp to mot in limine re exclude evid to lawful post-ground kill of birds.				
6 11	(130)	Fld pltf's repl to def's opp to mot im limine to permit lead quest on direct exam and preclude use on cross exam.				
			Interval (per Section 11)	Start Date End Date	Ltr. Code	Total Days

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

AO 256A

D-1: EXXON CORP.
D-2: EXXON SHIPPING

A90-015CF

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
<u>1991</u>	(Document No.)				
a Jan 11	(131) Fld pltf's repl to D-2's opp to mot for pretrial ruling of fed pilot law in P.W. Sound.				
11	(132) Fld D-2's supple opp to pltf's pilotage mot w/atch memo.				
11	(133) Fld D-2's reply memo in support of mot in limine re jury selection.				
11	(134) Fld D-2's mot to unseal pltf's exhib 11.				
11	(135) Fld D-2's reply memo re mot to excl evid of prior convict of DUI.				
11	(136) Fld D-2's mot to adopt mot of D-1.				
11	(137) Fld D-2's reply memo re pltf's opp to mot in limine to exclu certain conduct in 4-18 B/P.				
11	(138) Fld D-2's reply memo in support of Rule 12(b) req pretrial determine of applic of alter fine provision w/atch memo.				
11	(139) Fld D-1's reply to pltf's opp to D-2's mot for severance.				
11	(140) Fld D-1's reply to pltf's opp to D-1's consolid mots in limine.				
11	(141) Fld D-1's mot to adopt briefs of D-2 in reply to pltf's opp to mots in limine.				
11	(142) Fld D-2's mot to seal reply memo (Memo Filed Under Seal).				
14	(143) Fld D-2's afdvt of service.				
14	(144) Fld D-2's afdvt of service.				
14	(145) Fld D-2's redacted reply memo to pltf's resp to mot for Kastigar hearing w/atch memo.				
14	(146) Fld D-2's mot to seal corrected cy of reply memo.				
14	(147) Fld D-2's not of errata re memo in #142 (Memo Filed Under Seal).				
24	(148) Fld pltf's opp to D-2's mot to unseal exh #11.				
28	(112) Fld ORDER grant D-1's mot to adopt D-2's opp to mots in limine. Cy M. Davis, J. Clough, R. Bundy, P. Lynch, C. Matthews.				
28	(114) Fld ORDER grant D-2's mot to adopt D-1's resp to mot in limine re post-ground. Cy M. Davis, J. Clough, R. Bundy, P. Lynch, C. Matthews.				

Interval
(per Section 11)

Start Date
End Date

Ltr. Total
Code Days

**UNITED STATES DISTRICT COURT
CRIMINAL DOCKET**

U. S. vs

 D-1: EXXON CORP.
D-2: EXXON SHIPPING

A90-015CR

AO 256A ©

Yr. | Docket No. | Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
1991	(Document No.)				
Jan 28	(136) Fld ORDER grant D-2's mot to adopt mot of D-1. cy M. Davis, J. Clough, R. Bundy, P. Lynch, C. Matthews.				
28	(141) Fld ORDER grant D-1's mot to adopt briefs of D-2 reply to opp to mots inlimine. Cy M. Davis, J. Clough, R. Bundy, P. Lynch, C. Matthews.				
28	(142) Fld ORDER grant D-2's mot to seal. Cy M. Davis, J. Clough, R. Bundy, P. Lynch, C. Matthews.				
28	(146) Fld ORDER grant D-2's mot to seal correct cy of reply memo. Cy M. Davis, J. Clough, R. Bundy, P. Lynch, C. Matthews.				
29	(149) Fld CRT MIN re oral arg on all pend mot (pretrial conf to follow; mots at dkt #s 112,114,136,141, 142 & 146 granted.				
29	(150) D-2 mot to file Kastigar discovery plead under seal w/atch proposed mot & memo.				
30	(151) D-1 mot to adopt D-2 mot to file Kastigar disc plead under seal & D-1 mot for prod, unsealing & other access to evid materials necessary for Kastigar hrg.				
30	(152) Fld D-1 not of filing redacted mot & memo for prod, unsealing & other access to evid materials necessary for Kastigar hrg.				
30	(153) Fld D-1 redacted mot for prod, unsealing & other access to evid materials necessary for Kastigar hrg.				
30	(154) Fld D-1 exclud delay statement for mot for prod, unsealing & other access to evid materials necessary for Kastigar hrg & redacted mot for prod, unsealing & other access to evid materials necessary for Kastigar hrg.				
Feb 1	(155) Fld MO re defts rule 12(b) mot requesting pretrial determination of applic of alt fine provision granted, deadlines set. cc cnsl.				
01	(156) Fld pltf response to D-2 mot for production, unsealing & other access to evid materials necessary for Kastigar hrg.				
04	(157) Fld D-2 reply brief in support of mot for prod, unsealing & other evid access necessary for Kastigar hrg.				

Interval
(per Section II)Start Date
End DateLtr. Total
Code Days

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

D-1: EXXON CORP.
D-2: EXXON SHIPPING

A90-015CR

AO 256A

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
1991	(Document No.)				
Feb 05	(158) Fld REPORTERS TRANSCRIPT re oral arg on all pending mot on 1/28/91 @ 8:30am.				
06	(159) Fld ORDER denying govt mot in limine re use of statements of govt employees. cc M. Davis, R. Bundy, J. Clough, P. Lynch, C. Matthews.				
06	(160) Fld ORDER denying govt mot in limine re use of leading questions. cc M. Davis, R. Bundy, J. Clough, P. Lynch, C. Matthews.				
06	(161) Fld ORDER denying D-1 mot for severance of def. cc M. Davis, R. Bundy, J. Clough, P. Lynch, C. Matthews.				
06	(162) Fld ORDER granting govt mot in limine re evid of bird kills. cc M. Davis, R. Bundy, J. Clough, P. Lynch, C. Matthews.				
06	(163) Fld ORDER denying D-1 mot in limine re use of statements of Exxon exec. cc M. Davis, R. Bundy, J. Clough, P. Lynch, C. Matthews.				
06	(164) Fld ORDER granted in part/denied in part D-2 mot in limine re certain conduct described in bill of particulars. cc M. Davis, R. Bundy, J. Clough, P. Lynch, C. Matthews.				
06	(165) Fld ORDER grant D-1 mot/denying govt mot in limine re post-grounding policy changes. cc M. Davis, R. Bundy, J. Clough, P. Lynch, C. Matthews.				
06	(166) Fld ORDER grant govt mot for pre-trial ruling on fed pilotage requirements. cc M. Davis, R. Bundy, J. Clough, P. Lynch, C. Matthews.				
06	(167) Fld ORDER granting D-2 mot in limine re Hazlewood's DUI convictions. cc M. Davis, R. Bundy, J. Clough, P. Lynch, C. Matthews.				
06	(168) Fld ORDER re prelim pre-trial conf. cc M. Davis, R. Bundy, J. Clough, P. Lynch, C. Matthews.				
08	(169) Fld ORDER re D-2 mot for Kastigar-type hrg granted; D-2 mot for prod, unseal & other access to evid materials for Kastigar hrg to be addressed at or after 2/22/91 hrg. cc: USA, R. Bundy, J. Neal.				
13	(170) Fld D2 mot for determination re 18USC3571(d) does not apply w/atch memo & excludable delay statement.				

Interval
(per Section II)

Start Date
End Date

Ltr. Total
Code Days

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

D-1: EXXON CORP. (7)

D-2: EXXON SHIPPING

A90-015CR

AO 256A

Yr. | Docket No. | Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
1991	(Document No.)				
Feb 13	(171) Fld D-1 mot to adopt D2 mot for determination that 18USC3571(d) does not apply.				
13 21	(172) Fld pltf's memo of law re admissibil of evid of marine casualty investigat w/atch afdvt.				
22	(173) Fld CRT MIN re Kastigar Hearing.				
8 27	(174) Fld govt's resp in opp to dft's dkt #170.				
28	(175) Fld ORDER re <u>Kastigar</u> hrg. No challenged evid is protected by dft's claim of immunity. Exxon Shipping's mot to unseal govt's exh. 11 denied. cy: cnsl.				
Mar 5	(176) Fld D-2's reply memo in supp of mot that 18:3571(d) not apply w/atch exh.				
12 11	(177) Fld pltf's prop jury instructions w/atch memo.				
46 11	(178) Fld D-1's brief in supp of obj to pltf's prop jury instruc & in supp of def's req instruc.				
112 11	(179) Fld D-2's joint submiss of prop jury instructions.				
30 11	(180) Fld D-2's memo in supp of prop disput jury instruc.				
41 11	(181) Fld D-2's prop disput jury instructions.				
11 11	(182) Fld D-1's prop jury instructions.				
12 13	(183) Fld pltf's plea agreement.				
5 13	(184) Fld pltf's mot to permit fld documents via fax w/atch afdvt re joint not PCOP.				
2 13	(185) Fld D-1's afdvt fo service.				
5 13	(186) Fld D-1's applic of non-res attorney to appear w/atch exhib.				
1 18	(187) Fld ORDER grant D-1's mot for non-res cnsl, E. Lynch. Cy M. Davis, R. Bundy, J. Clough, USM, PTS.				
5 18	(184) Fld ORDER set hearing re PCOP for 3-22-91 at 9:30, TBJ is vacated. Cy M. Davis, R. Bundy, J. Clough, USM, PTS, JC.				
5 22	(188) Fld pltf's stmt of fact basis for def's guilty plea.				
3 22	(189) Fld ORDER re IOS; guilty plea acc, IOS set 4-24-91 at 8:30, w/atch public not re comments. Public has til 4-11-91. Cy M. Davis, R. Bundy, J. Clough, USM, PO.				

Interval | Start Date | Ltr. Total
(per Section 11) | End Date | Code Days

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

AO 256A

D-1: EXXON CORP.
D-2: EXXON SHIPPING

A90-015

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
1991 Mar 22	(190) Fld CRT MIN re COP; D-1 pleas G ct 3, D-2 pleas G cts I-III, IOS set Wed, 4-24-91. Cy M. Davis, R. Bundy, D. Clough, USM, PTS.				
		Interval (per Section II)			
		Start Date End Date		Ltr. Code	Total Days

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

FILED

MAR 27 1990

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By [Signature] Deputy

UNITED STATES OF AMERICA,)
)
Plaintiff)
)
v.)
)
EXXON CORPORATION)
)
and)
)
EXXON SHIPPING COMPANY,)
)
)
Defendants)

SUPERSEDING
INDICTMENT

Criminal No. A90-015

Count I: Clean Water Act
Vio. 33 U.S.C. §§ 1311(a),
1319(c)(1)

Count II: Refuse Act
Vio. 33 U.S.C. §§ 407, 411

Count III: Migratory Bird
Treaty Act

Vio. 16 U.S.C. §§ 703,
707(a)

Count IV: Ports and Waterways
Safety Act

Vio. 33 U.S.C. § 1232(b)(1)

Count V: Dangerous Cargo Act
Vio. 46 U.S.C. § 3718(b)

COUNT ONE

The grand jury charges that:

1. Defendant EXXON CORPORATION is a corporation incorporated under the laws of the State of New Jersey.
2. Defendant EXXON SHIPPING COMPANY is a corporation incorporated under the laws of the State of Delaware. At all times pertinent to this indictment, EXXON CORPORATION was the sole shareholder of EXXON SHIPPING COMPANY, and EXXON SHIPPING COMPANY had a single director who reported to Exxon USA, a division of EXXON CORPORATION.
3. EXXON SHIPPING COMPANY was incorporated in 1973.

Superseding
INDICTMENT

In 1982, EXXON SHIPPING COMPANY took over the functions of the Marine Department of Exxon USA, the primary purpose of which was to transport petroleum products for Exxon USA. EXXON CORPORATION or its affiliates were the source of all of EXXON SHIPPING COMPANY's initial assets and personnel, and EXXON CORPORATION continued to be the primary source of capital for EXXON SHIPPING COMPANY at all times pertinent to this indictment.

4. At all times pertinent to this indictment, EXXON SHIPPING COMPANY operated oil tankers for the benefit of EXXON CORPORATION; one such tanker was the Exxon Valdez. EXXON CORPORATION guaranteed the debt issued by EXXON SHIPPING COMPANY to build the Exxon Valdez.

5. At all times pertinent to this indictment, EXXON SHIPPING COMPANY's headquarters were in Houston, Texas, in the same building that housed the headquarters of Exxon Company USA. EXXON CORPORATION provided all of the computer, medical, accounting, administrative, and legal services used by EXXON SHIPPING COMPANY. EXXON CORPORATION set policies for EXXON SHIPPING COMPANY regarding capital expenditures, personnel, employee compensation, alcohol abuse, and contracting.

6. At all times pertinent to this indictment, the president of EXXON SHIPPING COMPANY reported to a vice-president of Exxon Company USA. All major investments by EXXON SHIPPING COMPANY were subject to the approval of EXXON CORPORATION.

7. At all times pertinent to this indictment, EXXON SHIPPING COMPANY was acting for the benefit of EXXON CORPORATION, and within the scope of authority granted it by EXXON

CORPORATION.

8. At all times pertinent to this indictment, EXXON SHIPPING COMPANY employed "able seamen" and officers aboard the Exxon Valdez who were responsible for the operation, direction, and control of the Exxon Valdez.

9. On March 23, 1989, at approximately 9:20 p.m., the Exxon Valdez departed from the Port of Valdez, Alaska carrying 53 million gallons of crude oil owned by EXXON CORPORATION, bound for an EXXON CORPORATION facility in Long Beach, California.

10. On March 23, 1989, shortly before midnight, the Exxon Valdez deviated from the designated shipping lanes in Prince William Sound. These lanes are used by ships entering or leaving the Port of Valdez, Alaska, and establish a route for the passage of ships.

11. After the Exxon Valdez deviated from the designated shipping lanes, the master left the ship's bridge. The ship then proceeded under the direction of an officer who lacked the required Coast Guard certification for pilotage in Prince William Sound, and a helmsman who was known by EXXON SHIPPING COMPANY to be incompetent at performing his assigned duties.

12. On March 24, 1989, shortly after midnight, the Exxon Valdez ran aground on Bligh Reef, a well-known and well-marked navigational hazard, and discharged more than ten million gallons of crude oil into Prince William Sound.

13. From March 24, 1989 through November 9, 1989, crude oil that discharged from the Exxon Valdez migrated more

than 700 miles from Bligh Reef, contaminating the waters and shorelines of Prince William Sound, the Gulf of Alaska, Kenai Fjords National Park, the Katmai National Park and Preserve, the Aniakchak National Monument and Preserve, the Alaska Peninsula National Wildlife Refuge, the Alaska Maritime National Wildlife Refuge, the Becharof National Wildlife Refuge, the Kodiak National Wildlife Refuge, the lower Kenai Peninsula, the Barren Islands, Kodiak Island, Shelikof Strait, and other parts of the Alaska Peninsula, causing the death of more than 36,000 migratory birds, including more than 100 bald eagles, and numerous other varieties of wildlife.

14. On March 24, 1989, in the District of Alaska, and elsewhere, defendants EXXON CORPORATION and EXXON SHIPPING COMPANY did negligently cause pollutants, namely more than ten million gallons of crude oil, to be discharged from a point source, namely the tank vessel Exxon Valdez, into Prince William Sound, a navigable water of the United States, without a permit, all of which is in violation of and contrary to Title 33, United States Code, Sections 1311(a) and 1319(c)(1).

COUNT TWO

The grand jury further charges:

1. Paragraphs one through thirteen of Count I are realleged as if set forth in full herein.

2. On March 24, 1989, in the District of Alaska and elsewhere, defendants EXXON CORPORATION and EXXON SHIPPING COMPANY unlawfully did throw, discharge and deposit, and did cause, suffer and procure to be thrown, discharged and deposited, refuse matter, namely more than ten million gallons of crude oil, from a ship, namely the Exxon Valdez, into Prince William Sound, a navigable water of the United States, without a permit, all in violation of and contrary to Title 33, United States Code, Sections 407 and 411.

COUNT THREE

The grand jury further charges:

1. Paragraphs one through thirteen of Count I are realleged as if set forth in full herein.

2. From on or about March 24, 1989 to on or about September 25, 1989, in the District of Alaska and elsewhere, the defendants EXXON CORPORATION and EXXON SHIPPING COMPANY, without being permitted to do so as required by law, did kill migratory birds, all in violation of and contrary to Title 16, United States Code, Sections 703 and 707(a) and Title 50, Code of Federal Regulations, Section 21.11.

COUNT FOUR

The grand jury further charges:

1. Paragraphs one through thirteen of Count I are realleged as if set forth in full herein.

2. On March 23 and March 24, 1989, in the District of Alaska and elsewhere, defendants EXXON CORPORATION and EXXON SHIPPING COMPANY did willfully and knowingly violate a regulation prescribed under Title 33, United States Code, Chapter 25, in that defendants, being the owners of the tank vessel Exxon Valdez, and the master of the Exxon Valdez, acting as the agent of the defendants, did willfully and knowingly fail to ensure that the wheelhouse of the Exxon Valdez, while underway, was constantly manned by persons who directed and controlled the movement of the vessel, each of whom was competent to perform that duty, all in violation of and contrary to Title 33, United States Code, Section 1232(b)(1), and Title 33, Code of Federal Regulations, Section 164.11(b).

COUNT FIVE

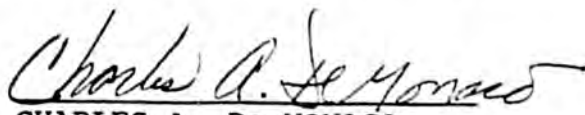
The grand jury further charges:

1. Paragraphs one through thirteen of Count I are realleged as if set forth in full herein.
2. On March 23 and March 24, 1989, in the District of Alaska and elsewhere, defendants EXXON CORPORATION and EXXON SHIPPING COMPANY did willfully and knowingly violate a regulation prescribed under Title 46, United States Code, Chapter 37, in that defendants did employ and cause persons to be engaged on the crew of the tank vessel Exxon Valdez, knowing such persons to be physically and mentally incapable of performing the duties assigned them, all in violation of Title 46, United States Code, Section 3718(b), and Title 46, Code of Federal Regulations, Section 35.05-20.

A true bill,


Foreperson^U


MARK R. DAVIS
Acting United States Attorney


CHARLES A. De MONACO
Assistant Chief
Environmental Crimes Section
U.S. Department of Justice

7-LS1256A

Cook

4/19/91

HOUSE RESOLUTION NO.**IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - FIRST SESSION****BY THE HOUSE SPECIAL COMMITTEE ON THE EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT****Introduced:****Referred:****A RESOLUTION**

- 1 Relating to the rejection of the Proposed Plea Agreement with Exxon Corporation and**
2 Exxon Shipping Company.

3 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES:

4 WHEREAS, as the elected representatives of the people of Alaska, the House of Representatives
5 has a unique responsibility to assess and articulate the public interest in all matters affecting the welfare
6 of the people and natural resources of this state; and

7 WHEREAS the State of Alaska contains more than 50 percent of the coastline of the United
8 States; and

9 WHEREAS the State of Alaska operates a marine highway system, and the people of the state
10 are highly dependent upon the safe and reliable conduct of maritime operations in international and
11 intracoastal traffic; and

12 WHEREAS the National Transportation Safety Board's investigation into the causes of the
13 Exxon Valdez oil spill established that Exxon Shipping Company "did not adequately monitor the master
14 for alcohol abuse," "did not have a sufficient program to identify, remove from service, if necessary, and
15 provide treatment for employees who had chemical dependency problems," "had manipulated shipboard
16 reporting of crew overtime information that was to be submitted to the Coast Guard," and implemented

1 policies that "do not adequately consider the increase in workload caused by reduced manning," and that
2 "could be conducive to fatigue"; and that a "probable cause of the grounding of the Exxon Valdez was
3 ... the failure of Exxon Shipping Company to provide a fit master and a rested and sufficient crew for
4 the Exxon Valdez"; and

5 **WHEREAS** a successful prosecution of Exxon Shipping Company for violation of the Ports and
6 Waterways Safety Act under the facts of this case would be a significant deterrent to the repetition of
7 the unsafe practices outlawed by that Act; and

8 **WHEREAS** the federal government has the authority and responsibility to ensure that safe
9 practices are followed by vessels operating in Alaska waters; and

10 **WHEREAS** Count IV of the indictment in United States v. Exxon Corporation and Exxon
11 Shipping Company, No. A90-015 Cr., before the United States District Court for the District of Alaska
12 charges Exxon Shipping Company with willfully and knowingly failing to ensure that the wheelhouse
13 of the Exxon Valdez was constantly manned by persons competent to direct and control the movement
14 of the vessel, in violation of 33 U.S.C. 1232(b)(1) and 33 CFR 164.11(b); and

15 **WHEREAS** Count IV charges a felony, punishable by up to five years' imprisonment and a
16 \$50,000 fine, which confirms the serious threat to human life, property, and the environment posed by
17 a failure to operate a vessel safely; and

18 **WHEREAS** the United States' Memorandum in Aid of Sentencing stresses the supervisory
19 misconduct of Exxon Shipping Company and the negligence of its employees to establish a basis for the
20 Plea Agreement under 18 U.S.C. sec. 3553(a)(1); and

21 **WHEREAS** the Proposed Plea Agreement would result in the dismissal of Count IV; and

22 **WHEREAS** the dismissal of Count IV against Exxon Shipping Company will not deter major
23 shippers from engaging in unsafe vessel manning practices; and

24 **WHEREAS** information has recently been made public that indicates a level of culpability on
25 the part of the Exxon Corporation and the Alyeska Pipeline Service Company (Alyeska) that could go
26 well beyond criminal negligence; and

27 **WHEREAS** Alyeska has not been indicted and is not a party to the criminal case, and there is,
28 according to comments previously submitted to the court for its consideration, no precedent for the
29 release of a third party from criminal liability as a part of a plea agreement;

30 **BE IT RESOLVED** that the Alaska House of Representatives respectfully requests the Honorable
31 Russel Holland to reject the Proposed Plea Agreement in this case because it is not in the public interest
32 unless:

1 [(1)] Count IV of the indictment is retained as to Exxon Shipping Company; and
2 (2) the provisions exculpating Alyeska Pipeline Service Company are omitted.

3
4 COPIES of this resolution shall be sent to Joseph G. Block, Chief, Environmental Crimes
5 Section, Environment and Natural Resources Division, United States Department of Justice; Charles A.
6 De Monaco, Assistant Chief, Environmental Crimes Section, Environment and Natural Resources
7 Division, United States Department of Justice; Eric W. Nagle, Trial Attorney, United States Department
8 of Justice; Mark R. Davis, Special Assistant United States Attorney; Mark B. Harmon, Trial Attorney,
9 United States Department of Justice; James F. Neal, Counsel for Exxon Shipping; E. Edward Bruce,
10 Counsel for Exxon Shipping; Robert C. Bundy, Counsel for Exxon Shipping; Edward J. Lynch, Counsel
11 for Exxon Corporation; ^{and to} John F. Clough III, Counsel for Exxon Corporation; ^{and to} the Honorable H.
12 Russel Holland, Chief Judge, United States District Court for the District of Alaska.

[add AK Legal Relegam?]

HOUSE SPECIAL COMMITTEE ON THE
EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT

EXCERPT FROM APRIL 16, 1991 TESTIMONY OF RICHARD STEWART, ASSISTANT ATTORNEY GENERAL, ENVIRONMENTAL AND NATURAL RESOURCES DIVISION, U.S. DEPARTMENT OF JUSTICE

Gruenberg: Any comment about Congressman Miller's letter?

Stewart: First of all, it contains a fundamental legal error asserting that there would be a prosecution available under the CWA. These reports on the contingency plans were not required to be filed under the CWA. In fact, there is a very substantial legal question whether any jurisdiction to assert a false reporting claim under the general false reporting claims of title 18 of the code with respect to the spill here because the report was to be filed under the lease agreement with the BLM and the contingency plan went with respect to spills out of the sound, not the spills on federal land. So, there is a real legal issue of whether there is a proper basis for federal prosecution under law and there are other substantial litigation risks in the case about whether any falsehood was knowing....(indecipherable).

I would say that the evidence before Congressman Miller did not really address those problems and I find it rather surprising that a responsible official felt this was important information material to the criminal case -- why this wasn't disclosed to us before. We never heard this information.

Gruenberg: Before passing on to this second letter, is it your testimony that you are not certain that there was, assuming the allegations made in that letter were true -- is it your testimony that there is significant question in your mind whether there is federal law that would make that criminal?

Stewart: yes.

Gruenberg: Have you brought that to the attention of Congress and sought curative legislation?

Stewart: No

Gruenberg: Is it your intent to do so.

Stewart: I want to investigate the facts more closely.

Gruenberg: From a legislative point of view, it's less important whether these particular facts were true than that if the hypothetical -- which certainly could occur -- not in Alaska in 1989, then in other places at other points in time. If that is in fact not criminal, ought it not to be?

Stewart: I think it is a substantial question we will pursue.

rupted until the subsequent morning, each 24-hour period would support a separate charge of violation of the Rivers and Harbors Act. Rivers and Harbors Appropriation Act of 1899, § 13, 33 U.S.C.A. § 407.

William B. Cummings, U.S. Atty., Robert W. Jaspen, Asst. U.S. Atty., Dept. of Justice, E.D.Va., Richmond, Va., Bradford F. Whitman, Department of Land and Natural Resources, Pollution Control Section, Washington, D.C., for plaintiff.

Murray J. Janus, Dennis W. Dohnal, Joseph M. Spivey, III, Manning Gasch, Jr., Hunton & Williams, Richmond, Va., for defendants.

MEMORANDUM

MERHIGE, District Judge.

Defendant Allied Chemical Corporation, a corporation organized and existing under the laws of the State of New York, allegedly owning and operating a manufacturing establishment at Hopewell, Virginia, moves to require the United States to elect or consolidate and dismiss Counts 1 through 456 of the indictment brought against them herein.

Counts 1 through 70 allege that Allied on each day of July and August, 1971, each of two days in September, 1971, and each of six days in April, 1972 unlawfully discharged and deposited from its alleged Hopewell establishment industrial wastes from the production of octahydro—1, 2, 4—metheno—2H—cyclobuta [cd] pentalen—2—one [hereinafter Kepone] into Gravelly Run, from which the refuse was washed into the James River, a navigable waterway of the United States. Counts 71 through 269 allege that Allied on each of fifteen days in September, 1971, and each day of October, 1971, November, 1971, December, 1971, January, 1972, February, 1972, and March, 1972, unlawfully discharged and deposited industrial wastes from the production of Tris "2—hydroxyethyl Isocyanurate [hereinafter THEIC] into Gravelly Run, from which the refuse was washed into the James River. Counts 270 through 356 al-

lege that Allied on each of seventeen days of April, 1972, each day of May, 1972, and June, 1972, and each of nine days in July, 1972, unlawfully discharged and deposited from its alleged Hopewell establishment industrial wastes from the production of Kepone and Triallyl Isocyanurate [hereinafter TAIC] into Gravelly Run, from which the refuse was washed into the James River. Counts 357 through 361 allege that Allied on each of five days in July, 1972, unlawfully discharged and deposited from its alleged Hopewell establishment industrial wastes from the production of TAIC into Gravelly Run, from which the wastes were washed into the James River. Counts 362 through 456 allege that Allied on each of seventeen days in July, 1972, each day of August, 1972, and September, 1972, and each of seventeen days in October, 1972, unlawfully discharged and deposited from its alleged Hopewell establishment industrial wastes from the production of TAIC and THEIC into Gravelly Run, from which the wastes were washed into the James River. The aforesaid acts were all charged as violations of the Refuse Act, 33 U.S.C. § 407.

It is Allied's position that the counts are multiplicitous and that the government should be required to elect which of Counts 1 through 456 of the indictment it intends to prosecute or, in the alternative, that all the counts be consolidated into one count, and the contended repetitive counts be dismissed.

[1] The term "multiplicity" refers to the practice of charging the commission of a single offense in several counts. See 8 *Moore's Federal Practice*, ¶ 8.07[1], at 8-47; Wright, *Federal Practice and Procedure*, § 142 (1969 ed.) at 306. "The vice of multiplicity is that it may lead to multiple sentences for the same offense, though for this there are remedies, and that 'the prolix pleading may have some psychological effect upon a jury by suggesting to it that defendant has committed not one but several crimes.'" Wright, *supra* at 311, quoting *United States v. Mamber*, 127 F.Supp. 925, 927 (D.Mass.1955). The Federal Rules on Criminal Procedure have, appropriately,

the District Court, court could not determine whether, whether charged a separate which any of three as discharged into multiplicitous.

Information — 127

refers to the practice of the commission of a single offense; Federal Rules of Criminal Procedure have been drafted to Fed.Rules Crim. P. 8(a)(1).

Words and Phrases
Instructions and

Information — 128

whether several offenses of same statute are of legislative intent against turning a multiple offenses. Rule 7(c), 18 U.S.C.A.

— 35

is Act is meant to prevent discharge or the discharge itself. Appropriation Act of § 407.

Information — 128

terminate, until proofs whether indictment against defendant with of the Refuse Act, and for each day on chemical compounds navigable waters, was and Harbors Appropriation Act of § 13, 33 U.S.C.A. Proc. rule 7(c), (c)(1),

— 35

ch discharges came down in the evenings and refuse was inter-



U.S. Department of Justice
Office of Legislative Affairs

Office of the Attorney General

Washington, D.C. 20530

April 9, 1991

Honorable Gerry E. Studds
Chairman
Subcommittee on Fisheries and
Wildlife Conservation and
the Environment
Committee on Merchant Marine
and Fisheries
U.S. House of Representatives
Washington, D. C. 20515

Honorable Dennis M. Hartel
Chairman
Subcommittee on Oceanography and
Great Lakes
Committee on Merchant Marine
and Fisheries
U.S. House of Representatives
Washington, D. C. 20515

Dear Chairman Studds and Hartel:

This responds to your letter to the Attorney General, dated March 26, 1991, requesting documents prepared in connection with the pending criminal and civil litigation arising from the Exxon Valdez oil spill. These are United States v. Exxon Corporation, et al. (Nos. A90-015-1CR; A90-015-2CR) and United States v. Exxon Corporation, et al. (No. A-91-082 Civ. D. Alaska).

The Department has endeavored to obtain appropriate criminal penalties and civil remedies for the wrongdoing and injuries related to the oil spill. The court is scheduled to sentence the defendants who have entered pleas in the criminal case during the next month. A proposed settlement and consent decree are pending before the court in the civil case and we expect that the court will rule on them at the end of the current notice and comment period. We believe, based upon the available information, that the proposed settlement is adequate, proper and would serve the best interests of the United States. If, however, the court decides not to accept the pretrial resolution of one or both of these actions, then they could proceed to trial. In that event, the United States would be forced to litigate the criminal and civil claims against Exxon, which litigation would run for years. Also, additional litigation has recently been filed alleging that the United States bore some responsibility for the Valdez spill.

ACE 45994J

We have prepared and filed with the court a summary of our scientific studies relating to natural resource damage from the spill in order to assist the court in evaluating the civil consent decree and the criminal plea. A copy of the summary is enclosed. We also can furnish some of the raw scientific data, which will not have a material effect on our litigation position, gathered by the federal trustee agencies in connection with damage assessment and restoration planning, which will be placed in the Oil Spill Public Information Center (OSPIC) in Anchorage. We believe that these documents, and the extensive materials already on file at the OSPIC, examples of which are listed in the enclosed bibliography, will provide an ample basis for evaluating the proposed plea agreement and civil settlement.

We regret that we cannot provide additional documents which were developed during the course of the pending litigation. Some of these documents, which include information furnished by expert consultants on a confidential basis, have not been disclosed outside of the Department and its federal agency clients. They also include materials that would not be available to an opposing party in the litigation. After careful consideration and despite our appreciation of the interests of your Subcommittees, we have concluded that the production of additional documents at this time would be inappropriate and pose an unacceptable risk to the pending litigation.

We appreciate your understanding of the importance to the United States of these proposed criminal and civil resolutions relating to the Valdez spill and the litigation sensitivity of the considerations that have gone into the proposed resolutions of these matters. We also appreciate your understanding that we must protect the exercise of fiduciary responsibilities by the natural resource trustees, who are among our client agencies, in achieving the best resolution of these claims. At the same time, we appreciate the Committee's oversight role in these matters. Once the litigation is resolved, we would be pleased to discuss the possibility of providing additional information.

Sincerely,



W. Lee Rawls
Assistant Attorney General

Enclosures

UNITED STATES DISTRICT COURT

District of Alaska
222 West 7th Avenue - No. 54
Anchorage, Alaska 99513-7545

H. Russel Holland
Chief Judge

April 12, 1991

The Honorable Max F. Gruenberg, Jr.
House Special Committee on the
Exxon Valdez Oil Spill Claims Settlement
Alaska State Legislature
Post Office Box V
State Capitol, Room 216
Juneau, Alaska 99811

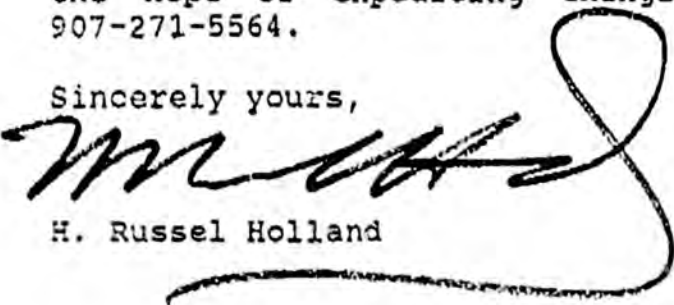
Re: United States v. Exxon Corp.
Case No. A90-015 Criminal

Sir:

I am in receipt of your letter of April 3, 1991. It is apparent that your committee has gone to some pains to accommodate the court and our calendaring of consideration of the plea agreement in the Exxon Valdez criminal litigation. I feel constrained to reciprocate, even though I had very much hoped to have all the materials to be considered in hand by April 11.

As I believe you are aware, we have scheduled consideration of the plea agreement for 8:30 a.m. on April 24, 1991. I do not expect to take the matter under advisement; and, as a consequence, my review of the committee's report will have to take place before the 24th of April. I will appreciate your arranging for delivery of the committee's report to me as early in the day on April 23 as you possibly can. Although we have expressly rejected the idea of permitting the general public to present comments employing our FAX number, I will receive the committee's report in that fashion in the hope of expediting things. The clerk's FAX number is 907-271-5564.

Sincerely yours,



H. Russel Holland

-----via facsimile-----

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 DIRECTOR/CHIEF COUNSEL
 GEORGE D. FENCE

U.S. House of Representatives Committee on

Merchant Marine and Fisheries

Room 1334, Longworth House Office Building
 Washington, DC 20515-6230

April 12, 1991

Dear Judge Holland:

We are writing to express our views regarding certain aspects of the proposed settlement of Federal and state civil claims arising from the EXXON VALDEZ oil spill.

These views are based on the ongoing effort of our Subcommittees to monitor the response to the oil spill, particularly by Federal agencies, including the assessment of injury to natural resources and plans for restoring the environment of Prince William Sound. In this capacity, our Subcommittees conducted an oversight hearing on the proposed settlement on March 20, 1991. Prior to that hearing, we asked the Department of Justice to prepare and make public a summary describing and quantifying the scope and severity of injuries caused by the EXXON VALDEZ spill to natural resources. That summary was prepared and submitted to Congress and the Court on April 8th.

Following the hearing, we asked the Justice Department to provide "all documents summarizing or estimating the dollar value of injuries done to natural resources by the spill and the costs of restoring those damages", while offering, if requested, to maintain the confidentiality of those documents. That request was denied in a letter to us on April 9th. A copy of the correspondence is enclosed.

We believe there is a strong general argument to be made in favor of settling the pending Federal and state claims now, thereby avoiding prolonged litigation and making funds immediately available for restoration purposes. But we also believe that no settlement should be accepted unless it serves the public interest and meets the requirements of Federal law. We are unable at this time to determine if the proposed settlement satisfies these criteria. We therefore respectfully recommend that you not approve the proposal unless and until certain fundamental issues are clarified.

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Specifically, we believe that the following three actions should be taken prior to approval of the settlement: 1) disclosure to the court of enough information to permit a fully informed judgment about the monetary sufficiency of the proposed settlement; 2) a commitment by the trustees to release all damage assessment and restoration studies and related documents to the public after the settlement is approved; and 3) clarifications by the trustees concerning the manner in which the recovered funds will be spent and the extent of public participation in the restoration planning and decisionmaking process. Each point is discussed below.

1. THE TRUSTEES HAVE FAILED TO PROVIDE THE INFORMATION NEEDED TO ASSESS THE MERITS OF THE PROPOSED SETTLEMENT.

a. How much will restoration cost?

Section 311 of the Clean Water Act requires the United States to recover from Exxon sufficient funds to cover the costs of replacing or restoring the natural resources under its trusteeship that were damaged or destroyed by the oil spill. At this point, only the trustees--and perhaps not even they--are in a position to judge whether or not the amount of the settlement is sufficient to meet this statutory obligation. This is true because the trustees have not disclosed to the court, and have refused to disclose to Congress and the public, the detailed information necessary to assess the severity of damage and the anticipated costs of restoration or replacement.

Although we do not know how large the settlement should be, we do know that it is not as large as some of its proponents have encouraged the public to believe. Last month, we asked the Congressional Research Service to review the proposed agreement to determine its net value to the Federal and state governments in real terms, taking into account the effects of inflation and Exxon's ability to deduct civil payments from its taxes. That study, a copy of which is enclosed, placed the estimated net value of the settlement at between \$421 million and \$524 million.

The difficulty of judging the adequacy of the settlement is further complicated by the facts that the damage assessment process is, according to the Administration's April 8th summary, still in a "preliminary" stage; the degree of injury to some important species, including salmon, will not be known for years; injuries to several other species are continuing; and specific restoration plans have not been made, nor costs estimated.

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b. Should restoration funds be used to pay cleanup costs?

Today, more than two years after the spill, oil remains trapped in sediments and gravel. More cleanup may occur this summer. Under the proposed agreement, any future cleanup activities (and certain past cleanup costs) will be paid for by the Fund established to finance restoration activities. This will create a direct tension between cleanup funding and restoration funding -- an "either-or" scenario even though the Clean Water Act requires both.

The adequacy of this arrangement depends upon the sufficiency of funds to cover both obligations. Once again, no good conclusion can be made about this aspect of the agreement without better information on projected cleanup costs and restoration costs.

We, like the public, are not able to make a good judgment about the monetary adequacy of the proposed settlement. That is important, but it is far more important that the court have access to all the documents it needs to make that judgment. Those documents must include more than a summary of the injuries to natural resources that have occurred, but also an expert evaluation of the cost of restoring those injuries, acquiring equivalent resources, if necessary, and providing compensation for lost use and other values pending restoration. We urge you to withhold approval of the settlement unless and until that information has been provided to the court.

2. THE PUBLIC'S NEED TO KNOW.

As mentioned above, the trustees have refused to release their evaluations of the scope and severity of the injury to natural resources resulting from the spill. This refusal is based on the claim that disclosure would jeopardize the proposed settlement and is covered by a loosely construed attorney-client privilege.

We agree that the trustees are entitled to maintain the confidentiality of a limited amount of detailed information gathered or prepared specifically to assist the prosecution of a pending case and that would, if publicly revealed, seriously undermine their legal position. That entitlement is an extremely narrow one in our judgment, however, and should never again be interpreted as broadly as it has been by the trustees in the present case.

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The fact is that the trustees in this instance developed a virtual obsession about secrecy. That obsession undermined the effectiveness and coordination of oil spill response and damage assessment efforts and unnecessarily limited public access to information on matters as important as public health. The sharing of scientific data and the dissemination of expert opinions is vital to maintain public confidence and ensure the effectiveness of response actions. In this case, the trustees operated with a degree of secrecy for which there was no practical or legal justification.

It is important to remember that the information available to the Executive branch concerning natural resource injuries in the EXXON VALDEZ case was gathered pursuant to public law, by public personnel and at public expense. The information pertains to resources that are publicly managed, publicly owned and subject to public trusteeship under federal law. Accordingly, we believe that citizens deserve access to the information whether they desire simply to assess the merits of the deal worked out by the trustees or to make a more informed judgment about their own legal options.

Consequently, we urge you to solicit an enforceable commitment from the Federal Government that all information available to it concerning the scope and nature of injuries done to natural resources as a result of the oil spill, including documents that place an estimated dollar value on those injuries and the costs of restoration, will be made public promptly subsequent to approval of any proposed settlement.

3. THE TRUSTEES MUST CLARIFY VAGUE COMMITMENTS ABOUT HOW THE FUNDS WILL BE SPENT.

The proposed settlement and Memorandum of Agreement between the Federal and state trustees provide only a vague and inadequate description of the purposes for which the recovered monies will be spent and the manner in which decisions about spending priorities will be made. We therefore recommend to the court that it seek substantial further clarifications from the trustees on these matters.

The effect of the consensus decisionmaking approach proposed for the Trustee Council will be to allow each Federal and state representative to veto any proposal by any participant. In the event that the obligations of the Federal and state trustees under Federal and state law are not identical, the Trustee Council may be operating under a set of dual and potentially conflicting obligations. Under section 311 of the Clean Water Act, recovered funds must be used solely to restore,

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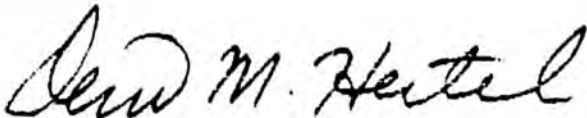
rehabilitate or acquire the equivalent of the damaged natural resources. We encourage the Court to make it clear that this limitation must be strictly adhered to by the trustees. The restoration fund is not to be viewed as a general fund to finance favorite projects or to conduct assessments in perpetuity.

We also urge you to solicit a clearer commitment from the Federal and state trustees for public participation in the natural resource damage restoration process. As you know, the proposed Memorandum of Agreement and Consent Decree provides that the Trustees shall ensure "meaningful public participation", including the "possible" establishment of a public advisory group. We believe a more detailed commitment should be made before the agreement becomes final.

CONCLUSION

We appreciate the opportunity to provide the court with our recommendations on the proposed settlement. While we value and applaud the attempt by the litigants to settle their differences, we believe that certain clarifications are necessary before the proposed settlement is approved. We respectfully urge the court to seek those clarifications prior to taking final action on the agreement.

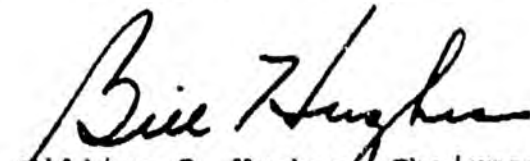
Respectfully Submitted,



Dennis M. Hertel, Chairman
Subcommittee on Oceanography,
Great Lakes and the Outer
Continental Shelf
Committee on Merchant Marine
and Fisheries



Gerry E. Studds, Chairman
Subcommittee on Fisheries and
Wildlife Conservation and the
Environment
Committee on Merchant Marine
and Fisheries



William J. Hughes, Chairman
Subcommittee on Intellectual Property
and Judicial Administration
Committee on the Judiciary

The Honorable H. Russel Holland
U.S. District Judge
U.S. District Court
222 West 7th Avenue
Anchorage, Alaska 99513

Enclosures

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U.S. House of Representatives
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April 8, 1991

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 GENERAL COUNSEL
 DANIEL VALISH
 REPUBLICAN STAFF DIRECTOR

Honorable H. Russel Holland
 United States District Judge
 U.S. District Court
 222 West 7th Avenue No.4
 Anchorage, Alaska 99513

Honorable Stanley Sporkin
 United States District Judge
 U.S. Court House
 3rd and Constitution, N.W.
 Washington, D.C. 20001

In Re:

United States of America v. Exxon Shipping Company and Exxon Corporation (No. A90-015 CR.)
[Criminal Plea Agreement]

United States of America v. Exxon Corporation, Exxon Shipping Company, and Exxon Pipeline Company,
in personam, and the T/V Exxon Valdez, in rem (A91082 Civil) [Agreement and Consent Decree]

State of Alaska v. Exxon Corporation, Exxon Shipping Company and Exxon Pipeline Company, in
personam, and the T/V Exxon Valdez, in rem (A91083 Civil) [Agreement and Consent Decree]

United States of America v. State of Alaska, and The State of Alaska v. United States of America (A91081
Civil) [Memorandum of Agreement and Consent Decree]

State of Alaska v. Exxon Corporation, et al., (3AN-89-6852 Civil)

The Native Village of Chenega Bay, et al., v. Manuel Lujan, Jr., et al. (91-483 SS Civil) and Chenega
Corporation, et al., v. Manuel Lujan, Jr., et al. (91-484 SS Civil)

Gentlemen:

For purposes of your review of the pending cases cited above and other claims arising from the Exxon Valdez oil spill of March 24, 1989, I want to bring to your attention some significant evidence concerning Exxon Corporation's and the Alyeska Pipeline Service Company's culpability.¹

¹The owner companies of Alyeska Pipeline Service Company ("Alyeska") are B.P. Pipelines Alaska, Inc. (50.01 percent); Exxon Pipeline Company (20.34 percent); Arco

Honorable H. Russel Holland
Honorable Stanley Sporkin
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As Chairman of the Subcommittee on Water, Power and Offshore Energy Resources, I have conducted an investigation of matters related to the Exxon Valdez oil spill, including the cleanup response, damage to natural resources, and operation of the Trans-Alaska Pipeline System.² The Committee on Interior and Insular Affairs was a principal author of the Trans-Alaska Pipeline Authorization Act (P.L. 93-153) and has broad jurisdiction concerning public lands and natural resources in Alaska and a special interest in issues affecting Alaska Natives.

In the course of this investigation, Alyeska has provided me with documents which indicate that Exxon and the other owner companies which control Alyeska: (1) knew that Alyeska could not effectively respond to an oil spill in Prince William Sound; (2) failed to make necessary improvements in Alyeska's oil spill response capabilities; and, (3) secretly decided that Alyeska would not respond to an oil spill in Prince William Sound in the manner prescribed by Alyeska's Oil Spill Contingency Plan.

Alyeska's Promises

Before the Pipeline Was Approved

In 1971, during the consideration of the trans-Alaska pipeline project, Alyeska's pollution control specialist R.L. Benyon promised the public in testimony before the Department of the Interior that:

"The contingency plan which will be drawn up will detail methods for dealing promptly and effectively with any spill which may occur, so that its effect on the environment will be minimal. We have adequate knowledge for dealing with oil spills and improvements in techniques and equipment are continuing to become available through world-wide research. The best equipment, materials and expertise which will be made available as part of

Pipe Line Co. (20.34 percent); Mobil Alaska Pipeline Co. (4.08 percent); Amerada Hess Pipeline Corp. (1.5 percent); Unocal Pipeline Co. (1.36 percent); and Phillips Alaska Pipeline Corp. (1.36 percent).

²"Investigation of the Exxon Valdez Oil Spill, Prince William Sound, Alaska," Oversight Hearings before the Subcommittee on Water, Power and Offshore Energy Resources of the Committee on Interior and Insular Affairs (Serial No. 101-5, Parts I to V) (hereinafter "Investigation of the Exxon Valdez Oil Spill").

Honorable H. Russel Holland
Honorable Stanley Sporkin
April 8, 1991
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the oil spill contingency plan, will make operations at Port Valdez and in Prince William Sound the safest in the world. [Emphasis added.]"

On April 10, 1973, the President of Alyeska, E.L. Patten, in testimony urging approval of the pipeline project, promised Congress that the very best technology would be in place:

"In safety [sic] superior American tankers the light traffic between Valdez, Alaska, and the west coast involves hazards of less magnitude than any other tanker run of which I have knowledge. The most modern loading equipment and proposed vessel designs will reduce even these modest risks before pipeline authorization begins."³

In the Right-of-Way Agreements

In exchange for the right to build the Trans-Alaska Pipeline System on public lands, Alyeska signed right-of-way agreements with both the United States and the State of Alaska.

In the section on oil spill contingency plans in the right-of-way contract with the United States, Alyeska promised to control and clean up any oil spill:

"It is the policy of the Department of the Interior that there should be no discharge of Oil or other pollutant into or upon lands or waters. Permittees must therefore recognize their prime responsibility for the protection of the public and environment from effects of spillage.... Permittees shall demonstrate their capability and readiness to execute the [contingency] plans....If during any phase of the construction, operation, maintenance or termination of the Pipeline, any Oil or other pollutant should be discharged from the Pipeline System, the control and total removal, disposal and cleaning up of such Oil or other pollutant wherever found, shall be the responsibility of Permittees, regardless of fault. [Emphasis added.]"⁴

³ "Oil and Natural Gas Pipeline Rights-of-Way," Hearings before the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs (Serial 93-12) at p.526.

⁴ Stipulation 2.14 to Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline, January 23, 1974, between United States of America and Alyeska owners. As used in Stipulation 2.14, Oil Spill Control is defined as: (1) detection of the spill; (2) location of the spill; (3) confinement of the spill; and (4) cleanup of the spill.

At the time of the Exxon Valdez spill

According to the "purpose" section of Alyeska's Oil Spill Contingency Plan (the "contingency plan") which was in effect on March 23, 1989, Alyeska promised rapid and effective response to any oil spill using state-of-the-art technology:

"The objective of the Alyeska Oil Spill Contingency Plan is to minimize damage to the environment...in the event of an oil spill...the resources of [Alyeska] are organized in a preplanned manner to assure rapid and effective response to any oil spill emergency. This manual outlines the techniques which will be in accordance with state-of-the-art oil spill cleanup technology. [Emphasis added.]"⁵

In section 102 of the contingency plan, Alyeska promised that it is the policy of the owner companies to fully comply with the laws and to take "every reasonable action" to minimize environmental damage from oil spills:

"It is the policy of the eight owner companies, constituting the Permittees under the Federal Right-of-Way Grant and the Lessees under the State Right-of-Way Lease and represented by their agent, Alyeska Pipeline Service Company, to take every reasonable action to prevent oil spills and, if they occur, to minimize environmental damage. Alyeska will comply with the relevant pollution laws for the protection and conservation of environmental resources. [Emphasis added.]"⁶

Alyeska also promised in section 102 of the contingency plan that it will be fully prepared to implement the contingency plan even in the event of a major oil spill:

⁵ Section 101, Alyeska Pipeline Service Company Oil Spill Contingency Plan General Provisions (January, 1987).

⁶ "The 'relevant pollution laws' according to Alyeska are: 'Alaska Statute Title 46, and 18 AAC75, and the National Oil and Hazardous Substances Pollution Contingency Plan, and any revisions thereof, as issued by the Council on Environmental Quality (CEQ) under the authority of the Federal Water Control Act [sic], as amended (Public Law 92-500). Alyeska Policy and these plans are intended to be written and executed so as to comply with the Grant and Agreement of Right-of-Way and the Right-of-Way lease with the United States of America and the State of Alaska, respectfully. Alyeska Pipeline Service Company will ensure that the National Contingency Plan is followed during any spill event." p.1-1

"Regularly scheduled training programs will be conducted....The objectives of this training program are:....To maintain the Plans as fully operable working documents [and] To update the Plans to reflect state-of-the-art capability....Full scale, company-wide field exercises will be held at least once per year to insure overall readiness for response to large scale oil spills.... [Emphasis added.]"

Alyeska further promised in section 102 of the contingency plan that, as agent for the owner companies, it will effectively direct and conduct cleanup operations, including those related to any spill in Prince William Sound:

"[C]leanup operations within the areas of liability and responsibility [imposed by law] will be conducted by Alyeska as Agent for the Owner companies and will be conducted in a manner as not to require assumption of control of such cleanup operations by federal or state officials....Alyeska will direct cleanup operations of spills resulting from...[O]peration, involving tankers carrying or destined to carry crude oil transported though the Trans-Alaska Pipeline System, occurring at Valdez terminal, in Port Valdez, Valdez arm or Prince William Sound. [Emphasis added.]"

Promises Versus Performance

In an addendum to its Oil Spill Contingency Plan in 1982, Alyeska informed the Alaska Department of Environmental Conservation that, in the event of a spill in Prince William Sound, the "[e]stimated time of completion of spill cleanup of a 100,000 barrel spill would be less than 48 hours."⁷

At the urging of the State of Alaska's Department of Environmental Conservation, Alyeska reluctantly included a response scenario for a 200,000 barrel spill in the 1987 Oil Spill Contingency Plan for Prince William Sound. "Alyeska believes it is highly unlikely a spill of this magnitude would occur."⁸

⁷Letter from B.L. Hilliker, manager, environmental protection and government reports, to Alaska Department of Environmental Conservation, dated June 22, 1982, reprinted in "Investigation of the Exxon Valdez Oil Spill," Part I at p. 894.

⁸ Oil Spill Contingency Plan Prince William Sound (January 1987), p.3-54. By letter to the Alaska Department of Environmental Conservation dated October 23, 1986, Alyeska predicted that the probability of a 200,000 barrel spill occurring in Prince

Honorable H. Russel Holland
Honorable Stanley Sporkin
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This Prince William Sound response scenario assumed that the spill would occur 30 miles from the Valdez terminal and that weather conditions would be conducive to oil spill cleanup. The contingency plan called for equipment, including a barge, to be in place within 5 hours after the spill.

Alyeska's Prince William Sound contingency plan predicted that 35 percent of the oil would be recovered from the water (70,000 barrels), 30 percent recovered from shoreline cleanup, 30 percent to disperse naturally or evaporate, and only 5 percent to remain in the environment.⁹

Yet when the Exxon Valdez spilled some 260,000 barrels on March 23, 1989 the cumulative total of oil recovered within the first 72 hours was less than 3,000 barrels. As one example of the response failure, the equipment barge which the contingency plan relied upon was damaged and unloaded at the time of the spill. The barge did not reach the spill site for more than 14 hours, even though the contingency plan called for it to be on the scene within five hours. Based on my investigation, there were clearly not sufficient quantities of dispersants or application equipment available to make up for the utter failure of the mechanical recovery effort.¹⁰

Even under extraordinarily good weather conditions for the first three days, Alyeska did not have equipment or resources to contain and collect even a fraction of the amount specified in the contingency plan. The failure of Alyeska's cleanup response in the first 72 hours significantly contributed to the ultimate environmental impacts of the spill, since winds of over 70 miles per hour spread the slick completely out of control (more than 40 miles from Bligh Reef) by the fourth day.

The Exxon Valdez spill would eventually soil over 1,000 miles of Alaska's coastline, inflict one of the worst wildlife disasters in our nation's history, and disrupt the lives of thousands of Alaskans who depend on the natural resources of this region.

William Sound would be once in 241 years. "Investigation of the Exxon Valdez Oil Spill," Part I at p. 834.

⁹Oil Spill Contingency Plan Prince William Sound (January 1987) at p. 3-56.

¹⁰"Investigation of the Exxon Valdez Oil Spill, Prince William Sound, Alaska", Part I at p. 303.

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Honorable Stanley Sporkin
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As the Alaska Oil Spill Commission concluded, "[p]ublic pronouncements by Alyeska and its owners that the company employed the best available technology and committed adequate resources to safety purposes turned out to be false."¹¹

Exxon and the Alyeska Owner Companies Knew That Alyeska Was Not Equipped to Effectively Respond To An Oil Spill in Prince William Sound.

My investigation revealed that Alyeska was on notice in 1984 that its own personnel believed they were incapable of effectively responding to an oil spill in Prince William Sound. James K. Woodle, former commander of the U.S. Coast Guard's Marine Safety Office in Valdez, and marine superintendent at the Valdez terminal, informed Alyeska's President George M. Nelson that:

"Serious doubt exists that Alyeska would be able to contain and clean-up effectively a medium or large size oil spill....Response to any spill beyond the limits of Valdez narrows should not be attempted with present equipment and personnel. [Emphasis added.]"¹²

A series of documents, which I have enclosed, reveal that Alyeska by 1988 -- one year prior to the Exxon Valdez oil spill -- had reached the same conclusion as James K. Woodle: it was seriously unprepared for an oil spill in Prince William Sound.

On April 18, 1988, W.D. Howitt, then Alyeska's Valdez Marine Terminal Superintendent, wrote to the Marine Services Subcommittee -- comprised of representatives of the owner companies, including Harvey Borgan of Exxon Shipping -- to inform them of a meeting in Bellingham, Washington on May 18, 1988. "Oil Spill Response Equipment" was listed on the agenda [Exhibit A].

On April 28, 1988, Howitt wrote to the Marine Services Sub-committee members with additional information for the May 18 meeting [Exhibit B]:

"The first part of the information package contains the T.L. Polasek briefing that was presented to the Operations Subcommittee on April 6-7, 1988, at the quarterly meeting. The briefing is the result of an action item from January's meeting during which a concern was raised by ARCO on

¹¹Final Report of the Alaska Oil Spill Commission (February 1990) at p.135.

¹²Letter from James K. Woodle dated April 15, 1984 concerning operations of the Marine Department, Alyeska Marine Terminal, Valdez, Alaska, reprinted in "Investigation of the Exxon Valdez Oil Spill," Part I at p. 179 and 890.

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April 8, 1991
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Alyeska's capability to respond to oil spills at midpoint of Prince William Sound. [Emphasis added.]¹³

Theo L. Polasek's (Alyeska's Vice President of Operations) briefing on April 6-7 for the Operations Subcommittee was entitled "Oil Spill Issues -- Status of Action Items from January Owners Meeting." [Exhibit C] The topic of "Alyeska's Response Capability to Spills at midpoint of Prince William Sound" is included under the heading "ARCO/Alyeska Response Equipment Discussions." What follows is a comparison of the equipment available to the "Clean Sound" Cooperative in Puget Sound, Washington. According to the document, Clean Sound's spill cleanup methodology is "immediate, fast response to spill, at any location, with boom to contain, exclude, and/or divert oil."

By contrast to the equipment available to Clean Sound, Polasek's briefing on "Present Alyeska Prince William Sound Capability" notes that "no new skimming vessels purchased since 1977." The list of Alyeska equipment is clearly deficient by comparison to Clean Sound.

Polasek's briefing on Alyeska's Prince William Sound cleanup response equipment includes the following indictment of Alyeska's capability to meet its obligations under its own Oil Spill Contingency Plan:

"Immediate, fast response to mid-point of Prince William Sound not possible with present equipment complement." (emphasis added)

Exxon and the Alyeska Owner Companies Failed to Improve Alyeska's Oil Spill Response Capabilities Before the Exxon Valdez Spill on March 23, 1989.

Theo Polasek's briefings to the owner company representatives in April and May 1988 outlined the deficiencies in Alyeska's equipment including the fact that "no new skimming vessels had been purchased since 1977."

¹³Howitt's letter also states that purchases of clean-up equipment for Alyeska, as recommended by Jeff Shaw of Arco, would be discussed at the May 18th meeting. In a document with the heading "Alyeska Equipment Project (for oil spill cleanup)" dated March 22, 1988, Jeff Shaw recommends: 1) a large oceangoing skimmer; 2) a 10,000 barrel barge; 3) an adds pack; 4) fast spill response vessels; 5) a destroil skimmer with power pack; and 6) an additional 5,000 feet of sea quality boom. [Exhibit D] In addition, a separate document indicates that the marine subcommittee members discussed an advanced skimmer recovery system which could operate in open waters, the "Dynamic Inclined Plan Oil Vessel." [Exhibit E]

When Polasek testified, under oath, at a hearing I chaired in Valdez on May 7, 1989, he acknowledged that: "the equipment in this plan was similar to the plan in 1977. We increased the amount of boom and take [sic] other actions, but essentially that was the same equipment decided upon."¹⁴

Polasek's briefing includes a reference to the planned acquisition of a 10,000 barrel tank barge by late 1988. In fact, this oil spill barge -- the "Berty-K" -- was stored in Washington state for the winter of 1989 and was not available in the Exxon Valdez cleanup.

Moreover, Polasek's briefing refers to a "mobile contingency command center with communications repeaters" which would be installed by "mid 1988." In fact, such a system was not in place at the time of the Exxon Valdez spill.

Exxon and the Alyeska Owner Companies Secretly Decided that Alyeska Would Not Respond to an Oil Spill In Prince William Sound in the Manner Prescribed in the Contingency Plan.

According to a June 30, 1988 telex from Roger A. Gale, Manager, Marine Operations, Sohio Oil (now BP) to Polasek of Alyeska, the Marine Services Subcommittee decided to make five recommendations to the Owners Committee as part of an "acceptable compromise" [Exhibit F]:

First, the "current stockpile of clean up equipment is adequate" for spills at the terminal, but "should be maintained to the highest state of readiness."

Second, for spills in Prince William Sound, additional equipment should be purchased of the "type best suited for near shore and beach operations."

Third, a large barge (50-100,000 barrel capacity) equipped with ocean boom and skimmers was needed.

Fourth, a "study of the best and quickest methods of moving the barge around" including predeployment in Prince William Sound.

Fifth, that Alyeska and the owners "press" state and federal officials for "preapproval to use chemicals on a widespread basis."

¹⁴"Investigation of the Exxon Valdez Oil Spill, Prince William Sound," Part I at p. 155.

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However, on July 6, 1988, Stanley Factor, Vice President, Chartering and Evaluations, Arco Marine, Inc., objected to Roger Gale's recommendations because the owners had already decided that Alyeska would not respond to spills in Prince William Sound in the manner required by the Oil Spill Contingency Plan [Exhibit G]:

"Arco Marine Inc. does not agree with this telex nor do we concur that this represents the thoughts of the subcommittee.

"At the owners committee meeting in Phoenix, it was decided that Alyeska would provide immediate response to oil spills in Valdez Arm and Valdez Narrows only. Further efforts in the Prince William Sound would be limited to the use of dispersants and any additional effort would be the responsibility of the spiller. [Emphasis added.]"¹⁵

Conclusion

At my subcommittee's hearing on May 7, 1989 in Valdez, Theo Polasek testified under oath on Alyeska's behalf that "[w]e fulfilled our promises in that [oil spill contingency] plan. We have not broken our promises to the people of this State."¹⁶

But the evidence I have set forth indicates that Alyeska broke the law as well as its promises to the State of Alaska and the Congress.

For example, section 309(c)(4) of the Clean Water Act (33 U.S.C. section 1319(c)(4)) provides that substantial criminal penalties may be imposed upon any corporation or responsible corporate official that files information with Federal authorities with knowledge that the documents contain material misstatements.¹⁷ In addition, criminal penalties may be imposed on any person who knowingly submits false information to any agency of the United States under 18 U.S.C. section 1001.¹⁸

¹⁵The Chairman of the Owners Committee at the time was Darrell Warner, President of Exxon Pipeline Company.

¹⁶"Investigation of the Exxon Valdez Oil Spill," Part I at p. 169.

¹⁷ A fine of up to \$10,000, or a prison term of up to two years or both may be imposed under this section.

¹⁸A fine of up to \$10,000, or a prison term of up to five years, or both, may be imposed under this section.

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Thus, since Alyeska knew that it could not and would not respond to an oil spill in Prince William Sound as required by its oil spill contingency plans, Alyeska and any responsible officer could be exposed to substantial criminal penalties.

However, the Department of Justice has not even filed any criminal charges against Alyeska or its owner companies other than Exxon. Furthermore, in the proposed Criminal Plea Agreement, the United States would waive its rights not only to pursue any criminal charges against Alyeska and its owner companies, but also waive its rights to pursue civil or administrative penalties against Alyeska and its owner companies.¹⁹

The proposed Agreement and Consent Decree also provides generous protection for Alyeska. The United States and the State of Alaska both waive their rights to raise claims against Alyeska for natural resource damages in Paragraph 20. In addition, should either government recover any amount from Alyeska for claims of any kind, Exxon is entitled to be reimbursed for 20.34 percent of the governments' recovery (this figure represents the percentage ownership by Exxon of Alyeska). Yet Alyeska, including its shareholders and owner companies other than Exxon Pipeline, expressly reserves their rights to sue the United States or the State of Alaska in Paragraph 19 of the proposed settlement agreement.

In my view, the inclusion of Alyeska in the proposed Criminal Plea Agreement and in the proposed settlement Agreement and Consent Decree is contrary to the public interest. Based on the evidence, it is inconceivable that the Department of Justice would waive its rights to pursue criminal claims, and virtually all civil claims, against Alyeska.

In sum, the proposed Exxon settlement fails to hold Alyeska accountable to the public for its wrongdoing and fails to serve as a deterrent for similar conduct in the future.²⁰

¹⁹ Section III.A. of the Plea Agreement states that "[t]he United States agrees not to seek additional criminal charges or any civil or administrative penalties.... against Alyeska Pipeline Service Company or any of its shareholders or owner companies or present or former shareholder representatives, for any violation of federal law arising out of the grounding of the 'EXXON VALDEZ,' the resulting oil spill, the containment or cleanup of that spill, or its or their conduct in connection with the preparation or submission of oil spill contingency plans or related, by Alyeska Pipeline Service Company to the federal or state government...." p.5.

²⁰ Under Alaska law, punitive damages are awarded for the public policy reasons of punishment and deterrent when the defendant's conduct was outrageous, reckless, or malicious. In this instance, there is clear and convincing evidence that Alyeska's conduct merits the award of punitive damages.

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After extensive debate about the environmental risks, the Trans-Alaska Pipeline System was approved in 1973 by only a one-vote margin in the U.S. Senate. In exchange for access to environmentally sensitive public lands, the Congress was assured by Alyeska and the owner companies that the pipeline system would be operated in a safe and environmentally sound manner, using state-of-the-art technology.

The oil industry betrayed its own promises and deceived the Congress with respect to operations of Alyeska and the Exxon Valdez oil spill. Without a commitment by the Department of Justice to prosecute this intentional deception, how is it that Congress and the people of the State of Alaska can rely on such assurances in the future?

Sincerely yours,


GEORGE MILLER
Vice Chairman

cc:

The Honorable Walter J. Hickel, Governor, State of Alaska
The Honorable Ben Grussendorf, Speaker, Alaska House of Representatives
The Honorable Richard Eliason, President, Alaska Senate
The Honorable Senator Ted Stevens
The Honorable Senator Frank Murkowski
The Honorable Representative Don Young
The Honorable Richard L. Thornburgh, Attorney General, U.S. Department of Justice
The Honorable Manuel Lujan Jr., Secretary, U.S. Department of the Interior
The Honorable Samuel K. Skinner, Secretary, U.S. Department of Transportation
The Honorable Edward R. Madigan, Secretary, U.S. Department of Agriculture
The Honorable William K. Reilly, Administrator, U.S. Environmental Protection Agency
The Honorable John A. Knauss, Undersecretary for Oceans and Administrator, National Oceanic and Atmospheric Administration, U.S. Department of Commerce
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U.S. House of Representatives
 Committee on
 Interior and Insular Affairs
 Washington, DC 20515-6230

April 17, 1991

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The Honorable H. Russel Holland
 United States District Judge
 U.S. District Court
 222 West 7th Avenue No. 4
 Anchorage, Alaska 99513

Dear Judge Holland:

I have reviewed the U.S. Department of Justice's memorandum supporting the government's criminal plea agreement in United States v. Exxon Corporation and Exxon Shipping Company (No. A90-015-CR) which was filed in your court yesterday (April 16, 1991).

In my view, the Department of Justice's memorandum fails to satisfactorily explain why it is in the public interest to agree not to bring criminal charges or any civil or administrative penalties against Alyeska Pipeline Service Company ("Alyeska") or its owner companies, including British Petroleum and Arco, for their conduct related to the Exxon Valdez oil spill.

In my April 8, 1991, letter, I set forth compelling evidence from company documents that Alyeska and its owner companies were aware long before the Exxon Valdez spill that Alyeska could not effectively respond to an oil spill in Prince William Sound, failed to make recommended improvements in Alyeska oil spill response capabilities, and secretly decided that Alyeska would not respond to an oil spill in the manner prescribed by Alyeska's Oil Spill Contingency Plan.

Despite this evidence, the Department of Justice failed to file any criminal charges or pursue any civil litigation against Alyeska or its owner companies other than Exxon. Yet Alyeska and its owner companies and shareholder representatives are immunized in both the proposed criminal plea agreement and civil settlement with Exxon.

The Department of Justice's memorandum acknowledges that criminal charges could have been brought against Alyeska for false statements in violation of 18 U.S.C. section 1001 (p.21). However, Justice asserts that "it was in the best interests of the public" to

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April 17, 1991

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let Alyeska and its owner companies off the hook by including them in the proposed plea agreement with Exxon. However, Justice failed to explain how they weighed the evidence against Alyeska to arrive at this conclusion.

How can it be "in the best interests of the public" when the Department of Justice is not even attempting to recover a single penny in compensation from Alyeska or its owner companies other than Exxon?

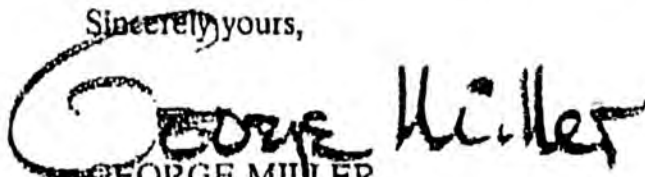
As Justice's memorandum points out, factors to be considered by the court pursuant to 18 U.S.C. section 3553 in reviewing the proposed plea agreement include the need of the sentence to: reflect the seriousness of the offense; promote respect for the law; provide just punishment; afford adequate deterrence; and provide restitution for victims.

It is difficult to understand how granting Alyeska and its owner companies immunity from criminal prosecution can conceivably "promote respect for the law" or meet any of the other sentencing criteria.

In defending the non-prosecution of Alyeska, Justice's memorandum states that the plea agreement "preserves the federal government's right to prosecute any employee of Alyeska for any criminal conduct that may have been associated with the spill plan." Yet this obfuscates the reality that it was the Alyeska owner companies and their representatives on Alyeska's Owners Committee who are most culpable since they decided not to commit the resources necessary for the Alyeska employees to respond effectively to an oil spill in Prince William Sound.

The Department of Justice has failed to meet its burden of proof that providing immunity for Alyeska, its owner companies, and their shareholder representatives, is in the public interest. I urge you to reject the plea agreement as currently written.

Sincerely yours,


GEORGE MILLER
Vice Chairman

cc: The Honorable Richard L. Thornburgh
Attorney General, U.S. Department of Justice

FILED

FEB 27 1990

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,
Plaintiff

v.

EXXON CORPORATION

and

EXXON SHIPPING COMPANY,

Defendants

A90-015 CR
INDICTMENT

Criminal No.

Count I: Clean Water Act
Vio. 33 U.S.C. §§ 1311(a),
1319(c)(1)

Count II: Refuse Act

Vio. 33 U.S.C. §§ 407, 411

Count III: Migratory Bird
Treaty Act

Vio. 16 U.S.C. §§ 703, 707(a)

Count IV: Ports and Waterways
Safety Act

Vio. 33 U.S.C. § 1232(b)(1)

Count V: Dangerous Cargo Act

Vio. 46 U.S.C. § 3718(b)

COUNT ONE

The grand jury charges that:

1. Defendant EXXON CORPORATION is a corporation incorporated under the laws of the State of New Jersey.

2. Defendant EXXON SHIPPING COMPANY is a corporation incorporated under the laws of the State of Delaware. At all times pertinent to this indictment, EXXON CORPORATION was the sole shareholder of EXXON SHIPPING COMPANY, and EXXON SHIPPING COMPANY had a single director who reported to Exxon USA, a division of EXXON CORPORATION.

3. EXXON SHIPPING COMPANY was incorporated in 1973. In 1982, EXXON SHIPPING COMPANY took over the functions of the