

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
2008 SCOMM 77: SENATE SPEC. COMM. EXXON VALDEZ OIL SPILL...1991

225



AMERICAN INSTITUTE OF PROFESSIONAL GEOLOGISTS

11661 Rockridge Dr.
Anchorage, AK, 99516
March 21, 1991

Senate Oil Spill Committee
Pouch V
Juneau, AK 99811

Dear Sirs:

The Alaska Section, American Institute of Professional Geologists, a Certifying organization akin to your ABA, is strongly opposed to one of the conditions of the Federal/State-Exxon Valdez Spill Settlement Agreement, i.e. the provision to not release the scientific studies regarding the spill.

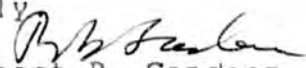
We feel that the spill studies contain extremely valuable data which MUST be available to the public. Some of the data in these studies may be critical in formulating a best response to the inevitable future events in similar environments. Most of the studies were undertaken on the basis of precisely such rationale.

Further, it should be noted that most of the studies were funded or supported by the federal government and as such would be subject to disclosure through the Freedom of Information Act. Others were conducted under NSF and private grants which contractually REQUIRE the publication of results. Finally, in the event of a lawsuit the "Discovery" process should effectively unmask these studies.

Rather than suppressing these studies, NOAA would better serve the worldwide scientific community in sponsoring the dissemination of data gained through these studies. Happily, the U.S. Forest Service has already opened an office for such purpose, and at least one of NOAA's experts is already describing study results on the Lecture Circuit.

Whereas most of the studies involved would be of great value to the scientific community; were conducted with public funding; and would, in any case, eventually become public through various means; we feel that that portion of the settlement be deleted.

Respectfully


Dr. Robert B. Sanders
Legislative Affairs Committee

Mr. Eric Opstad
President, Alaska Section

Martin & Sheila Nickerson
540 West 10th Street
Juneau, Alaska 99801

4/13/'91

Senator Ellison

Dear ~~Legislator~~,

We urge that you vote to reject the proposed Exxon Settlement. The terms offer too little. It denies the public the opportunity to learn the full extent of the damage. It leaves the State liable for all the secondary suits while holding Exxon harmless (which, after all the affected individuals get through, could end up with nothing for the State). It puts supervision of the fund created by the settlement outside the review of any elected officials and outside the political process. And, by a decision of the present State Administration, it puts all the economic and scientific studies out of public scrutiny. Each of those items causes harm. Together, those terms amount to a bad deal.

Studies made by the State to date support at least a \$3.5 billion dollar settlement on the basis of direct damages alone. The so-called, currently-proposed "\$1.0 billion dollar settlement" actually amounts to less than \$500 million for the state in present value since it will come in to the state over some time. That amounts to inadequate compensation.

Aside from the questionable allegiance of those who negotiated this deal, and apart from the shabby terms, we need to face the full impact of the spill and identify what needs to be done to lessen its impact and prevent it from happening again. There should be additional funding for the Departments of Environmental Conservation, Fish and Game and Natural Resources to identify the effects of the spill over time and to counteract them as much as possible. We should know the full extent of the damage and review the fate of Prince William Sound and the other affected communities for as many years as the impacts are felt. Nothing in this settlement and nothing proposed by those who negotiated it points in the direction of a responsible attitude to this problem or any continuing concern for this tragedy.

We urge that you take a step in the right direction and reject this bad first offer. It does not adequately address the responsibilities of the State.

Yours sincerely, *MN*

Sheila and Martin Nickerson

- ☒ Mary ✓
- ☐ Sheila _____
- ☐ Laura _____
- ☐ Jo-Eve _____
- ☐ Carol _____
- ☐ Brandie _____

Staff Notes:

☐ Dick _____

Notes to Dick: This person evidently believes that the settlement will keep the state from being sued for its own liability and ~~the~~ negligence in the spill.

Eliason's Instructions:

- ☐ File _____
- ☐ Back to Staffer _____

Instructions/Action to Be Taken:

Did Sam

April 15, 1991

Sandra Clark
6766 Double Tree Court
Anchorage, Ak 99516
(907) 346-2800

Senate Special Committee
On Proposed Exxon Settlement
P.O. Box V
Juneau, Ak 99811

The comments contained in the attached copies of various letters to the editor, pretty well expresses the opinion of most knowledgeable Alaskans as to the role the State played in the Exxon "Valdez" incident.

The attached portion of Alyeska's oil spill contingency plan clearly shows that the effects of the spill were just as should have been expected under the circumstances as shown in the State approved plan.

The quicker the State can get this settlement behind it, the better off it will be.

Very truly yours,

A handwritten signature in cursive script that reads "Sandra Clark".

Sandra Clark

State bumbled cleanup

Dear Editor:

I would like to add a little more to your excellent editorial of Friday, Feb. 2, and Hugh Cunningham's column of Sunday, Feb. 4, regarding the continuing mass of oil spill misinformation that pours forth from both the Department of Environmental Conservation, and our chief executive — the "lame turkey."

I observed DEC's handling of the oil spill in Kodiak far over seven months, and the fact they made a numerical error saying 224 beaches were deeply fouled when it's really only two beaches, is probably closer than most of the statistical information they've presented as a result of their 10 months of "scientific research."

The Kodiak DEC office during the spill consisted of some 40 people — the largest collection of non-Alaskan hippy types to be seen since Woodstock — all "supervised" by a man whose previous experience with the department had been as a restaurant inspector in Anchorage.

This amazing group punched in their time cards at 6 a.m. and punched out at midnight — seven days a week for six months. During that time they played cards and computer games, slept, ate and flew around the country sightseeing, fishing, taking pictures, and occasionally collected samples and figures that no one on earth will ever be able to figure out.

They also had wild parties, wrecked a state vehicle, refused to consult with the natives of the six Kodiak villages on any pertinent issue — were unable to handle even a simple phone call, and only the fact that God protects fools and drunks kept some of them from getting killed. Their second supervisor, who replaced the restaurant inspector after he's "lost" several hundred miles of beach, did break a few bones performing silly tricks.

As far as the Kodiak office is concerned, I personally doubt that one true or usable piece of information was developed in the entire 10 months they've spent getting rich at state expense. As a witness to their action, I also believe that the blame for any long-term environmental damage can be laid firmly on DEC's doorstep. They hampered and restricted the cleanup — over extended their authority with Exxon, Veco and the Coast Guard and showed more ignorance and stupidity than this world has seen since the Titanic set sail without enough life boats.

It certainly makes me wonder if Alaska will be able to survive the remaining months of Cowper's administration.

Laura "Sasha" Hughes
Sitka

Time to fire Kelso

Dear Editor:

I am totally outraged about the Department of Environmental Conservation employees and their so-called overtime pay. If any of those union non-artists worked 12 1/2 hours a week, I'll eat my hat. That would be 17.35 hours a day, seven days a week, leaving only 6.65 hours for a meal, a bath and sleep. Come on, what kind of nonsense are these people trying to shove down our throats? Not only are they overpaid in the first place, but to see them sticking it to the Alaskan people for \$10,000 to \$18,000 a month is totally abominable.

The papers say their boss, Steve Provant, is concerned and that his boss, Bob LeRoeche, is investigating. But they don't go directly to the problem of the entire DEC and that's with their loud-mouthed leader, Dennis Kelso. This is the man who should shoulder all the blame and should actually be fired for allowing his people to gouge the people of Alaska.

Dennis Kelso is the man whose early decisions in the spill not only exacerbated cleanup efforts but also probably did more damage to the beaches than some of the oil did, over the advice of scientists, I might add.

This is the man who had never even set foot in Valdez in all the time he was on the payroll until after the spill.

If we can prosecute the guy who was asleep in the back seat for what the man behind the wheel did, we can surely demand Dennis Kelso's punk slip.

Larry W. Phillips

The blame is in Juneau

Dear Editor:

Perhaps now some new light can be shed on the Exxon Valdez grounding. We Alaskans all got a black eye from this accident. Captain Hazelwood and Exxon have been highlighted.

Are we so naive as to overlook the real cause of the wreck? I personally find it appalling that one man is being held responsible for embarrassing the state of Alaska. Where were the safeguards that were supposed to be in place to prevent this very thing? In theory we had agencies whose sole function was monitoring and ensuring that this couldn't happen. But if it did, it could be contained!

Hopefully no one at the Department of Environmental Conservation and the U.S. Coast Guard was hurt in the stampede to distance themselves from exposure of their neglect.

I've seen enough oiled birds and otters to gag. Let's see some coverage of those agency directors that pulled their heads out of the sand and got to higher ground. Buzzards aren't native to Alaska, but at the Daily News they are in abundance and gorging on the oil industry!

Dan Whitehead
Anchorage

Kelso bears much of blame

There has been a preponderance of misleading stories written by the Anchorage Daily News lately alluding to the premise that Alyeska was unable to handle the Exxon Valdez oil spill as promised. Most of these stories appear to be based on information and complaints furnished by the DEC and its commissioner, Dennis Kelso.

If Mr. Kelso had bothered to read the Alyeska Oil Spill Contingency Plan before approving it (it was reported he did not), he would have known the following:

1. The plan clearly shows that if a spill of this magnitude did occur, and the use of dispersants and burning were not immediately allowed, the amount of oil reaching the shoreline would be just like it was in this case.

2. The plan further states that even under the most ideal conditions, in a spill only 1/65th the size of that of the Exxon Valdez, 40 percent of all the spilled oil would reach the shoreline and would require approximately two months to clean up.

By approving this plan, the DEC approved of the expected consequences. Remember, this plan was 100 percent DEC-required, administered and approved.

In spite of all of the attempts to whitewash, praise, and glorify Mr. Kelso and the DEC, the only conclusions that can be drawn from all of the evidence are:

1. If Dennis Kelso did indeed not read the plan before he approved it, he should be immediately fired.

2. If, in light of Dennis Kelso's remarks as to the inadequacy of the plan, he did read it and then still approved it, he should be immediately fired.

— Sandra Clark

Pumping up the numbers

Dear Editor:

Did you ever wonder why oil is discovered, produced, transported and processed in barrels but only spilled in gallons? Because bigger numbers sound much more dramatic!

So goes the governor's DEC report on oil penetration of Prince William Sound beaches (the misstatements were uncovered and reported in The Anchorage Times Feb. 1).

Mr. Kemmerer made lame excuses and stated, "the figures are definitely approximate" and "these misstatements are approximate by the way you measure them."

Then why misstatements in comments? Elementary, my dear Watson, look at the big numbers!

Now no one will deny that any oil spill on matter what size is serious. But let's get real and put things in perspective! I'm 21,000,000 miles old but I sure as heck wasn't here yesterday.

Marvin Elton 2-16-90

An end to smokescreens

Dear Editor:

Many people in the state are currently focusing on the projected future revenue shortfalls which will be caused by decreasing oil revenue, but there is another large liability looming on the horizon that appears to go unnoticed by the general public.

State statutes place protection of the environment in Alaska as the responsibility of the Department of Environmental Conservation (i.e., Dennis Kelso). Therefore because DEC was lax in working effectively with Alyeska and Exxon in the containment of the Valdez oil spill, the state will have to share part of the responsibility.

The lawsuits filed against the state so far are probably just the tip of the iceberg. Once the public finds out that claims filed against Exxon will be paid by both Exxon and the state, the "oily" mouse will really hit the fan.

Kelso can hide a while longer behind the smoke screen that he continues to throw up, but he better remember one thing — there is no smoking allowed in the courtroom!

James Blalock
Anchorage

Paying the piper AT 2-17-90

Dear Editor:

I noted the other day that Exxon has counter-sued the state. It seems that after the state sued that Exxon spent \$2 billion on the spill, washing rocks, they then sued Exxon for damages. Exxon, of course, countersues saying that the state prevented them from using dispersants or burning before the spill got out of hand. Therefore, the state should reimburse them for most of their \$2 billion cost.

What happens five or six years from now when this mess finally emerges from the court system and Exxon wins? Those of us still here will have to come up with \$2 billion, plus interest, plus attorney fees, etc. Mr. Cowper and Mr. Kelso will probably be living in California saying, "Gee, that's too bad," while we spend our Permanent Fund paying off the debt.

I think it is time to start focusing on all the bad guys in this mess, not just Exxon. Cowper and Kelso have not contributed anything positive to the problem. In fact, they became part of the problem.

I think we should hold these guys accountable now. Why is Kelso still DEC commissioner? Why is Cowper not being taken to task for his actions? We Alaskans who were here when these two clowns came to Alaska will be here after they leave, paying the bills for their actions.

Bob Bell
2610 Curlew Circle

Questions on DEC overtime

I would like to pose several questions to the state Department of Environmental Conservation. I hope they will use this public forum to reply.

The issue is not about the overtime wages paid to employees of the department working, presumably, on the Exxon tanker spill. My questions are:

1) What were the employees doing of such importance to justify the massive use of overtime, much in the winter months?

2) If the work was essential, why was the overtime eliminated just when the public learned of the issue?

3) If the overtime was non-essential, then how was it authorized in the first place?

4) Who is to pay this overtime: the public or Exxon?

ADN 1-31-90 David G. Hendrickson

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. Biegiert 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 hither 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.

300

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 306-4

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.

April 18, 1991

M E M O R A N D U M

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

FROM: Chip Thoma

SUBJECT: Final NTSB Report, June 1990

These excerpts from the NTSB report give credence to the contention that failures on the part of Exxon and Exxon Shipping management contributed directly to grounding of the Exxon Valdez.

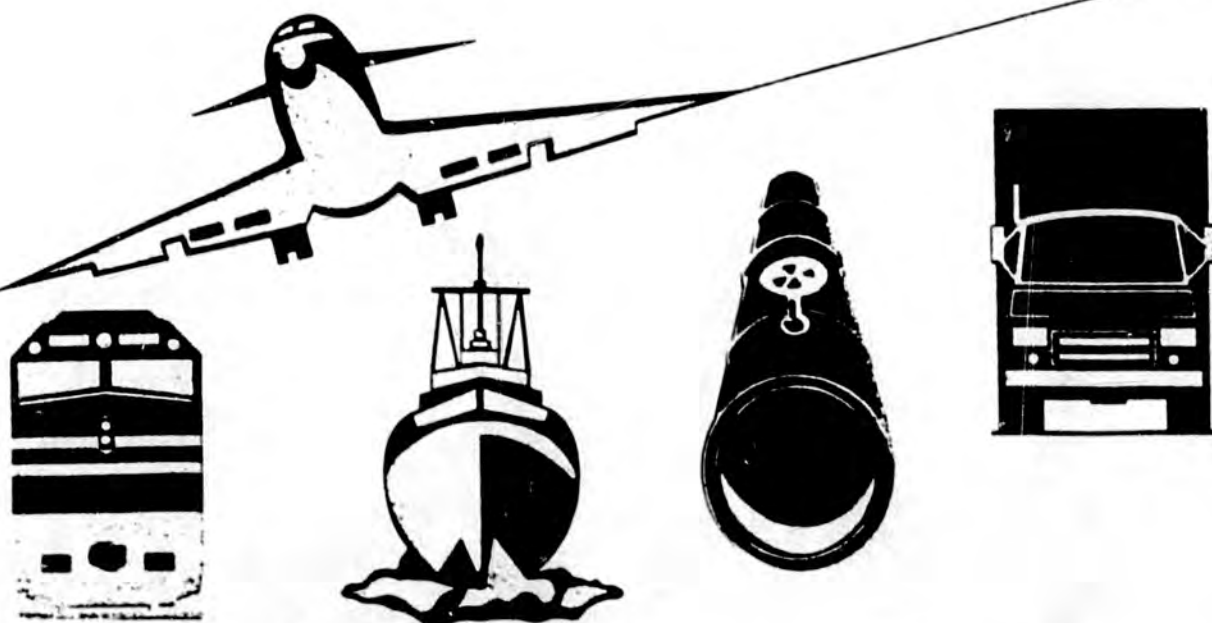
The Executive Summary (p. v.) under "Probable Cause" details some of these failings, while the excerpts give specific information on:

- 1) the background and rating of Joseph Hazelwood (p.28)
- 2) lack of Exxon monitoring of the Master (p.32)
- 3) workload of the third mate (p.34)
- 4) background on Helmsman Kagan (p.35)
- 5) manning on the Exxon Valdez (p.137)
- 6) continued increases on crew workloads (p.140)
- 7) safety conclusions (p.141)
- 8) Alyeska response to spill (p.144)
- 9) contingency plans (p.146)
- 10) dispersants (p.147)
- 11) conclusions (p.166)
- 12) probable cause, recommendations (p.170)

NATIONAL TRANSPORTATION SAFETY BOARD

MARINE ACCIDENT REPORT

**GROUNDING OF
THE U.S. TANKSHIP EXXON VALDEZ
ON BLIGH REEF, PRINCE WILLIAM SOUND
NEAR VALDEZ, ALASKA
MARCH 24, 1989**



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EXECUTIVE SUMMARY

About 0009, on March 24, 1989, the U.S. tankship EXXON VALDEZ, loaded with about 1,263,000 barrels of crude oil, grounded on Bligh Reef in Prince William Sound, near Valdez, Alaska. At the time of the grounding, the vessel was under the navigational control of the third mate. There were no injuries, but about 258,000 barrels of cargo were spilled when eight cargo tanks ruptured, resulting in catastrophic damage to the environment. Damage to the vessel was estimated at \$25 million, the cost of the lost cargo was estimated at \$3.4 million, and the cost of the cleanup of the spilled oil during 1989 was about \$1.85 billion.

The safety issues discussed in the report are:

- (1) The adequacy of the navigation watch on the EXXON VALDEZ on the night of the grounding;
- (2) The role of human factors, including fatigue and alcohol abuse, in this accident;
- (3) Coast Guard and Exxon Shipping Company manning standards and Exxon's procedures for determining manning levels for tankships;
- (4) Exxon Shipping Company's drug/alcohol testing and rehabilitation program;
- (5) Coast Guard regulations and procedures for drug/alcohol testing aboard commercial vessels;
- (6) The role of the Coast Guard Vessel Traffic Service at Valdez; and
- (7) Oil spill contingency planning and initial response to this accident.

Recommendations concerning these issues were made to the U.S. Coast Guard, the U.S. Environmental Protection Agency, the U.S. Geological Survey, the Exxon Shipping Company and other tankship companies carrying North Slope crude oil from Port Valdez, the State of Alaska, the Alyeska Pipeline Service Company, and the Alaska Regional Response Team.

Probable Cause

The National Transportation Safety Board determines that the probable cause of the grounding of the EXXON VALDEZ was the failure of the third mate to properly maneuver the vessel because of fatigue and excessive workload; the failure of the master to provide a proper navigation watch because of impairment from alcohol; the failure of Exxon Shipping Company to provide a fit master and a rested and sufficient crew for the EXXON VALDEZ; the lack of an effective Vessel Traffic Service because of inadequate equipment and manning levels, inadequate personnel training, and deficient management oversight; and the lack of effective pilotage services.

rboard ballast tank No. 2. There was some loss of cargo after the ullage measurements on March 25. Exxon calculated that the total cargo lost was about 258,000 barrels. The value of the lost cargo was estimated at \$3.4 million. Exxon expended approximately \$1.85 billion on cleanup operations in 1989.

Crew Information

Master.--Personnel records provided by Exxon show that the master of the EXXON VALDEZ, age 42, received a Bachelor of Science degree in Marine Transportation from the State University of New York Maritime College in May 1968. At that time he also received a Federal license, which qualified him to serve as a third mate of steam and motor vessels of any tonnage upon oceans.

He was employed by Humble Oil and Refining Co. (the predecessor company of Exxon Shipping Company) as a third mate on June 10, 1968. During his career with Humble/Exxon, he took numerous marine courses sponsored by Exxon. He upgraded his license to second mate in 1971, to chief mate in 1973, and to master in 1977, making him eligible for promotion to the level of the respective licenses. He obtained a Federal pilotage endorsement to his master's license for Prince William Sound between Cape Hinchinbrook and Rocky Point in Alaska in 1987. He was promoted to second mate in 1978, to chief mate in 1979, to relieving master in early 1979, and to master in 1980.

Since his promotion to master, he had served on nine tankships with no breaks in service except for authorized leave periods. He had served as the alternate master on the EXXON VALDEZ since 1987 and had worked in the Alaskan trade for about 10 years (during this period, the master made well over 100 round trips through Prince William Sound).

Submissions by Exxon provided a seriatim ranking of the master in comparison with other Exxon masters from 1981 to 1988. These rankings are as follows:

Year		Rating/group size	Percentile (100 equals the highest possible ranking)
1988	23/38	39	
	1987	24/29	17
	1986	35/37	5
	1985	35/37	5
	1984	24/34	2
	1983	29/33	2
	1982	35/39	10
	1981	25/36	36

Each year's ranking was for the performance period of the previous year. The EXXON VALDEZ in the West Coast Fleet and the EXXON GALVESTON in the Gulf Coast Fleet were selected as the best performing vessels in 1987. In 1988 the EXXON VALDEZ was the sole winner of this award. The master was one of

two masters of the EXXON VALDEZ when the vessel was judged to be the best performer in the fleet in 1987 and 1988.

In addition to the employment history shown in Exxon and Coast Guard records, the master told Safety Board investigators that he had served as a lightering superintendent in the Gulf of Mexico for about 3 1/2 months and had acquired additional seagoing experience in the Esso foreign flag fleet.

Additional employment information on the master is contained in appendix C.

About 13 hours before the accident, the master, accompanied by the chief engineer and the radio electronics officer, went ashore while the EXXON VALDEZ was loading cargo at the Alyeska Marine Terminal. The Alyeska security logbook shows that they departed the terminal gate at 1059. They were met by the ship's agent, who drove them to the agent's office at Alaska Maritime Agencies, Inc., in Valdez. The agent's supervisor recalled that the three men arrived shortly after 1100 and that the master and chief engineer conducted routine ship's business in a meeting that lasted about 45 minutes. The agent informed investigators that the master seemed "more relaxed" than when she had seen him on previous trips. She explained by saying that she had worked with the master for 8 to 10 years. After the meeting, the pilot who had conducted the inbound transit of the vessel to Valdez picked up the three men at the agent's office in his automobile and drove them to a nearby restaurant, where the four had lunch together. The chief engineer said that they spent about 1 1/2 hours at the restaurant. The chief engineer and the radio electronics officer told investigators that the master and pilot had nonalcoholic beverages with their lunch. However, the master told the Coast Guard investigating officer that he had had a beer at lunch.

After lunch, the pilot drove the three men to a small shopping center, and the three separated to run personal errands. The three men had agreed to meet again at a town bar later in the afternoon. Safety Board investigators located a gift store where the master had ordered flowers sent to his family. The owner of the gift shop recalled having a pleasant conversation with the master and stated that he did not appear to have been drinking. The chief engineer recalled walking to several newsstands, looking unsuccessfully for a newspaper, and then going to the bar, arriving alone about 1600. He said that the master arrived about a half hour after he did. However, the master told the Coast Guard investigator that he arrived at the bar about 1500. The radio electronics officer said that when he arrived at the bar about 1630, the master and chief engineer were already there. According to the radio electronics officer, they played darts with local residents and otherwise enjoyed themselves while each purchased one or more rounds of drinks. The radio electronics officer said that he drank beer while the master was drinking a "clear" beverage and the chief engineer was drinking gin and tonic. The chief engineer told Safety Board investigators that he had three gin and tonics and that he did not recall how much the master had.

The chief engineer said the three men left the bar about 1900 and returned to the restaurant where they had had lunch. They ordered two pizzas to take back to the ship and then went next door to an adjacent bar to await

the preparation of the pizza. The chief engineer and the radio electronics officer in separate interviews agreed that each man, including the master, had one drink while they waited. The radio electronics officer stated that he believed the master had a vodka while they waited. The chief engineer said that about 1930 their pizza order was ready and they called a cab to return to the ship.

According to the cab driver who transported them back to the Alyeska terminal, a fourth person from an ARCO tanker joined them in the cab for the trip to the terminal. He said that no one in the group appeared to be "under the influence of alcohol." The security log at the terminal gate showed that the cab arrived there at 2024. Terminal security officers stated that all persons arriving in cabs were required to check in to the office and walk through a metal detector and that they did not believe any of the men arriving at that time were intoxicated. The cab was permitted to proceed to the dock without delay.

The chief engineer said that they had expected the vessel to depart later in the evening and were surprised that it was ready to get under way. He also said that during the afternoon, the master had discussed the presence of ice in the traffic lanes and was considering delaying departure until daylight.

According to the radio electronics officer, the three men boarded the ship together. The ship's agent was aboard the vessel in the wheelhouse when the master arrived. She said that she met with him there to discuss cargo and ship's fuel. She said that he was in a good mood and did not appear to be intoxicated, although his eyes were watery. The agent and the master agreed that they would talk further on the VHF/FM radio to confirm cargo quantities after the vessel got under way.

The pilot conducting the outbound transit from the Alyeska terminal told Safety Board investigators that he smelled alcohol on the master's breath when the master returned to the ship from Valdez. However, it was his impression that the master's behavior and speech were unimpaired. The pilot said that the master left the bridge after they had gotten under way and remained away until the pilot called him shortly before disembarking at Rocky Point. The pilot said that the master returned to the wheelhouse soon after the call, and he estimated that the master had been gone for about 1 1/2 hours. The pilot stated that he again smelled alcohol on the master's breath, but the master's speech and behavior gave no indication of impairment.

Both the XO and the SIO of the MSO who boarded the vessel after the accident about 0335, smelled alcohol on the master's breath when they met with him on the bridge. The investigating officer described the odor as the very strong smell of "stale" alcohol. In response to a question about the smell of alcohol, the master explained to the investigating officer that he drank two Moussy beers (.05 percent alcohol) after returning to the vessel from Valdez. The investigating officer reported finding two empty Moussy beer bottles in a wastebasket in the master's stateroom.

The XO reported to the Commanding Officer (CO) of the MSO that the master smelled of alcohol, and he requested that someone be sent to the vessel to conduct toxicological testing. The CO then contacted an Alaska State trooper by telephone and requested him to proceed to the vessel to conduct the testing. However, when the trooper arrived about 0630, he had no equipment to conduct any testing or to collect urine specimens for subsequent testing. The XO again called the CO to request someone to conduct the testing. During a later telephone conversation, the CO suggested that the XO check with the master to ascertain if the vessel carried any equipment for collecting toxicological samples. About 1000, the Coast Guard officers learned that kits for obtaining toxicological samples were on board the vessel, and urine specimens were obtained soon thereafter from the third mate and the two ABs on watch when the grounding occurred. The master also was asked to provide a urine specimen at this time, but he said he was unable to urinate.

Meanwhile, ashore, a Coast Guard medical technician from Anchorage, Alaska, who had been conducting an inspection of health records of the MSO, was located at the airport about 0830 and instructed to proceed to the vessel to take blood and urine samples. About 1030, the Coast Guard medical technician boarded the vessel to obtain blood samples for toxicological testing. The master was selected to provide the first blood sample. At this time the master also provided a urine specimen. Blood samples also were taken from the third mate and the two ABs. At this time it was discovered that the urine specimen earlier provided by the AB on lookout was not sealed correctly, and she provided a second specimen.

The results of the toxicological testing by Chem West Laboratories, Inc., of Sacramento, California, of the samples collected on March 24, 1989, are shown in the following table:

Table 3.--Toxicological testing results

<u>Position</u>	<u>Blood</u>		<u>Urine</u>	
	<u>Time</u>	<u>% Ethanol</u>	<u>Time</u>	<u>% Ethanol</u>
Master	1050	0.061	1000 ¹³	0.094
Third Mate	1100	0	1000	0
Lookout	1140	0	1145	0
Helmsman	1115	0	1000	0

Portions of the blood and urine specimens provided by the master were sent to the Center for Human Toxicology (CHT) for an independent ethanol analysis. The CHT measurement showed the blood contained 0.06 percent ethanol and the urine contained 0.1 percent.

¹³Although the sample container was marked 1000, the urine specimen probably was taken about 1050.

The president of Exxon Shipping Company testified that the master, while on leave, had entered a hospital for treatment of an alcohol problem and that the company learned about the master's hospitalization when a shoreside manager attempted to contact the master. Exxon provided investigators limited medical records for the master's treatment. An Exxon Individual Disability Report, signed by the attending physician and dated April 16, 1985, showed that the master was admitted to a hospital on April 2, 1985, and "remains in residence at the present time." The report stated: "He is a 38 yo W/M who has been depressed and demoralized; he's been drinking excessively, episodically, which resulted in familial and vocational dysfunction." A treatment program was suggested that included a recommendation that he be given a leave of absence to get involved in Alcoholics Anonymous (AA), psychotherapy, and aftercare. The report indicates his first day of disability was April 1, 1985. Further documents show that the master was on sick leave from April 1, 1985, through May 15, 1985, and that disability was terminated on May 16, 1985, at which time he was placed on leave of absence for 90 days starting on May 16, 1985. Exxon did not provide documentation to indicate when he was granted sick leave or what followup monitoring was provided.

The master had made no claims for medical care or health services with the Exxon health care contractor during the last year of his employment before the accident.

The president of the Exxon Shipping Company testified that a fleet manager and a ship group coordinator were given the responsibility to follow up on the master after he was returned to duty following his hospitalization in 1985. According to this testimony, the followup consisted of visits by the ship group coordinator to the master's vessel in the west coast ports of San Francisco and Long Beach about every 2 weeks. The president testified, "I think he [the master] felt he was the most scrutinized employee in our company. I think he felt a little uncomfortable with it."

Early in the investigation, an Exxon representative said the company could find no documents covering this followup period. Exxon later provided documents that included a memorandum dated June 27, 1988, initialed by the master's shoreside supervisor at the time, regarding the master's performance. In this memorandum, the master was complimented for his professional expertise, leadership, and interdepartmental cooperation. Exxon also provided an unsigned and undated document that discussed the supervision of the master during his rehabilitation from October 1985 to April 1987. This document was developed from memory, after the accident, by a former shoreside supervisor of the master. The frequency of the visits and the outcome of these visits were not detailed in the document, except for a statement that no evidence of alcohol use by the master could be found and that it was concluded that he was "clean."

The Safety Board made a 50-State search of the National Driver Register (NDR) to investigate the master's driving record. This check revealed that the master had one "driving while intoxicated" (DWI) conviction in Huntington, New York, in 1985, and a second DWI conviction in Conway, New Hampshire, in 1988. The police report for the first DWI conviction showed

that on September 21, 1984, he ran a red light, struck another vehicle, and left the scene without providing information to the driver of the other vehicle. The investigating police officer subsequently met the master in the driveway of his residence and reported that the master smelled strongly of alcoholic beverage, was unsteady on his feet, and that his speech was slurred. The master refused to take a Breathalyzer test. The master's second DWI conviction, on September 15, 1988, resulted from his being stopped for driving 44 mph in a 30 mph zone. The reporting officer reported that he smelled strongly of alcoholic beverage, had difficulty getting his driver's license out of his wallet, and was unsteady on his feet. The master submitted to a Breathalyzer test that gave a blood alcohol level of 0.19 percent.

The chief engineer and the radio electronics officer stated that the master was going through divorce proceedings at the time of the accident. The radio electronics officer on the EXXON VALDEZ stated that the master appeared to undergo noticeable changes in mood. ✓

The radio electronics officer said that he witnessed the master drinking alcohol on board the EXXON VALDEZ during the last voyage of the vessel at the end of February 1989. The master had called him about a design for a ship's T-shirt, and in the course of the conversation, the master asked him to come to the lounge to "destroy a bottle." When the radio electronics officer arrived, the third mate was already there and the master removed a bottle or a flask from his jacket. Soon thereafter, the master sent the third mate to the galley for some ice, and the radio electronics officer went to bring some orange juice to the lounge. He said that the chief mate came into the lounge while the drinking was going on but did not participate. According to the radio electronics officer's recollection, the incident took place in the morning or early afternoon. The radio electronics officer said that one or two other persons were in the lounge watching a concert video, but he could not recall who they were. He said that the bottle was placed on the deck while he, the master, and the third mate watched the video. He did not recall tasting alcohol in any beverage he drank during the incident. He said the contents of the bottle were clear. It was his impression that the master had been drinking before he was called to the lounge, but no one appeared to be intoxicated during or after the incident.

Third Mate.--The third mate told Safety Board investigators that he had begun sailing in 1977 on National Oceanic and Atmospheric Administration (NOAA) vessels as an ordinary seaman after having worked several years as a shipfitter and a hull inspector. He said that he had served 3 years on NOAA vessels and in 1980 had begun sailing with Exxon as an AB. Coast Guard records for his sea duty with Exxon show that he worked as an unlicensed seaman from December 1980 to January 1987, principally as an AB. The third mate said he had attended a Page Navigation School course in New Orleans to prepare for the third mate's license examination. He obtained a third mate's license in March 1986. Since January 1987, he had served as third mate on five Exxon vessels with no breaks in service of more than 3 1/2 months. He told investigators that he had made six round trips to the port of Valdez with the current master and had served one previous tour on the EXXON VALDEZ. Company records show that he joined the vessel on February 20, 1989. He

obtained a second mate's license on January 12, 1989. Information provided by the company showed that the third mate had made 18 voyages through Prince William Sound, but the information did not indicate how many were as an AB and how many were as an officer.

Exxon provided four performance appraisals for the third mate to the Safety Board. The lowest rating given to the third mate was in 1986 while he was serving as an AB on the EXXON JAMESTOWN; it was "above normal" in the rating category of "Steers In Confined Waters." The same rating category was "outstanding" on two earlier appraisals of his service on the EXXON NORTH SLOPE. The third mate's overall performance as an AB was rated as "outstanding" on three of the Exxon performance appraisals.

In one performance appraisal as a third mate, his "overall effectiveness" had been evaluated as "high," one rating below "outstanding." The two lowest ratings he received as a third mate were given to him while he was on the EXXON JAMESTOWN in 1987 and contained the following comments: "performs adequately" in the rating categories of "seeks advice or guidance at the appropriate time and informs supervisor when appropriate" and "demonstrates thorough knowledge of ship and its handling characteristics." In a summary of employee weaknesses, the evaluator wrote, "He [third mate] seems reluctant or uncomfortable in keeping his superior posted on his progress and/or problems in assigned tasks."

During the third mate's initial interview by the Coast Guard investigating officer, he stated that he began work on March 23, 1989, at 0800, had a "cat nap" at 1330, relieved the chief mate for supper and worked thereafter until the grounding. He testified that he had been on watch when the EXXON VALDEZ approached the terminal dock on the day preceding the accident. The third mate said that after his watch ended, he had a brief conversation with the chief mate about how he [the chief mate] "starts up the cargo." He also testified that he had gotten to sleep at 0100 and was called at 0720 for his watch on the morning of March 23. ✓

The crew on the EXXON VALDEZ did not normally break sea watches while they were transferring cargo or ballast. Since the chief mate oversaw cargo handling operations, the second mate and the third mate stood watch extra hours to enable the chief mate to rest. The second mate said that in addition to relieving the chief mate, the two mates tried to "cover one another when needed." The second mate told Safety Board investigators that on this trip to Valdez, the two mates began their extended watches at midnight on March 23. He indicated to Safety Board investigators on board the vessel on March 26, 1989, that he and the third mate essentially stood watches 6 hours on and 6 hours off during cargo operations.

The third mate testified that he went to the engineroom to conduct a "salinity test" after lunch on March 23 and then went to his room for a nap between 1300 and 1350. According to the testimony of an Exxon Seaman's Union officer, it was "common practice for the mates off watch to assist in the cargo operations." The pumpman told Safety Board investigators that he had seen the third mate walking forward on the main deck early during the afternoon watch on the day preceding the accident.

At 1700 on March 23, the third mate relieved the chief mate for the evening meal, and about 1730, he was in turn relieved by the chief mate. About 1800, he assisted the chief mate with completing the cargo loading. The third mate checked navigation gear on the bridge about 1848 and remained on the bridge until he was relieved by the chief mate, probably sometime prior to 1900. The third mate was next reported by an AB as standing by at his usual location at the aft mooring lines during undocking about 2100. The third mate then returned to the pilot house about 2150 to relieve the chief mate. He said he relieved the chief mate early because the chief mate had been on duty a long time and needed rest. The pumpman who met and talked briefly with the third mate immediately before he returned to the bridge stated that the third mate appeared to be fatigued. Another AB also told Safety Board investigators that he had heard on the night of the grounding that the second mate was tired and this explained why the third mate had remained on watch after midnight. The third mate remained on duty until sometime after the Coast Guard boarding officers arrived about 0335.

Helmsman.--Coast Guard records show that the AB serving as helmsman when the grounding occurred had obtained his first seaman's document in 1965. Between 1965 and 1970, he had acquired only 25 days of documented marine work, all of which was in the steward's department for Boatel, Inc., an offshore catering company. The helmsman had no further documented shipping time until he began working for Exxon in April 1975. He initially worked in the steward's department on Exxon vessels for about 1 year and then began working regularly as an ordinary seaman. He obtained a lifeboatman endorsement in April 1980 and an unlimited AB rating in October 1981. Coast Guard records indicated that he had worked each year without remarkable breaks in service except in 1978 and 1987, when he sailed 1 month and 1 1/2 months, respectively. Since joining Exxon, he had served on 19 vessels, including the EXXON VALDEZ. ✓

Since acquiring his AB rating, the helmsman had acquired about 7 1/2 months of documented time as an AB, according to Coast Guard records. Those records show that the helmsman had worked primarily as an ordinary seaman and in other unrated positions. On January 18, 1989, he was assigned to the EXXON VALDEZ as an AB.

Exxon provided seven performance appraisals for the helmsman from February 1986 to August 1988. No performance appraisal for the helmsman referred to an AB-specific job classification, and for the corresponding periods in Coast Guard records he was shown as an ordinary seaman. Five performance appraisals were for the position of maintenance seaman,¹⁴ one was

¹⁴Maintenance seaman is a designation for a crewman having cross responsibilities in deck, engine, and steward's departments.

for ordinary seaman corrected to read "MS," and one was for wiper.¹⁵ Safety Board investigators could not locate any Coast Guard record for the periods during which the helmsman was evaluated as wiper.

The performance appraisals for the helmsman included at least one evaluation from the deck, engine, and steward's departments. In May 1986, he received ratings from a chief mate with whom he had worked on two vessels successively. This evaluator indicated a "cannot rate" for the "steers in confined waters" category and commented that the helmsman "needs to practice [helmsmanship] before sailing AB." The chief mate listed the helmsman's strengths as "a hard worker who was thorough in cleanup operations" but stated "[the helmsman] must prove himself capable [of an AB's position] by steering in confined waters ... and other skills required of an AB." A chief mate on the EXXON NEW ORLEANS rated the helmsman as a "normal" overall performer but commented that "[he] must concentrate more on the task at hand." In 1987, the helmsman's performance appraisal on the EXXON CHARLESTON included an "above normal" for the category "steers in confined waters" with the comment, "steers well to pilot's orders." The chief mate commented that "[he] is not ready at this time to sail as AB." In January 1988, the first assistant engineer on the EXXON BALTIMORE rated him less than the midpoint for overall performance, "needs improvement." The helmsman noted on the same performance appraisal that his ambition was to "sail on my AB's papers and/or obtain my oiler's endorsement and sail in the engine department." The helmsman also received a performance appraisal for his duties in the steward's department on the EXXON BALTIMORE and was given an overall assessment of "generally meets requirements," a midpoint rating. In August 1988, the helmsman received a performance appraisal for his maintenance duties in the engine department on the EXXON BALTIMORE and was rated with an overall assessment of "generally meets requirements."

The helmsman indicated that from March 17 through March 23 he had experienced a normal routine at sea, adhering to 4-hour watches with the customary 8 hours off. The helmsman indicated that he usually slept from about 0400 until called some time after 1100 in time for lunch before his afternoon watch. After that, he remained awake to eat supper about 1700 and then returned to sleep about 1800 until called at 2320 for the next morning watch. He indicated that on March 23, he obtained his usual sleep between the watches and an unusually early call at about 1030. He then worked from noon to about 1600 loading, supper, and went to bed. He indicated that he assisted with undocking from the terminal about 2000 until 2200. He indicated he returned to his room for a nap until called for watch at 2320. The helmsman declined most voluntary opportunities to work in excess of 8 hours a day.

¹⁵An entry-level position in the engineering department on board a merchant ship. A wiper assists in the performance of general work in the engine room and is so named because he is commonly occupied in cleaning machinery, etc.

Issue rules specifying zero (no alcohol) as the blood alcohol concentration for private sector employees in safety sensitive positions in all transportation modes and for Federal employees in safety sensitive positions. (Class II, Priority Action) (I-89-12)

The DOT has not responded to these recommendations and they are still classified as "Open--Await Response." The Safety Board believes that the EXXON VALDEZ accident demonstrates the continuing need for action on these recommendations; accordingly, they are reiterated.

Manning on the EXXON VALDEZ

The EXXON VALDEZ was operated with a reduced crew complement. Evidence indicated that watchkeeping safeguards on the EXXON VALDEZ had been compromised because of the manning level. The number of unlicensed crewmembers in the deck department was not sufficient to provide uninterrupted lookout capability when other routine deck-department duties arose. When one AB was required to serve as helmsman, the remaining ABs on duty had to cover all work and lookout responsibilities unless an AB from another watch was "turned to" on overtime. Moreover, when a lookout was required for long transits through congested waterways, no other qualified persons on duty were available to relieve that crewmember for breaks. As a result, on the EXXON VALDEZ, the lookout position routinely went unattended when the AB was called for other tasks or took a break. ✓

The Exxon Seamen's Union officials testified during depositions that the sea passages for voyages between Alaska and California were not long enough for conducting necessary maintenance or permitting thorough crew rest between the around-the-clock demands of cargo handling in port. When the current minimum crew requirements were established for the EXXON VALDEZ, the vessel had been scheduled for the Valdez-Panamanian trade. But that trade was discontinued after December 1988, and the EXXON VALDEZ then began operating regularly between Valdez and ports in California. ✓

According to company and union officials, crewmembers in addition to those required by the COI were regularly assigned to the EXXON VALDEZ. The minimum crew for the EXXON VALDEZ required by the Coast Guard was 15, including the master, and the company regularly assigned 4 additional unlicensed crewmembers to the vessel. Two of these crewmembers were QMEDs; one performed pumpman's duties and the other performed maintenance. These additional crewmembers, specifically the two QMEDs, showed the company's awareness of manpower needs in addition to those recognized by the Coast Guard. The other two additional seamen regularly assigned to the EXXON VALDEZ were members of the steward's department and prepared meals for the crew. A third unlicensed engine department crewmember was aboard when the vessel was grounded but apparently was riding for only that one trip. The Safety Board believes that the additional crewmembers regularly assigned to the EXXON VALDEZ engineering department were needed to perform essential work and that the number of crewmembers required by the Coast Guard was not adequate. ✓

The mates on the EXXON VALDEZ were usually fatigued after cargo handling operations in Valdez, and the vessel usually put to sea with a fatigued crew. Although the EXXON VALDEZ had cargo handling automation, the equipment did not eliminate the need for deck officers to spend many hours on cargo watches. The Safety Board is concerned that the manning and working conditions producing fatigue on the EXXON VALDEZ are likely to exist on other U.S. tankships that carry three mates and/or have reduced manning.

Compliance with Exxon Shipping Company procedures that require two officers on the bridge during maneuvering may have provided sufficient sharing of the workload to prevent the grounding of the EXXON VALDEZ. However, the Safety Board is reluctant to endorse the routine use of two officers, who may not have had adequate rest, as a means of obtaining a sufficient number of personnel for a navigation watch. The Safety Board contends that manning levels aboard ships should incorporate realistic expectations for human endurance and fallibilities so that the amount of work required for peak periods, such as cargo handling in port and tank cleaning at sea, can be accomplished without debilitating fatigue.

Reduced Crews

Coast Guard Manning Practices.--The investigation reviewed relevant Coast Guard practices and standards for setting reduced-crew minimum manning levels for inspected vessels. The regulatory agency is admittedly under conflicting pressures from ship owners, operators, and labor unions. Long-standing manning practices are being replaced with more economically advantageous ones, and current manning appears to be at or near the limits for individual workloads. Although these circumstances explain some of the criticism of Coast Guard manning decisions and the manning review process, the Coast Guard's limited perspective for justifying reduced crews may be the primary shortcoming. The trend toward reducing crew complements has been based principally on labor-saving shipboard equipment and equipment reliability, which serve to reduce workload at sea primarily in the engineroom. However, in establishing reduced manning levels, the Coast Guard gave practically no thought to the work load in port. This omission is serious because tankship crews are required to perform much more demanding work in port than at sea, and this work leads to fatigued crews taking their ships to sea. Also, having fatigued crewmen in charge of cargo transfer operations increases the risk of a catastrophic accidental release of the cargo in port that could result in fire/explosion, as well as pollution.

The Safety Board believes that the Coast Guard must promptly implement manning safeguards that directly address crew working conditions in port, as well as at sea. If additional authority is needed, the Coast Guard should seek such authority. These safeguards should incorporate verifiable man-hour requirements for cargo handling in port and for all vessel operations, including tank cleaning, at sea. The safeguards should directly address risk factors associated with fatigue, low morale, and other consequences of longer work hours. The safeguards must also address the consequences of the social isolation that results from lower manning levels and longer tours of sea duty. The Safety Board believes that human

capacities and limitations require no less attention in the manning process than the shipboard equipment criterion.

The Safety Board is particularly interested in the outcome of two research efforts sponsored by the Coast Guard that are intended to examine variables in human factors on reduced-crew vessels. One project, which is being conducted by the Marine Board at the National Academy of Sciences, has used input from vessel operators and marine labor unions to obtain information about existing workloads and working conditions. The Safety Board believes it is important that the Coast Guard evaluate different viewpoints in order to assess the current safety of manning and to develop guidelines to ensure that future manning levels are appropriate to the work load. Similarly, the Safety Board recognizes the interest that the Coast Guard and MARAD have shown in the fatigue factor in their companion project for manning vessels with smaller crews.

Although Coast Guard officers stated that the review process for manning decisions used a "worse case" criterion, there is no evidence of this consideration in documentation related to the manning of the EXXON VALDEZ or EXXON LONG BEACH. Nor is there any evidence that the Coast Guard considered the fact that crewmen may be fatigued from increased additional work owing to tank cleaning or to machinery breakdown. The Safety Board believes that the Coast Guard should re-examine manning practices and establish amended standards using the same criteria as other safety standards for vessels. For example, calculations to obtain structural standards acceptable to the Coast Guard are normally based on the vessel being in adverse loading conditions and, in some cases, the most adverse conditions possible. Even if it can be argued that the vessel will seldom operate in those adverse conditions, standards based on less rigorous loading criteria are generally considered inadequate. The Safety Board urges the Coast Guard to exercise comparable rigor for manning standards and to set minimum manning requirements that provide safe vessel operation for all foreseeable operating circumstances.

The equipment currently installed for deck-department operation may not reduce manpower needs to the extent projected in the reduced manning requests. With the exception of cargo tank sounding automation, remotely controlled cargo tank valves, and newer equipment that required less maintenance than older equipment, no substantial labor-saving devices were on board the EXXON VALDEZ. In fact, crewmembers on Exxon vessels normally verified manually the operation of all automated sounding and cargo tank valve positions. Since reduced manning of vessels means fewer people on board to do about the same amount of work as was previously done by larger crew complements, the Safety Board views future verification of the assumed lower workload for deck-department personnel as important. Thus, the Coast Guard should develop procedures to more accurately gauge the manning requirements for modern tankships that also take into account human performance needs such as adequate rest, relief from isolation owing to smaller crews, and less time in port.

Exxon Shipping Company Practices.--The Safety Board identified several general operating practices of the Exxon Shipping Company pertaining to

reduced crews that prompted concern. First, no evidence indicated that the company had policies or procedures intended to compensate for the risks involved in having smaller crews on its vessels. For example, Exxon had no program to ensure that mates complied with the requirement in U.S.C. 8401(a) that they have 6 hours of off-duty time in 12 hours before taking charge of the navigation watch. Aside from one introductory reduced-crew manning conference, officers received no specific supervisory training in recognizing fatigue in subordinates or in understanding the debilitating effects of fatigue on themselves or on their subordinates.

Finally, Exxon Shipping Company policy was to manipulate overtime records relevant to crew workload for vessels assigned to at least one "ship group coordinator" in order to support periodic unmanned status for engine rooms and thus to permit reducing crew size. Payment of overtime for officers on all Exxon vessels had been discontinued several years earlier, and during the investigation, no company method was identified that was designed to monitor officers' work in excess of 8 hours daily. Aside from concern about the morale problem created by the loss of direct compensation for time worked, the Safety Board is concerned that unrecorded overtime was not reflected in the work load data used by Coast Guard personnel who evaluated reduced-manning requests. Also, this investigation uncovered evidence that deck officers were used to do maintenance and other work previously done by unlicensed crew who had since been eliminated from service on the vessels.

Because of the Exxon Shipping Company memoranda that directed officers to minimize reports of equipment maintenance and overtime, the minimum manning requirements on Exxon Shipping Company vessels may have been based upon incomplete and inaccurate information. Assuming that the recipients of the memoranda complied with the directive, their maintenance and overtime records would not be representative of actual crew work loads. In addition, the Coast Guard had probably agreed to minimum manning reductions using the same deficient information for its evaluations and consequently may have underestimated crew workloads on all reduced-crew Exxon Shipping Company vessels.

Exxon submitted graphs to the Safety Board that showed a favorable comparison between lower manning levels and casualty and personal injury statistics. The Safety Board does not consider these comparisons useful evidence of safe vessel operation. Gross measurements, such as the number of oil spills per vessel or injuries per million man-hours over a 15-year interval, do not provide sufficient information for causal inferences about any safeguards on these vessels. The evaluations did not provide information on safety programs in effect, composition of crew complements, crew overtime, length of crewmember tours, equipment installed on the vessels, or other variables from which the effects of lower manning on safety may be methodically deduced.

The Safety Board is also concerned that Exxon has continued to increase crew work load in its fleet even after the grounding of the EXXON VALDEZ. A recent company directive, issued after the grounding, required manning of periodically unmanned machinery spaces while vessels are in inland

waterways. Since engineering crew complements were reduced on these vessels because the machinery spaces were said to no longer require monitoring, the reestablishment of watchstanding without replacing the deleted engineers and QMEDs places an additional workload on the number of engineers retained. In another directive issued after the grounding, the company restricted off-duty crewmembers to their vessels when cargo handling operations are in progress. The apparent intent of requiring off-duty crewmembers to remain on board was to ensure the availability of enough manpower for cargo-related incidents or other emergencies. These measures may show a necessary concern for engineroom and cargo safety, but they impose additional burdens on crewmembers without compensating for the human factors involved. As a result, the Safety Board is concerned that Exxon's measures may not adequately provide for the safety of personnel, the vessel, or the environment. ✓

Evidence also indicated that the Exxon Shipping Company planned to further reduce the crew size and to lower crew qualifications for most vessels in its operating fleet. The company was planning to eliminate the current position of the radio electronics officer by assigning communication and maintenance duties to the master and engineers, respectively. The company also planned to institute a separate maintenance department of unlicensed seamen having duties across deck, engine, and steward's departments. Implementation of such a department would have weakened the navigation watch by enabling a minimally manned vessel to operate with a complement of only four ABs and two ordinary seaman instead of six ABs. According to the Coast Guard, implementation of the new department was delayed only by the Exxon Seamen's Union. In the interim, the Coast Guard issued a directive requiring that the company retain six certified ABs on each vessel. The maintenance department concept under which ordinary seamen are employed to perform maintenance is reasonable, but its implementation should not lead to a reduction in the number of ABs. Six ABs, two per watch, are needed for an underway navigation watch in order to provide two qualified helmsman so that the helm can be relieved, thereby reducing the possibility of having a fatigued seaman steering. ✓

The Safety Board considers the reduced manning practices of the Exxon Shipping Company generally incautious and without apparent justification from the standpoint of safety. The financial advantage derived from eliminating officers and crew from each vessel does not seem to justify incurring the foreseeable risks of serious accidents.⁹⁰ Regarding company manning practices that related to the EXXON VALDEZ, the Safety Board does not believe that the Exxon Shipping Company showed sufficient regard for the known debilitations that occur as a result of crewmember fatigue. Furthermore, the Safety Board could find no reasonable explanation for the following: the absence of company programs to ensure that crewmembers observed hours-of-service regulations; the lack of procedures to ensure that at least one rested deck officer, in addition to the master, was available for watch at departure; the practice of rating a crewmember's performance in part according to willingness to work overtime, thus giving an incentive to work ✓

⁹⁰The cost of cleanup is expected to exceed \$2 billion.

an excessive number of hours; and the indiscriminate increase in work loads and standby time throughout the fleet before and after the grounding of the EXXON VALDEZ.

Fatigue in Transportation Safety

In a letter dated May 12, 1989, to the Secretary of Transportation, the Safety Board expressed its concerns about the far-reaching effects of fatigue, sleepiness, sleep disorders, and circadian factors in transportation system safety. The Board further stated that:

poor scheduling of work and rest time continues to affect the performance of operating personnel in virtually all modes of transportation. Safety Board experience also indicates that most employees and supervisors in the transportation industry do not receive training on the problems associated with work and rest schedules and the effects such schedules have on safety and performance. Additionally, proper living habits, including attention to exercise, diet, and rest, are important to good health. However, many transportation operating personnel may not adequately appreciate the importance of these habits in relationship to their fitness for duty and their susceptibility to fatigue in the face of their irregular and often unpredictable work/rest patterns. Therefore, the Safety Board believes there is a need to develop and disseminate educational materials that will assist transportation employees in adapting living habits appropriate to their work/rest patterns.

Furthermore, it appears that, with minor exceptions, neither management nor the labor segments of the transportation industry properly considers the adverse effects of irregular and unpredictable cycles of work and rest on its vehicle-operating personnel. Although some private research has been conducted on this safety issue, the Safety Board is unaware of any systematic activity by the DOT to address the safety concerns of inadequate work and rest scheduling in any of the transportation modes.

Since 1972, the Safety Board has issued about 39 safety recommendations to transportation modal administrations, operators, and associations concerning fatigue, duty time, and hours of service. Collectively, these recommendations addressed most aspects of the fatigue and fitness-for-duty issues, but they constitute uncoordinated and piecemeal efforts directed to various government and industry segments of the transportation community. The Safety Board is aware of the March 1989 DOT report entitled "Transportation-Related Sleep Research," which was prepared in response to a request by

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the U.S. Senate Committee on Appropriations and which describes current departmental activities in this field. This report provides an overview of current diverse activities by various departmental administrations regarding the role of fatigue, sleep disorders, and sleepiness in their respective modes. However, the Board believes a review of the report also indicates a need for more overall planning, direction, and control of these activities to assure that they are administered as a coordinated, effective program that will provide the best possible safety benefits for the entire transportation community.

Based on its experience in accident investigation, the Safety Board believes it is time for an aggressive Federal program to address the problems of fatigue and sleep issues in transportation safety. Such a program should include a coordinated research effort, an extensive educational effort directed toward all segments of the transportation industry, and a systematic review and improvement of regulations governing hours of service across all transportation modes.

Therefore, the National Transportation Safety Board recommends that the DOT:

Expedite a coordinated research program on the effects of fatigue, sleepiness, sleep disorders, and circadian factors on transportation system safety. (Class II, Priority Action) (I-89-1)

Develop and disseminate educational material for transportation industry personnel and management regarding shift work; work and rest schedules; and proper regimens of health, diet, and rest. (Class II, Priority Action) (I-89-2)

Review and upgrade regulations governing hours of service for all transportation modes to assure that they are consistent and that they incorporate the results of the latest research on fatigue and sleep issues. (Class III, Longer-Term Action) (I-89-3)

These recommendations are currently classified as "Open--Acceptable Action." The Safety Board believes that these safety recommendations are pertinent to the EXXON VALDEZ accident and reiterates them to the Secretary of Transportation.

Response Activities During the First 24 Hours

Coast Guard Response Activities.--At 0027 on March 24, 1989, the Coast Guard VTC at Valdez was advised by the master of the EXXON VALDEZ that his

vessel was aground and leaking oil. About 10 minutes later, the CO and XO of the Coast Guard MSO in Valdez arrived at the VTC and activated the COTP Prince William Sound Pollution Action Plan, and the CO assumed responsibility as the OSC. Soon after arriving, they notified the Alyeska Terminal's marine operations watchstander, the local ADEC representative, and the Seventeenth Coast Guard District Office staff of the accident. The CO also advised the Alyeska Terminal watchstander to send its pollution contingency barge to Bligh Reef. The XO and SIO were sent to the vessel to initiate the casualty and pollution investigations and to determine the extent of the oil spill. The CO of the MSO expected that the spill would be classed as a "major" oil spill (in excess of 100,000 gallons, about 2,380 barrels) because the vessel was a large tanker and had grounded on a rocky reef. At 0249, he asked for assistance from the PACAREA Strike Team. He believed that asking for assistance from the strike team was a prudent action because it has the additional manpower, expertise, and equipment needed to supplement the local response to a major oil spill.

The CO, as Federal OSC for the oil spill, followed proper procedures in initiating Coast Guard actions in response to the report of the spill. Because Alyeska was responsible for cleaning up oil spilled at its Terminal and from ships that carry North Slope crude oil and had successfully cleaned up oil spills from ships carrying such crude oil in the past, the Federal OSC, in accordance with the NCP and RCP, assumed his customary duties: investigating the accident and oil spill, assessing the situation, monitoring the removal actions, and providing guidance and assistance as necessary for the cleanup activities. During the first 24 hours, Alyeska employed company personnel and local workers, ordered additional workers, and was using or had ordered all cleanup equipment available in the area to be delivered to the Terminal or the EXXON VALDEZ. If the OSC had taken over the cleanup during the first 24 hours, he would have had to employ the same people and contract for the same equipment that Alyeska was using at the time. His work load would have expanded considerably because he would not only have been directing the cleanup but also increasing his record keeping and contracting responsibilities. Such an action would not have enhanced the cleanup effort already under way; it would only have changed who was directing and paying for cleanup actions. The Safety Board believes that it was unwarranted for the Federal OSC to assume cleanup responsibility from Alyeska during the first 24-hour period after the spill for the following reasons: all equipment in the area was being used, other equipment was being mobilized or ordered into the area by Alyeska and Exxon, and the only change in cleanup actions would have been who paid directly for the cleanup.

Alyeska's Response Activities.--The contingency barge was not loaded with oil spill response equipment as had been the Terminal's practice in the past and the expectation of the ADEC. However, the Alyeska Contingency Plan, which had been approved by ADEC, did not specify that response equipment had to be kept on board the barge at all times. The barge had been used in response to a pollution incident in early January 1989, and its equipment had been offloaded so that it and the barge could be cleaned. The barge had also been damaged above the waterline during a storm in February 1989, and reloading of the response equipment had been delayed to allow for repairs. Alyeska had not thought it necessary to inform the ADEC that the

barge was not loaded with equipment because the barge could still be loaded and used in an emergency.

When it became apparent that the EXXON VALDEZ could not be moved safely off Bligh Reef in its damaged condition, the Federal OSC assigned a high priority to lightering the EXXON VALDEZ, and Alyeska and Exxon prepared for the lightering of the vessel. Exxon had to request lightering hoses and fittings from tankships at anchor near Bligh Reef and hired a small freighter in the area to collect and deliver the equipment to the EXXON VALDEZ. Lightering of a damaged or stranded tanker was covered in the Alyeska contingency plan, and the plan included a list of some of the equipment needed for the process. Large ship fenders for mooring the EXXON VALDEZ and the lightering vessel together had to be found in Valdez, and other lightering equipment had to be located and gathered from various storage areas at the Terminal, requiring additional time to load the barge. The extra effort and time necessary to locate and collect sufficient lightering equipment demonstrated a lack of preparation on the part of Alyeska and the need to have such equipment readily available. ✓

On the night of the spill, poor weather conditions, darkness, and the gathering of extra cleanup equipment, including lightering equipment, prolonged the loading of the Alyeska contingency barge. Had another contingency barge been preloaded with lightering equipment, locating, collecting, and gathering the equipment would not have been necessary and the cleanup supervisors could have used the additional time to plan other cleanup activities. These actions increased the time needed to load and prepare the barge for towing from the 2.5 hours provided in the plan to 10 hours. It took another 5 hours to tow the barge to the EXXON VALDEZ, which was about 28 miles from the Terminal. The Alyeska contingency plan's 200,000-barrel oil spill scenario, which was predicated on daylight and summer weather conditions, allowed a total of 5 hours for preparation and towing of the barge to a spill site about 30 miles from the Terminal. This timetable can only be met if the barge is already loaded. If the contingency barge had been preloaded with its cleanup equipment and had left the dock as soon as the tug PATHFINDER received orders to proceed to the EXXON VALDEZ, the barge could have been at Bligh Reef within the 5 hours prescribed in the Alyeska contingency plan. The Safety Board believes that the almost 10 additional hours needed to load, prepare, and tow the barge to the site constituted an unwarranted delay that could have been avoided if the barge had been loaded. The 10-hour loss had no material impact on the cleanup because of the size of the spill. However, had the spill been more manageable, the opportunity for quick response would have been lost. Even though the 10-hour delay did not make a difference in this spill, the delay might have been significant under other conditions.

Because every spill is different in size and location, a variety of cleanup equipment is required. Equipment stored on one barge may be adequate for a small spill, while larger spills may require additional equipment that must be loaded on two or more barges. An accident may also necessitate the use of lightering equipment, as was the case in this spill. To save time in gathering and loading response equipment and to allow cleanup supervisors to use their time for other activities, such equipment should be preloaded on

barges and ready for deployment. Thus, Alyeska should be prepared beforehand with barges loaded with different levels of cleanup equipment so that the response to an accident is not delayed by the need to load or unload equipment.

The cost of an additional barge or barges with equipment aboard, compared to the value of the oil on board a tankship and the large volume of oil transported from the Alyeska Terminal in Valdez, should more than justify the need for additional barges loaded with cleanup and response equipment. Moreover, the equipment on the barges should be placed in protective containers, and the loaded barges should be moored under shelters to protect them from the detrimental effects of weather. The Safety Board believes that barges should be loaded with different levels of oil spill cleanup equipment and lightering equipment and that the barges should be ready at all times for immediate deployment to the scene of a spill.

State of Alaska's Activities.--ADEC also established an emergency response center in Valdez that was fully operational by the evening of the day of the spill. It planned to monitor, assess, and oversee the cleanup response from the response center. During the first day of the spill, ADEC was concerned that Alyeska had not deployed cleanup equipment to the scene as provided for in the Alyeska contingency plan. The State wanted to make sure that the Federal OSC would intervene early in the response process and take over the cleanup if the responsible parties did not do what was expected in a timely and effective manner. A letter was drafted by the ADEC for the State representative to the RRT. Although the letter mentioned the State's concerns, it was not conveyed to the RRT during the first day. ADEC was following the requirements of its contingency plan to assess, monitor, and oversee spill cleanup activities.

Contingency Plans.--Not covered in the Alyeska contingency plans was a procedure for the transfer of cleanup responsibility from Alyeska to the shipping company that was responsible for the oil spill because it came from one of that company's vessels. A procedure for transferring cleanup responsibility should be developed by Alyeska and the individual shipping companies loading oil at the Valdez Terminal so that there will be continuity in the cleanup work and so that the transfer can be fully monitored by the Coast Guard and the State of Alaska. Because of the remote location of Valdez and the time it takes for a shipping company's oil spill response personnel to arrive on the scene, Alyeska should continue to be the initial responder to oil spills from vessels carrying oil from the Valdez Terminal in Prince William Sound. The vessel's parent company should have an organization or plan to respond effectively so that it can relieve Alyeska of long-term cleanup responsibility within a reasonably short period of time. After being relieved, Alyeska should remain on the scene to support the responsible company by providing continuity to the cleanup activity, local knowledge, and advice. ✓

ARCO Marine had conducted a simulated oil spill drill in 1988, during which ARCO relieved Alyeska. The Coast Guard, ADEC, and local government officials participated in the drill. ARCO was the only company that had a State-approved plan that included procedures for relieving Alyeska of

cleanup responsibilities. As a result of this drill, the OSC apparently assumed that Alyeska and Exxon would follow similar procedures. Alyeska and Exxon did not have any State-approved procedures for relieving Alyeska of cleanup responsibilities, probably because Alaska had not required any such procedures. Exxon had submitted proposed oil spill cleanup plans on two previous occasions, but the State had returned the plans to Exxon because, according to the State, they were not required. Alyeska stated that it had an understanding with Exxon that Exxon would assume cleanup responsibilities for a major spill, but the understanding was not written into Alyeska procedures. Exxon announced soon after it was advised of the spill that it would assume cleanup responsibility, supporting the contention that such an arrangement had existed with Alyeska. After Exxon received notice of the spill, the president of Exxon Shipping Company activated the Exxon-wide spill response teams, and he and his staff proceeded to Valdez to take over the cleanup responsibilities from Alyeska. They arrived on the afternoon of the accident day, but they did not relieve Alyeska immediately, although Exxon was taking action to assume responsibility for the cleanup. Companies shipping oil from the Alyeska Terminal at Valdez should amend their individual plans to include procedures for assuming cleanup responsibility for major oil spills from Alyeska and have the individual plans approved by the State. It is possible that some companies may not be fully capable of assuming responsibility quickly. Each company's response capability and procedures should be listed in the Alyeska contingency plan. Following State approval of a company's plan, it should be included in the Alyeska contingency plan for Prince William Sound.

Use of Dispersants.--The Alaska RCP addresses the use of oil dispersants in the State. It provides a decision matrix and a description of the biological effects of dispersants in the water but no guidance or information about the conditions under which the application of dispersants is effective. Wind and sea conditions and the length of time that the oil has been on the water when dispersants are applied alter their effectiveness. Such information about dispersant application should be included in the Alaska RCP and other contingency plans so that proper dispersant procedures are readily available. An OSC would then know when to use dispersants and would not waste time using them when they would not be effective. On the afternoon of the spill, a test was conducted using dispersants when the sea was calm. However, calm sea conditions are not conducive to the effective use of dispersants, which must mix with the oil in order to cause it to break into droplets and disperse into the water column. If the OSC had had guidelines in the RCP that described the wind and sea conditions necessary for effective use of dispersants, a test application would have been unnecessary.

The company contracted by Alyeska needed more than 3 hours to prepare a helicopter with a 300-gallon spray bucket to conduct a dispersant test application, which was done about 18 hours after the spill was reported. Air-deliverable dispersant system (ADDS) packs for fixed-wing aircraft were not available in Valdez and had to be ordered from storage sites in Alaska and the continental United States. The Alyeska plan states that aircraft capable of applying dispersants are to be available in 9 to 17 hours. However, the aircraft and ADDS packs were not available for use during the

first 24 hours after the spill occurred. If dispersants are to be used on an oil spill, especially in such a remote area as Valdez, the delivery system must be readily available and stored on or near the Terminal. The Safety Board believes that if dispersants continue to be regarded as an oil spill response option, ADDS packs and other dispersant application equipment should be stored in Valdez and ready for immediate use and that appropriate aircraft or vessels should be available on short notice.

In-Situ Burning.--The Alaska RCP and the Alyeska plans also mention in-situ burning of oil as an approved alternative to mechanical cleanup, but the plans provide no guidance about how to proceed with in-situ burning or about possible results of burning, such as smoke or oil and tar residue. The use of in-situ burning is at the discretion of the OSC, with guidance from the RRT. Thus, the OSC is in the difficult position of being able to authorize certain methods--dispersant use and in-situ burning--but only after consulting and seeking advice from the RRT. The RRT may provide some information and agree to the use of a particular method, but the final decision is the OSC's. At times, the OSC may not be able to contact the RRT, or the RRT may not provide clear guidance. Such problems may result in delays that could render the application of dispersants useless and in-situ burning ineffectual. The OSC could also make an incorrect decision because of the lack of sufficient guidance or information, but incorrect action probably would not be as harmful as no action while awaiting a consensus from the RRT. In any case, the OSC's decisions will probably be second guessed during and after the cleanup because the results may not be acceptable to all parties. The cleanup party may think there was a delay in authorizing a certain procedure; the environmentalists may believe the physical environment was damaged or fish and wildlife were destroyed; fishermen may think their livelihood was threatened; the State may regard the impact on its environment, revenue, or tourism as negative; or the RRT may think its guidance was interpreted incorrectly. OSCs need more than advice from a committee. They need guidance in writing, before a spill occurs, from the NCP and the RCP about the use of dispersant chemicals and in-situ burning so that their decisions can be based on accepted procedures.

During the first 24 hours after the spill, Exxon applied to the RRT to conduct in-situ burning of the spilled oil. The RRT recommended approval if the OSC was satisfied that the burning could be done without degrading other cleanup efforts. In addition, the State had to issue a burn permit. "Approval to open burn" was issued by the ADEC on the same day, March 24, but the permit was not sent to Exxon until the next day. Even though the permit was not received until the next day, neither Alyeska nor Exxon was prepared to burn oil on the first day of the spill because neither one had a fire- or burn-proof boom on hand. The boom had to be shipped in from the North Slope and Seattle. Had the boom been immediately available and a burn permit issued earlier, this method of cleanup could have been used on heavy concentrations of oil before the wind and currents spread the oil so far that effective containment was not possible.

The burn permit stated: "Exxon has the responsibility to ensure smoke from their burning does not impact public health or violate Air Quality Standards. Following the limits of this permit does not relieve Exxon of

been fitted with a double hull, the risk of oil spills owing to collision or grounding would have been significantly reduced.

The United States has taken unilateral action and will require U.S. flag and foreign flag tank vessels entering U.S. waters to have double hulls. Although this action will not afford total protection of the U.S. coastline from accidental oil spills in international waters off the U.S. coast, it will protect U.S. coastal waters from oil spills as a result of groundings and collisions in U.S. waters. Since a large percentage of the world's tank vessels operate in U.S. waters, this action by the United States will probably promote double-hull construction of many new foreign flag tank vessels so that these vessels can be used in the U.S. market. This action by the United States may also lead to international requirements for double hulls or unilateral action by other countries.⁹²

CONCLUSIONS

Findings

1. The master's decision to depart from the Traffic Separation Scheme to avoid ice was probably reasonable, even though it required a heading toward shoal water.
2. Navigating the EXXON VALDEZ between the ice field and Bligh Reef required a diligent, competent navigation watch capable of conning the vessel, watching for ice, and fixing the vessel's position frequently; hence, two officers were required on the bridge--one with conning and shiphandling experience to conn the vessel and one to fix the vessel's position frequently--to navigate the vessel safely.
3. The master's decision to leave the third mate in charge of the navigation watch was contrary to Federal regulations and Exxon policy and was improper given the course of the vessel, the uncertain extent of the ice conditions, the proximity of a dangerous reef and the fact that the third mate did not have the required pilotage endorsement. ✓
4. The master's judgment was impaired by alcohol during the critical period the vessel was transiting Valdez Arm.
5. The performance of the third mate was deficient, probably because of fatigue, when he assumed supervision of the navigation watch from the master about 2350. ✓
6. The third mate's failure to turn the vessel at the proper time and with sufficient rudder probably was the result of his excessive workload and fatigued condition, which caused him to lose awareness of the location of Bligh Reef. ✓

⁹²Finland has already implemented an oil protection fee in order to minimize the number of single-bottom tank vessels in its waters.

7. The vessel was in the red sector of Busby Island Light for several minutes before grounding, which afforded a warning of the reef that apparently was not noticed by the third mate or the lookout.
8. There were no rested deck officers on the EXXON VALDEZ available to stand the navigation watch when the vessel departed from the Alyeska Terminal. ✓
9. Many conditions conducive to producing crew fatigue on the EXXON VALDEZ exist on other Exxon Shipping Company vessels because many are three-mate vessels and because the company has pursued reduced manning procedures. ✓
10. The Exxon Shipping Company did not adequately monitor the master for alcohol abuse after his alcohol rehabilitation program. ✓
11. Exxon Shipping Company did not have a sufficient program to identify, remove from service, if necessary, and provide treatment for employees who had chemical dependency problems.
12. Exxon Shipping Company manning policies do not adequately consider the increase in workload caused by reduced manning. ✓
13. The Exxon Shipping Company had incentives and work requirements that could be conducive to fatigue. ✓
14. The Exxon Shipping Company had manipulated shipboard reporting of crew overtime information that was to be submitted to the Coast Guard for its assessments of workloads on some tankships.
15. The Coast Guard was unduly narrow in its perspective when it evaluated reduced manning requests for the EXXON VALDEZ; it based manning reductions primarily on the assumption that shipboard hardware and equipment might reduce the workload at sea but did not consider the heavier workload associated with cargo operations in port and the frequency of such operations.
16. The Coast Guard was not adequately prepared to implement the requirement to obtain toxicology samples from mariners involved in marine accidents.
17. Department of Transportation regulations for postaccident/incident drug testing of employees in safety-sensitive positions are not adequate.
18. Drug testing of Vessel Traffic Center watchstanders was not conducted in a timely manner in accordance with Department of Transportation directives.
19. The Coast Guard needs to have access to National Driver Register information and other information regarding alcohol-related traffic offenses committed by licensed maritime officers in order to better determine a merchant mariner's fitness to hold a Federal license.

20. The Alyeska Pipeline Service Company failed to meet the expected response-time objective of its approved spill plan because it failed to have an oil spill cleanup barge loaded and ready for deployment. ✓
21. The Alyeska Pipeline Service Company should have, at a minimum, a second barge that is loaded with additional cleanup and lightering equipment so that cleanup equipment will be ready for immediate deployment at all times. ✓
22. The National Oil and Hazardous Substance Pollution Contingency Plan and Alaska Regional Oil and Hazardous Substances Pollution Contingency Plan both lack adequate guidance for On-Scene Commanders about the use of dispersants and in-situ burning.
23. Requiring the On-Scene Commander to confer with the Regional Response Team before using dispersants or in-situ burning needlessly delays the use of these methods and complicates the decision process.
24. There was no evidence that the Federal Government (Coast Guard) or any other organization would have been capable of increasing the efforts under way during the first 24 hours after the spill.
25. The Alyeska Pipeline Service Company contingency plans lacked procedures that would allow individual companies transporting oil from the Valdez Terminal in Prince William Sound to relieve Alyeska of cleanup responsibilities in a manner that would prevent interruption. ✓
26. The Alyeska Pipeline Service Company plan should include guidelines that describe the wind and sea conditions under which different types of skimmers, dispersants, and in-situ burning can be used most effectively for North Slope crude oil. ✓
27. Ice in Valdez Arm is a significant hazard to navigation and requires closer monitoring and reporting.
28. The limited supervision of the Vessel Traffic Center probably contributed to the commanding officer's and operations officer's lack of awareness that tankships were departing from the traffic separation scheme to avoid ice and were passing close to Bligh Reef.
29. The Vessel Traffic Service radar was operating satisfactorily, and the detection range of the radar was not significantly reduced by weather or sea conditions while the EXXON VALDEZ was transiting Valdez Arm.
30. The Vessel Traffic Center lost radar contact with the EXXON VALDEZ about 7.7 miles from the radar site, which is about 5.5 miles from the northern part of Bligh Reef, because the Center's watchstander did not use a higher range scale and not because of any limitation or malfunction of the radar. Had he used a higher range scale, the vessel probably could have been tracked as far as the site of the grounding, but no firm policy required that he do so.

31. The monitoring of vessels in Valdez Arm was left to the discretion of the Vessel Traffic Center watchstander because the senior watchstander decided to allow the Center's watchstanders to monitor instead of plot the positions of vessels transiting Valdez Arm.
32. A firm policy requiring the Vessel Traffic Center to plot tankships transiting the full length of Valdez Arm could have alerted the commanding officer of the Marine Safety Office to the fact that tankships were departing from the traffic separation scheme in the vicinity of Bligh Reef to avoid ice.
33. Monitoring the EXXON VALDEZ by radar as it transited Valdez Arm would have revealed to the Vessel Traffic Center watchstander that the vessel had changed course to 180°, had departed the vessel traffic separation scheme, and was headed for shoal water east of Bligh Reef.
34. A query or warning from the Vessel Traffic Center might have alerted the third mate to the impending danger from Bligh Reef.
35. Ice reports issued by the Vessel Traffic Center frequently are neither sufficiently timely nor sufficiently accurate to enable masters to ascertain before leaving Port Valdez the ice conditions that will be encountered in Valdez Arm.
36. The policy adopted by the Coast Guard about 1985 to discontinue independent collection of ice information and statistics about vessel deviations from the traffic separation scheme probably contributed to the commanding officer and the operations officer not knowing that ice was causing vessels to depart from the traffic lanes and pass close to Bligh Reef.
37. A radar site near Bligh Reef would enable the Vessel Traffic Center to obtain current information on ice in Valdez Arm and to reliably track vessels in Valdez Arm.
38. The communication and microwave systems for the Vessel Traffic Service, Prince William Sound, were not reliable owing to age, the scarcity of proper replacement parts, and improvised repairs.
39. The Coast Guard has not maintained an effective vessel traffic service in Prince William Sound.
40. Although moving the pilot station to Rocky Point was apparently based on a consideration for pilot safety, the move also resulted in a reduction in pilotage services past Bligh Reef, where local knowledge is needed.
41. Moving the pilot station to a position south of Bligh Reef enhanced navigation safety by ensuring the presence of an officer with local knowledge of the area on the bridge of each vessel transiting Valdez Arm past Bligh Reef.

42. Former COTP Order 1-80, which included requirements for two officers on the bridge and for plotting and position reporting by vessels, contributed to navigation safety.
43. Current monitoring of the amount and size of ice being calved from the Columbia Glacier is inadequate for the safety of tankships transiting Prince William Sound.
44. The EXXON VALDEZ met all U.S. and international segregated-ballast regulations.
45. Current standards for segregated ballast and cargo tank size do not provide sufficient protection against oil spills caused by groundings or collisions.
46. If the EXXON VALDEZ had been fitted with an 11-foot double bottom (based on the 1/15 of the beam criterion), the resulting oil spill would have been small, and possibly eliminated. ✓
47. Double bottoms on all U.S. and foreign tank vessels (tankships and barges) that enter U.S. waters and have a capacity of more than 20,000 deadweight tons would minimize oil pollution in U.S. waters caused by groundings. ✓

Probable Cause

The National Transportation Safety Board determines that the probable cause of the grounding of the EXXON VALDEZ was the failure of the third mate to properly maneuver the vessel because of fatigue and excessive workload; the failure of the master to provide a proper navigation watch because of impairment from alcohol; the failure of Exxon Shipping Company to provide a fit master and a rested and sufficient crew for the EXXON VALDEZ; the lack of an effective Vessel Traffic Service because of inadequate equipment and manning levels, inadequate personnel training, and deficient management oversight; and the lack of effective pilotage services.

RECOMMENDATIONS

As a result of its investigation, the National Transportation Safety Board made the following recommendations:

--to the Exxon Shipping Company and all shipping companies operating in Prince William Sound:

Eliminate personnel policies, including performance appraisal criteria, that encourage marine employees to work long hours without concern for debilitating fatigue and commensurate reduction in safety of vessel operations. (Class II, Priority Action) (M-90-26) ✓

Implement manning policies that prevent excessively long working hours for crewmembers during cargo handling operations. (Class II, Priority Action) (M-90-27) ✓

Institute a written policy forbidding deck officers to share navigation and cargo watch duties on a 6-hours-on, 6-hours-off basis, except in emergencies. (Class II, Priority Action) (M-90-28) ✓

Require that two licensed watch officers be present to conn and navigate vessels in Prince William Sound. (Class II, Priority Action) (M-90-29) ✓

Implement an alcohol/drug program for seagoing employees that prevents such personnel from returning to sea until their alcohol/drug dependency problem is under control. (Class II, Priority Action) (M-90-30)

Train persons who monitor the alcohol/drug rehabilitation program in the recognition of recidivism after treatment, in the utilization of appropriate professional referrals, and in the interpersonal skills necessary for competent rehabilitation supervision. (Class II, Priority Action) (M-90-31)

--to the Coast Guard:

Develop a means for rigorous enforcement of 46 U.S.C.8104(a) to ensure that officers on watch during departures from ports have had at least 6 hours of off-duty time in the previous 12 hours. (Class II, Priority Action) (M-90-32)

Expedite the study programs to establish manning levels and safeguards based on human factors, as well as on shipboard hardware and equipment, and incorporate the findings into the manning review process. (Class II, Priority Action) (M-90-33)

Establish manning standards to ensure that crew complements reflect all expected shipboard operating situations and that procedures are in place for dealing with unusually high workloads at sea, such as tank cleaning, and with cargo handling operations in port. (Class II, Priority Action) (M-90-34)

Seek authority for access to the National Driver Register and other driving records and make use of the information from these sources to prevent any person with a drug and/or alcohol problem from holding a merchant marine license. (Class II, Priority Action) (M-90-35)

Adopt a permanent policy to plot all vessels participating in the Valdez Vessel Traffic System between the pilot station south of Bligh Reef, or as near the pilot station as possible, and their berths in Port Valdez. (Class II, Priority Action) (M-90-36)

Increase the manning level at the Marine Safety Office, Valdez, Alaska, to provide the following: enough watchstanders to plot all participating vessels between the pilot station south of Bligh Reef and their berths in Port Valdez; an officer-in-charge of the Vessel Traffic System who will have time to manage and supervise the system effectively; and sufficient additional officers to staff a duty officer watch with officers capable of monitoring and supervising vessel traffic watchstanders outside normal working hours. (Class II, Priority Action) (M-90-37)

Install an additional radar site as close to Bligh Reef as feasible to enable the Vessel Traffic Center to accurately monitor and plot all participating vessels and ice in the area of Valdez Arm from Busby Island to the pilot station south of Bligh Reef. (Class II, Priority Action) (M-90-38)

Initiate procedures to collect information on ice conditions in Valdez Arm so that all participating vessels receive accurate and timely ice reports before departing port and so that all supervisory personnel associated with the Valdez Traffic System are cognizant of ice conditions in Valdez Arm. (Class II, Priority Action) (M-90-39)

Improve the communications system operated by the Marine Safety Office in Valdez, Alaska. (Class II, Priority Action) (M-90-40)

Improve the microwave system operated by the Marine Safety Office in Valdez, Alaska. (Class II, Priority Action) (M-90-41)

Limit any proposed reduction in Federal pilotage to that part of Prince William Sound from the entrance outside Cape Hinchinbrook to the current pilot station at latitude 69°49'N, longitude 174° 01'W, which is south of Bligh Reef, thus ensuring that Federal pilots will be required between the entrance to Valdez Arm south of Bligh Reef and the berths in Port Valdez. (Class II, Priority Action) (M-90-42)

Incorporate into the Vessel Traffic Service regulations for all vessels the provisions of former COTP Order 1-80

(except the requirement for daylight transit), including the requirements about vessel condition, crews, navigation equipment, and publications, as well as the requirement that a licensed officer in addition to the licensed officer on watch be available to plot the vessel's position. (Class II, Priority Action) (M-90-43)

--to the Environmental Protection Agency:

Develop guidance in the National Contingency Plan for Regional Response Teams and On-Scene Coordinators about dispersant use. (Class II, Priority Action) (M-90-44)

Develop guidance for Regional Response Teams and On-Scene Coordinators about in-situ burning of oil and include the guidance in the National Contingency Plan. (Class II, Priority Action) (M-90-45)

Develop procedures that would eliminate the need for the On-Scene Coordinator to obtain burn permits from a State after the Regional Response Team has agreed that the spilled oil can be burned in situ. (Class II, Priority Action) (M-90-46)

Develop guidance for Regional Response Teams that enables them to establish the minimum amount of cleanup equipment that must be immediately available to initiate a cleanup response. (Class II, Priority Action) (M-90-47)

--to the Alaska Regional Response Team:

Develop clearer guidance for dispersant use in order to eliminate the need for a dispersant test before dispersants are used on an oil spill and include that information in the Alaska Regional Contingency Plan. (Class II, Priority Action) (M-90-48)

Develop guidelines and procedures for in-situ burning of oil, identify the range of wind and sea conditions for which in-situ burning of oil can be used effectively, and incorporate that information into the Alaska Regional Contingency Plan. (Class II, Priority Action) (M-90-49)

--to the State of Alaska:

Require that the oil spill contingency barge or barges at the Alyeska Pipeline Service Company Terminal at Valdez be loaded at all times with the response equipment specified in the plan. If a barge is unloaded and unavailable for immediate deployment, require that a replacement barge be provided and loaded with the

equipment specified in the plan. (Class II, Priority Action) (M-90-50)

Require that the companies loading oil at the Alyeska Pipeline Service Company Terminal in Valdez provide a plan for assuming cleanup responsibility from Alyeska Pipeline Service Company in the event of a major oil spill or potential major oil spill of more than 100,000 gallons. (Class II, Priority Action) (M-90-51)

Develop and require minimum levels of mechanical oil spill cleanup equipment, fire- or burn-proof boom, air-deployable dispersant system packs, and other dispersant application equipment to be stockpiled and immediately available at the Alyeska Pipeline Service Company's Valdez Terminal. (Class II, Priority Action) (M-90-52)

--to Alyeska Pipeline Service Company:

Provide at its Valdez terminal two or more oil spill contingency barges that are loaded with pollution-response cleanup equipment, lightering equipment, and fire- or burn-proof booms that are maintained and ready for immediate deployment, thus facilitating an effective response to different spill conditions. (Class II, Priority Action) (M-90-53)

Identify the range of wind and sea conditions for which dispersants can be used effectively and incorporate that information into company contingency plans. (Class II, Priority Action) (M-90-54)

In conjunction with each of the companies that load oil at its terminal in Valdez, develop a plan or procedures for relieving Alyeska Pipeline Service Company of primary cleanup responsibility in the event of a major oil spill or potential major oil spill of more than 100,000 gallons and include the procedures in its contingency plan after they have been approved by the State of Alaska. (Class II, Priority Action) (M-90-55)

In its company contingency plans, list also the companies that do not have a plan for relieving Alyeska Pipeline Service Company of cleanup responsibility. (Class II, Priority Action) (M-90-56) ✓

Store air-deployable dispersant system packs and other dispersant application equipment at its Valdez Terminal, as agreed upon with the State of Alaska, for use with fixed wing aircraft, or helicopters, or vessels. (Class II, Priority Action) (M-90-57) ✓

Store fire- or burn-proof booms at its Valdez Terminal, as agreed upon with the State of Alaska, and include procedures for their use in the company's oil spill contingency plan. (Class II, Priority Action) (M-90-58)

--to the US Geological Survey:

Intensify efforts to monitor the state of the Columbia Glacier, particularly to identify the amount of ice calving from the glacier and any changes in the rate that might affect the number and size of icebergs emanating from the glacier, and make this information available to agencies, such as the U.S. Coast Guard, tasked with assuring the safety of shipping into and out of Valdez Harbor. (Class II, Priority Action) (M-90-59)

Also, the Safety Board reiterated the following safety recommendations:

--to the Department of Transportation:

I-89-1

Expedite a coordinated research program on the effects of fatigue, sleepiness, sleep disorders, and circadian factors on transportation system safety.

I-89-2

Develop and disseminate educational material for transportation industry personnel and management regarding shift work; work and rest schedules; and proper regimens of health, diet, and rest.

I-89-3

Review and upgrade regulations governing hours of service for all transportation modes to assure that they are consistent and that they incorporate the results of the latest research on fatigue and sleep issues.

I-89-4

Develop postaccident and postincident testing regulations that are separate from the pre-employment, random, and reasonable suspicion testing regulations in all modal agencies.

Edson PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: MATT KINNEY

TITLE:

ADDRESS: P.O. BOX 1502

CITY: VALDEZ

ZIP: 99686

PHONE: 835-4817

BILL NO:

SUBJECT:

MESSAGE: I DISAGREE WITH THE SETTLEMENT BASED ON THE INFORMATION AVAILABLE ON THE ENVIRONMENTAL AND SOCIAL IMPACT. ATTORNEY GENERAL COLE SHOULD BE REMINDED TIMBER BUY-BACKS WOULD BE CONSISTANT WITH "ENHANCEMENT" AS STATED IN THE SETTLEMENT SECTION ON HOW THE MONEY WOULD BE USED. THE FIGURE \$1.2 BILLION IS RIDICULOUSLY LOW.

POMID: 17171704

DATE: 91/04/15

TIME: 17:17:04

LIONAME: VALDEZ INFORMATION OFFICE

COPIES: REPRESENTATIVES SENATORS

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JONES

HALFORD

SHULTZ

STURGULEWSKI

ZHAROFF

PUBLIC OPINION MESSAGE

SENATOR ELIASON

NAME: JERRY MCCUTCHEON

TITLE:

ADDRESS: 121 WEST 11TH

CITY: ANCHORAGE

PHONE: 277-3076

ZIP: 99501

BILL NO:

SUBJECT: EXXON SETTLEMENT/JUDGE HOLLAND

MESSAGE: EXXON HAVING DELIBERATELY CO-MINGLED THE CIVIL AND CRIMINAL CASES TO GET AN ADVANTAGE, CANNOT NOW SEPARATE THEM NOR CAN THE JUDGE WASH EXXON'S FEET BY INVOKING THE PROTECTION OF THE LAW EXXON CAST ASIDE. AN APPEAL OF HOLLAND'S RULING TO THE WASHINGTON JUDGE OR THE 9TH CIRCUIT IS IN ORDER. /JSM

POMID: 03104924

DATE: 91/03/25

TIME: 10:49:24

LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

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KERTTULA

MENARD

PEARCE

POURCHOT

RODEY

SHULTZ

STURGULEWSKI

UEHLING

ZHAROFF

PUBLIC OPINION MESSAGE

MR: SENATOR ELIASON

NAME: RITA THOMPSON

TITLE:

ADDRESS: 3701 EUREKA STREET, #21-C

CITY: ANCHORAGE

ZIP: 99503

PHONE: 561-8329

BILL NO:

SUBJECT: EXXON SETTLEMENT

MESSAGE: PLEASE PLEASE VOTE AGAINST THE EXXON SETTLEMENT. WE MUST KNOW THE RESULTS OF THE ENVIORNMENTAL IMPACTS STUDY FIRST.WE DO NOT KNOW THE FUTURE DAMAGE TO THIS AREA. PUNITIVE FUNDS ARE A MUST BEFORE A SETTLEMENT CAN TAKE PLACE. REMEMBER HICKLE ONLY GOT 31% OF THE VOTE. /CMR

POMID: 03152712

DATE: 91/03/25

TIME: 15:27:12

LIONAME: ANCHORAGE LIO

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PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: DEBBIE MILLER

TITLE:

ADDRESS: 1446 HANS WAY

CITY: FAIRBANKS

ZIP: 99709

PHONE: 479-2189

BILL NO: SB 209

SUBJECT: APPROP: ANWR NATIONAL EDUCATION EFFORT

MESSAGE: I HOPE YOU ARE AWARE THAT THE ALASKA COALITION FOR AMERICAN ENERGY SECURITY HAS ALREADY PUT ASIDE \$11,243,000.00 TO PROMOTE THE OPENING OF ANWR. SEEMS WASTEFULL TO SPEND MORE MONEY ON LOBBYING EFFORT. PLEASE KILL SB 209! THA NK YOU. EOM/CLS

POMID: 07142659

DATE: 91/03/27

TIME: 14:26:59

LIONAME: FAIRBANKS LIO

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SHARP

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FRANK
SHULTZ
KERTTULA
POURCHOT
DUNCAN
ADAMS
UEHLING
HOFFMAN

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: MIKE MCDERMOTT
TITLE: COUNCILMAN
ADDRESS: CITY OF BARROW, BOX 629
CITY: BARROW, ALASKA
PHONE: 852-6811

ZIP: 99723

BILL NO:

SUBJECT: CONFIRMATION OF COMMISSIONER OF FISH AND GAME

MESSAGE: I CAN NOT SUPPORT CARL ROSIER AS FISH AND GAME COMMISSIONER UNTIL SUMMERVILLE RESIGNS OR IS TRANSFERED OUT OF THE DEPARTMENT.

POMID: 04092221

DATE: 91/03/27

TIME: 09:22:21

LIONAME: BARROW INFO OFFICE

COPIES: SENATORS

JONES
COTTEN
MENARD
HALFORD
ZHAROFF
FRANK

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: JAMES TILTON
 TITLE:
 ADDRESS: POBOX 670062
 CITY: CHUGIAK
 PHONE: 688-9651
 BILL NO:
 SUBJECT: EXXON SETTLEMENT
 MESSAGE: I AM COMPLETELY AND TOTALLY OPPOSED TO THE PROPOSED SETTLEMENT AND
 REQUEST THAT YOU VOTE IT DOWN. /BN
 ZIP: 99567

POMID: 03092809
 DATE: 91/04/11
 TIME: 09:28:09
 LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

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 SHULTZ
 STURGULEWSKI
 UEHLING
 ZHAROFF

Dir -

FYI -

*This is a
 representative
 sample of the
 POMS coming in
 re: Settlement*

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: STEVE JYURICKO

TITLE:

ADDRESS: PO BOX 733385

CITY: FAIRBANKS

ZIP: 99707

PHONE: 456-7860

BILL NO:

SUBJECT: EXXON VALDEZ OIL SPILL

MESSAGE: AFTER SEEING THE HICKEL ADMINISTRATION FIGHT TO CLEAR EXXON OF CHARGE
NOT TO MENTION CUT ALASKA LIKELY FUTURE DAMAGE AWARDS I INSIST THE DEAL BE
TURNED DOWN. I ALSO WANT TO HAVE POSSIBLE "INTENTIONAL GROUNDING" OF THE EXXON
INVESTIGATED AS WELL. THANK YOU. EOM/CLS

POHID: 07084152

DATE: 91/04/11

TIME: 08:41:52

LIONAME: FAIRBANKS LIO

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FINKELSTEIN	FOSTER	FRANK
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KUBINA	LARSON	MENARD
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SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: MARTI RESSLER (MS.)
TITLE:
ADDRESS: 16431 HOME PLACE, NO 6
CITY: EAGLE RIVER
PHONE: 696-1235
ZIP: 99577

BILL NO:
SUBJECT: EXXON SPILL SETTLEMENT
MESSAGE: THE SETTLEMENT WITH EXXON IS NOT ADEQUATE. IT IS LIKE FINEING SOMEONE WHO EARN\$ \$117,000 A YEAR\$1,000 TO BE PAID OVER 9 OR 10 YEARS. RIDICULOUS!
/JSM

POMID: 03131511
DATE: 91/04/11
TIME: 13:15:11
LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES SENATORS

GRUENBERG
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ULMER
G.PHILLIPS
NAVARRE
HUDSON
BARNES

COTTEN
JONES
PEARCE
HALFORD
KERTTULA
RODEY

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: KENNETH HOISINGTON
TITLE:
ADDRESS: 408 EAST MANOR AVE.
CITY: ANCHORAGE
PHONE: 277-6273
ZIP: 99501
BILL NO:
SUBJECT: EXXON VALDEZ OIL SPILL SETTLEMENT
MESSAGE: SAY NO TO THE EXXON DEAL. I BELIEVE THEY ARE GETTING OFF TOO LIGHT.
/JSM

POMID: 03150751
DATE: 91/04/11
TIME: 15:07:51
LIONAME: ANCHORAGE LIO

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DONLEY	ELLIS	FISCHER
FINKELSTEIN	FOSTER	FRANK
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HUDSON	IVAN	JONES
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G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: MARK RINEHART

TITLE:

ADDRESS: 4026 E. 8TH AVENUE, #1

CITY: ANC

ZIP: 99508

PHONE: 337-4820

BILL NO:

SUBJECT: EXXON SETTLEMENT

MESSAGE: SHAME ON YOU. IF YOU ARE TO BE MISLEAD BY CHARLIE COLE, THE HICKEL ADMINISTRATION AND EXXON REGARDING THIS SETTLEMENT YOU WILL HAVE SOLD OUT THE STATE OF ALASKA AND ITS CITIZENS. THANKS VERY MUCH. /LD

POMID: 03153518

DATE: 91/04/11

TIME: 15:35:18

LIONAME: ANCHORAGE LIO

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GRUENBERG

DONLEY

DAVIDSON

NAVARRE

KUBINA

HUDSON

ULMER

BARNES

G.PHILLIPS

COTTEN

HALFORD

JONES

KERTTULA

PEARCE

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: DAVID S. ANDERSON

TITLE:

ADDRESS: 4106 SVEGLUND

CITY: HOMER

ZIP: 99603

PHONE: 235-5489

BILL NO:

SUBJECT: KACHEMAK PARK BUYBACK AND EXXON SETTLEMENT

MESSAGE: I SUPPORT WHOLEHEARTEDLY THE KACHEMAK BAY STATE PARK BUYBACK IN THE INTEREST OF PRESERVING THE TOURIST AND WILDERNESS POTENTIAL ACROSS THE BAY, AND I'M ALSO AGAINST THE OIL SPILL SETTLEMENT THAT HAS BEEN ARRANGED BY THE HICKEL ADMINISTRATION AND FEEL THAT A MORE EQUITABLE ARRANGEMENT NEEDS TO BE WORKED OUT TO BENEFIT THE CITIZENS OF ALASKA AND NOT THE EXXON CORPORATION. THANK YOU

POMID: 18130232

DATE: 91/04/10

TIME: 13:02:32

LIONAME: HOMER INFORMATION OFFICE

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DONLEY	ELLIS	FISCHER
FINKELSTEIN	FOSTER	FRANK
GONZALES	GRUENBERG	HALFORD
GRUSSENDORF	HANLEY	HOFFMAN
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JACKO	KOPONEN	KERTTULA
KUBINA	LARSON	MENARD
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NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: ELIZABETH BALKUS

TITLE:

ADDRESS: BOX 2993

CITY: HOMER

ZIP: 99603

PHONE: 235-4329

BILL NO:

SUBJECT: EXXON VALDEZ OIL SPILL SETTLEMENT

MESSAGE: RECOMMEND EXTENDING PUBLIC COMMENT PERIOD RE EXXON-V/ DEZ OIL SPILL SETTLEMENT DEAL. PUBLIC NEEDS TIME TO ANALYZE CONTENTS OF SCIENTIFIC DATA IN ORDER TO FORM OPINIONS. PERSONALLY, I FEEL HICKEL-COLE CONSPIRACY IS WOEFULLY INADEQUATE. AND I SERIOUSLY QUESTION THE PROPRIETY OF COLE'S INFLUENCE IN THIS INSTANCE. THANKS FOR CONSIDERATION.

POMID: 18141204

DATE: 91/04/10

TIME: 14:12:04

LIONAME: HOMER INFORMATION OFFICE

COPIES: REPRESENTATIVES SENATORS

GRUENBERG
NAVARRE
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KUBINA
ULMER
HUDSON
BARNES

FISCHER
POURCHOT
DUNCAN
ADAMS
HOFFMAN
SHULTZ
UEHLING

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: SALLY DODD BUTTERS

TITLE:

ADDRESS: P.O. BOX 1223

CITY: HOMER

ZIP: 99603

PHONE: 235-5994

BILL NO:

SUBJECT: VARIOUS

MESSAGE: I AM ADAMENTLY OPPOSED TO THE EXXON SETTLEMENT AS WELL AS THE PAJ RIVER FISH LADDER PROJECT AND THE HICKEL ADMINISTRATIONS OBSESSIVE ATTEMPTS TURN US ALL INTO FUNDAMENTALISTS; I.E. DAY CARE CUTBACKS, ANTI-ABORTION RUI THE MASSACRE OF THE WOMEN'S COMMISSION AND THE EDUCATION COMMISSION. I AI THINK THAT THE TREES AND LAND NEXT TO KACHEMAK BAY STATE PARK SHOULD BE BOL BACK BY THE STATE.

FOMID: 18125230

DATE: 91/04/10

TIME: 12:52:30

LIONAME: HOMER INFORMATION OFFICE

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G.PHILLIPS

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NAVARRE

MACLEAN

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KOPONEN

BARNES

SHARP

R.PHILLIPS

FISCHER

KERTTULA

POURCHOT

DUNCAN

ADAMS

UEHLING

HOFFMAN

SHULTZ

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: MR. LEE BEESON

TITLE:

ADDRESS: P.O. 2667

CITY: PALMER

ZIP: 99645

PHONE: 746-3351

BILL NO:

SUBJECT:

MESSAGE: I AM TOTALLY OPPOSED TO THE PROPOSED SETTLEMENT WITH EXXON. MY
OPINION IS THAT THE PEOPLE IN ALASKA HAVE BEEN DELIBERTELY MISLED BY BOTH THE OIL
COMPANIES AND THEIR EMPLOYEES IN THE STATE GOVERNMENT.

POMID: 14111255

DATE: 91/04/10

TIME: 11:12:55

LIONAME: MAT-SU LIO

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BAKER	BARNES	ADAMS
BOYER	BROWN	COLLINS
BRUCKMAN	CARNEY	COTTEN
CHOQUETTE	DAVIDSON	DUNCAN
B.DAVIS	C.DAVIS	FAHRENKAMP
DONLEY	ELLIS	FISCHER
FINKELSTEIN	FOSTER	FRANK
GONZALES	GRUENBERG	HALFORD
GRUSSENDORF	HANLEY	HOFFMAN
HUDSON	IVAN	JONES
JACKO	KOPONEN	KERTTULA
KUBINA	LARSON	MENARD
LEMAN	LINCOLN	PEARCE
MACKIE	MACLEAN	POURCHOT
MARTIN	M.A.MILLER	RODEY
M.W.MILLER	MOYER	SHULTZ
NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: GLADYS W. THOMPSON

TITLE:

ADDRESS: 7216 LAKE OTIS PARKWAY

CITY: ANCHORAGE

ZIP: 99507

PHONE: 349-1456

BILL NO:

SUBJECT: EXXON/VALDEZ OIL SPILL

MESSAGE: AS EXPECTED, EXXON CONTINUES LYING ALL THE WAY TO THE BANK. DO NOT SETTLE NOW. WAIT UNTIL ALL FACTS ARE PUBLIC. WHEN SETTLING CLAIM, TAKE WHOLE AMOUNT NOW AND PUT IN STATE OF ALASKA COFFERS TO BECOME A SECOND ALASKA PERMANENT FUND WITH ITS INTEREST. /BN

POMID: 03104254

DATE: 91/04/10

TIME: 10:42:54

LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BAKER	BARNES	ADAMS
BOYER	BROWN	COLLINS
BRUCKMAN	CARNEY	COTTEN
CHOQUETTE	DAVIDSON	DUNCAN
B.DAVIS	C.DAVIS	FAHRENKAMP
DONLEY	ELLIS	FISCHER
FINKELSTEIN	FOSTER	FRANK
GONZALES	GRUENBERG	HALFORD
GRUSSENDORF	HANLEY	HOFFMAN
HUDSON	IVAN	JONES
JACKO	KOPONEN	KERTTULA
KUBINA	LARSON	MENARD
LEMAN	LINCOLN	PEARCE
MACKIE	MACLEAN	POURCHOT
MARTIN	M.A.MILLER	RODEY
M.W.MILLER	MOYER	SHULTZ
NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: TOM LAKOSH
TITLE: AK RESIDENT LITIGANT
ADDRESS: BOX 100648
CITY: ANC
PHONE: 258-5767

ZIP: 99510

BILL NO:

SUBJECT: EXXON SETTLEMENT

MESSAGE: THE STATE SHOULD ADD ITS PORTION OF LIABILITY FOR CONTRIBUTORY NEGLIGENCE IN OVERSIGHT OF EXXON AND ALYESKA TO THE COMMON FUND FOR CLEANUP RESTORATION AND REGULATION OF POLLUTION IN THE GULF OF ALASKA. SUBTRACTING THE STATE'S LIABILITY FROM POLLUTER DISGORGEMENTS (SP) IS UNCONSTITUTIONAL, IMMORAL AND UNETHICAL. /LD

POMID: 03104328

DATE: 91/04/10

TIME: 10:43:28

LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

MACKIE
B.DAVIS
G.PHILLIPS
GONZALES
GRUENBERG
ELLIS
M.W.MILLER
DAVIDSON
IVAN
FINKELSTEIN
HUDSON
ZAWACKI
CHOQUETTE
NAVARRE
BARNES

C.DAVIS
FOSTER
BAKER
DONLEY
PARNELL
MARTIN
HANLEY
LINCOLN
MOYER
CARNEY
LEMAN
KUBINA
BRUCKMAN
ULMER

FRANK
ZHAROFF
HOFFMAN
STURGULEWSKI
PEARCE
FISCHER
COTTEN
MENARD
HALFORD
RODEY
ADAMS
COLLINS
JONES
DUNCAN
POURCHOT
UEHLING
KERTTULA

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: TOM LAKOSH
TITLE: ALASKA RESIDENT LITIGANT
ADDRESS: BOX 100648
CITY: ANCHORAGE
PHONE: 258-5767

ZIP: 99510

BILL NO:

SUBJECT: EXXON SETTLEMENT

MESSAGE: THE STATE SHOULD NOT RELEASE EXXON OR ALYESKA FROM THEIR LIABILITY FOR CRIMINAL FINES, CLEANUP COSTS RESTORATION OR DAMAGES TO NATURAL RESOURCES. OUR SHORELINES WOULD BECOME A STATE MAINTAINED PUBLIC AND PRIVATE NUISANCE, HEALTH HAZARD AND ECOLOGICAL DEAD ZONE. POLLUTERS AND RESPONSE COMPANIES WOULD BE SCOFF LAWS (SP) LAUGHING AT D.E.C../CMR

POMID: 03083915

DATE: 91/04/10

TIME: 08:39:15

LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BAKER	BARNES	ADAMS
BOYER	BROWN	COLLINS
BRUCKMAN	CARNEY	COTTEN
CHOQUETTE	DAVIDSON	DUNCAN
B.DAVIS	C.DAVIS	FAHRENKAMP
DONLEY	ELLIS	FISCHER
FINKELSTEIN	FOSTER	FRANK
GONZALES	GRUENBERG	HALFORD
GRUSSENDORF	HANLEY	HOFFMAN
HUDSON	IVAN	JONES
JACKO	KOPONEN	KERTTULA
KUBINA	LARSON	MENARD
LEMAN	LINCOLN	PEARCE
MACKIE	MACLEAN	POURCHOT
MARTIN	M.A.MILLER	RODEY
M.W.MILLER	MOYER	SHULTZ
NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

HEAR: SENATOR ELIASON

NAME: CHARLES FULLETON
TITLE:
ADDRESS: HC80, BOX 210
CITY: CHUGIAK
PHONE: 688-4650
BILL NO:
SUBJECT: CLAIMS SETTLEMENT
MESSAGE: REJECT. NEGOTIATED TO FAST. PAYOFF TO SLOW.

ZIP: 99567

/BN

POMID: 03083125
DATE: 91/04/08
TIME: 08:31:25
LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES SENATORS

M.A. MILLER
R. PHILLIPS
GRUENBERG
DONLEY
DAVIDSON
KUBINA
ULMER
NAVARRE
HUDSON
BARNES

COTTEN
HALFORD
JONES
PEARCE
KERTTULA

*Mary - You should
love This one!*

PUBLIC OPINION MESSAGE

TO: SENATOR ELIASON

NAME: CLAIRE DUBIN
TITLE:
ADDRESS: P.O. BOX 870978
CITY: WASILLA
PHONE: 344-6116

ZIP: 99687

BILL NO:
SUBJECT: EXXON SETTLEMENT

MESSAGE: THE EXXON SETTLEMENT IS NOT FAIR TO ALASKA AND SHOULD BE REJECTED. WE NEED MORE TIME TO ASSESS DAMAGES. THE MONETARY SETTLEMENT IS LIKE A BAD JOKE ON ALASKA. THEY SHOULD PAY ALL THE MONEY AT ONCE. ALASKANS MUST STOP THE FARCE AND START NEGOTIATING AN AGREEMENT THAT WILL HELP ALASKA OVERCOME HER GREAT LOSS.
/CMR

POMID: 03110044
DATE: 91/04/08
TIME: 11:00:44
LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BAKER	BARNES	ADAMS
BOYER	BROWN	COLLINS
BRUCKMAN	CARNEY	COTTEN
CHOQUETTE	DAVIDSON	DUNCAN
B.DAVIS	C.DAVIS	FAHRENKAMP
DONLEY	ELLIS	FISCHER
FINKELSTEIN	FOSTER	FRANK
GONZALES	GRUENBERG	HALFORD
GRUSSENDORF	HANLEY	HOFFMAN
HUDSON	IVAN	JONES
JACKO	KOPONEN	KERTTULA
KUBINA	LARSON	MENARD
LEMAN	LINCOLN	PEARCE
MACKIE	MACLEAN	POURCHOT
MARTIN	M.A.MILLER	RODEY
M.W.MILLER	MOYER	SHULTZ
NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

REAR: SENATOR ELIASON

NAME: JOHN ALFONSI

TITLE:

ADDRESS: 2484 OUTSIDE BLVD.

CITY: NORTH POLE

PHONE: 488-1361

ZIP: 99705

BILL NO:

SUBJECT:

MESSAGE: CHARLES COLE'S INTERESTS IN EXXON AND ARCO ARE AN OUTRAGE TO ALL ALASKANS. THIS IS ABSOLUTELY UNACCEPTABLE. THERE NEEDS TO BE A FULL INVESTIGATION OF MR. COLE'S DEALINGS IN THE EXXON SETTLEMENT. THIS CANNOT STAND.

EOM-FZ

POMID: 07112904

DATE: 91/04/08

TIME: 11:29:04

LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BAKER

BOYER

BRUCKMAN

CHOQUETTE

B.DAVIS

DONLEY

FINKELSTEIN

GONZALES

GRUSSENDORF

HUDSON

JACKO

KUBINA

LEMAN

MACKIE

MARTIN

M.W.MILLER

NAVARRE

G.PHILLIPS

SHARP

ULMER

BARNES

BROWN

CARNEY

DAVIDSON

C.DAVIS

ELLIS

FOSTER

GRUENBERG

HANLEY

IVAN

KOPONEN

LARSON

LINCOLN

MACLEAN

M.A.MILLER

MOYER

PARNELL

R.PHILLIPS

TAYLOR

ZAWACKI

ADAMS

COLLINS

COTTEN

DUNCAN

FAHRENKAMP

FISCHER

FRANK

HALFORD

HOFFMAN

JONES

KERTTULA

MENARD

PEARCE

POURCHOT

RODEY

SHULTZ

STURGULEWSKI

UEHLING

ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: SHEILA R. HOWE

TITLE:

ADDRESS: 6831 E. 10TH

CITY: ANCHORAGE

ZIP: 99504

PHONE: 333-2225

BILL NO:

SUBJECT: EXXON VALDEZ SETTLEMENT

MESSAGE: ANY SETTLEMENT THAT RESTRICTS THE FLOW OF SCIENTIFIC KNOWLEDGE
PREMATURALLY SO AN HONEST AND UNBIAS JUDGMENT BY ALL THE PEOPLE IS A BAD DEAL
FOR OURSELVES AND OUR CHILDREN. /CMR

POMID: 03115542

DATE: 91/04/08

TIME: 11:55:42

LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BAKER	BARNES	ADAMS
BOYER	BROWN	COLLINS
BRUCKMAN	CARNEY	COTTEN
CHOQUETTE	DAVIDSON	DUNCAN
B.DAVIS	C.DAVIS	FAHRENKAMP
DONLEY	ELLIS	FISCHER
FINKELSTEIN	FOSTER	FRANK
GONZALES	GRUENBERG	HALFORD
GRUSSENDORF	HANLEY	HOFFMAN
HUDSON	IVAN	JONES
JACKO	KOPONEN	KERTTULA
KUBINA	LARSON	MENARD
LEMAN	LINCOLN	PEARCE
MACKIE	MACLEAN	POURCHOT
MARTIN	M.A.MILLER	RODEY
M.W.MILLER	MOYER	SHULTZ
NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEPLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

TO: SENATOR ELIASON

NAME: ALLEN HOWE

TITLE:

ADDRESS: 8869 BOOM CIRCLE

CITY: ANCHORAGE

ZIP: 99502

PHONE: 243-6570

BILL NO:

SUBJECT: EXXON VALDEZ SETTLEMENT

MESSAGE: I WAS UNABLE TO ATTEND THE TELECONFERENCE ON THE EXXON VALDEZ SETTLEMENT. I STILL URGE THE LEGISLATURE TO REJECT ANY SETTLEMENT THAT DOES NOT PROVIDE FOR A LUMP SUM PAYMENT OF AT LEAST \$1 BILLION DOLLARS AT THE TIME OF SETTLEMENT. /CMR

POMID: 03135134

DATE: 91/04/08

TIME: 13:51:34

LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BAKER	BARNES	ADAMS
BOYER	BROWN	COLLINS
BRUCKMAN	CARNEY	COTTEN
CHOQUETTE	DAVIGSON	DUNCAN
B.DAVIS	C.DAVIS	FAHRENKAMP
DONLEY	ELLIS	FISCHER
FINKELSTEIN	FOSTER	FRANK
GONZALES	GRUENBERG	HALFORD
GRUSSENDORF	HANLEY	HOFFMAN
HUDSON	IVAN	JONES
JACKO	KOPONEN	KERTTULA
KUBINA	LARSON	MENARD
LEMAN	LINCOLN	PEARCE
MACKIE	MACLEAN	POURCHOT
MARTIN	M.A.MILLER	RODEY
M.W.MILLER	MOYER	SHULTZ
NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: BROTHER TOM PATMOR

TITLE:

ADDRESS: PO BOX 124

CITY: CLAM GULCH

ZIP: 99568

PHONE: N/R-

BILL NO:

SUBJECT: COLLECTING FROM EXXON

MESSAGE: SINCE EXXON FEELS THEY NEED SOME TIME TO PAY \$1,000,000,000., GIVE THEM AS LONG AS THEY WANT BUT TELL THEM THE STATE IS GOING TO HOLD THEIR BUSINESS LICENSE UNTIL THE AMOUNT IS ALL PAID. IF THEY KNEW THEY COULDN'T SHIP ANY OIL TILL THEN, THEY'D HURRY AND PAY RIGHT AWAY. BROTHER TOM PATMOR

POMID: 13145803

DATE: 91/03/26

TIME: 14:58:03

LIONAME: SOLDOTNA LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BAKER	BARNES	ADAMS
BOYER	BROWN	COLLINS
BRUCKMAN	CARNEY	COTTEN
CHOQUETTE	DAVIDSON	DUNCAN
B.DAVIS	C.DAVIS	FAHRENKAMP
DONLEY	ELLIS	FISCHER
FINKELSTEIN	FOSTER	FRANK
GONZALES	GRUENBERG	HALFORD
GRUSSENDORF	HANLEY	HOFFMAN
HUDSON	IVAN	JONES
JACKO	KOPCEN	KERTTULA
KUBINA	LARSON	MENARD
LEMAN	LINCOLN	PEARCE
MACKIE	MACLEAN	POURCHOT
MARTIN	M.A.MILLER	RODEY
M.W.MILLER	MOYER	SHULTZ
NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

TO: SENATOR ELIASON

NAME: SHEILA HOWE
TITLE:
ADDRESS: 6831 E. 10TH AVENUE
CITY: ANCHORAGE
PHONE: 333-2225

ZIP: 99504

BILL NO:
SUBJECT: INFORMATION

MESSAGE: THE FEDERAL GOVERNMENT HAS A FREEDOM OF INFORMATION ACT. MAYBE IT
TIME ALASKA HAS ONE TOO. IF WE DO NOT HAVE ACCESS TO ALL THE RESEARCH INFORMATION
ON THE EXXON VALDEZ WHEN WE PAID FOR IT, WHY SHOULDN'T IT BE PUBLIC DOMAIN. I
WOULD BE HELPFUL TO A GREAT MANY OF PEOPLE WHO WOULD LIKE TO MAKE RATIONAL
JUDGMENT ON IT. /CMR

POMID: 03121011
DATE: 91/03/18
TIME: 12:10:11
LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BAKER	BARNES	ADAMS
BOYER	BROWN	COLLINS
BRUCKMAN	CARNEY	COTTEN
CHOQUETTE	DAVIDSON	DUNCAN
B.DAVIS	C.DAVIS	FAHRENKAMP
DONLEY	ELLIS	FISCHER
FINKELSTEIN	FOSTER	FRANK
GONZALES	GRUENBERG	HALFORD
GRUSSENDORF	HANLEY	HOFFMAN
HUDSON	IVAN	JONES
JACKO	KOPONEN	KERTTULA
KUBINA	LARSON	MENARD
LEMAN	LINCOLN	PEARCE
MACKIE	MACLEAN	POURCHOT
MARTIN	M.A.MILLER	RODEY
M.W.MILLER	HOYER	SHULTZ
NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

SCOMM

77:80

Check out:

33 U.S.C. 1321

43 CFR 11.92 (a)(1)

43 CFR 11.92 (a)(2)

secrets or secret processes of such person, the board shall consider such report or portion thereof confidential for the purposes of section 1905 of title 18 of the United States Code [18 USCS §§ 1905]. If any person required to file any report under this paragraph shall fail to do so within the time fixed by the board for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of \$1,000 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States in the district court of the United States where such person has his principal office or in any district in which he does business. The Administrator may upon application therefor remit or mitigate any forfeiture provided for under this subsection.

(e) **Compensation of board members.** Board members, other than officers or employees of Federal, State or local governments, shall be for each day (including travel-time) during which they are performing board business, entitled to receive compensation at a rate fixed by the Administrator but not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5 of the United States Code [5 USCS § 5332], and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5 of the United States Code [5 USCS §§ 5703, 5704], be fully reimbursed for travel, subsistence, and related expenses.

(f) **Enforcement proceedings.** When any such recommendation adopted by the Administrator involves the institution of enforcement proceedings against any person to obtain the abatement of pollution subject to such recommendation, the Administrator shall institute such proceedings if he believes that the evidence warrants such proceedings. The district court of the United States shall consider and determine de novo all relevant issues, but shall receive in evidence the record of the proceedings before the conference or hearing board. The court shall have jurisdiction to enter such judgment and orders enforcing such judgment as it deems appropriate or to remand such proceedings to the Administrator for such further action as it may direct.

(June 30, 1948, ch 758, Title III, § 310, as added, Oct. 18, 1972, P. L. 92-500, § 2, 86 Stat. 860.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act June 30, 1948, ch 758, Titles I-V, as added Oct. 18, 1972, P. L. 92-500, § 2, 86 Stat. 816 and Dec. 27, 1977, P. L. 95-217, §§ 39-41, 91 Stat. 1581, popularly known as the Federal Water Pollution Control Act or the Clean Water Act, which is classified to 33 USCS §§ 1251 et seq. For previous versions of this Act, see Explanatory note at 33 USCS § 1251.

CROSS REFERENCES

Intervention on the high seas, 33 USCS §§ 1471 et seq.
International and national coordination of environmental efforts, 42 USCS § 4332.

RESEARCH GUIDE

Am Jur:

61A Am Jur 2d, Pollution Control §§ 4, 132, 212, 233.

Law Review Articles:

International Joint Commission (United States-Canada) and the International Boundary and Water Commission (United States-Mexico): Potential for Environmental Control Along the Boundaries. 6 NYU J of International L & Politics 499, Winter, 1973.

Boundary Waters Treaty of 1909: Does It Provide an Environmental Cause of Action? 20 SD L Rev 147, Winter, 1975.

INTERPRETIVE NOTES AND DECISIONS

Decision under 33 USCS § 1320 must be "on the basis of the evidence presented"; hearing contemplated by section results only in "recommendations" for abating international pollution and might well be intended by Congress to be legislative type of hearing producing policy of general application. *Seacoast Anti-Pollution League v Costle* (1978, CA1) 572 F2d 872, cert den 439 US 824, 58 L Ed 2d 117, 99 S Ct 94 and later app (CA1) 597 F2d 306.

EPA administrator has authority to apply ocean dumping criteria promulgated under Marine Protection, Research, and Sanctuaries Act of 1972 [33 USCS §§ 1420, 1444 et seq.] to set National Pollutant Discharge Elimination System permit conditions for ocean discharges in absence of promulgated ocean discharge guidelines under 33 USCS § 1343. Re Continental Oil Co. (1978) USEPA NPDES Permit Op No. 72.

§ 1321. Oil and hazardous substance liability

(a) **Definitions.** For the purpose of this section, the term—

(1) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 402 of this Act [42 USCS § 1342], (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act [42 USCS § 1342], and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act [42 USCS § 1342], which are caused by events occurring within the scope of relevant operating or treatment systems;

(3) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

- (4) "public vessel" means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;
- (5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;
- (6) "owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;
- (7) "person" includes an individual, firm, corporation, association, and a partnership;
- (8) "remove" or "removal" refers to removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines and beaches;
- (9) "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone [15 UST 1606];
- (10) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;
- (11) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;
- (12) "act of God" means an act occasioned by an unanticipated grave natural disaster;
- (13) "barrel" means 42 United States gallons at 60 degrees Fahrenheit;
- (14) "hazardous substance" means any substance designated pursuant to subsection (b)(2) of this section;
- (15) "inland oil barge" means a non-self-propelled vessel carrying oil in bulk as cargo and certificated to operate only in the inland waters of the United States, while operating in such waters;
- (16) "inland waters of the United States" means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside such baseline which are a part of the Gulf Intracoastal Waterway.[:]
- (17) "Otherwise [otherwise] subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or

numbering, or as provided for by international agreement to which the United States is a party.

- (b) Congressional declaration of policy against discharges of oil or hazardous substances; designation of hazardous substances; study of higher standard of care incentives and report to Congress; liability; penalties; civil actions: penalty limitations, separate offenses, jurisdiction, mitigation of damages and costs, recovery of removal costs and alternative remedies. (1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).
- (2)(A) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.
- (B) The Administrator shall within 18 months after the date of enactment of this paragraph, conduct a study and report to the Congress on methods, mechanisms, and procedures to create incentives to achieve a higher standard of care in all aspects of the management and movement of hazardous substances on the part of owners, operators, or persons in charge of onshore facilities, offshore facilities, or vessels. The Administrator shall include in such study (1) limits of liability, (2) liability for third party damages, (3) penalties and fees, (4) spill prevention plans, (5) current practices in the insurance and banking industries, and (6) whether the penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500 should be enacted.
- (3) The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or (ii) in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to,

appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges into the waters of the contiguous zone or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), where permitted under the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(4) The President shall by regulation determine for the purposes of this section those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person (A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than \$10,000, or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(6)(A) Any owner, operator, or person in charge of any onshore facility or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than \$5,000 for each offense. Any owner, operator, or person in charge of any vessel from which oil or a hazardous substance is discharged in violation of

paragraph (3)(i) of this subsection, and any owner, operator, or person in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) who is otherwise subject to the jurisdiction of the United States at the time of the discharge, shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than \$5,000 for each offense. No penalty shall be assessed unless the owner or operator charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91) [46 USCS Appx. § 91], of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

(B) The Administrator, taking into account the gravity of the offense, and the standard of care manifested by the owner, operator, or person in charge, may commence a civil action against any such person subject to the penalty under subparagraph (A) of this paragraph to impose a penalty based on consideration of the size of the business of the owner or operator, the effect on the ability of the owner or operator to continue in business, the gravity of the violation, and the nature, extent, and degree of success of any efforts made by the owner, operator, or person in charge to minimize or mitigate the effects of such discharge. The amount of such penalty shall not exceed \$50,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, or person in charge, such penalty shall not exceed \$250,000. Each violation is a separate offense. Any action under this subparagraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty. No action may be commenced under this clause where a penalty has been assessed under clause (A) of this paragraph.

(C) In addition to establishing a penalty for the discharge of a hazardous substance, the Administrator may act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost incurred under subsection (c) of this section for the removal of such substance by the United States Government.

(D) Any costs of removal incurred in connection with a discharge excluded by subsection (a)(2)(C) of this section shall be recoverable from the owner or operator of the source of the discharge in an action brought under section 309(b) of this Act [33 USCS § 1319(b)].

(E) Civil penalties shall not be assessed under both this section and section 309 [33 USCS § 1319] for the same discharge.

(c) **Removal of discharged oil or hazardous substances; National Contingency Plan.** (1) Whenever any oil or a hazardous substance is discharged, or there is a substantial threat of such discharge, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976) the President is authorized to act to remove or arrange for the removal of such oil or substance at any time, unless he determines such removal will be done properly by the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs.

(2) Within sixty days after the effective date of this section, the President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances, pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to—

(A) assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies, including, but not limited to, water pollution control, conservation, and port authorities;

(B) identification, procurement, maintenance, and storage of equipment and supplies;

(C) establishment or designation of a strike force consisting of personnel who shall be trained, prepared, and available to provide necessary services to carry out the Plan, including the establishment at major ports, to be determined by the President, of emergency task forces of trained personnel, adequate oil and hazardous substance pollution control equipment and material, and a detailed oil and hazardous substance pollution prevention and removal plan;

(D) a system of surveillance and notice designed to insure earliest possible notice of discharges of oil and hazardous substances and imminent threats of such discharges to the appropriate State and Federal agencies;

(E) establishment of a national center to provide coordination and direction for operations in carrying out the Plan;

(F) procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances;

(G) a schedule, prepared in cooperation with the States, identifying (i) dispersants and other chemicals, if any, that may be used in carrying out the Plan, (ii) the waters in which such dispersants and chemicals may be used, and (iii) the quantities of such dispersant or chemical which can be used safely in such waters, which schedule shall provide in the case of any dispersant, chemical, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants and other chemicals which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters; and

(H) a system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal.

The President may, from time to time, as he deems advisable revise or otherwise amend the National Contingency Plan. After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

(d) **Maritime disaster discharges.** Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil, or of a hazardous substance from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. Any expense incurred under this subsection or under the Intervention on the High Seas Act [33 USCS §§ 1471 et seq.] (or the convention defined in section 2(3) thereof [33 USCS § 1471(3)]) shall be a cost incurred by the United States Government for the purposes of subsection (f) in the removal of oil or hazardous substance.

(e) **Judicial relief.** In addition to any other action taken by a State or local government, when the President determines there is an imminent and substantial threat to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and public and private property, shorelines, and beaches within the United States, because of an actual or threatened discharge of oil or hazardous substance into or upon the navigable waters of the United States from an onshore or offshore

facility, the President may require the United States attorney of the district in which the threat occurs to secure such relief as may be necessary to abate such threat, and the district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

(f) **Liability for actual costs of removal.** (1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding [notwithstanding] any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed \$50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Administrator is authorized, by regulation,

after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

(3) Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed \$50,000,000 except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

(4) The costs of removal of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

(5) The President, or the authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resources. Sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government, or the State government.

(g) **Third party liability.** Where the owner or operator of a vessel (other than an inland oil barge) carrying oil or hazardous substances as cargo or an onshore or offshore facility which handles or stores oil or hazardous substances in bulk, from which oil or a hazardous substance is discharged in violation of subsection (b) of this section, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall pay to the United States Government the actual costs incurred under subsection (c) for removal of such oil or substance and

shall be entitled by subrogation to all rights of the United States Government to recover such costs from such third party under this subsection. In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section, proves that such discharge of oil or hazardous substance was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government, such third party shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for removal of such oil or substance by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, the liability of such third party under this subsection shall not exceed, in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred if such owner or operator were liable. If the United States can show that the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party in any court of competent jurisdiction to recover such removal costs.

(h) **Rights against third parties who caused or contributed to discharge.** The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) The United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil or hazardous substance.

(i) **Recovery of removal costs.** (1) In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section acts to remove such oil or substance in accordance with

regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Claims Court, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing causes.

(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974.

(3) Any amount paid in accordance with a judgment of the United States Claims Court pursuant to this section shall be paid from the funds established pursuant to subsection (k).

- (j) **Regulations; penalty.** (1) Consistent with the National Contingency Plan required by subsection (c)(2) of this section, as soon as practicable after the effective date of this section, and from time to time thereafter, the President shall issue regulations consistent with maritime safety and with marine and navigation laws (A) establishing methods and procedures for removal of discharged oil and hazardous substances, (B) establishing criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, (C) establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges, and (D) governing the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes in order to reduce the likelihood of discharges of oil from vessels in violation of this section.

(2) Any owner or operator of a vessel or an onshore facility or an offshore facility and any other person subject to any regulation issued under paragraph (1) of this subsection who fails or refuses to comply with the provisions of any such regulations, shall be liable to a civil penalty of not more than \$5,000 for each such violation. This paragraph shall not apply to any owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of subsection (b) unless such owner, operator, or person in charge is otherwise subject to the jurisdiction of the United States. Each violation shall be a separate offense. The President may assess and compromise such penalty. No penalty shall be assessed until the owner, operator, or other person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the owner, operator, or other person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by the President.

(k) **Authorization of appropriations; supplemental appropriations.** (1) There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury such sums as may be necessary to maintain such fund at a level of \$35,000,000 to carry out the provisions of subsections (c), (d), (i), and (l) of this section. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to, or deposited in, said fund shall remain available until expended.

(2) The Secretary of Transportation shall notify the Congress whenever the unobligated balance of the fund is less than \$12,000,000, and shall include in such notification a recommendation for a supplemental appropriation relating to the sums that are needed to maintain the fund at the level provided in paragraph (1).

(l) **Administration.** The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this section. Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

(m) **Boarding and inspection of vessels; arrest; execution of warrants or other process.** Anyone authorized by the President to enforce the provisions of this section may, except as to public vessels, (A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone, (B) with or without a warrant arrest any person who violates the provisions of this section or any regulation issued thereunder in his presence or view, and (C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

(n) **Jurisdiction.** The several district courts of the United States are invested with jurisdiction for any actions, other than actions pursuant to subsection (i)(1), arising under this section. In the case of Guam and the Trust Territory of the Pacific Islands, such actions may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the United States District Court for the District of the Canal Zone.

(o) **Obligation for damages unaffected; local authority not preempted; existing Federal authority not modified or affected.** (1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore

facility or offshore facility to any person or agency under any provision of law for damages to any publicly owned or privately owned property resulting from a discharge of any oil or hazardous substance or from the removal of any such oil or hazardous substance.

(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil or hazardous substance into any waters within such State.

(3) Nothing in this section shall be construed as affecting or modifying any other existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this Act or any other provision of law, or to affect any State or local law not in conflict with this section.

(p) **Financial responsibility.** (1) Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil or hazardous substances as cargo or fuel, using any port or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of, in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater, to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(2) The provisions of paragraph (1) of this subsection shall be effective April 3, 1971, with respect to oil and one year after the date of enactment of this section [enacted Oct. 18, 1972] with respect to hazardous substances. The President shall delegate the responsibility to carry out the provisions of this subsection to the appropriate agency head within sixty days after the date of enactment of this section [enacted Oct. 18, 1972]. Regulations necessary to implement this subsection shall be issued within six months after the date of enactment of this section [enacted Oct. 18, 1972].

(3) Any claim for costs incurred by such vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility as required under this subsection. In the case of any action

pursuant to this subsection such insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been brought against him by the owner or operator.

(4) Any owner or operator of a vessel subject to this subsection, who fails to comply with the provisions of this subsection or any regulation issued thereunder, shall be subject to a fine of not more than \$10,000.

(5) The Secretary of the Treasury may refuse the clearance required by section 4197 of the Revised Statutes of the United States, as amended (4 U.S.C. 91) [46 USCS Appx. § 91] to any vessel subject to this subsection, which does not have evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(6) The Secretary of the Department in which the Coast Guard is operated may (A) deny entry to any port or place in the United States or the navigable waters of the United States, to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection, which upon request, does not produce evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(q) Establishment of maximum limit of liability with respect to onshore or offshore facilities. The President is authorized to establish, with respect to any class or category of onshore or offshore facilities, a maximum limit of liability under subsections (f)(2) and (3) of this section of less than \$50,000,000, but not less than \$8,000,000.

(r) Liability limitation, not to limit liability under other legislation. Nothing in this section shall be construed to impose, or authorize the imposition of, any limitation on liability under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974.

(June 30, 1948, ch 758, Title III, § 311, as added Oct. 18, 1972, P. L. 92-500, § 2, 86 Stat. 862; Dec. 28, 1973, P. L. 93-207, § 1(4), 87 Stat. 906; Dec. 27, 1977, P. L. 95-217, §§ 57, 58(a)-(g), (i), (k)-(m), 91 Stat. 1593-1596; Nov. 2, 1978, P. L. 95-576, § 1(b), 92 Stat. 2467; Oct. 21, 1980, P. L. 96-478, § 13(b), 94 Stat. 2303; Oct. 21, 1980, P. L. 96-483, § 8, 94 Stat. 2362; Apr. 2, 1982, P. L. 97-164, Title I, Part B, § 161(5), 96 Stat. 49.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"The Canal Zone", referred to in this section, is defined at 22 USCS § 3602.

"The Outer Continental Shelf Lands Act", referred to in this section, is Act Aug. 7, 1953, ch 345, 67 Stat. 462, as amended, which appears generally as 43 USCS §§ 1331 et seq. For full classification of such Act, consult USCS Tables volumes.

"The Deepwater Port Act of 1974", referred to in this section, is Act Jan. 3, 1975, P. L. 93-627, 88 Stat. 2126, which appears generally as 33 USCS §§ 1501 et seq. For full classification of such Act, consult USCS Tables volumes.

"The Fishery Conservation and Management Act of 1976", referred to in this section, is Act Apr. 13, 1976, P. L. 94-265, 90 Stat. 331, which was designated as the Magnuson Fishery Conservation and Management Act by Act Dec. 22, 1980, P. L. 96-561, Title II, Part C, Subpart 2, § 238(a), 94 Stat. 3300, and which appears generally as 16 USCS §§ 1801 et seq. For full classification of such Act, consult USCS Tables volumes.

"The date of enactment of this paragraph", referred to in this section, is probably Nov. 2, 1978, the date of enactment of Act Nov. 2, 1978, P. L. 95-276, § 1(b), 92 Stat. 2467, which substituted subsec. (b)(2)(B) for former subsec. (b)(2)(B) of this section.

"The penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500", referred to in this section, probably means the penalty provision of subsec. (b)(2)(B)(iii)(bb) of this section as added by Act Oct. 18, 1972, P. L. 92-500, § 2, 86 Stat. 864, prior to amendment by Act Nov. 2, 1978. Prior to amendment, subsec. (b)(2)(B)(iii)(bb) read as follows: "a penalty determined by the number of units discharged multiplied by the amount established for such unit under clause (iv) of this subparagraph, but such penalty shall not be more than \$5,000,000 in the case of a discharge from a vessel and \$500,000 in the case of a discharge from an onshore or offshore facility."

"The effective date of this section", referred to in this section, is October 18, 1972, which is the date of enactment of § 311 of Act June 30, 1948, ch 758 (this section), as added by Act Oct. 18, 1972, P. L. 92-500, § 2, 86 Stat. 862.

"This Act", referred to in this section, is Act June 30, 1948, ch 758, Titles I-V, as added Oct. 18, 1972, P. L. 92-500, § 2, 86 Stat. 816 and Dec. 27, 1977, P. L. 95-217, §§ 39-41, 91 Stat. 1581, popularly known as the Federal Water Pollution Control Act or the Clean Water Act, which is classified to 33 USCS §§ 1251 et seq. For previous versions of this Act, see Explanatory note at 33 USCS § 1251.

Explanatory notes:

The bracketed semicolon is inserted in subsec. (a)(16) as the punctuation probably intended by Congress.

The bracketed word "otherwise" is inserted in subsec. (a)(17) as the uncapitalized word probably intended by Congress.

The bracketed word "notwithstanding" is inserted in subsec. (f)(1) as the word probably intended by Congress.

Amendments:

1973, Act Dec. 28, 1973, in subsec. (f), in paras. (1)-(3), substituted "(b)(3)" for "(b)(2)" wherever appearing and in para. (2), substituted "Administrator" for "Secretary"; and in subsecs. (g) and (i)(1), substituted "(b)(3)" for "(b)(2)" wherever appearing.

1977. Act Dec. 27, 1977, in subsec. (a), in para. (11), inserted ", and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters," in para. (14), substituted ";" for ".", and added paras. (15) and (16); in subsec. (b), in para. (1), substituted ", or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976)." for ".", in para. (2), subpara. (A), inserted "or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976)", in subpara. (B), added cl. (v), in para. (3), inserted "(i)", inserted ", or (ii) in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976)", inserted "or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976)" and deleted "article IV of" following "where permitted under", in para. (4), substituted "." for "except that in the case of the discharge of oil into or upon the waters of the contiguous zone, only those discharges which threaten the fishery resources of the contiguous zone or threaten to pollute or contribute to the pollution of the territory or the territorial sea of the United States may be determined to be harmful.", in para. (5), inserted "(A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States, or (C) in charge of an onshore facility or an offshore facility," and in para. (6), substituted "Any owner, operator, or person in charge of any onshore facility" for "Any owner or operator of any vessel, or shore facility," and inserted "Any owner, operator, or person in charge of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, and any owner, operator, or person in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) who is otherwise subject to the jurisdiction of the United States, shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than \$5,000 for each offense."; in subsec. (c), in para. (1), inserted "or there is a substantial threat of such discharge," and inserted "or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States

(including resources under the Fishery Conservation and Management Act of 1976)", and in para. (2)(D), substituted "and imminent threats of such discharges to the appropriate State and Federal agencies;" for "to the appropriate Federal agency;"; in subsec. (d), inserted "or under the Intervention on the High Seas Act (or the convention defined in section 2(3) thereof); in subsec. (f), in para. (1), substituted ", in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater," for "\$100 per gross ton of such vessel or \$14,000,000, whichever is lesser," in paras. (2) and (3), substituted "\$50,000,000" for "\$8,000,000", and added paras. (4) and (5); in subsec. (g), inserted "Where the owner or operator of a vessel (other than an inland oil barge) carrying oil or hazardous substances as cargo or an onshore or offshore facility which handles or stores oil or hazardous substances in bulk, from which oil or a hazardous substance is discharged in violation of subsection (b) of this section, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall pay to the United States Government the actual costs incurred under subsection (c) for removal of such oil or substance and shall be entitled by subrogation to all rights of the United States Government to recover such costs from such third party under this subsection." and substituted ", in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater." for "\$100 per gross ton of such vessel or \$14,000,000, whichever is the lesser," in subsec. (i)(2), substituted ", or the Deepwater Port Act of 1974." for "."; in subsec. (j)(2), inserted "This paragraph shall not apply to any owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of subsection (b) unless such owner, operator, or person in charge is otherwise subject to the jurisdiction of the United States."; in subsec. (k), substituted "such sums as may be necessary to maintain such fund at a level of" for "not to exceed"; in subsec. (p)(1), substituted ", in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater," for "\$100 per gross ton, or \$14,000,000 whichever is the lesser,"; and added subsecs. (q) and (r).

1978. Act Nov. 2, 1978, in subsec. (a), in para. (2), inserted ", but excludes (A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems",

and added para. (17); in subsec. (b)(2), substituted new subpara. (B) for one which read:

"(B)(i) The Administrator shall include in any designation under subparagraph (A) of this subsection a determination whether any such designated hazardous substance can actually be removed.

"(ii) The owner or operator of any vessel, onshore facility, or offshore facility from which there is discharged during the two-year period beginning on the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, any hazardous substance determined not removable under clause (i) of this subparagraph shall be liable, subject to the defenses to liability provided under subsection (f) of this section, as appropriate, to the United States for a civil penalty per discharge established by the Administrator based on toxicity, degradability, and dispersal characteristics of such substance, in an amount not to exceed \$50,000, except that where the United States can show that such discharge was a result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States for a civil penalty in such amount as the Administrator shall establish, based upon the toxicity, degradability, and dispersal characteristics of such substance.

"(iii) After the expiration of the two-year period referred to in clause (ii) of this subparagraph, the owner or operator of any vessel, onshore facility, or offshore facility, from which there is discharged any hazardous substance determined not removable under clause (i) of this subparagraph shall be liable, subject to the defenses to liability provided in subsection (f) of this section, to the United States for either one or the other of the following penalties, the determination of which shall be in the discretion of the Administrator:

"(aa) a penalty in such amount as the Administrator shall establish, based on the toxicity, degradability, and dispersal characteristics of the substance, but not less than \$500 nor more than \$5,000; or

"(bb) a penalty determined by the number of units discharged multiplied by the amount established for such unit under clause (iv) of this subparagraph, but such penalty shall not be more than \$5,000,000 in the case of a discharge from a vessel and \$500,000 in the case of a discharge from an onshore or offshore facility.

"(iv) The Administrator shall establish by regulation, for each hazardous substance designated under subparagraph (A) of this paragraph, and within 180 days of the date of such designation, a unit of measurement based upon the usual trade practice and, for the purpose of determining the penalty under clause (iii)(bb) of this subparagraph, shall establish for each such unit a fixed monetary amount which shall be not less than \$100 nor more than \$1,000 per unit. He shall establish such fixed amount based on the toxicity, degradability, and dispersal characteristics of the substance.

"(v) In addition to establishing a penalty for the discharge of a hazardous substance determined not to be removable pursuant to clauses (ii) through (iv) of this subparagraph, the Administrator may

act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost incurred under subsection (c) of this section for the removal of such substance by the United States Government."

Such Act further, in subsec. (b), in para. (3), substituted "in such quantities as may be harmful" for "in harmful quantities", substituted new para. (4) for one which read: "The President shall by regulation, to be issued as soon as possible after the date of enactment of this paragraph, determine for the purposes of this section, those quantities of oil and any hazardous substance the discharge of which, at such times, locations, circumstances, and conditions, will be harmful to the public health or welfare of the United States, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.", in para. (5), inserted "at the time of the discharge", and in para. (6), designated existing matter as subpara. (A), in subpara. (A), as so designated, inserted "at the time of the discharge", and added subparas. (B)-(E).

1980. Act Oct. 21, 1980, P. L. 96-478 (effective as provided in § 14(a) of such Act, which appears as 33 USCS § 1901 note), in subsec. (b)(3)(A), deleted "of oil" following "of such discharges" and substituted "the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973" for "the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended".

Act Oct. 21, 1980, P. L. 96-483, in subsec. (k), designated the existing provisions as para. (1), and added para. (2).

1982. Act Apr. 2, 1982 (effective 10/1/82, as provided by § 402 of such Act, which appears as 28 USCS § 171 note), in subsec. (i), in paras. (1) and (3), substituted "Claims Court" for "Court of Claims".

Transfer of functions:

Enforcement functions of the Administrator or other official of the Environmental Protection Agency under this section relating to spill prevention, containment and countermeasure plans with respect to pre-construction, construction, and initial operation of the transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of the date of the initial operation of the Alaska Natural Gas Transportation System by Reorg. Plan No. 1 of 1979, §§ 102(a), 203(a), 44 Fed. Reg. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, which appears as 5 USCS § 903 note.

Other provisions:

Assignment of Presidential Functions. Ex. Or. No. 11735 of Aug. 3, 1973, 38 Fed. Reg. 21243; as amended by Ex. Or. No. 12418 of May 5, 1983, § 1, 48 Fed. Reg. 20891, provided:

By virtue of the authority vested in me by section 311 of the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500; 86 Stat. 816 at 862; 33 U.S.C. 1321 [this section], hereinafter referred to as

the act, by section 301 of title 3 of the United States Code [3 USCS § 301], and as President of the United States, it is hereby ordered as follows:

Section 1. Administrator of the Environmental Protection Agency. The Administrator of the Environmental Protection Agency is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

- (1) the authority of the President under subsections (b)(3) and (b)(4) of section 311 [subsec. (b)(3) and (4) of this section] of the act relating to the determination of those quantities of oil and hazardous substances the discharge of which, at such times, locations, circumstances, and conditions, will be harmful to the public health or welfare of the United States and those which will not be harmful;
- (2) the authority of the President under subsection (c)(2)(G) of section 311 of the act [subsec. (c)(2)(G) of this section], relating to identification of dispersants and other chemicals to be used;
- (3) the authority of the President under subsection (e) of section 311 [subsec. (e) of this section] of the act, relating to determinations of imminent and substantial threat because of actual or threatened discharges of oil or hazardous substances from non-transportation-related onshore and offshore facilities, and relating to securing relief necessary to abate such actual or threatened discharges through court action; and
- (4) the authority of the President under subsection (j)(1)(C) of section 311 of the act [subsec. (j)(1)(C) of this section], relating to the establishment of procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from non-transportation-related onshore and offshore facilities, and to contain such discharges.

Sec. 2. Secretary of Department in which the Coast Guard is Operating. The Secretary of the Department in which the Coast Guard is operating is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

- (1) the authority of the President under subsection (e) of section 311 of the act [subsec. (e) of this section], relating to determinations of imminent and substantial threat because of actual or threatened discharges of oil or hazardous substances from transportation-related onshore and offshore facilities, and relating to securing relief necessary to abate such actual or threatened discharges through court action;
- (2) the authority of the President under subsection (j)(1)(C) of section 311 of the act [subsec. (j)(1)(C) of this section], relating to the establishment of procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and transportation-related onshore and offshore facilities, and to contain such discharges;
- (3) the authority of the President under subsection (j)(1)(D) of section 311 of the act [subsec. (j)(1)(D) of this section], relating to the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes;

(4) the authority to administer the revolving fund established pursuant to subsection (k) of section 311 of the act [subsec. (k) of this section]; and

(5) the authority under subsection (m) of section 311 of the act [subsec. (m) of this section], relating to the boarding and inspection of vessels, the arrest of persons violating section 311 [this section], and the execution of warrants or other process pursuant to that section.

(6) the authority of the President under subsection (p)(1) of section 311 of the act [subsec. (p)(1) of this section], relating to the issuance of regulations governing evidence of financial responsibility for vessels to meet liability to the United States; and

(7) the authority under subsection (p)(2) of section 311 of the act [subsec. (p)(2) of this section], relating to the administration of subsection (p) [subsec. (p) of this section].

Sec. 3. Reserved.

Sec. 4. Council on Environmental Quality. The Council on Environmental Quality is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority under subsection (c)(2) of section 311 of the act [subsec. (c)(2) of this section], providing for the preparation, publication, revision or amendment of a National Contingency Plan for the removal of oil and hazardous substance discharges (hereinafter referred to as the National Contingency Plan).

Sec. 5. Other Assignments.

(a) The head of each Federal department and agency having responsibilities under the National Contingency Plan (40 C.F.R. Part 300), as now or hereafter amended, is designated and empowered to exercise, without the approval, ratification, or other action of the President, in accordance with that Plan, the authority under Section 311(c)(1) of the Act (33 U.S.C. 1321(c)(1)) [subsec. (c)(1) of this section], relating to the removal of oil and hazardous substances that have been discharged, or for which there is a substantial threat of discharge, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act [43 USCS §§ 1331 et seq.] or the Deepwater Port Act of 1974 [33 USCS §§ 1501 et seq.], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976) [16 USCS §§ 1801 et seq.].

(b) The Administrator of the Environmental Protection Agency and the Secretary of the Department in which the Coast Guard is operating, respectively, in and for the waters and areas for which each has responsibility for providing or furnishing on-scene-coordinators under the National Contingency Plan, are designated and empowered to exercise, without approval, ratification, or other action of the President, the following:

- (1) the authority under subsection (c)(2)(C) of section 311 of the act [subsec. (c)(2)(C) of this section], relating to the determination of major ports for establishment of emergency task forces;

(2) the authority under subsection (d) of section 311 of the act [subsec. (d) of this section], relating to the coordination and direction of the removal or elimination of threats of pollution hazards from discharges, or imminent discharges, of oil or hazardous substances, and the removal and destruction of vessels;

(3) the authority of the President under subsection (j)(1)(A) of section 311 of the act [subsec. (j)(1)(A) of this section], relating to the establishment of methods and procedures for the removal of discharged oil and hazardous substances; and

(4) the authority of the President under subsection (j)(1)(B) of section 311 of the act [subsec. (j)(1)(B) of this section], relating to the establishment of criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans.

(c) The Administrator of the Environmental Protection Agency and the Secretary of the Department in which the Coast Guard is operating are designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority of the President under section 311(j)(2) [subsec. (j)(2) of this section] with respect to assessing and compromising civil penalties in connection with enforcement of the respective regulations issued by each pursuant to this order.

Sec. 6. Consultation. Authorities and functions delegated or assigned by this order shall be exercised subject to consultation with the Secretaries of departments and the heads of agencies with operating or regulatory responsibilities which may be significantly affected.

Sec. 7. Agency to Receive Notices of Discharges of Oil or Hazardous Substances. The Coast Guard is hereby designated the "appropriate agency" for the purpose of receiving the notice of discharge of oil or hazardous substances required by subsection (b)(5) of section 311 of the act [subsec. (b)(5) of this section]. The Commandant of the Coast Guard shall issue regulations implementing this designation.

Sec. 8. Without derogating from any action heretofore taken thereunder, Executive Order No. 11548 of July 20, 1970 [formerly classified as a note to this section], is hereby superseded.

Effective date of 1977 amendments. Act Dec. 27, 1977, P. L. 95-217, § 58(h), 91 Stat. 1596, provided: "The amendments made by paragraphs (5) and (6) of subsection (d) of this section [amending subsec. (f)(2), (3) of this section] shall take effect 180 days after the date of the enactment of the Clean Water Act of 1977 [enacted Dec. 27, 1977]."

Allowable delay in establishing financial responsibility for increase in amounts under 1977 amendments. Act Dec. 27, 1977, P. L. 95-217, § 58(j), 91 Stat. 1596, provided: "No vessel subject to the increased amounts which result from the amendments made by subsections (d)(2), (d)(3), and (d)(4) of this section [amending subsecs. (f)(1), (g), and (p)(1) of this section] shall be required to establish any evidence of financial responsibility under section 311(p) of the Federal Water Pollution Control Act [subsec. (p) of this section] for such increased amounts before October 1, 1978."

Transfer of functions relating to financial responsibility of vessels for pollution liability. Ex. Or. No. 12418 of May 5, 1983, 48 Fed. Reg. 20891, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, in order to transfer certain functions relating to the financial responsibility of vessels for water pollution and establish the authority of Federal agencies to respond to discharges or substantial threats of discharges of oil and hazardous substances, it is hereby ordered as follows:

Section 1. Executive Order No. 11735 of August 3, 1973 [note to this section] is amended as follows:

(a) The heading of Section 3 is amended to read "Reserved".

(b) Subsections 3(1) and 3(2) are redesignated subsections 2(6) and 2(7) respectively.

(c) Section 5(a) is amended to provide as follows:

"(a) The head of each Federal department and agency having responsibilities under the National Contingency Plan (40 C.F.R. Part 300), as now or hereafter amended, is designated and empowered to exercise, without the approval, ratification, or other action of the President, in accordance with that Plan, the authority under Section 311(c)(1) of the Act (33 U.S.C. 1321(c)(1)), relating to the removal of oil and hazardous substances that have been discharged, or for which there is a substantial threat of discharge, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976)."

Sec. 2. Section 1-2 of Executive Order No. 12123 of February 26, 1979 [43 USCS § 1811 note], is amended to provide as follows:

"1-2. *Determination of Financial Responsibility and the Assessment and Compromise of Penalties.*

"The Secretary of the Department in which the Coast Guard is operating is hereby delegated the following authorities:

"1-201. The authority vested in the President by Section 305(a)(1) of the Act (92 Stat. 677, 43 U.S.C. 1815(a)(1)), relating to vessels;

"1-202. The authority vested in the President by Section 305(b) of the Act (92 Stat. 678, 43 U.S.C. 1815(b)), relating to offshore facilities; and

"1-203. The authority vested in the President by Section 312(a)(2) of the Act (92 Stat. 684, 43 U.S.C. 1822(a)(2)), relating to the assessment and compromise of penalties concerning vessels."

Sec. 3. Section 5(b) of Executive Order No. 12316 of August 14, 1981 [42 USCS § 9615 note] is amended to provide as follows:

"(b) The functions vested in the President by Section 108(a) of the Act are delegated to the Secretary of the Department in which the Coast Guard is operating. The Secretary shall be responsible, in accordance

with Section 109 of the Act, for the enforcement of civil penalties for violations of the regulations issued under Section 108(a) of the Act."

Sec. 4. The Secretary of the Department in which the Coast Guard is operating is hereby delegated the authority vested in the President by Sections 311(p)(1)-(2) of the Federal Water Pollution Control Act, as amended (86 Stat. 870, 33 U.S.C. 1321(p)(1)-(2)) [subsec. (p)(1), (2) of this section], as those sections are incorporated by reference in Section 204(c)(3) of the Trans-Alaska Pipeline Authorization Act of 1973 (Public Law 93-153, 87 Stat. 585, 587) [43 USCS § 1653(c)(3)], relating to the demonstration of financial responsibility for vessels carrying oil loaded from the Trans-Alaska pipeline.

Sec. 5. The Director of the Office of Management and Budget shall make such determinations, issue such Orders, and take all steps necessary or appropriate to effectuate the transfer of records, property, personnel, and positions and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred, as provided in this Order [this note], from the Federal Maritime Commission to the Secretary of the Department in which the Coast Guard is operating.

Sec. 6. Any rules, regulations, orders, directives, circulars, or other actions taken pursuant to the functions transferred from the Federal Maritime Commission to the Secretary of the Department in which the Coast Guard is operating by the delegation made in this Order [this note] shall remain in effect until amended, modified, or revoked.

CODE OF FEDERAL REGULATIONS

United States Customs Service, Department of the Treasury; Vessels in foreign and domestic trades, 19 CFR Part 4.

Coast Guard, Department of Transportation; General; Claims, 33 CFR Part 25.

Coast Guard, Department of Transportation; Marine Pollution Financial Responsibility and Compensation; Financial responsibility for water pollution, 33 CFR Part 130.

Coast Guard, Department of Transportation; Marine Pollution Financial Responsibility and Compensation; Financial responsibility for oil pollution—Alask pipeline, 33 CFR Part 131.

Coast Guard, Department of Transportation; Pollution; Oil pollution regulations, 33 CFR Part 151.

Coast Guard, Department of Transportation; Pollution; Control of pollution by oil and hazardous substances, discharge removal, 33 CFR Part 153.

Coast Guard, Department of Transportation; Pollution; Oil pollution prevention regulations for marine oil transfer facilities, 33 CFR Part 154.

Coast Guard, Department of Transportation; Pollution; Oil pollution prevention regulations for vessels, 33 CFR Part 155.

Coast Guard, Department of Transportation; Pollution; Oil and hazardous material transfer operations, 33 CFR Part 156.

Coast Guard, Department of Transportation; Ports and Waterways Safety; Inland waterways navigation regulations, 33 CFR Part 162.

Environmental Protection Agency; Water Programs; Criteria for State, local and regional oil removal contingency plans, 40 CFR Part 109.

Environmental Protection Agency; Water Programs; Oil pollution prevention, 40 CFR Part 112.

Environmental Protection Agency; Water Programs; Civil penalties for violation of oil pollution prevention regulations, 40 CFR Part 114.

Environmental Protection Agency; Superfund Programs; National oil and hazardous substances pollution contingency plans, 40 CFR Part 300.

Environmental Protection Agency; Superfund Programs; Designation, reportable quantities, and notification, 40 CFR Part 302.

Office of the Secretary of the Interior; Trans-Alaska pipeline liability fund, 43 CFR Part 29.

Coast Guard, Department of Transportation; Tank Vessels; Inspection and certification, 46 CFR Part 31.

Coast Guard, Department of Transportation; Passenger Vessels; Inspection and certification, 46 CFR Part 71.

Coast Guard, Department of Transportation; Cargo and Miscellaneous Vessels; Inspection and certification, 46 CFR Part 91.

Coast Guard, Department of Transportation; Small Passenger Vessels (Under 100 gross tons); Inspection and certification, 46 CFR Part 176.

Coast Guard, Department of Transportation; Oceanographic Research Vessels; Inspection and certification, 46 CFR Part 189.

CROSS REFERENCES

Excavations and deposit of debris in navigable waters, 33 USCS §§ 403-407.

Definition of "person", 33 USCS § 1362.

Marine protection and restriction of ocean dumping, 33 USCS § 1401 et seq.

U. S. liability for unreasonable damages under Intervention on the High Seas Act, 33 USCS § 1479.

This section is referred to in 33 USCS §§ 1014, 1266, 1314, 1318, 1376, 1402, 1486, 1517; 42 USCS §§ 9601, 9602, 9605, 9606, 9611, 9631, 9651, 9652, 9654, 10601; 43 USCS §§ 1653, 1811, 1821; 46 USCS §§ 391a, 2101.

RESEARCH GUIDE

Am Jur:

61A Am Jur 2d, Pollution Control §§ 3, 132, 182, 184-192, 194, 211, 212, 233, 247.

Am Jur Trials:

Subterranean Water Pollution, 18 Am Jur Trials 495.

Forms:

9 Federal Procedural Forms L Ed, Environmental Protection, §§ 29:131-29:135, 29:137.

13 Federal Procedural Forms L Ed, Navigable Waters §§ 51:81, 51:102.

15 Am Jur Legal Forms 2d, Pollution Control §§ 205:21 et seq.

Annotations:

Liability, under § 311(i) of Federal Water Pollution Control Act (33 USCS § 1321(i)), of United States to owner or operator of onshore or offshore facility, or vessel, for removal costs of oil or hazardous substance. 59 ALR Fed 282.

Liability, under § 311(f, g) of Federal Water Pollution Control Act (33 USCS § 1321(f, g)), to United States of owner or operator of onshore or offshore facility, or vessel, for discharge of oil or hazardous substance. 56 ALR Fed 343.

Liability, under § 311(b)(6) of Federal Water Pollution Control Act (33 USCS § 1321(b)(6)), of owner, operator, or person in charge of onshore or offshore facility, or vessel, for discharge of oil or hazardous substance. 55 ALR Fed 141.

Damages compensable under Federal maritime Law for injuries caused by discharge of oil into navigable waters. 26 ALR Fed 346.

Construction and application of provision of Federal Water Pollution Control Act (33 USCS § 1321(b)(5) and similar predecessor, formerly designated as 33 USCS § 1161(b)(4)) requiring person in charge of vessel, or onshore or offshore facility, to notify federal agency of prohibited discharge from such vessel or facility. 17 ALR Fed 804.

Liability of vessel to state in admiralty action in rem for damages resulting from oil spill in navigable waters of state. 10 ALR Fed 956.

Liability insurance coverage for violations of antipollution laws. 88 ALR3d 182.

Texts:

1 Norris, *The Law of Maritime Personal Injuries* (3d ed) § 153.

Law Review Articles:

Mervin, Government Regulation of Oil Polluters: How Much is Enough? 29 Admin L Rev 603, Fall, 1977.

Discharge of Oil into Nonnavigable Tributary of Navigable Water. 27 Ala L Rev 227, Spring, 1975.

Validity of States' Oil Pollution Sanctions. 15 Boston College Industrial and Commercial L Rev 829, April, 1974.

Shipowner's Liability for an Oil Spill Caused Solely by the Negligence of a Compulsory Pilot. 58 Boston U L Rev 316, March, 1978.

Federal Common Law and Ocean Pollution: A Private Remedy for Oil Pollution Damage? 8 Environmental Law 1, Fall, 1977.

Roady, Remedies in Admiralty for Oil Pollution. 5 Fla State U L Rev 361, Summer, 1977.

Bentz, Chemical Identification of Oil Spill Sources. 13 Forum 425, Winter, 1978.

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Bergman, No Fault Liability for Oil Pollution Damage. 5 Journal of Maritime L 1, October, 1973.

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Dubais, Liability of a Salvor Responsible for Oil Pollution Damage. 8 J of Maritime L 375, April, 1977.

Sisson, Oil Pollution Law and the Limitation of Liability Act: A Murky Sea for Claimants Against Vessels. 9 Journal of Maritime L 285, April, 1978.

Oil Pollution Act Amendments of 1973. 6 Law and Policy in International Business 1251, Fall, 1974.

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VII. LIMITATION OF LIABILITY

87. Generally

I. IN GENERAL

1. Generally

33 USCS § 1321 is not limited in application only to classical "navigable waters of the United States"; Congress, in adopting Federal Water Pollution Control Act Amendments of 1972, intended to control both discharges of pollutants directly into navigable waters and discharges of pollutants into nonnavigable tributaries which flow into navigable rivers. *United States v. Ashland Oil & Transp. Co.* (1974, CA6 Ky) 504 F2d 1317, 50 OGR 133.

Purpose behind 33 USCS § 1321(b)(6) is remedial and compensatory in nature, as penalty is imposed regardless of fault, with proceeds being used for costs of administration and cleanup. *True v. United States* (1985, DC Wyo) 603 F Supp 1370, 86-1 USTC ¶ 9193, 56 AFTR 2d 85-6208, later proceeding (DC Wyo) 629 F Supp 881, 57 AFTR 2d 86-1417.

2. Constitutionality

Waiver of pre-emption in predecessor to 33 USCS § 1321 providing that nothing in section "shall be construed as pre-empting any state or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil into any waters within such state" is valid. *Askew v. American Waterways Operators, Inc.* (1973) 411 US 325, 36 L Ed 2d 280, 93 S Ct 1590, 45 OGR 409, reh den 412 US 933, 37 L Ed 2d 162, 93 S Ct 2746.

Use of report of discharge required by 33 USCS § 1321(b)(5) to support and assess penalty under § 1321(b)(6) does not violate Fifth Amendment's prohibition against compelling person to be witness against himself, since provisions of § 1321 are civil in nature and Fifth Amendment applies only to criminal actions. *United States v. Ward* (1980) 448 US 242, 65 L Ed 2d 742, 100 S Ct 2636, 66 OGR 280, reh den 448 US 916, 65 L Ed 2d 1179, 101 S Ct 37.

Predecessor to 33 USCS § 1321 and regulation promulgated thereto, which, read together, prohibit discharge of oil from ship and consider such discharge as harmful if it produces sheen on water's surface and if it does not come from properly functioning vessel engine, did not violate Fifth Amendment due process of law, as

statute, when coupled with regulation, was not void for vagueness; "sheen test" in regulation promulgated pursuant to predecessor to 33 USCS § 1321 was valid basis for distinction between those oil discharges which are harmful and those which are not. *United States v. Boyd* (1973, CA9 Wash) 491 F2d 1163.

Hearing provided by administrative civil penalty procedures is not subject to procedural requirements of formal hearing dictated by Administrative Procedure Act and cross-examination is not required; due process requirements are met since party is entitled to present his case or defense by oral or documentary evidence and to submit rebuttal evidence and there is no need for cross-examination to obtain full disclosure of facts. G-LMI ltr 16460/17, 15 July 80, CGLB, Feb 1981.

3. Construction

Since United States Coast Guard is charged with execution of 33 USCS § 1321, great weight must be given to construction it gives to such statute. *United States v. W. B. Enterprises, Inc.* (1974, SD NY) 378 F Supp 420.

33 USCS § 1321(j)(2) is pollution prevention measure but it is not necessary that there be pollution incident for there to be violation; § 1321(j) provides for civil penalty to be assessed against owner or operator of vessel which fails to comply with regulations issued under authority of § 1321 establishing procedures and requirements for equipment to prevent discharges. G-LMI ltr 16460/12, 31 Mar 80 CGLB, Oct 1980.

4. Application

33 USCS § 1321 is not limited in application only to classical "navigable waters of the United States"; Congress, in adopting Federal Water Pollution Control Act Amendments of 1972, intended to control both discharges of pollutants directly into navigable waters and discharges of pollutants into nonnavigable tributaries which flow into navigable rivers. *United States v. Ashland Oil & Transp. Co.* (1974, CA6 Ky) 504 F2d 1317, 50 OGR 133.

3 USCS §§ 1321 and 1322 no longer apply to Panama Canal since Panama resumed plenary jurisdiction under Panama Canal Act (Public Law 96-70, 93 Stat 452). G-LMI memo 16450, 10 Mar. 80, CGLB, Oct. 1980.

33 USCS §§ 1321, 1322 may be applied to public vessels, depending upon extent to which vessel is used in trade or business involving transportation of goods or persons, but such vessels are not subject to enforcement or penalty provisions although basic prohibitions apply; violations may be referred to agency responsible for vessel and in case of foreign vessel to flag gov-

eminent; non-public vessels operated by states are subject to enforcement and penalty action. G-LMI memo 16450, 26 Nov 80, CGLB, Mar 1982.

5. Relationship with other laws

Action under 33 USCS § 1321 is subject to six-year contract statute of limitations of 28 USCS § 2415. *United States v P/B STCO* 213 (1985, CA5 Tex) 756 F2d 364.

Predecessor to 33 USCS § 1321 does not supersede or emasculate Refuse Act [33 USCS § 407]. *United States v Interlake Steel Corp.* (1969, ND Ill) 297 F Supp 912; *United States v Armco Steel Corp.* (F DC Tex) 3 ERC 1067, mod on other grounds 3 ERC 1263.

Action by United States for recovery of full amount of its oil spill cleanup cost, as opposed to action for damages to property or for injunctive relief, may only be predicated on 33 USCS § 1321 and not on Refuse Act (33 USCS § 407) or upon general maritime law of torts or federal common law of nuisance. *United States v Dixie Carriers, Inc.* (1978, ED La) 462 F Supp 1126, affd (CA5 La) 627 F2d 736, later proceeding (ED La) 560 F Supp 796, affd (CA5 La) 736 F2d 180.

United States does not retain cause of action to remedy oil spillage under Refuse Act (33 USCS § 407), which is superseded by FWPCA (33 USCS §§ 1251 et seq.). (ED La) 480 F Supp 290, later op (ED La) 505 F Supp 1029, affd in part and revd in part on other grounds (CA5 La) 681 F2d 432, reh den (CA5 La) 693 F2d 451, cert den 462 US 1132, 77 L Ed 2d 1367, 103 S Ct 3112.

28 USCS § 2415 is applicable statute of limitations in action brought under 33 USCS § 1321. *United States v C & R Trucking Co.* (1982, ND W Va) 537 F Supp 1080.

Citizen suit provision of Clean Water Act (33 USCS § 1365) does not confer upon citizens right to intervene in governmental action to abate imminent and substantial endangerment brought pursuant to 33 USCS §§ 1321 and 1364. *United States v Stringfellow* (1984, CD Cal) 39 FR Serv 2d 439, motion to dismiss app den (CA9 Cal) 40 FR Serv 2d 931, cert dismd (US) 85 L Ed 2d 527, 105 S Ct 2171 and revd, in part on other grounds, vacated, in part on other grounds (CA9 Cal) 793 F2d 821, 4 FR Serv 3d 397.

6. Definitions

Fact that tanks, pumps, lights, and connecting lines owned by defendant were buried on land in possession of third-party lessee is immaterial to determination of whether defendant was owner within meaning of 33 USCS § 1321. G-LMI ltr 16460/5, 13 May 1981, CGLD, April 1984.

Naptha is considered "oil" within meaning of § 1321(j). G-LMI ltr 16460/1, 14 Oct. 82, CGLB No. 433.

7. "Onshore facility"

Oil company cannot recover from United States reasonable cost incurred in cleaning up oil spill which originated from tanker and fuel barge; oil spill does not originate from "on shore facility" because instrumentality that is afloat is not "on shore", and company's land submerged for use as slip cannot be considered on shore, within meaning of 33 USCS § 1321(a)(10). *Shell Oil Co.* (1976) 209 Ct Cl 699.

Oil terminal and distribution facility, consisting in part of transportation facility that includes loading racks for trucks and railroad tank cars, and dock extending into creek for oil tankers, is "onshore facility"; railroad's 2 tank cars, as "rolling stock", also meet statutory definition of "onshore facility". *Union Petroleum Corp. v United States* (1980, Ct Cl) 14 ERC 2072.

Claimant's oil terminal is "on shore facility" within meaning of 33 USCS § 1321(a)(10). *Union Petroleum Corp. v United States* (1981) 228 Ct Cl 54, 651 F2d 734, 59 ALR Fed 262.

Home fuel oil heating tank constitutes "on-shore facility" for purposes of 33 USCS § 1321(a)(10). *United States v Buntin* (1976, DC Tenn) 11 ERC 1061.

8. "Person"; "person in charge"

Corporation which had capacity to prevent and abate damage through its direction of activities of persons controlling mechanisms causing pollution must be regarded as "person in charge" for purpose of 33 USCS § 1161 (renumbered 33 USCS § 1321) requiring that person in charge notify government of discharge of oil from facility into navigable waterway. *United States v Mobil Oil Corp.* (1972, CA5 Tex) 464 F2d 1124, 17 ALR Fed 796.

Owner-operator is "in charge" of his facility within meaning of 33 USCS § 1161 (predecessor to 33 USCS § 1321), and it necessarily follows that corporate owner, "person" within statutory definition, is "person in charge" of facilities it owns and operates; there is no inconsistency between such definition of "person in charge" and use in civil penalty provision of § 1321 of words "owner or operator", and regulations of Coast Guard defining "person in charge" as being individual are unpersuasive, since purpose of regulations is to prescribe manner in which reporting duties of statute will be fulfilled in daily practice, and this necessarily requires that regulations speak to individuals who act for corporation. *Apex Oil Co. v United States* (1976,

CA8 Mo) 530 F2d 1291, cert den 429 US 127, 50 L Ed 2d 90, 97 S Ct 84.

Political subdivision or municipality is "person" within definition of 33 USCS § 1321(a)(7) and is therefore subject to civil penalties pursuant to 33 USCS § 1321 for causing oil spills into navigable waters. *United States v Massachusetts Bay Transp. Authority* (1980, CA1 Mass) 614 F2d 27; *United States v New York* (1979, SD NY) 481 F Supp 4, 55 ALR Fed 134, affd without op (CA2 NY) 614 F2d 1292, cert den 466 US 936, 64 L Ed 2d 789, 100 S Ct 2154.

Corporation is "person in charge" within meaning of predecessor to 33 USCS § 1321's notification of discharge provision. *United States v United States Steel Corp.* (1972, DC Pa) 4 ERC 1641.

Phrase "person in charge" in 33 USCS § 1321(b)(5) includes corporations. *United States v Houghland Barge Line, Inc.* (1974, WD Pa) 387 F Supp 1110.

Truck driver who delivered oil was not "in charge" of on shore facilities within meaning of 33 USCS § 1321(a)(10). *United States v Mackin Constr. Co.* (1975, DC Mass) 388 F Supp 478.

University of Minnesota is "person" within meaning of term as defined in 33 USCS § 1321(a)(7), in view of its autonomous corporate nature, and as such, is subject to civil penalty provision of § 1321(b)(6) for violation of statute. G-LMI ltr 16460/2, 6 Dec 79, CGLB, Jul 1980.

Term "person in charge," as used in 33 USCS § 1321(b)(6), is not limited to person in charge of oil transfer operation, but includes one in charge of vessel or facility from which oil is discharged in violation of Federal Water Pollution Control Act (§§ 1251 et seq.). G-LMI ltr 10460/7, 5 Aug 80, CGLB, Dec 1981.

Annotations:

Construction and application of provision of Federal Water Pollution Control Act (33 USCS § 1321(b)(5) and similar predecessor, formerly designated as 33 USCS § 1161(b)(4)) requiring person in charge of vessel, or onshore or offshore facility, to notify federal agency of prohibited discharge from such vessel or facility, 17 ALR Fed 804 (see, especially, § 3 as to "person in charge").

9. "Public vessel"

Vessel chartered by government but operated by private operator is not "public vessel" within meaning of 33 USCS § 1321(a)(4). G-LMI ltr 14660-8, 17 Jan 78, CGLB, Apr 1979.

Vessels in Ready Reserve Fleet program operated by private persons are not within purview of § 1321(a)(4) definition of "public vessel." Chief Counsel Memo 16712, 29 Sept. 83, CGLB No. 433.

10. Expenditures

33 USCS § 1321(k) permits expenditure of sums in revolving fund established under § 1321(k) which have been recovered under § 1321(f)(4) for purpose of restoring or replacing natural resources damaged or destroyed as a result of discharge of oil or hazardous substance; no appropriations or other sums in revolving fund may be used for such purposes, nor may revolving fund be accessed for resource replacement or restoration until after sums are recovered under § 1321(f)(4). G-LMI memo 16450, 26 Nov 80, CGLB, Mar 1982.

II. PROHIBITED DISCHARGES

A. In General

11. Declaration of policies

In prosecutions under 33 USCS § 1321(b)(5), government is not required to establish effect on interstate commerce of any particular discharge or of any particular stream as legislative history of Act is laden with reports, references, and statements supporting widely accepted conclusion that water pollution is national problem severely affecting health of our people, welfare of nation, and efficient conduct of interstate commerce. *United States v Ashland Oil & Transp. Co.* (1973, WD Ky) 364 F Supp 349, 46 OGR 11, affd (CA6 Ky) 504 F2d 1317, 50 OGR 133.

Language of 33 USCS § 1321(b)(1) reinforces government's position that once discharge of oil occurs, environmental harm results, and defendant would be subject to civil liability, not abated by subsequent removal of oil from river. *United States v W. B. Enterprises, Inc.* (1974, SD NY) 378 F Supp 420.

12. Proof of violation

In prosecutions under 33 USCS § 1321(b)(5), government is not required to establish effect on interstate commerce of any particular discharge or of any particular stream as legislative history of Act is laden with reports, references, and statements supporting widely accepted conclusion that water pollution is national problem severely affecting health of our people, welfare of nation, and efficient conduct of interstate commerce. *United States v Ashland Oil & Transp. Co.* (1973, WD Ky) 364 F Supp 349, 46 OGR 11, affd (CA6 Ky) 504 F2d 1317, 50 OGR 133.

Remedial action taken subsequent to spill is totally irrelevant to determination of harmfulness under 33 USCS § 1321(b)(3). *United States v Atlantic Richfield Co.* (1977, ED Pa) 429 F Supp 830, affd (CA3 Pa) 573 F2d 1303.

Single sample is insufficient as evidentiary basis upon which civil penalty may be assessed; it is essential that all possible sources be sam-

pled. G-LMI ltr 16460/5, 31 Mar 80, CGLB, Oct 1980.

When oil sample analyses are performed, it is essential that all possible sources be sampled and where, for some reason it is not possible to do so, record must specify reason, which must be considered by Hearing Officer in his determination. G-LMI ltr 16460/17, 7 July 80, CGLB, Feb 1981.

In assessing penalty against defendant for discharge of oil in violation of 33 USCS § 1321, Hearing Officer's consideration of prior assessment of penalty for prior violations is proper notwithstanding fact that denial of liability accompanied payment of penalty. G-LMI ltr 16460/9, 23 June 1981, CGLB, April 1984.

13. —Determination of illegal quantities; "sheen" test

Predecessor to 33 USCS § 1321 and regulation promulgated thereto, which, read together, prohibit discharge of oil from ship and consider such discharge as harmful if it produces sheen on water's surface and if it does not come from properly functioning vessel engine, did not violate Fifth Amendment due process of law, as statute, when coupled with regulation, was not void for vagueness; "sheen test" in regulation promulgated pursuant to predecessor to 33 USCS § 1321 was valid basis for distinction between those oil discharges which are harmful and those which are not. *United States v Boyd* (1973, CA9 Wash) 491 F2d 1163.

Regulation (40 CFR § 110.3) establishing "sheen test" provides generally valid and useful standard and creates rebuttable presumption that any spill which causes sheen is "harmful" and therefore prohibited by 33 USCS § 1321(b)(3); however, defendant must be allowed to offer proof at statutorily mandated hearing that its spill was not harmful despite presence of sheen; "not harmful" means only that quantity spilled was de minimis and not that harmful quantity was spilled but fortunately did not actually cause harm. *United States v Chevron Oil Co.* (1978, CA5 La) 583 F2d 1357, 63 OGR 77.

Regulation [40 CFR § 110.3] establishing "sheen test" as determination of harmfulness of oil discharges does not go beyond statutory mandate of 33 USCS § 1321(b)(3) and (4). *Ward v Coleman* (1976, WD Okla) 423 F Supp 1352, 57 OGR 70, rev'd on other grounds (CA10 Okla) 598 F2d 1187, 63 OGR 115, rev'd on other grounds 448 US 242, 65 L Ed 2d 742, 100 S Ct 2636, 66 OGR 280, reh den 448 US 916, 65 L Ed 2d 1179, 101 S Ct 37.

In cases arising under 33 USCS § 1321(b)(6), proof that "harmful quantity" of oil was discharged is required and, although quantitative

estimates of size of oil spill may be useful to Hearing Officers' determination of gravity of offense, they do not, standing alone, show that discharge was in harmful quantity, and, depending on duration of discharge, type of oil spilled, size and flow in waterway, and other such factors, even large amount of oil may not cause conditions violative of regulations promulgated pursuant to 33 USCS §§ 1251 et seq. G-LMI memo 16460, 6 June 78, CGLB, Apr 1979.

Coast Guard is not authorized to determine whether given oil discharge is harmful to public health or welfare but must follow standard of 40 CFR § 110.3, establishing "sheen test" to determine harmful quantity, so where rebuttable presumption of harmful quantity is created by sheen test and is not overcome by evidence to contrary, civil penalty will be assessed, notwithstanding amount of oil discharged. G-LMI ltr 16460/8, 7 Nov 79, CGLB, Jul 1980.

14. —Discharge into "navigable waters"

Discharge of oil into unnamed tributary of creek which flowed into second creek which was tributary of Red River constituted discharge into "navigable waters" for purposes of 33 USCS § 1321 regardless of fact that spill was confined to unnamed tributary and whether or not that stream was, at time of spill, discharging water continuously into river navigable in traditional sense. *United States v Texas Pipe Line Co.* (1979, CA10 Okla) 611 F2d 345, 65 OGR 51, 52 ALR Fed 783.

33 USCS § 1321 is applicable to tributaries of navigable waters if there is continuous flow of water from point of oil spill, through any intermediate tributaries and eventually into navigable waters at specific time of oil spill. *United States v Texas Pipe Line Co.* (1978, ED Okla) 528 F Supp 728, aff'd (CA10 Okla) 611 F2d 345, 65 OGR 51, 52 ALR Fed 783.

15. —By particular violator

There is sufficient evidence that oil spill is caused by particular vessel where comparison of oil samples taken from all vessels in area with sample from spill eliminates all but one vessel as source of spill; majority of experts agree that minor differences in chromatograms used to analyze and compare oil samples may be attributed to "weathering." G-LMI ltr 1940/7, 2 June 80, CGLB, Feb 1980.

Civil penalty assessment for violation of 33 USCS § 1321 cannot be upheld where only evidence identifying particular vessel as source of oil discharge is dual test oil sample analysis conducted by field laboratory; in absence of other corroborating evidence, where analysis is only means of identifying source of discharge,

Central Oil Identification Laboratory analysis is necessary. G-LMI ltr 16460/5, 7 Nov 79, CGLB, Jul 1980.

B. Notification of Discharge

1. In General

16. Generally

Statutory terms of 33 USCS § 1321(b)(5) are neither vague, highly technical nor obscure and give adequate notice to persons in charge of onshore oil facilities that failure promptly to notify governmental agency concerned with navigable waters or environmental protection about substantial oil spill will subject them to potential criminal liability. *United States v Kennecott Copper Corp.* (1975, CA9 Ariz) 523 F2d 421.

17. Who must be notified

Information was defective in alleging failure of defendant to notify Environmental Protection Agency of oil spill at time when notice to Environmental Protection Agency was not required by government rules and regulations pertaining to such matter. *United States v Messer Oil Corp.* (1975, WD Pa) 391 F Supp 557, 51 OGR 597.

18. Persons responsible for notifying

Truck driver who delivered oil was not "in charge" of on shore facilities within meaning of 33 USCS § 1321(a)(10). *United States v Mackin Constr. Co.* (1975, DC Mass) 388 F Supp 478.

Annotations:

Construction and application of provision of Federal Water Pollution Control Act (33 USCS § 1321(b)(5) and similar predecessor, formerly designated as 33 USCS § 1161(b)(4)) requiring person in charge of vessel, or onshore or offshore facility, to notify federal agency of prohibited discharge from such vessel or facility. 17 ALR Fed 804 (see, especially, § 3 as to "person in charge").

19. —Corporations

Corporation which had capacity to prevent and abate damage through its direction of activities of persons controlling mechanisms causing pollution must be regarded as "person in charge" for purpose of 33 USCS § 1161 (renumbered 33 USCS § 1321) requiring that person in charge notify government of discharge of oil from facility into navigable waterway. *United States v Mobil Oil Corp.* (1972, CA5 Tex) 464 F2d 1124, 17 ALR Fed 796.

Corporation is no less "in charge" of oil facility than is its employee and corporation cannot argue that government failed to prove corporation was "in charge" of facility at time of

spills, and had knowledge of their occurrence, because employee of corporation, who notified neither Coast Guard nor EPA, was in actual charge and no officer or director of corporation had knowledge of spill prior to determination by Coast Guard of spill's origin. *Apex Oil Co. v United States* (1976, CA8 Mo) 530 F2d 1291, cert den 429 US 827, 50 L Ed 2d 90, 97 S Ct 84.

Corporation is "person in charge" within meaning of predecessor to 33 USCS § 1321's notification of discharge provision. *United States v United States Steel Corp.* (1972, DC Pa) 4 ERC 1641.

20. Time of notification

Where oil spill occurred on May 27, 1973, District Court would assume arguendo, under circumstances of case, that failure to notify federal authorities prior to 11 a.m. on May 29 was not immediate notification as required by Act; word "immediate" must be interpreted in light of circumstances of each particular case. *United States v Messer Oil Corp.* (1975, WD Pa) 391 F Supp 557, 51 OGR 597.

2. Immunity

21. Generally

There was insufficient evidence for defendant to invoke immunity for reporting "oil spill" under predecessor to 33 USCS § 1321 where defendant was indicted for discharging refuse tank containing titanium dioxide and other substances into tributary of Hudson River in violation of 33 USCS § 407 as result of employee's negligence in failing to close water tap of reserve tank prior to weekend. *United States v American Cyanamid Co.* (1973, SD NY) 354 F Supp 1202, aff'd (CA2 NY) 480 F2d 1132.

Annotations:

Construction and application of provision of Federal Water Pollution Control Act (33 USCS § 1321(b)(5) and similar predecessor, formerly designated as 33 USCS § 1161(b)(4)) requiring person in charge of vessel, or onshore or offshore facility, to notify federal agency of prohibited discharge from such vessel or facility. 17 ALR Fed 804 (see, especially, § 4 as to notification immunizing party).

22. Persons claiming immunity

Federal regulation and legislative history expressing government concern with possible reports of de minimis pollution are strong enough to require that defendant seeking immunity under 33 USCS § 1161 (superseded by 33 USCS § 1321) show that specific reports were made by, under direction, or with consent in each specific instance of individual who could reasonably be said to be "in charge" though not necessarily in

sole charge or highest ranking individual at site. *United States v General American Transp. Corp.* (1973, DC NJ) 367 F Supp 1284.

Barge owner was not entitled to immunity under 33 USCS § 1321(b)(5) in government prosecution for alcohol spill which barge owner had reported to Coast Guard since alcohol had not been designated hazardous substance and until substance is designated as hazardous by administrator, provisions of § 1321 apply. *United States v Ohio Barge Lines* (1975, WD La) 410 F Supp 625, aff'd without op (CA5 La) 531 F2d 574.

23. —Corporation

Corporate owner is person in charge of facility it owns and operates, and is thus entitled to statutory immunity under former 33 USCS § 1161 (predecessor to 33 USCS § 1321); accordingly, government may not, in prosecution of offenses defined by Rivers and Harbors Appropriation Act of 1899 [Refuse Act of 1899] (33 USCS §§ 407, 411) rely upon information obtained solely from notice mandated by § 1161 or from exploitation thereof. *United States v Mobil Oil Corp.* (1972, CA5 Tex) 464 F2d 1124, 17 ALR Fed 796.

Reference in predecessor to 33 USCS § 1321 to any person in charge of on shore facility does not refer only to natural persons and corporation which complies with statute by giving immediate notice of discharge is entitled to rely upon further provision which precludes use of such notification or information flowing therefrom against any "such person" in any criminal case except one involving perjury for giving false statements. *United States v Republic Steel Corp.* (1974, CA6 Ohio) 491 F2d 315.

The grant of immunity by predecessor to 33 USCS § 1321 to persons notifying the agency of the improper discharge is intended to be immunity to the individual person, not to a corporation. *United States v Skil Corp.* (1972, ND Ill) 351 F Supp 295.

Corporate owner-operator charged with violation of 33 USCS §§ 407 and 411 was a "person in charge" within meaning of predecessor to 33 USCS § 1321, and was entitled to immunity provided. *United States v Reynolds Metals Co.* (1973, SD Tex) 359 F Supp 338.

Immunity provided for by 33 USCS § 1161(b)(4) (superseded by identical section 33 USCS § 1321(b)(5)) extends to corporations as well as natural persons, as reading of face language of statute leads to conclusion that corporations were meant to be included in term "person in charge." *United States v General American Transp. Corp.* (1973, DC NJ) 367 F Supp 1284.

24. Notice sufficient to confer immunity

Court denied corporate defendant's motion to suppress evidence obtained by exploitation of such defendant's notification to proper federal agency with respect to discharged oil into non-navigable stream where such notification was not immediate and, therefore, not received pursuant to 33 USCS § 1321(b)(5). *United States v Ashland Oil & Transp. Co.* (1973, WD Ky) 364 F Supp 349, 40 OGR 11, aff'd (CA6 Ky) 504 F2d 1317, 50 OGR 133.

25. Extent of immunity

Plain meaning of immunity provision of predecessor to 33 USCS § 1321(b)(5) was that neither notification, nor information obtained as outgrowth of notification, may be used against defendant in criminal prosecution; immunity is akin to use immunity rather than to transactional immunity. *United States v United States Steel Corp.* (1972, DC Pa) 4 ERC 1641.

Immunity afforded under 33 USCS § 1161(b)(4) (superseded by identical section 33 USCS § 1321(b)(5)) is "use" immunity only; to allow such immunity to be "transactional" in scope would dangerously jeopardize objective of Water Pollution Control Act to set up deterrent against prospective polluters. *United States v General American Transp. Corp.* (1973, DC NJ) 367 F Supp 1284.

26. —Liability for civil penalty

Fifth Amendment's guaranty against person being compelled to be witness against himself, a protection expressly limited to "criminal case," is not implicated when person in charge of facility from which oil is discharged in violation of § 311 (b)(3) of Federal Water Pollution Control Act [33 USCS § 1321(b)(3)] reports discharge as required by § 311(b)(5) of Act [33 USCS § 1321(b)(5)], and such report is then used to support assessment of penalty against that person under § 311(b)(6) of Act [33 USCS § 1321(b)(6)]; proceeding for assessment of civil penalty under § 311(b)(6) is not "criminal case." *United States v Ward* 448 US 242, 65 L Ed 2d 742, 100 S Ct 2636, 66 OGR 280, reh den 448 US 916, 65 L Ed 2d 1179, 101 S Ct 37.

In action to recover \$2,500 penalty assessed by Coast Guard under 33 USCS § 1161(b)(5) [superseded by 33 USCS § 1321(b)(6)] against corporate defendant, no inquiry into civil or criminal nature of penalty was required since no constitutional right was involved and statutory language was not ambiguous; immunity provided in 33 USCS § 1161(b)(4) [superseded by 33 USCS § 1321(b)(5)] was not intended to extend immunity to civil cases regardless of their "nature" and penalty provided for in 33 USCS § 1161(b)(5) [superseded by 33 USCS

§ 1321(b)(6)) is clearly denominated as civil, forfeiture actions brought in rem under Refuse Act [33 USCS §§ 407 et seq.] are civil proceedings and do not trigger immunity provision of 33 USCS § 1321(b)(5). *United States v Le Beouf Bros. Towing Co.* (1976, CA5 La) 537 F2d 149, 55 OGR 32, reh den (CA5 La) 541 F2d 282 and cert den 430 US 987, 5% L Ed 2d 383, 97 S Ct 1688.

Use immunity provided by 33 USCS § 1321(b)(5) has no application to proceeding to assess civil penalty under 33 USCS § 1321(b)(6); in action to assess civil penalty pursuant to § 1321(b)(6), use of notice given by corporation pursuant to § 1321(b)(5) would not violate Fifth Amendment privilege against self-incrimination since corporation has no such privilege. *United States v Allied Towing Corp.* (1978, CA4 Va) 578 F2d 978.

Penalty imposed by 33 USCS § (b)(6) is remedial in nature, not subject to use immunity afforded by 33 USCS § 1321(b)(5) and may be imposed in administrative or civil proceedings in harmony with fifth and sixth amendments. *United States v General Motors Corp.* (1975, DC Conn) 403 F Supp 1151.

27. Use of evidence obtained through notice

Corporation which reports discharge pursuant to predecessor to 33 USCS § 1321 may be prosecuted under 33 USCS §§ 407 and 411, but such prosecution must be based on evidence other than notification or information obtained by exploitation of such notification; prosecution based on any other evidence is unaffected by 33 USCS § 1161(b)(4). *United States v Republic Steel Corp.* (1974, CA6 Ohio) 491 F2d 315.

Immunity provided by predecessor to 33 USCS § 1321(b)(5) was defense, and government did not have to plead its nonexistence anticipatorily in criminal information by stating that such criminal information was not based upon notification of oil discharge given pursuant to statute. *United States v Humble Oil & Refining Co.* (1971, DC Tex) 3 ERC 1226.

Burden was on government to show that evidence it proposed to use in prosecution under predecessor to 33 USCS § 1321 was not obtained from defendant's notification of oil spill or from exploitation of that notification. *United States v United States Steel Corp.* (1972, DC Pa) 4 ERC 1641.

Defendant was not entitled to separate hearing on issue whether government's evidence was sufficiently independent of defendant's reports or notice so as not to run afoul of statutory immunity, as question could be decided during course of trial. *United States v General American Transp. Corp.* (1973, DC NJ) 367 F Supp 1284.

Annotations:

Construction and application of provision of Federal Water Pollution Control Act (33 USCS § 1321(b)(5) and similar predecessor, formerly designated as 33 USCS § 1161(b)(4)) requiring person in charge of vessel, or onshore or offshore facility, to notify federal agency of prohibited discharge from such vessel or facility. 17 ALR Fed 804 (see, especially, § 5 as to necessity that government prove evidence was not obtained from statutory notification).

C. Civil Penalty

28. Generally

Penalty prescribed in 33 USCS § 1321 is civil rather than penal; fact that behavior to which its penalty applies was made punishable by criminal penalties under 33 USCS § 407 70 years before is irrelevant. *Kennedy v Mendoza-Martinez* (1963) 372 US 144, 9 L Ed 2d 644, 83 S Ct 554.

33 USCS § 1321(b)(6) is absolute liability provision which contemplates substantial penalty even in absence of fault. *United States v Marathon Pipe Line Co.* (1978, CA7 Ill) 589 F2d 1305.

Penalty prescribed in 33 USCS § 1321 is civil rather than penal. *United States v Eureka Pipeline Co.* (1975, ND W Va) 401 F Supp 934.

Principal goal of 33 USCS § 1321(b)(6) is to deter spills; Congressional purpose was to impose standard of conduct higher than that related just to economic efficiency; imposition of penalty under 33 USCS § 1321(b)(6) is civil and not criminal notwithstanding that spill was accidental, was properly reported and was cleaned up without expense to government; economic sanction of § 1321(b)(6) is reasonably calculated to deter spills and to achieve non-economic values selected by Congress. *United States v Atlantic Richfield Co.* (1977, ED Pa) 429 F Supp 830, affd (CA3 Pa) 573 F2d 1303.

Principal purpose of 33 USCS § 1321(b)(6) is deterrence of harmful oil spills. *Puerto Rico v SS Zoe Colocotroni* (1978, DC Puerto Rico) 456 F Supp 1327, affd in part and vacated in part on other grounds (CA1 Puerto Rico) 628 F2d 652, 30 FR Serv 2d 244, cert den 450 US 912, 67 L Ed 2d 336, 101 S Ct 1350.

33 USCS § 1321(b)(6) is strict liability statute, remedial as well as deterrent in nature, which contemplates meaningful penalty even in absence of fault, being designed to shift, through civil penalties, costs of oil pollution to private sector. *G-LMI ltr* 16460/8, 28 Nov 79, CGLB, Jul 1980.

29. Application

Exceptions contained in 33 USCS § 1321(f), placing liability for costs of cleaning up oil spill