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STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Our Fax Number: (907) 278-7022

FAX TRANSMITTAL LETTER

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WALTER J. HICKEL, GOVERNOR

REPLY TO: NEW ANCHORAGE PHONE (907) 269-5100

☑ 1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

☐ KEY BANK BUILDING
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

☐ P.O. BOX K— STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Charles E. Cole

LOCATION: AGO – Juneau

FAX NUMBER: 463-5295

TOTAL NUMBER OF PAGES 14 **INCLUDING COVER LETTER.**

COMMENTS: DELIVER DIRECTLY TO CHARLIE COLE

Attached is the copy of the (1) dollars/gallon demand letter and (2) Exxon-State reimbursement agreement. I am still looking for documentation

DATE SENT: 4/11/91 **TIME:** 4:43 p.m.

FROM: Craig J. Tillery
Assistant Attorney General - Anchorage

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL:

bonita nipper or Mary Deaver at (907) 269-5274.

relating to the April, 1989 [redacted] reimbursement by Exxon to the trustee for damage assessment (see MOA at Article X)

03-C5LH

COPY

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

April 25, 1989

Mr. Frank Iarossi, President
Exxon Shipping Company
800 Bell Street
Houston, Texas 77002-7426

Re: T/V EXXON VALDEZ Oil Spill

Dear Mr. Iarossi:

I recently spoke with your counsel, Mr. Serdahely, concerning the oil spill and the future legal relations between the State of Alaska and Exxon. Obviously, both the state and Exxon have a mutual interest in avoiding expensive and protracted litigation in those areas where agreements may be reached. To that end, the state is pleased that the costs-billing arrangement with Exxon is moving forward. Moreover, the state hopes that it can, in the short term, reach agreement with Exxon on a determination of interim penalties and civil assessments, and, in the long term, a final resolution of all penalties, assessments, damages and restoration. I would like the proposal made in this letter to serve as the basis for the first, cooperative step towards achieving that goal.

The state is entitled to recover civil penalties under AS 46.03.758 for the discharge of oil from the T/V EXXON VALDEZ, without regard to fault and independent of other rights of action and theories of damages. Those penalties are calculated pursuant to Department of Environmental Conservation regulations which implement the statute, and which may be found at 18 AAC 75.500 - 18 AAC 75.570. The civil penalties scheme outlined in the regulations establishes a per gallon penalty based on the sensitivity of the receiving environment and toxicity, degradability, and dispersibility of the discharge. The "base" penalty thus calculated is subject to a multiplier for,

> discharges of oil which are caused by the gross negligence or intentional act of the discharger, or when the court finds that the discharger did not take reasonable measures to contain and cleanup the discharged oil
> . . . .

AS 46.03.758(b)(2). A deduction is allowed for any oil removed from the environment under a prompt and proper cleanup operation. AS 46.03.758(f). I am proposing that Exxon make an interim pay-

ACE 1287327

03-C32LM

ment of the minimum base penalty likely to be assessed under the statute.

In order to establish that minimum base penalty, I have made certain assumptions which simplify calculations. I have assumed that 10,000,000 gallons of crude oil were spilled into a marine environment, that so far none of the oil has entered or will enter more sensitive freshwater environment, and that none of the oil has been or will be removed by Exxon. I have also assumed that the API gravity of the spilled crude is 27 degrees. Using those assumptions, the formula and resulting minimum base penalty I calculate is as follows:

	$2.50/Gallon
X	10,000,000 gallons
X	(.675 + .555 + 0.5)/3 (toxicity, degradability and dispersibility factors)
=	$14,425,000.00 approximate minimum base penalty

The regulatory basis for the formula is as follows:

$2.50:	Receiving environment per gallon factor. [18 AAC 75.520(a)(1); 18 AAC 75.570(1)]
0.675:	Toxicity factor. [18 AAC 75.540(2)(D); 18 AAC 75.570(2)(A)(ii)]
0.555:	Degradability factor. [18 AAC 75.550(2)(D); 18 AAC 75.570(2)(B)(ii)]
0.5:	Dispersibility factor. [18 AAC 75.560(2)(D); 18 AAC 75.570(2)(C)(ii)]
27 (Assumed API gravity)/30:	Multiplier for toxicity. [18 AAC 75.570(2)(A) and note]
30/27 (assumed API gravity:	Multiplier for degradability. [18 AAC 75.570(2)(B) and note]

As with any other monies owed the state as a consequence of the spill, the total penalty, including the minimum

base penalty, will accrue prejudgment interest under AS 45.45.010 at the statutory rate in effect while the money is due and owing, a rate now set at 10.5% per annum.

The state requests that your company make an immediate interim payment to the state for the minimum base penalty calculated above, with interest to date of payment, which would serve as a credit against any final sum Exxon will be determined to owe the state for damages and penalties. In requesting the payment, the state would not insist on an admission of liability or waiver of defenses on Exxon's part. The state reserves the right to recalculate the minimum base penalty as future investigation or events justify, and may alter the assumptions upon which the calculation is based. Further, the state expressly does not waive its right to pursue other remedies or penalties, including those penalties calculated using the multiplier under AS 46.03.-758(b)(2).

Immediate payment provides Exxon with at least three distinct advantages. It stops the accrual of substantial prejudgment interest on the base penalty portion of the total sums that will be owed to the state by Exxon under this statute. Second, it sends an early, clear signal from Exxon to the public, the Governor, the Alaska Legislature, Congress, and President Bush that Exxon is serious in its expressed acceptance of an element of responsibility for the consequences of the oil spill. Finally, it will be an important, first step on the difficult road of avoiding protracted litigation between the state and Exxon, enabling both parties to direct their immediate, cooperative efforts to cleaning up the spill, aiding the affected communities and people, and restoring Prince William Sound to its former pristine condition.

Sincerely,

Douglas B. Baily
Attorney General

DBB/lg

cc: Douglas J. Serdahely, Esq.
John F. Clough, Esq.

STATE OF ALASKA - EXXON SHIPPING COMPANY
EXPENSE REIMBURSEMENT AGREEMENT

The State of Alaska and Exxon Company U.S.A. (a division of Exxon Corporation) as contractor for Exxon Shipping Company, agree to the following:

1. The State of Alaska ("State") may submit invoices to Exxon Shipping Company ("Exxon") as the State incurs expenses, debts, or obligations of any type, except damage assessment expenses (collectively "invoices") due to the oil spill from the M/V EXXON VALDEZ.

2. The State may submit invoices to Exxon for direct payment to the vendor, or the State may pay the vendor or use operating funds and seek reimbursement from Exxon by filing an invoice with Exxon. "Vendor" as used here includes, without limitation, any administrative agency of the State as well as any political subdivision of the State. Subject to the terms of this agreement, overhead will be payable on an incremental cost basis as described in paragraph 8 of the "Procedures For Payments/Accounting" which is attached as Exhibit A.

3. Exxon agrees that it will, within ten (10) days from the date Exxon receives an invoice from the State, either: a) pay the invoice directly to the vendor identified by the State, if the State has not paid the invoice; b) reimburse the State, if the State has already paid the invoice; or c) notify the State that Exxon will not pay the invoice. Exxon agrees that it will process all invoices pursuant to the "Procedures For Payments/Accounting" which is attached as Exhibit A.

4. By entering into this agreement, the State does not waive, release or acknowledge satisfaction of any claim or cause of action it may have against Exxon or any other party for penalties, civil assessments, damages or costs attributable to the oil spill from the M/V EXXON VALDEZ. The State specifically reserves the right to bring any action, civil or criminal, it may have against Exxon or any other party. The State agrees that it will not include any invoice paid by Exxon under this agreement as part of any future claim or demand on Exxon.

5. By entering into this agreement, Exxon does not admit any violation of law nor does it admit liability for any penalties, civil assessments, damages or costs attributable to the M/V EXXON VALDEZ oil spill or obligate itself to pay any invoices submitted by the State. However, Exxon is obligating itself to process all such invoices submitted by the State hereunder in accordance with this agreement.

6. The State agrees that Exxon may audit the State's contracts, records and other documentation (including the State's vendors' records and documentation) associated with any expense or invoice which Exxon pays directly or for which Exxon reimburses the State. In the event that such an audit determines that Exxon has overpaid a third party vendor, the State will assist Exxon's efforts to seek recovery from the vendor, including assigning or subrogating its contractual

rights against third party vendors to Exxon to allow Exxon to identify and recover any overpayment; provided, however, that the State is not obligated to bring suit in its own name against any third party vendor. In light of the State's agreement to assist, Exxon agrees that it will not seek reimbursement from the State for any third party vendor overpayment. Exxon and the State agree to expend their best efforts to resolve by mutual agreement any overpayments made to reimburse the State's own expenses that may be revealed by audits conducted pursuant to this paragraph.

7. In the event that a court or other judicial or administrative body should determine that Exxon was not liable for any penalties, civil assessments, damages, or costs attributable to the M/V EXXON VALDEZ oil spill, Exxon's right to recover from the State or its vendors funds paid pursuant to this agreement shall be limited to that specified in paragraph six above.

8. This agreement shall be executed in two counterparts, each of which shall be an original, but both of which when taken together shall constitute one and the same instrument.

Dated:_____

EXXON COMPANY U.S.A. (A DIVISION OF EXXON CORPORATION) AS A CONTRACTOR FOR EXXON SHIPPING COMPANY

By:_____

Dated: April 21, 1989

STATE OF ALASKA

By: Douglas B. Baily
Douglas B. Baily
Attorney General

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State/Exxon Shipping Co Escrow
Reimbursement Agreement.

Exhibit A to Expense Reimbursement Agreement

PROCEDURES FOR PAYMENTS/ACCOUNTING FOR THE STATE OF ALASKA'S RESPONSE EXPENSES FOR THE M/V EXXON VALDEZ OIL SPILL

Expenses incurred by the State of Alaska as a result of the M/V EXXON VALDEZ oil spill will be processed by Exxon pursuant to the terms of the Expense Reimbursement Agreement. Exxon and the State agree to devise an accounting and payment process which promptly pays or reimburses State expenditures and which is consistent with the accounting processes of both Exxon and the State. Therefore, a Joint Financial Response Coordination Group is formed to ensure expeditious processing of invoices for State and vendors' expenditures (as defined in the Expense Reimbursement Agreement) incurred as a result of the M/V EXXON VALDEZ oil spill.

The Financial Response Coordination Group will consist of State and Exxon personnel organized to account for, process, and pay these expenditures. Participation of personnel from both organizations will: (1) facilitate prompt payments; (2) eliminate duplicate processing of documents, to the extent possible; and (3) minimize disputed costs. Further, the coordination during document processing will provide easy access, for both parties, to the appropriate decision level for items in question.

The Financial Response Coordination Group ("FRCG") will

conduct operations to account for, process, and pay for invoices for State and vendors oil spill expenditures as follows:

1. The State and Exxon will be responsible for supervising the FRCG. The FRCG will consist of Exxon's Accounting and Control Manager in Valdez and the State's representatives.
2. Exxon will provide the staff necessary to account for and process the invoices submitted by the State, as well as all materials, equipment and supplies needed to perform this accounting, review and payment process.
3. All State requests for payment will be submitted by the State's representative to the FRCG for review and processing.
4. Processing will include supporting payment or reimbursement requests by appropriate documentation such as invoices, contracts, purchase authorizations, personnel documentation, appropriate State approval for the expenditure being reviewed, or other substantiation linking the expenditure to the State oil spill response.
5. Because of the unusual nature and magnitude of the emergency that precipitated State expenditures, it has not always been possible to follow normal procurement procedures for all expenditures and obligations.

Therefore, documentation of approval by an appropriate State official, along with an invoice, will serve as adequate support for submission of items procured by means other than normal procedures. Additional State approvals may be obtained during this review and processing period. However, nothing in this paragraph shall preclude Exxon from conducting audits pursuant to paragraph six of the Expense Reimbursement Agreement.

b. Exxon may request additional justification from the State during this review and processing period. If, after appropriate decision levels have been contacted, Exxon still has objections regarding an expenditure, the amount in question will be placed in an "Adjust and Hold" status. Under these circumstances, the State may pay the expenditure and the State reserves the right to assert the expense as a claim against Exxon or any other party at a later date, pursuant to the terms of the Expense Reimbursement Agreement. Nothing in this paragraph shall preclude Exxon from making partial payment on an invoice and reserving the balance for the Adjust and Hold status.

7. Exxon and the State will develop a spreadsheet to track expenditure review information. This spreadsheet will address all payment and cost

information data specified by both Exxon and the State. The spreadsheet shall include, but is not limited to, the following:

A. Invoice information
   1. Log-in date
   2. Invoice date
   3. Vendor
   4. Payee
      a. Vendor
      b. State
   5. Invoice number
   6. Review responsibility
   7. Invoice amount

B. Review results
   1. Review date
   2. Adjust and hold
   3. Amount payable

C. Payment information
   1. Exception amount
   2. Total paid
   3. Exxon check number
   4. Check date

It is recognized that the FRCG may change the specific format of the spreadsheet from time to time, but the spreadsheet shall as a minimum contain the above information.

8. Pursuant to the terms of the Expense Reimbursement Agreement, the State may submit for reimbursement invoices for reasonable overhead costs incurred as a result of the M/V EXXON VALDEZ oil spill. For the purposes of this agreement, "overhead costs" are defined as those costs incremental to normal State operations such as overtime, temporary personnel, office equipment and supplies, travel expenses, or other out of pocket expenditures which were directly related to the oil spill.

9. Exxon shall promptly review and process payment for invoices submitted by the State in no more than 10 days from the day the invoice is received by Exxon.

10. Exxon will make expeditious payment upon State invoices, as requested by the State, by either direct payment to the vendor or the State, or by wire transfer to the First Pennsylvania Bank, Philadelphia, Pennsylvania, ABA # 031000021 (attention: Catherine Jacobs) for credit to the State of Alaska account # 881-462-6.

11. Exxon will, on a daily basis, print a hard copy of the spreadsheet described in paragraph 7 above. Exxon will on a daily basis: provide two copies of the spreadsheet to the Department of Environmental

Conservation, Valdez, Alaska; and maintain one copy at Exxon's Valdez office.

Acknowledged:

By: _____ Date: April 21, 1989

By: _____ Date: _____

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Exhibit "A" to State of Alaska/Exxon Shipping Co.
Expense Reimbursement Agreement