

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672  
7451 SENATE JUDICIARY

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

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

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

### Conclusion

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

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

For example, section 309(c)(4) of the Clean Water Act (33 U.S.C. section 1319(c)(4)) provides that substantial criminal penalties may be imposed upon any corporation or responsible corporate official that files information with Federal authorities with knowledge that the documents contain material misstatements.<sup>17</sup> In addition, criminal penalties may be imposed on any person who knowingly submits false information to any agency of the United States under 18 U.S.C. section 1001.<sup>18</sup>

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

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

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

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

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

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

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

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

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

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

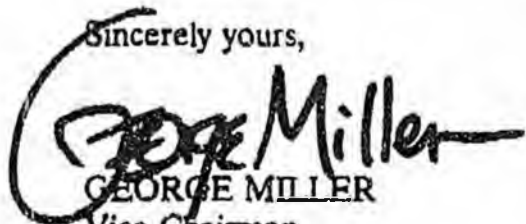
<sup>20</sup> Under Alaska law, punitive damages are awarded for the public policy reasons of punishment and deterrent when the defendant's conduct was outrageous, reckless, or malicious. In this instance, there is clear and convincing evidence that Alyeska's conduct merits the award of punitive damages.

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

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

Sincerely yours,

  
GEORGE MILLER  
Vice Chairman

cc:

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

**DRAFT**

Honorable Dave Donley, Chairman  
House Judiciary Committee  
House of Representatives  
Alaska State Legislature

February 27, 1991

663-91-0339

465-3600

Deposit and accounting for  
Exxon Valdez oil spill  
settlement proceeds

James L. Baldwin  
Assistant Attorney General  
Governmental Affairs

This responds to your letter of February 19, 1991 in which you asked two questions concerning a possible settlement of claims arising out of the oil spill caused by the grounding of the Exxon Valdez. You also requested our comments on a draft bill that purports to require review and approval of an out-of-court settlement of the state's claim against the parties responsible for the oil spill.

Both of your questions concern the attorney general's power to settle a lawsuit. State law authorizes the attorney general to perform duties "which usually pertain to the office of attorney general in a state." AS 44.23.020(b)(7). The attorney general's settlement powers are a necessary element of his recognized common law power to control the disposition of cases. In Public Defender Agency v. Superior Court, 534 P.2d 947 the Alaska Supreme Court stated:

Under the common law, an attorney general is empowered to bring any action which he thinks necessary to protect the public interest, and he possesses the corollary power to make any disposition of the state's litigation which he

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thinks best.

534 P.2d at 950 (citation omitted) (emphasis added); accord Island-Gentry Joint Venture v. State, 554 P2d 761 (Haw. 1976).

The questions you asked appear to express a concern that AS 46.08.020 may abrogate, or limit, the attorney general's common law powers to settle oil spill claims. We believe that AS 46.08.020 does not limit the attorney general's settlement powers. The attorney general has the discretion to settle state claims using remedies available under the Federal Clean Water Act (33 U.S.C. 1321). His actions are reviewable by a court but would be subject to a deferential standard of review.

To briefly answer your questions, federal law requires recoveries to be dedicated for restoration and replacement of natural resources. We believe that a settlement agreement dedicating settlement proceeds can be made consistent with the dedicated fund prohibition contained in the Alaska Constitution. This can occur because the constitution allows federally required dedications to be implemented. Alaska Const. art. IX, sec. 7.

Our reasoning is set out in the following answers to your questions. We will respond to your questions in the order in which they were asked.

1) May the governor settle the state's claims against Exxon and its subsidiaries arising from the Exxon Valdez oil spill under terms that require the defendant's to give the state money dedicated to a particular purpose, or to provide specified services or property?

The state's claim was asserted to recover for natural resource damages, including the cost of the restoration and replacement of natural resources harmed by the Exxon Valdez oil spill. The federal government also asserts that it is the steward of resources harmed by the spill and is also entitled to a recovery. Depending on the damage theory asserted, the state and federal government each have an undivided interest in harmed resources. Federal law provides that the state and federal governments should act jointly in administering damages recovered by either sovereign for such resources. 40 CFR 300.615. Any recovery under this damage theory is being considered, for the purposes of this case, as money belonging jointly to the federal and state governments. As a consequence, the governments acting together intend to establish a joint trust under the Clean Water Act (33 U.S.C.1321) to prosecute and, if determined to be in the public interest, serve as a device for settlement of the claims.

The Clean Water Act provides for disposition by state and

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federal natural resource trustees of the proceeds of any settlement. The Act expressly provides:

"Sums recovered [by the trustees] shall be used .  
. . [for restoration and resource acquisition] by  
the appropriate agencies of the federal government,  
or the state government."

33 U.S.C. 1321(f)(5). The Act is further implemented by federal regulations. These regulations authorize the deposit of recoveries in separate accounts within the state treasury or in interest bearing accounts established outside the state treasury. 43 C.F.R. 11.92. Based on this statutory and regulatory framework, we conclude, that the Clean Water Act requires the dedication of settlement proceeds as a condition of participation in a joint enforcement effort. We consider a joint enforcement effort effective and proper in this case.

The federal restrictions either take the form of a dedication imposed by federal law as a condition of exercising joint enforcement powers under the Clean Water Act or a public trust authorized under that Act. In both cases, the money may be received and expended under an exception to the dedicated fund restriction imposed by art. IX, sec. 7 of the Alaska Constitution. Section 7 provides in relevant part:

The proceeds of any [state revenue] shall not be

dedicated to any special purpose, except . . . when required by the federal government for state participation in federal programs.

After a thorough analysis of the history of the dedicated fund prohibition, this office opined that trust receipts are exempt from the dedication fund prohibition by implication. 1982 Op. Att'y Gen. No. 13 (November 30; A.G. file No. 366-649-80). A reading of the constitutional history also makes it quite likely that the framers did not intend to prohibit the dedication of certain non-tax or license related revenues, such as litigation proceeds.

Strong legal arguments can be made in support of the validity of a settlement agreement that purports to require the dedication of joint trust receipts for restoration and replacement of natural resources harmed by an oil spill.

2) May the governor settle the state's claims against Exxon and its subsidiaries arising from the Exxon Valdez oil spill under terms that do not involve deposit of the money in the state general fund, and would such terms violate AS 46.08.020.?

In our opinion, the provisions of AS 46.08.020 do not impair the governor's ability to settle claims under the Clean Water Act. As discussed above, the Clean Water Act requires that the proceeds be dedicated for the purpose of restoration. The

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custodian holds them in trust. These federally imposed restrictions on use appear to conflict with AS 46.08.020(b) which provides:

Money received by the state . . . shall be deposited in the general fund and credited to a special account called the "oil and hazardous substance release mitigation account." The legislature may annually appropriate to the fund from this account a sum equal to the amount received . . . during the calendar year preceding the legislative session in which the appropriations are to be made.

(Emphasis added). The foregoing provision is a part of a chapter of statutes that provide for financing "the expenses incurred by the Department of Environmental Conservation in the protection of the environment of the state from the release of oil or hazardous substances." AS 46.08.005. The text of AS 46.08.020 plainly does not dedicate amounts for the purpose of restoration and replacement of natural resources. To the contrary, the legislature has the discretion whether to appropriate money for a federally required purpose. The implication is plainly present that the legislature could appropriate the settlement proceeds for another purpose. In the case of a true dedication, the legislature has no discretion concerning the assignment of purpose for an expenditure. The nature and effect of a dedicated fund is analyzed in a 1982 formal opinion of the attorney general. 1982 Op Att'y Gen No. 13 (November 30; A.G. file No. 366-649-80).

There is additional evidence to explain why AS 46.08.020 does not apply to settlement proceeds under the Clean Water Act. The regulations implementing the Clean Water Act require the trustee to either deposit the proceeds in a separate account within the state treasury or in an interest bearing account if maintained outside the state treasury. 43 C.F.R. 11.92(a)(2). In both instances, the regulations contemplate a segregation and dedication for a specific purpose. Section 020(b) would require the governor to deposit the proceeds in the state general fund.

The general fund is not the equivalent of the state treasury. All public money and revenue coming into the state treasury, not specifically authorized by the constitution or by statute to be placed in a separate fund, and not given or paid over in trust for a particular purpose, constitute the general fund of the state. Navajo Tribe v. Arizona Dept. of Admin. 528 P.2d 623 (Ariz. 1975). State v. Bates, 18 S.E. 2d 346, 351 (S.C. 1941) Bd of Ed of Wyoming County v. Bd of Public Works, 109 S.E. 2d 551 (W. Va. 1959). However, a requirement to deposit dedicated receipts in the general fund does not cause them to lose their restricted status. Municipality of Metropolitan Seattle v. O'Brien, 544 P.2d 729 (Wash.1976).

We believe that it is reasonable to interpret section 020

so it does not conflict with federal law. In construing this section, we must presume that the legislature was aware of the remedies afforded by the Clean Water Act. Wik v. Wik, 681 P.2d 336 (Alaska 1984). The statutory directive to deposit recoveries set out in AS 46.08.020(b) can be interpreted to exclude proceeds that are dedicated or encumbered by trust obligations imposed by federal law.

By express reference, the deposit and accounting requirements apply only to amounts received under AS 46.08.020(a)(2) and (3). Section 020(a)(2) covers

money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific site.

It refers only to money that is received directly from a responsible party, not from a joint trust entity.

Section 020(a)(3) covers "fines, penalties, or damages recovered under AS 46.08.005 - 46.08.080 or other law." Taken out of context, it appears to cover a broad spectrum of damages. However, a careful reading of AS 46.08 discloses that only recoveries to reimburse the state for previous expenditures are addressed. The right to claim established in AS 46.08.070 is described as the power to seek "reimbursement". We presume that

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damages recovered under "other law" refers to reimbursement type damages as well. Such recoveries should be deposited in the general fund.

Amounts allocated by the joint trustees for state restoration projects would be from a source described in AS 46.08.020(a)(1). Section 020(a)(1) covers "money received from federal, state, other sources, or from a private donor." That provision describes money received from a source other than a responsible party and appears to include federal or other trust receipts that do not represent a reimbursement for past expenditures. The joint trust could be considered a grant of money to a state agency for restoration purposes. Amounts from this nonstate source are not expressly directed by section 020(b) to the general fund of the state for possible appropriation to the hazardous substance release response fund, nor are "joint" as opposed to "state" recoveries. This treatment is consistent with the status of trust receipts and dedicated funds discussed earlier in this memorandum.

In summary, we conclude that settlement recoveries are not required to be deposited in the general fund of the state. The provisions of AS 46.08.020 can be interpreted to allow for the receipt and expenditure of settlement proceeds held in trust under

the Clean Water Act.

We next turn to the validity of a separate trust fund that may be established to implement a settlement under the Clean Water Act. As mentioned above, the state and federal governments may agree to proceed under the Clean Water Act to create a joint trust to administer the proceeds of a settlement. The settlement agreement may prescribe the elements of this trust or there may be a separate trust agreement that describes in detail the powers and duties of the trustees. The joint trustees would be a federal natural resources management agency (43 C.F.R. 11.14 (rr)) and state officials designated by the governor (42 U.S.C. 9607(f)(2)(B)).

A difficult question concerns whether there is sufficient authority for the attorney general to take a part in the creation of a joint trust fund. Generally it is held that special funds must be established by law. State v. West, 145 P. 15 (Wash. 1914). However, we believe that the joint trust could be formed under authority expressly granted by the Alaska Constitution. Article XII, sec. 2 provides:

The state . . . may cooperate with the United States . . . on matters of common interest.

The attorney general could agree to form an intergovernmental trust

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entity to solve the common dilemma presented by the Exxon Valdez oil spill. Some may argue that the joint cooperation provision of the state constitution may only be implemented by law. However, it must be remembered that the constitution is to be construed as self-executing "whenever possible." Alaska Const. art. XII, sec. 9.

If the relationship between the state and federal government is to be truly "cooperative," it is reasonable to assume that neither the state legislature nor the Congress has absolute veto power over deposit in the joint trust or expenditure of settlement proceeds from the joint trust. The joint trust would hold the settlement proceeds as an asset of the trust. As jointly recovered trust receipts, the state or federal treasuries could not claim absolute title to them. Beyond these basic legal concepts it would be difficult to foretell the exact nature and effect of a joint trust created under the Clean Water Act. It is possible that private trust law will be used to construe the rights and obligations of the joint trustees and the beneficiaries. In Weiss v. State, 706 P.2d 681 (Alaska 1985), the Alaska Supreme court applied private trust law principles to resolve legal disputes concerning the operation of a public land trust.

In a memorandum attached to your February 19 letter,

legislative counsel argues that a state agency cannot expend trust receipts without a valid appropriation. There are numerous cases from other states holding that no appropriation is needed to expend trust receipts. See, e.g. Colorado General Assembly v. Lamm, 700 P.2d 508 (Colo. 508); See also Navajo Tribe v. Ariz. Dept. of Administration 528 P2d 623 (Ariz. 1975); but see Sharpp V. Sloan, 391 A2d (Pa. 1978) (custodial funds must be appropriated or returned). The practice in Alaska for the past 14 years has been to appropriate the majority of federal, trust and other custodial funds.

However, there are notable exceptions to this practice. For example, refunds of overpayments of state income tax were not appropriated before disbursed. The Alaska Supreme Court has not interpreted art. IX, sec. 13 of the Alaska Constitution to determine how the appropriation requirement imposed there applies to expenditure of trust or custodial receipts. We believe that the result of a supreme court decision on this issue would be too close to predict. However, we believe that the legislature could not appropriate the settlement proceeds for a purpose other than restoration or replacement of natural resources damaged by the Exxon Valdez Oil Spill. Nor may the money be expended in a manner that is contrary to a restoration plan prepared by or at the direction of the joint trustees. 43 C.F.R. 11.92(c).

3. Comments concerning draft legislation purporting to regulate the attorney general's settlement powers.

We have reviewed a work draft for a bill relating to agreements, compromises, and settlements entered into by the state in the Exxon Valdez oil spill litigation. This bill would require the administration to submit to the legislature for review a settlement that arose out of the March 1989 grounding of the Exxon Valdez. The bill purports to give the legislature the power to prohibit the settlement before it takes effect.

We believe that this bill contains serious legal defects. Under our constitutional system there must be a separation of powers between the branches of government. The Alaska Supreme Court has held that the separation of powers doctrine, though not expressly set out in the Alaska Constitution, is clearly implied. Public Defender Agency v. Superior Court, 534 P.2d 947 (Alaska 1975). If the legislature has the power to prohibit a specific settlement, it may be improperly attempting to obtain executive or quasi-judicial power. The legislature would be supervising the decision making of executive officers. The ability to prohibit a settlement amounts to a veto power.

There are several ways to illustrate that such a retained

veto power constitutes the exercise of an executive power. No one doubts that it would be unconstitutional for the legislature to require the governor to appoint a legislator to negotiate a settlement agreement. See, Stockman v. Leddy, 129 P. 220 (Colo. 1912) (legislative committee improperly given executive duties in the enforcement of statute). There is little difference between being the party doing the negotiating and having the power to cancel the resulting agreement. The attorney general becomes as much an agent of the legislature as does the legislator who is appointed to negotiate.

Assumption of the power to review and prohibit a settlement agreement frustrates the constitutional objective of making the executive branch accountable to the people for the execution of the law. Under the draft bill, accountability would be spread among the various legislators who vote one way or another on the question of prohibition of a settlement.

The draft bill would cause a serious blow to the ability of the attorney general to settle the case in point. The legislature must abide by its delegation of authority until that delegation is altered or revoked. INS v. Chadha, 462 U.S. 919, 955 (1983). The legislature may, as a general proposition, prescribe the standards under which the attorney general may settle cases.

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However, by failing to adopt real criteria for the settlement of this case, there can be no certainty that a negotiated settlement will remain binding on the parties. Essentially, the only real criteria remaining is whether a motion to enact a prohibition of the settlement can command a majority vote in each house of the legislature. The legislature cannot delegate a power, while retaining significant control over how the power is exercised. That type of control is executive in nature and is inappropriate.

Another serious defect of this bill is the notion that the legislature could pass a bill prohibiting a specific settlement. We do not know what form a bill prohibiting a settlement will take. Certainly, it must focus on only a single settlement. By doing this, it becomes special legislation. The legislature cannot as a general rule enact a special act "if a general act can be made applicable." Alaska Const. art. II, sec. 19; Section 1 of the draft bill contains little more than conclusions to justify special treatment for the Exxon Valdez spill settlement. Persuasive justification for special treatment must be provided by the legislature. Abrams v. State, 534 P.2d 91 (Alaska 1975). (Enactment creating Eagle River Chugiak Borough invalidated because other communities were similarly situated). Settlement of the mental health land trust dispute is no less important for having "far reaching effects on the welfare of the people of the

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state, on disposition of state funds, and on the status of large areas of state land." Other equally important oil and gas taxation cases also come to mind.

A question involving a possible violation of the special legislation prohibition must be analyzed using the rational basis test applicable to nonsuspect classifications challenged under the equal protection doctrine. State v. Lewis, 559 P.2d 630 ( Alaska 1977). It is presumed that the same nondeferential, ends versus means test applied in Isakson v. Rickey, 550 P2d 359 (1976); will also apply in resolving a special legislation claim. To satisfy this test, the legislature must rigorously develop a detailed legislative history supporting the reasons why the Exxon Valdez settlement warrants special legislation. The findings and purpose clauses of the work draft do not contain sufficient material to satisfy the heightened scrutiny of the state equal protection test for validity. Further, we doubt that it is possible to make a convincing case for such special treatment.

We hope that the foregoing memorandum adequately responds to your questions and will assist the House Judiciary Committee in its deliberations concerning the work draft bill.

JLB:jr

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Our Fax Number: (907) 278-7022

### FAX TRANSMITTAL LETTER

WALTER J. HICKEL, GOVERNOR

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FROM: Barbara Herman  
Assistant Attorney General - Anchorage

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## MEMORANDUM

State of Alaska

Department of Law

TO: Douglas Baily

DATE: March 20, 1991

FILE NO:

TEL. NO: 269-5274

SUBJECT: Dismissal of Case Against  
the State

FROM:

*BH*  
Barbara Herman  
Assistant Attorney General  
Oil Spill Litigation Section - Anchorage

VIA FACSIMILE  
(465-3805)

You requested information concerning the lawsuits filed against the state and the circumstances under which those cases were ultimately dismissed. John Hanson and Chuck Ray sued the state on behalf of Whittier Seafood, Inc., F/V Debra Lee, Inc. and F/V Dew Drop Inc. on April 4, 1989. The State was dismissed as a defendant on June 23, 1989. Hansen also sued the State on behalf of Martin and James Goreson on March 28, 1989 and that suit was dismissed on June 23, 1989.

Threats, not promises, forced the dismissals. We simply told Hanson and Ray, as well as all other plaintiffs' counsel, that the state was not willing to share work product and otherwise cooperate with private plaintiffs in prosecuting the case as long as those same plaintiffs were suing the state. Although Hanson made a number of outrageous demands (i.e., finance and scientific consulting firm of his choice, and provide unlimited, direct access to state employees) in exchange for dismissing the lawsuits, we refused to negotiate. Ultimately, members of the plaintiffs' court appointed executive committee were successful in persuading Hanson and Ray to dismiss the cases.

BH:bkn

cc: Charlie Cole, Attorney General

ONE HUNDRED SECOND CONGRESS)

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## U.S. House of Representatives Committee on

### Merchant Marine and Fisheries

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

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March 26, 1991

Mr. Dick Thornburgh  
 Attorney General of the United States  
 Department of Justice  
 Constitution Avenue and Tenth Street, N.W.  
 Washington, D.C. 20520

Dear Mr. Thornburgh:

We are writing to re-state our interest in obtaining information concerning the recently negotiated proposed settlement of certain civil and criminal liabilities resulting from the EXXON VALDEZ oil spill.

We understand that your Department is currently preparing a summary of information describing and quantifying the scope and severity of injuries to natural resources caused by the spill and that this summary will soon be available to the Committee and the public.

We also request that documents, studies and memoranda be made available to us for the purpose of allowing us to make an informed judgment about the reasonableness of the settlement that has been reached. These materials need not include raw scientific data, but they should include all documents summarizing or estimating the dollar value of injuries done to natural resources by the spill and the costs of restoring those damages. If requested, we will agree to maintain the confidentiality of these materials. We ask that the materials be provided no later than the close of business on Thursday, March 28.

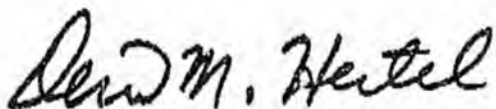
March 26, 1991  
Page Two

If you have any questions about these requests, please let me know or ask a member of your staff to contact Bill Woodward or Will Stelle of the Subcommittee staff at 226-3533.

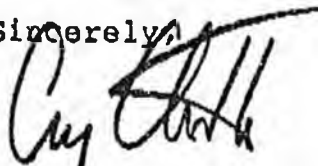
We look forward to your continued help and cooperation.

With kind regards.

Sincerely,



Dennis E. Hertel, Chairman  
Subcommittee on Oceanography  
and Great Lakes and the  
Continental Shelf



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

cc: Mr. John Knauss, Administrator  
National Oceanic and Atmospheric Administration

Baily

*Charles Hamel*

101 DUANE STREET  
ALEXANDRIA, VIRGINIA 22304  
TEL. 703/549-0594

February 12, 1991

The Honorable William K. Reilly  
Administrator  
United States Environmental Protection Agency  
Washington, D.C. 20460

The Honorable Richard L. Thornburgh  
The Attorney General  
United States Department of Justice  
Washington, D.C. 20530

RE: EXXON TANKERS CONTINUED VIOLATIONS OF THE CLEAN  
WATER ACT, AND POLLUTION OF PRINCE WILLIAM SOUND

Gentlemen:

Valdez community leaders, Cordova fishermen, and Region Ten EPA officials have urged me to present new evidence that EXXON is illegally dumping toxic wastes in Valdez Harbor, Prince William Sound.

I had intended to present the new evidence at my upcoming Evidentiary Hearing. Administrative Law Judge Thomas B. Vost has been designated to preside at the Hearing granted me by EPA Regional Administrator Dana Rasmussen.

We believe it is important to bring these violations of the Clean Water Act to your attention immediately in view of the increasing toxic impairment of the Harbor and Prince William Sound from these illegal practices.

And we also believe that these EXXON violations must be reviewed in conjunction with your ongoing EXXON VALDEZ Spill settlement negotiations.

The evidence comes directly from the Tanker Wheel House logs, the Chief Mate's Oil Record Books, the Engine Room Logs, the Engine Room Oil Record Books, the Mate's Relief Note Files, the Engineer's Relief Note files regarding these "pollutants" and the Cable/Fax traffic instructions, from EXXON Shipping Operations Department.

It is the practice of EXXON Shipping to transfer toxic wastes originating in California, via EXXON lightering tankers/barges, to Valdez bound EXXON vessels. These liquid wastes, are diluted and disguised in the ballast water

Deilly, The Honorable William K.  
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of EXXON's Alaska bound tankers. Much of the water soluble concentrations of chemicals, corrosive solvents, heavy metals, and toxic aromatic hydro-carbons (carcinogens) are ultimately disposed of, undetected, into Prince William Sound through ALYESKA (and EXXON's) Ballast Water Treatment (BWT) facilities.

On August 4, 1988, EXXON ordered the transfer of 8,000 tons of toxic wastes, in San Francisco Bay, from the EXXON GALVESTON tanker to the EXXON VALDEZ, diluted as part of her 21,203 tons of sea water ballast. The illegal disposal occurred at Valdez, Alaska, on August 14, 1988.

The EXXON GALVESTON sails between the Benicia Terminal and San Francisco Bay area as a lightering tanker. It is EXXON's practice to store wastes, originating in California, in the EXXON GALVESTON for transshipment to Alaska. Indeed, the EXXON GALVESTON herself, prior to dry-docking in 1987 and again after the "Spill," was cleaned and vapor-freed by the use of tons of highly corrosive chemicals (because she lacks the usual hot water and Eutter-Worth cleaning systems). The resultant tons of toxic chemical sludge were disposed of by dilution in the ballast water of Alaska bound EXXON tankers and dumped in Valdez, disguised as sea water.

In addition, EXXON BAYTOWN, EXXON VALDEZ, and her sister ship, EXXON LONG BEACH continually and illegally dump their peculiar on-board created toxic waste at Valdez. These three, the only EXXON diesel powered vessels, generate tons of highly toxic sludge from their diesel fuel filters during each voyage. These vessels are provided with special sludge storage tanks connected to dedicated piping to the deck for shore transfer and legal disposal. But EXXON had the piping reconfigured to allow pumping into the ballast water to evade costly Federal and California toxic waste disposal statutes.

For submission at the Hearing, we have computerized the records (date and point of original ballast, date of discharge to the BWT, the Master, the Chief Mate, etc) of all voyages, for the past three years, of the EXXON BAYTOWN, EXXON BENICIA, EXXON BOSTON, EXXON HOUSTON, EXXON JAMESTOWN, EXXON LONG BEACH, EXXON NEW ORLEANS, EXXON NORTH SLOPE, EXXON PHILADELPHIA, EXXON SAN FRANCISCO and EXXON VALDEZ.

On March 27, 1988, my attorneys served on your predecessors, Administrator Lee M. Thomas and Attorney General Edwin Meese, III, "60 Day Notice of Intent" to commence action in a District Court of the United States regarding

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Page Three

violations of the EPA NPDES Permit issued to the Owners/Permittees \*\* of the Valdez BWT Facility. The Cordova District Fishermen United joined in this action identifying improper operation, violations of the Clean Water Act, and the serious pollution of Prince William Sound.

Separately, my attorneys notified Messrs. Thomas and Meese of former ALYESKA technicians and officials' testimony that the contaminants, chemicals, and toxic wastes were diluted and concealed in tanker ballast water for ultimate illegal disposal into the receiving waters of the "Sound".

Our evidence caused EPA to issue numerous Compliance Orders to correct the violations.

These Orders were personally implemented by EXXON's Mr. Craig Rassinier, on loan to Alyeska in Valdez (but continuing on EXXON Payroll). Later that same year, Mr. Rassinier returned to Houston as Assistant to EXXON Shipping President Frank Iarossi for Tanker Operations including responsibility for Valdez BWT liaison and environmental compliances.

Coincidentally, EXXON USA's Mr. Darrell Warner was also deeply involved as Vice-Chairman and Chairman of the Owner Committee \*\* through 1989. He never saw the protracted legal controversies with EPA regarding these compliance orders.

Through these compliance orders, EPA was misled by EXXON, et al., into believing that extraneous pollutants were no longer being concealed in ballast water. EPA specifically defined tanker ballast and bilge water, in its Compliance Orders and the NPDES Permit, as:

"Ballast water means harbor, river, and seawater added to tankers' cargo tanks to maintain proper ship stability when not loaded with cargo."

"Bilge water means water which collects in the lower internal parts of a tanker's machinery spaces and which may be contaminated with oil, grease, and/or cleaning agents."

---

\*\* EXXON, ARCO, BP, SHELL/BP, MOBIL, PHILLIPS, UNION,  
AMERADA HESS, AND ALYESKA PIPELINE SERVICE COMPANY

Reilly, The Honorable William K.  
Thornburgh, The Honorable Richard L.  
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NOTE: Additional language provides for oil contaminated slop tank water (repeat water) and rainwater/deck drainage from the tanker's deck which is routed to the slop tanks only while in port, (decanted to ballast water).

Gentlemen, ANY OTHER SUBSTANCES, CONTAMINANTS, WASTES MIXED WITH BALLAST WATER ARE NOT AUTHORIZED. INTRODUCTION OF ANY UNAUTHORIZED POLLUTANTS INTO BALLAST IS NOT PERMISSIBLE UNDER THE CLEAN WATER ACT AND/OR THE TOXIC SUBSTANCES CONTROL ACT (TOSCA).

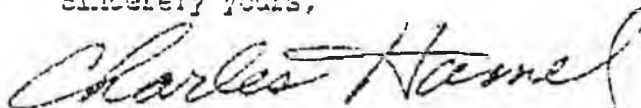
EXXON has never provided the few paragraphs of its Permit, with regard to ballast water restrictions, to the EXXON tanker Masters, Mates, Engineers, and Pumpmen. Nor were these Mariners apprised of the EWT Facilities' limitations and resultant environmental harm. The Mariners believed that it was permissible to move EXXON's California wastes on EXXON's tankers to EXXON's partially owned and operated EWT Facility. Should a Federal inquiry become necessary, I hope that all cooperating Mariners will be assured immunity.

The Alyeska Technical Advisory Group (of scientists) was recently appointed by Federal/Alaska State agencies. Their intimate familiarity with this facility can readily assess for your agencies the additional harm to the waters and marine creatures of this already "Toxic Impaired" Port Valdez (as designated by the State of Alaska under the Clean Water Act).

There is no basis for concluding that the operating practices of EXXON Shipping, giving rise to these violations, have been abandoned.

Certainly, before any "Restoration" negotiations are completed, EXXON should show its "good faith" by terminating the operating practices of EXXON Shipping which are increasing the "Toxic Impairment" of Prince William Sound.

Sincerely yours,



Charles Hamel

Reilly, The Honorable William K.  
Thornburgh, The Honorable Richard L.  
February 12, 1991  
Page Five

cc: Restoration Fund Trustees for Natural Resources Damaged  
by the EXXON-Alyeska Oil Spill:

The Honorable Manuel Lujan, Secretary of Interior

The Honorable Clayton Yeutter, Secretary of Agriculture

The Honorable John Knauff, Under Secretary of Commerce

The Honorable George Miller, Vice Chairman, House Interior Committee

The Honorable Walter J. Hickel, Governor, State of Alaska

The Honorable Charles Cole, Attorney General, State of Alaska

Mr. Lawrence G. Rawl, Chairman, EXXON Corporation

EXXON Board of Directors Investigation Committee  
c/o EXXON Corporate Secretary:

Mr. Jeff Hay, Committee Chairman

Sir Hector Laing

Dr. John Steele

Mr. Phillip E. Lippincott

Ms. Dana Rasmussen, Administrator, E.P.A. Region Ten, Seattle

The Honorable Robert S. Mueller, Assistant Attorney General,  
Criminal Division

The Honorable Dick Stewart, Assistant Attorney General,  
Environment and Natural Resources Division

The Honorable Jay Kertula, State Senator, State of Alaska (Prince William  
Sound)

The Honorable Curt Menard, State Senator, State of Alaska (Prince William  
Sound)

Mr. Eric Olsen, National Wildlife Federation



# Alaska Center for the Environment

519 West 8th Avenue, Suite 201 • Anchorage, Alaska 99501 • (907) 274-3621

April 24, 1991

Senator Rick Halford  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99801

Dear Senator Halford:

The following comments are submitted on behalf of the Alaska Center for the Environment (ACE) regarding the proposed Exxon Valdez criminal and civil settlement agreements. ACE greatly appreciates the work done by the House and Senate Special Committees on the Exxon Valdez Settlement to provide opportunities to the public to testify before the Legislature regarding the settlement. As stated in verbal testimony, ACE considers the settlement presented to the people of Alaska by Exxon, the Governor, and the federal government to be flawed irreconcilably as currently proposed.

## **Release of Economic and Scientific Spill Data**

ACE finds it ludicrous to be asked to evaluate the adequacy of the settlement without first being given the opportunity to review the biologic and economic study data measuring natural resource damages to Prince William Sound. Public monies paid for that data, and the public has a right to it. Attorney General Cole's argument that the spill data should not be released because it could potentially be used against the state in a lawsuit is horrifying in terms of public policy. If indeed the state was party to events leading to or causing improper response to the Prince William Sound spill (e.g. approval of a faulty spill contingency plan, failure to inspect response equipment, etc.), then the public has a right to know where the flaws were in order to evaluate how to correct them before a future spill occurs.

Review of the spill data is needed not only to evaluate the settlement, but also to help direct efforts towards restoration of Prince William Sound and prevention of future spills. How can we know where restoration is needed most, or what ongoing studies are needed without review of the spill data? Equally as important, little is currently known in "dollar for dollar" terms about the value of preventative measures compared to the costs of spill response and natural resource damages. The data from the Exxon Valdez spill could help provide answers to some of these questions. It would truly be a tragedy if another spill like the Exxon Valdez occurred in Alaska tomorrow because, for example, the arguments for prevention were outweighed by industry resistance to expending the upfront capital needed for a double-hulled tanker, or because the state did not want to pay the costs of maintaining adequate staffing of the Oil Spill Response Office in the Department of Environmental Conservation.

The summary of federal spill data recently released is not enough. Economic analysis is not included in the summary, and the report plainly states that it is "preliminary" and "available data are not fully analyzed and interpreted." The rest of the federal scientific and economic data, in addition to the state studies, must be released in order to be of value.

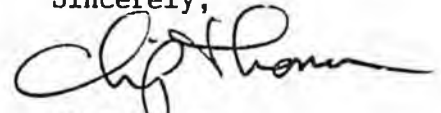
April 12, 1991

Alaska State Legislators  
Pouch V  
Juneau, Alaska 99801

Dear Legislator,

Attached is my submitted testimony to U.S. District Judge Holland on the proposed settlement of the federal and state charges against the Exxon Corporation, Exxon Shipping, and Alyeska Services Corporation. I hope you take the opportunity to review these comments and consider either new settlement terms or the pursuit of original and new charges through the court system, both federal and state. These are extremely important issues which, if allowed to be settled in present form, will only reinforce the understanding in Congress and the nation as a whole that Alaskans are willing to sacrifice the environment and the trust of many state residents for a very small monetary deposit in the treasury. Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chip Thoma".

Chip Thoma

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
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### **Public Participation**

The public has been given no opportunity to participate in decisions about how settlement monies would be spent, were the settlement approved. The Trustees Council thus far has met behind closed doors, and has made no move towards soliciting public input on this matter. ACE would like to see the money spent on 1) purchase of timber rights along spill-affected coastlines to prevent further damage to these areas, 2) other restoration activities, and 3) ongoing studies of spill impacts in Prince William Sound.

ACE is disturbed to hear the Trustees Council part from the state administration's long stated intention to use the settlement monies to purchase timber tract lands. The statements against purchase of timber rights by members of the Trustees Council came forth despite the clear public support for timber buy-backs expressed in the legislative hearings on the settlement, and is further evidence of the Council's oblivion to public concerns.

### **Deterrent Value of Settlement**

ACE is extremely pleased with Judge Holland's ruling that the \$100 million fine required of Exxon in the proposed criminal settlement is inadequate. A criminal penalty should both reflect the enormity of the crime committed by Exxon and should act to deter further crimes of this sort. The settlement fashioned by Exxon and the state and federal administrations accomplishes neither of these goals.

The entire settlement package clearly fails to send a message to polluters that egregious environmental crimes are unacceptable and will not be tolerated. The message it does send, however, is that polluters can make deals behind closed doors and buy their way out of messy pollution problems-- including the largest oil spill in North America.

### **Alyeska's Release from Culpability**

ACE objects to the release of Alyeska Pipeline Service Company and its owner companies from any criminal charges, civil penalties or administrative penalties in the criminal plea, and release from natural resource damages in the civil settlement. Alyeska's failure to comply with the oil spill contingency plan in effect on March 24, 1989 significantly compounded the environmental damage that eventually occurred. According to material presented by Rep. George Miller, U.S. House of Representatives, in his letter to Judge Holland and Judge Sporkin dated April 8, 1991, Alyeska and its owners had advance knowledge of the company's inability to respond to an oil spill in Prince William Sound, and failed to take action to correct that situation. It is clearly not in the public interest for the state and the federal government to waive their rights to pursue charges against Alyeska for the Exxon Valdez oil spill.

Because of the major flaws inherent in the Exxon Valdez settlement agreement, the Alaska Center for the Environment strongly urges you to reject the settlement. We encourage you to consider these concerns and work to avoid the reemergence of the same problems in any potential future settlement proposals. Thank you for considering these comments.

Sincerely,

*Sue Libenson*  
Sue Libenson  
Executive Director

*fu*

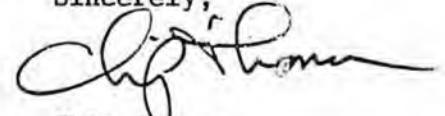
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Sincerely,



Chip Thoma

TO: Honorable H. Russel Holland  
United States District Judge  
U.S. District Court  
222 W. Seventh Avenue, No. 4  
Anchorage, Alaska 99513

April 10, 1991

RE: A 90 - 015 CR

FR: Theodore P. Thoma  
#2 Marine Way  
Juneau, Alaska 99801

RE: CRIMINAL PLEA BARGAIN PROCEEDINGS  
concerning EXXON CORPORATION, EXXON SHIPPING, ALYESKA SERVICES

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

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

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

Sandra Tavanis Cesarini  
6621 Fairweather Drive  
Anchorage, Alaska 99518  
907-344-0519  
fax 349-7261

April 17, 1991

Re: PROPOSED EXXON SETTLEMENT

Allow me to introduce myself. My name is Sandra Cesarini. I am co-founder of a large seafood processing company in this state. I am not now, nor have I ever been, "anti-business". I have been an active member in virtually every local and statewide pro-development organization in Alaska. However, as a legitimate victim of the oil spill, I cannot allow the settlement now under consideration to be accepted without voicing my heartfelt opposition.

I believe that Governor Hickel and Attorney General Cole worked diligently and sincerely in what they perceived to be the best interest of the State. I have personally been in negotiations with Exxon and know full well the difficulties involved. I understand the pressures of closed door negotiations. Considering the additional complication of Federal involvement (and agendas) in the negotiations, the Governor and Attorney General should be commended for their good faith efforts.

None-the-less, in reviewing the new information on Alyeska's culpability, as well as the repercussions that the proposed Exxon settlement has on third party (private) plaintiffs, I believe you will agree with me that serious reconsideration of the terms of this settlement is necessary.

The State of Alaska, until now, has stood squarely on the side of its injured citizens, proclaiming the need for responsible development yet seeking to insure the negligent parties bore full responsibility for their actions. Now, in the midst of bitter litigation and in light of the most recent revelations, the settlement proposal seems to put the State of Alaska in bed with the guilty parties. In the eyes of the third party plaintiffs and Congressional leaders who will determine the fate of ANWR, this settlement transforms Alaska from a leading plaintiff into just another defendant.

# **CORRECTION**

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

TO: Honorable H. Russel Holland  
United States District Judge  
U.S. District Court  
222 W. Seventh Avenue, No. 4  
Anchorage, Alaska 99513

April 10, 1991

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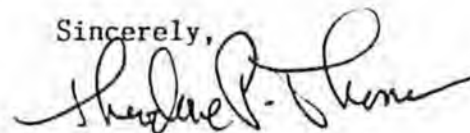
Consequently, I believe that counts IV & V (A90-015) should be reinstated and litigated, and actively pursued by the federal government, as these circumstances were the BASIS of state testimony before the NTSB. The agreement to bring these charges for litigation by the federal government was done in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

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

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

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

Sincerely,



Theodore P. Thoma

Sandra Tavanis Cesarini  
6621 Fairweather Drive  
Anchorage, Alaska 99518  
907-344-0519  
fax 349-7261

April 17, 1991

Re: PROPOSED EXXON SETTLEMENT

Allow me to introduce myself. My name is Sandra Cesarini. I am co-founder of a large seafood processing company in this state. I am not now, nor have I ever been, "anti-business". I have been an active member in virtually every local and statewide pro-development organization in Alaska. However, as a legitimate victim of the oil spill, I cannot allow the settlement now under consideration to be accepted without voicing my heartfelt opposition.

I believe that Governor Hickel and Attorney General Cole worked diligently and sincerely in what they perceived to be the best interest of the State. I have personally been in negotiations with Exxon and know full well the difficulties involved. I understand the pressures of closed door negotiations. Considering the additional complication of Federal involvement (and agendas) in the negotiations, the Governor and Attorney General should be commended for their good faith efforts.

None-the-less, in reviewing the new information on Alyeska's culpability, as well as the repercussions that the proposed Exxon settlement has on third party (private) plaintiffs, I believe you will agree with me that serious reconsideration of the terms of this settlement is necessary.

The State of Alaska, until now, has stood squarely on the side of its injured citizens, proclaiming the need for responsible development yet seeking to insure the negligent parties bore full responsibility for their actions. Now, in the midst of bitter litigation and in light of the most recent revelations, the settlement proposal seems to put the State of Alaska in bed with the guilty parties. In the eyes of the third party plaintiffs and Congressional leaders who will determine the fate of ANWR, this settlement transforms Alaska from a leading plaintiff into just another defendant.

Page 2 of 4  
April 17, 1991  
RE: Proposed Exxon Settlement

Over the past two years the State has acted in concert (for the most) with other victims of the spill. The proposed settlement as it presently stands is a radical departure from this policy and leaves the remaining plaintiffs to face not only a corporate giant, but the full force of the State government as well. As a plaintiff, I would alert you to several specific concerns:

**A. THE PROPOSED SETTLEMENT UNDERMINES THE LEGITIMATE CLAIMS OF HUNDREDS OF ALASKANS STILL SEEKING REDRESS FROM EXXON.**

United, the plaintiffs as a whole were in a much better negotiating position. With the State settling the government's interest, the remaining plaintiffs, businesses and individual citizens, are much weakened. We feel abandoned by the State in our hour of greatest need. It seems the power and leadership of the State is now backing the party responsible for the disaster, and we are left alone to deal with an organization that describes itself as "wealthy and powerful beyond your wildest dreams". It is difficult not to feel betrayed.

**B. THE PROPOSED SETTLEMENT ALLOWS EXXON TO SHARE THE BLAME AND LEGAL LIABILITY FOR THE SPILL WITH THE STATE GOVERNMENT.**

It has been Exxon's position at every juncture since the day of the grounding of the Exxon Valdez to spread the blame as widely as possible. Fundamental to this policy is the ongoing attempt by Exxon to establish the legal grounds necessary to include the State of Alaska as a responsible party, sharing proportionately in any future financial damage awards. The most recent evidence of this effort to shift the blame comes from the extensive deposition taken last week from fellow Bruce Suzumoto, President of the Prince William Sound Aquaculture Corporation (PWSAC). Exxon, in court, intends to attribute as much blame and accordingly, financial damage liability, to the State of Alaska as it can. The more the blame and damage is attributed to the State, the less will be attributed to Exxon. During this action between Exxon and the third party plaintiffs, the State will be powerless to affect the jury's determination of proportion, or amount of blame that will fall to Alaska. This percentage of blame will set the State's set the State's percentage of direct financial liability in any damage award made to the plaintiffs.

Page 3 of 4

April 17, 1991

RE: Proposed Exxon Settlement

In order to insure the ability of the third parties to collect whatever portion of any such future award the court may decide will be the State's responsibility, the third party plaintiffs have no option but to sue the State as well as Exxon and Alyeska. Legal fees will be astronomical given the fact there will be many lawsuits and the State will be required to defend itself many times.

By settling now, and forcing the third parties to sue the State as well as Exxon, I feel the administration is opening itself to even more enormous court costs. When the settlement's potential for massively increasing the actual direct liability is added to the potential of ongoing legal fees incurred defending against some 300 litigants, it would seem clear that the Governor's goal of saving legal fees is not met with the proposed settlement.

C. THE PROPOSED SETTLEMENT ESTABLISHES THE STATE AS AN ADVERSARY TO THE OTHER PLAINTIFFS.

Where the State has been seen as an ally, the terms of the proposed settlement clearly moves the government into an adversarial position (politically as well as legally) against the hundreds of citizens who need access to the information denied them by the settlement terms. Extensive case law, Alaska's Freedom of Information Statutes and, indeed, the State Constitution all suggest that efforts to hide research done by State officials, State contractors or paid for by State warrants are doomed to fail. Rather than freely transferring information between joint plaintiffs, the parties must now anticipate another round of legal battles to gather the data needed to establish our case against Exxon.

We feel Exxon is well able to hire its own attorneys and fight its own battles if it wants to deny us access to information which chronicles the damage done by Exxon's negligence. Why should the State assist Exxon in this endeavor?

These issues are those of most concern to third party plaintiffs in the Exxon case. However, there are other primarily political and moral concerns that bear consideration as well. I simply cannot believe that the State's acceptance of the proposed settlement, especially in light of the recent revelations regarding Alyeska and its owner companies (including Exxon), is good public policy. From a practical standpoint, Alaska's development would appear to be hindered by the State's seeming compliance in relieving Alyeska of its liability.

Page 4 of 4  
April 17, 1991  
RE: Proposed Exxon Settlement

Opposition to the settlement is growing within Alaska. Rather than take an increasingly unpopular position siding with the guilty parties, it would seem the Legislature has an opportunity to seize the leadership of a move to revisit the terms of this dubious arrangement. The new light shed on the behind-the-scenes dealings with Alyeska and the owner companies allows ample excuse to re-evaluate the State's position without loss of face. We have been negotiating in good faith.

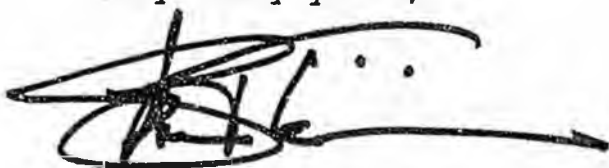
I can assure you that the last thing I or any of the other third party plaintiffs want to do is drag the State of Alaska into court on our way to seeking redress from Exxon and Alyeska. To prevent this I urge the following actions be considered:

1. THE STATE SHOULD SEEK IMMEDIATE AND SUBSTANTIVE RENEGOTIATION OF THE PROPOSED SETTLEMENT.
2. THE STATE SHOULD WITHHOLD ANY SETTLEMENT AGREEMENT UNTIL AND UNLESS EXXON HAS SATISFIED ALL THIRD PARTY PLAINTIFFS.
3. THE STATE SHOULD REQUIRE ANY SETTLEMENT AGREEMENT TO INCLUDE PROVISIONS HOLDING THE STATE BLAMELESS FOR ANY LOSS OR DAMAGE SUFFERED AS A CONSEQUENCE OF THE SPILL AND RELATED ACTIVITIES.

Thank you for your serious consideration of this matter.

Please feel free to contact me if I may be of any further assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Sandra Tavanis Cesarini', with a large, sweeping flourish extending to the right.

Sandra Tavanis Cesarini



Congressional Research Service • The Library of Congress • Washington, D.C. 20540

March 19, 1991

**TO** : House Committee on Merchant Marine and Fisheries  
Attention: Will Stell

**FROM** : Bernard A. Gelb  
Specialist in Industry Economics  
Economics Division  
and  
Jane G. Gravelle  
Senior Specialist in Economic Policy

**SUBJECT** : Net Present Values of the Exxon Valdez Settlement

This memorandum is in response to your request for a calculation of the present value of the recent settlement of the Exxon Valdez case to the U.S. Government and to Exxon Corporation. (Such a "value" would be negative in the case of Exxon.) The gross amount received (or paid) can differ from the net cost to the firm depending on tax liabilities, and values could differ with choice of discount rate. Because of uncertainties we have prepared several alternative scenarios.

One uncertainty is the ultimate amount to be paid. The agreement provides for a \$100 million criminal penalty, which we assume will be paid May 1, 1991, and for a series of civil payments tentatively payable on September 1 of this and the following ten years. These payments are set at \$90 million in 1991, \$150 million in 1992, \$100 million in 1993 and \$70 million for the next eight years. These amounts total to \$1 billion. There also is, however, the possibility of up to \$100 million more being payable after the year 2001, if additional environmental damage is discovered. In this alternative, we assume the \$100 million will be paid in two installments in the two years following.

Undiscounted, the payments will sum to \$1 billion and \$1.1 billion in the two payment scenarios. The net cost to Exxon will be smaller, however, because the civil payments can be deducted from income for purposes of both State and Federal taxes. The Federal tax rate is set at 34 percent; and we add three percentage points to account for State income taxes net of the

## CRS-2

deductibility against Federal taxes.<sup>1</sup> Thus, the combined tax rate is set at 37 percent. As a result, the net cost to Exxon (net receipts to the Government) will be \$655 and \$716 million, respectively, without discounting.

A second major uncertainty is the discount rate. The present value of both net and gross costs depend on the discount rate used, and the proper discount rate is not entirely clear.

We consider several. The Forestry Service uses a 4 percent real return, while the Office of Management and Budget (OMB) suggests a 10 percent real return. (The regulations on evaluating natural resource damages, 43 CFR 11, direct the use of the OMB rate). The General Accounting Office (GAO) suggests using a nominal rate of return similar to a Treasury security for the same maturity. The 4 percent rate of return is closer to a riskless rate; it is also quite similar to the Government bond yield for three to ten year maturities assuming an inflation rate of around 4 percent. The 10 percent rate seems quite high, and would be associated with a relatively risky investment. Our understanding is that this rate was based on an attempt to estimate the pre-tax real return on physical capital investment. We would estimate that the average pre-tax return on private capital investment is lower than these numbers, at around 7 percent.<sup>2</sup>

Since the payments are in nominal dollars, these real returns should be converted to nominal returns. Assuming an inflation rate of 4 percent, the nominal rates would be 8.16 percent for the Forestry Service number (and consistent with the GAO approach), 11.28 percent to correspond to the average pre-tax return on private capital, and 14.4 percent to correspond to suggested OMB rates.

Using the three discount rates with the two payment scenarios, we obtain the following results:

(1) For the 8.16 percent rate, the present value to the Government ranges between \$734 million and \$773 million. The cost net of taxes to Exxon would be \$499 to \$524.

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<sup>1</sup> This adjustment was suggested to us by Andy Yood of the American Petroleum Institute, who indicated that an add on of two to three percentage points was a typical rule of thumb to obtain a combined Federal and State income tax rate.

<sup>2</sup> To estimate the pre-tax return requires a measure of yields on debt and equity and an estimate of the effective tax rate. See June G. Gravelle, Differential Taxation of Capital Income: Another Look at the 1986 Tax Reform Act, National Tax Journal, December 1989, pp. 441-464 for a discussion of the methods used to derive this number.

## CRS-3

(2) For the 11.28 percent rate, the present value to the Government ranges from \$666 million to \$694 million. Exxon's cost net of taxes would be \$456 million to \$474 million.

(3) For the 14.4 percent rate, the present value ranges from \$611 million to \$631 million. The cost net of taxes would be \$421 million to \$434 million.

While we would consider the discount rate in (3) as probably too high, the choice between (1) and (2) is less clear. Since the stream of payments is fixed, there is some justification for using a relatively riskless rate of return. On the other hand, the present value using the estimated pre-tax return rate represents the quantity of actual physical capital that would be necessary to generate the stream of future payments.

Please contact us (at 7-7300) if you have further questions on this matter.



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

MEMORANDUM

TO: The Cabinet  
All Administrative  
Services Directors

DATE: April 20, 1989

Special Staff Assistants  
Regional Offices  
Office of the Governor

PHONE: 465-3616

FROM: Mike Nizich *MN*  
Director, Division of  
Administrative Services  
Office of the Governor

SUBJECT: Valdez Oil  
Spill Expense  
Reimbursement  
Agreement

Attached is a copy of the Expense Reimbursement Agreement reached by Exxon Shipping Company and the State of Alaska during the April 18 meeting in Juneau. All agencies are to follow the expense submission procedures outlined in my April 3 memo. All agencies reimbursement and direct payment claims are to be submitted through the Office of the Governor, Division of Administrative Services. The only agency exception to this routing process is the Department of Environmental Conservation.

Again, claims to be submitted are for those expenses directly related to mitigating the effects of the oil spill. As stated in paragraph one of the agreement, consequential damage claims will be addressed at a future date.

Any equipment that is purchased for oil spill clean-up and reimbursed for or paid by Exxon is the property of Exxon. All agencies must be able to identify such equipment for future return to Exxon. In order to avoid possible repayment to Exxon for lost equipment, please ensure that detailed property inventories are maintained.

April 20, 1989

As paragraph three of the Expense Reimbursement Agreement specifies, Exxon has agreed to process claims within 10 days of their receipt of the documentation. Any claims that are rejected by Exxon will be scrutinized by DEC for payment from their Oil and Hazardous Substance Release Response Fund. Exxon rejected claims that do not meet the criteria for payment from DEC's fund will be returned to the originating agency. Agencies are responsible for maintaining complete records of their rejected claims. The Department of Law will request those records at a later date for litigation purposes.

Please call me if you have any questions or need assistance.

cc: Garrey Peska

Attachments

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.

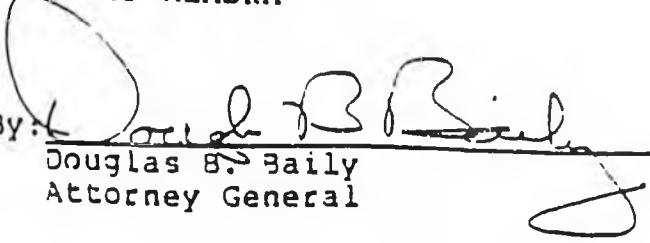
Dated: \_\_\_\_\_

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  
Attorney General

2697n

*State Exxon Shipping Co Expenses:  
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.

6. 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 # 031000024 (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: *[Signature]*

Date: April 21 1989

By: \_\_\_\_\_

Date: \_\_\_\_\_

2680n

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

## Exxon Confirms Waste Water Charges; Move May Impede a Valdez Settlement

By ALLANNA SULLIVAN

Staff Reporter of THE WALL STREET JOURNAL

Exxon Corp. acknowledged that it has shipped tanker waste water to Alaska.

While the company said the shipments and subsequent tanker-to-tanker transfers of so-called tank washings were within federal guidelines, such a disclosure could further entangle attempts to settle litigation stemming from the Exxon Valdez oil spill two years ago. Exxon, Alaska and the federal government have been engaged in talks for several weeks in efforts that could settle the state's civil case and possibly the federal government's criminal case. The allegations, which have drawn Environmental Protection Agency scrutiny, raise "the possibility of further complicating the settlement," said Jay Kerttula, chairman of Alaska's Senate Finance Committee.

The parties were on the verge of settlement late last week, but pressure from some state officials and environmentalists unhappy with the terms of the possible settlement may be slowing the process. Indeed, some Alaskan lawmakers are considering legislation that would preclude a settlement until state legislators scrutinize the agreement. Gov. Walter J. Hickel had proposed that Exxon pay \$1.2 billion to settle; it appears the company has asked to provide payments over a period of years that would devalue the amount.

Allegations regarding waste water specifically focus on the transfer of so-called tank washings from the Exxon Galveston, a lightering tanker, to the supertanker Exxon Valdez on Aug. 4, 1988. The washings were then transported up to Valdez, Alaska, where they were treated in the ballast water-treatment plant owned by Alyeska Pipeline Services Co.

The charges were contained in a letter sent last week by former oil-tanker broker Charles Hamel to EPA head William Reilly and U.S. Attorney General Richard Thornburgh. In the letter, Mr. Hamel says that before any settlement is concluded, Exxon should be asked to stop such shipping practices. Mr. Hamel, who is engaged in a dispute over mutual business arrangements he has with Exxon and other oil companies, claims that Exxon insiders told

him of the wrongdoing.

Beyond hearsay, however, a document turned up by Alaskan attorneys in preparation for the state's civil case against Exxon makes reference to the transfer. The handwritten document is a set of instructions from the second mate to another second mate who was boarding the vessel to relieve him. It says specifically that the Exxon Valdez will unload its crude oil to the Exxon Galveston but not until "after we take 50,000 barrels of tank washings from [the Exxon Galveston]."

Pressed for a response to the charges, Jim Pitts, a spokesman for Exxon, said that "yes, there was a transfer . . . all wash water returned to the Exxon Valdez as ballast and returned for treatment to the ballast water treatment plant in Alaska were in compliance with permits from EPA."

Exxon declined to identify what type of cleaning agent was being used to clean the oil storage tanks of the vessels other than to say that the tanks were cleaned with hot water and a very small amount of detergent. The oil company also declined to say what materials were contained in the tank washings following the cleaning.

But the company did say that the practice of transferring tank washings to tankers en route to Alaska "wasn't uncommon" and that all such transfers involved washings of ships handling Alaskan crude oil. Indeed, individuals familiar with the transport of crude oil said that other oil companies engage in the same practice and that it's still continuing.

But EPA officials said such moves are violations of federal law.

The EPA permit that authorizes operation of Alyeska's ballast water treatment plant in Valdez allows small amounts of cleaning agents to be present in the ballast water injected into the plant by arriving supertankers. But EPA officials presumed that such tank washings would be the result of cleanings of the supertankers themselves, which en route to Alaska aren't permitted to eject the waste water.

"But deliberately stopping a supertanker and putting the washings into its ballast; there's no way the permit authorizes that kind of discharge," says Harold Geren, chief of water permits for EPA in Seattle, which has jurisdiction over the Alyeska plant.

Mr. Geren says that EPA has already started to look into what is contained in those cleaning wastes. Mr. Geren says that Alyeska has volunteered to scan the ballast water at the treatment plant for toxic pollutants. "We need to know what is in the waste water," he said, adding that tank washings can contain toxic wastes, such as heavy metals.

Experts say that any damage to the port of Valdez depends on the amount and constituency of the chemicals going into the water. The ballast water treatment plant was designed to separate oil from water and then eject the treated water back into Valdez Harbor. Individuals familiar with the design of the plant say that any unanticipated substances, such as certain heavy metals, could travel through the plant and into Valdez Harbor undetected.

Riki Ott, a sediment toxicologist who is also heading up a coalition of Alaskans seeking reform of oil industry practices, said that the Port of Valdez was recently declared environmentally "impaired." Its degeneration is from long-term abuse unrelated to the Exxon Valdez spill that never fouled the harbor's waters, she says. To be sure, Valdez is in better shape than many commercial harbors in the U.S., but "we've had the first warning sign that something has gone wrong," she says.

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

By KEITH SCHEIDER  
Special to The New York Times

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

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

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

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

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

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

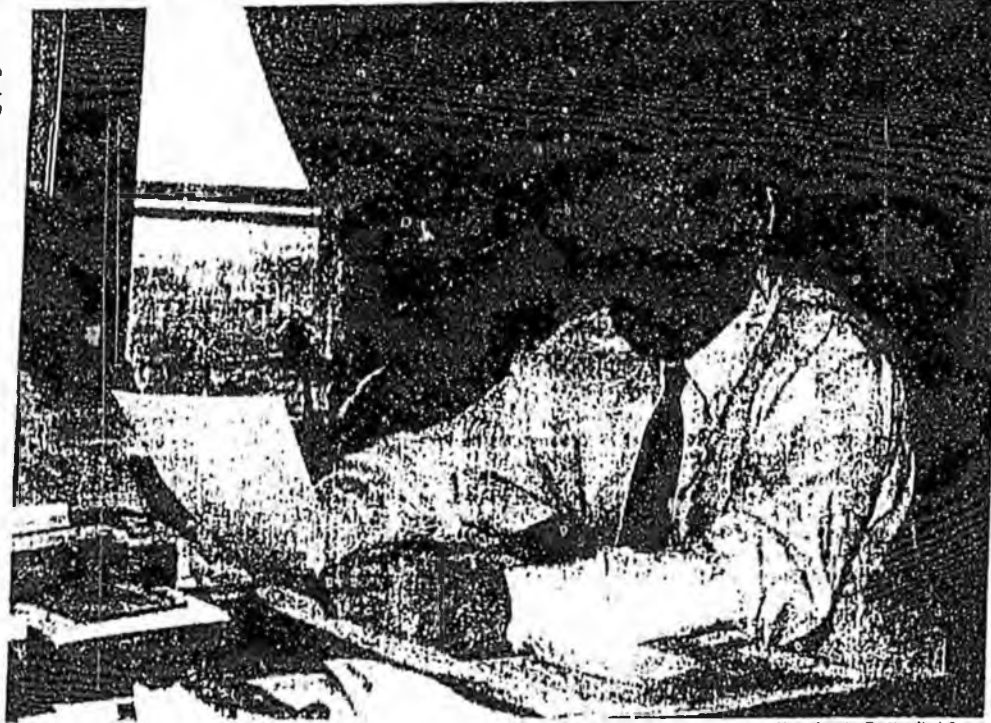
## In Response to Disasters

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

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

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

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



Marty Kalb for The New York Times

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

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

## Eager for a Settlement

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

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

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

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

## An experienced litigator finds a way to satisfy everybody.

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

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

## The Chairman Cools His Heels

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

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

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

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

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

Nobody responded until Mr. Skin-

ner disarmed Mr. Rawl, according to participants.

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

## 'Reopener Clause' Is a Snag

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

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

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

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

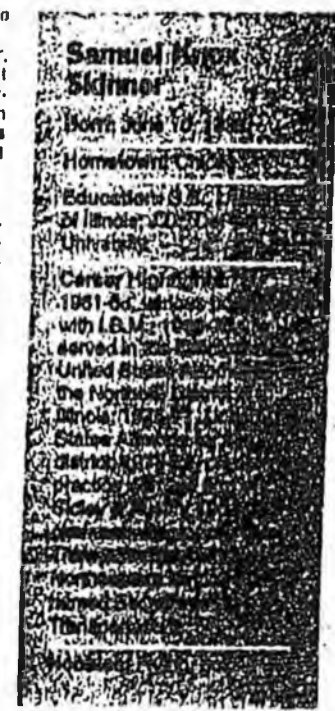
Through February, the talks were never far from collapse. "We knew the longer the discussions went on the harder it would be to put it together," the Secretary said.

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

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

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

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



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

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

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

Exxon, like any corporation (or person, for that matter), would have preferred not to spend any money. But Mr. Rawl said last week that he thought the settlement was good for the company. Paid out annually over 10 years, the payments reach a maximum of \$190 million this year, and then drop to \$70 million each year from 1994 to 2001.

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

SB

3



SB 3 -

Comte payee 2 zero final note -

3-27 Called 2450 Terri Landerbach for CS in final -  
Left ward w/ Phone Answerer -

3-27 - 3672 Called Pegun for final note on  
CS - He did not have CS -

# FISCAL NOTE

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

**BILL NO. SB 3**

Revision Date March 22, 1991 Dept. Affected Health & Social Services  
 Title: "An Act relating to protection of elderly person from harm" BRU: Family Services  
 Sponsor: Kerttula Component: Southcentral, Northern, Northwestern, Western & Southeastern  
 Requestor: Senate HESS COMPONENT SERIAL NO. 0254

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
PERSONAL SERVICES	236.7	298.2	298.2	298.2	298.2	298.2
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	18.5	18.5	18.5	18.5	18.5	18.5
SUPPLIES	6.5	6.5	6.5	6.5	6.5	6.5
EQUIPMENT	34.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>296.2</b>	<b>323.2</b>	<b>323.2</b>	<b>323.2</b>	<b>323.2</b>	<b>323.2</b>

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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**FUNDING:**

(Thousands of Dollars)

GENERAL FUND	386.9	368.8	368.8	368.8	368.8	368.8
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>386.9</b>	<b>368.8</b>	<b>368.8</b>	<b>368.8</b>	<b>368.8</b>	<b>368.8</b>

**POSITIONS:**

FULL-TIME	5.0	5.0	5.0	5.0	5.0	5.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: NONE

**ANALYSIS:** (Attach a separate page if necessary)

This analysis is based on 5 Social Worker III positions, one at each region listed above. Appropriate pay scales have been used for each position based on region position will be located at.

First years personal services amount is based on 10 months funding, each year following that is based on 12 months funding.

Prepared by: Michael L. Price, Director *Michael Price*  
 Division: Family & Youth Services

Phone: 465-3191

Date: \_\_\_\_\_

Approved by Commissioner: Theodore A. Malá, MD, MPH *Jay & Mary Bor*  
 Agency: Department of Health and Social Services

Date: 3/22/91

Distribution (by preparer):

Legislative Finance      OMB  
 Legislative Sponsor      Impacted Agency(ies)  
 Requestor

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

No. 1

Bill Version: SB 3

(S) Publish Date: 2-1-91

Revision Date: January 21, 1991

Department Affected HSS

Title: "An Act relating to protection of elderly person from harm"

BRU: Family Services

Sponsor: Kerttula

Component: Southcentral, Northern, Northwestern, Western & Southeastern

Requestor: Senate HESS

COMPONENT SERIAL NO. 

0	2	5	4
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CAPITAL</b>	0	0	0	0	0	0
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<b>REVENUE</b>	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Implementation of the provisions of this bill would have no fiscal impact on the Division of Family & Youth Services.

Prepared By: Russ Webb, Acting Director

Phone: 465-3191

Division: Family & Youth Services

Date: January 28, 1991

Approved by Commissioner: Theodore A. Mala, MD, MPH

Agency: Department of Health & Social Services

Date: 1/28/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

**FISCAL NOTE**

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

**Bill No. CSSB 3 (Judiciary)**

Revision Date: \_\_\_\_\_ Department Affected: Alaska Court System  
 Title: An Act relating to protection of BRU: Trial Courts  
eldering persons from harm Components: \_\_\_\_\_  
 Sponsor: Kerttula  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

000   000	000   768
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**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

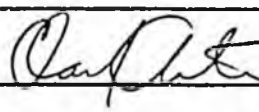
**POSITIONS:**

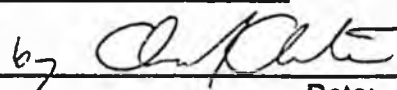
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

**ANALYSIS: (Attach a separate page if necessary)**

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228  
 Division: Alaska Court System Date: 03/22/91

Approved by: Arthur H. Snowden, II, Administrative Director  by \_\_\_\_\_ Date: 03/22/91  
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. CSSB 3(JUD)

Revision Date: \_\_\_\_\_  
Title: An Act relating to protection of elderly persons from harm.  
Sponsor: Senator Kerttula  
Requestor: Senate Judiciary

Department Affected: Public Safety  
BRU: Village Public Safety Officers  
Component: Contracts

COMPONENT SERIAL NO. 

	5	1	6
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Gayle A. Horetski Phone: 465-4322  
Division: Office of the Commissioner Date: 3/27/91

Approved by Commissioner: Gayle A. Horetski for Richard L. Burton  
Agency: Department of Public Safety Date: 3/27/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).



Official Business

# Alaska State Legislature

P.O. Box V  
State Capitol  
Juneau, Alaska 99811

## MEMORANDUM

**TO:** Senator Halford, Chairman  
Senate Judiciary Committee

**FROM:** Senator Kerttula

**SUBJ:** Senate Bill 3 --  
Elder Abuse

**DATE:** February 14, 1991

*Get fiscal  
note*

*Get the rest of  
the pre-requisites  
for hearing from  
Kerttula.*

Last year, doctors had to surgically remove an elderly Anchorage woman from a chair in which she had been confined for months by her husband. This woman had been forced to sleep, eat, and defecate in that chair. Concerned neighbors and others had made several reports regarding this situation to the Department of Health and Social Services. Social workers "investigated" these reports by telephone and this woman, with her husband standing by her side, was unable to tell them what was being done to her. The Long Term Care Ombudsman has told me that what happened to this woman is not an aberration in the system.

Senate Bill 3 would require social workers to conduct in-person investigations of reports of elder abuse. The bill is needed and I urge you to schedule it soon.



Official Business

# Alaska State Legislature

P.O. Box V  
State Capitol  
Juneau, Alaska 99811

## MEMORANDUM

*To HSS First*

**TO:** Senator Rick Halford, Chairman  
Senate Judiciary Committee

**FROM:** Senator Jay Kerttula

**SUBJ:** Senate Bill 3 --  
Investigation of Elder Abuse

A handwritten signature in dark ink, appearing to read "Jay Kerttula", written over the "FROM" field of the memorandum.

I would appreciate your scheduling Senate Bill 3, relating to the protection of elderly persons from harm. This bill has a "0" fiscal note from the Department of Health and Social Services, and is supported by both the administration and the long-term care ombudsman.

Alaska Statute 47.24.020 requires the department to investigate reports of elder abuse, interview the elderly person and prepare a written report. The law directs the department to stop the investigation at the elderly person's request.

There are two large gaps in Alaska's ability to effectively protect senior citizens from abuse under AS 47.24.020.

1) termination of investigations after telephone interviews leaves the elderly extremely vulnerable to coercion by their abusers.

2) great delays in investigating reports of abuse leave seniors in abusive situations for an unconscionable period of time. Delays in investigation also result in a tendency on the part of police and emergency room physicians to not report, since they believe that the Division of Family and Youth Services will not respond.

Senate Bill 3 is aimed at helping alleviate the first problem, and I urge the Senate HESS Committee to pass the bill. For your information I have attached some background information on elder abuse which was contained in report which Legislative Research did at my request. I have also attached several newspaper articles on the topic for your information.

## **ELDER ABUSE BACKGROUND**

Nationally, the most common forms of elder abuse are physical abuse (including neglect) and financial exploitation. They are followed by emotional abuse or neglect, and sexual abuse. Elders also are often victims of self-neglect. Elders who are abused physically may be beaten, slapped, cut, burned or shoved; they may be deprived of food, supervision or medical care; they may be sexually abused; or they may be forcibly confined to a bed, a chair or a room. Those who are emotionally abused may be assaulted or threatened verbally. They also may be frightened, humiliated, intimidated, isolated or treated as children.

### **Profiles of the Typical Victim and Elder Abuser**

The typical victim is a frail, 75-year-old woman who cannot care for herself. The victim generally depends on the family or an unrelated person for care and protection. Victims may have a drinking problem and a tendency to take the blame for the abuse. They may be excessively loyal to the caregiver. They may also have a history of abuse and be unpleasant or demanding.

The typical abuser is under stress, has a substance abuse problem, and frequently was abused as a child. Three out of four elder abusers are members of the victim's family. The son of the victim is the most likely abuser, followed by the daughter of the victim.

Data from the National Aging Resource Center on Elder Abuse indicate that two-thirds of the victims in reported cases in 1988 were female. Almost one-third of the abusers were adult children of the abused (30 percent). About 15 percent of abusers were the abused's spouse and about 13 percent were identified as the "service provider." Other reported abusers included friends or neighbors, other relatives, siblings and grandchildren.

### **Reporting**

Most elder abuse is not reported, and this situation is worsening.. In 1980, an estimated one in six cases were reported; in 1985, one in five were reported; and in 1990, one in eight were reported. Nationally, elder abuse is far less likely to be reported than child abuse.

Alaska reports the second highest rate of elder abuse among the 43 states (including Washington, D.C.) with mandatory reporting laws. Alaska reports 9.18 cases of abuse per 1,000 elderly residents. If national estimates hold true for Alaska (one case reported for every eight which occurs), there were about 2,200 actual cases of elder abuse in Alaska in 1988. In that year, 273 cases were reported.

To LAA Legal -

From Doug Bailey - Senate Judiciary 465 3717

Please Prepare a Judiciary Committee Substitute for SB 3 to include the following changes:

Sec 1 line 6 to read

department may not terminate an investigation at any time until after the department or its designee has

Sec 2 lines 12-13-14 are deleted.

New Section 2 to provide

~~AS 47.24.020 is amended to read~~

In second sentence of 47.24.020

The department or its designee shall personally interview . . . .

---

Is this all perfectly clear?

Thanks - DB

March 14 --

Adams asks is there enough money to visit every village in his area particularly when we reduce the age by 10 years and Gov. reduces travel budget by 10% -

Halford - The age change affects <sup>an</sup> the entire group of statuten on elderly.

Skertula staff - Age change not critical to Sen. K.

Mike Price -

Dir - Family & Youth Services - Mike Price -

Can't project how many more cover the change in age will generate.

Perhaps VPSO could conduct the face to face - Not the Rept.

Wm O'Connor - Long Term Care ombudsman.

Wants 5 new positions -

Request Fiscal note from Court - Gov Public Safety - Law - one is requested from HSS at hearing.

CS Passed w indv rec subject to member seeing draft and fiscal not.

FAX  
258-4968

Count Fiscal  
Note  
Please

7-LS0001ND ✓  
Lauterbach  
3/15/91

CS FOR SENATE BILL NO. 3 (JUDICIARY)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATORS KERTTULA, Rodey, Uehling, Sturgulewski

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to protection of elderly persons from harm."

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

3 \* Section 1. AS 47.24.020(a) is amended to read:

4 (a) Upon receiving a report of harm, the department shall promptly initiate an  
5 investigation to determine the economic or physical condition of the elderly person named in the  
6 report and whether action or services are needed for the protection of the elderly person. The  
7 department or its designee shall personally interview the elderly person during the investigation  
8 unless the elderly person is unconscious or otherwise physically or mentally impaired to such an  
9 extent as to be unable to respond to questions.

10 \* Sec. 2. AS 47.24.020(c) is amended to read:

11 (c) The department shall immediately terminate an investigation under this section upon  
12 the request of an elderly person who is the subject of a report of harm, except that the  
13 department may not terminate an investigation at any time until after the department or  
14 its designee has conducted a face-to-face interview with the elderly person who is the subject

# **CORRECTION**

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

March 14 -

Adams asks is there enough money to visit every village in his area particularly when we reduce the age by 10 years and Gov. reduces travel budget by 10% -

Holford - The age change affects <sup>an</sup> ~~the~~ entire group of statutes on elderly.

Skertula staff - Age change not critical to Sen. K.

Mike Price -

Dir - Family & Youth Services - Mike Price -

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Wm O'Connor - Long Term Care ombudsman.

Wants 5 new positions -

Request Fiscal note from Court - Gov Public Safety -  
Law - one is requested from HSS at hearing.

CS Passed w indiv rec subject to member seeing draft and fiscal note.

SENATE BILL NO. 3

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS KERTTULA, Rodey

Introduced: 1/21/91

Referred: HESS and Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to protection of elderly persons from harm."

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

3 \* Section 1. AS 47.24.020(c) is amended to read:

4 (c) The department shall immediately terminate an investigation under this section upon  
5 the request of an elderly person who is the subject of a report of harm, except that the  
6 department may not terminate an investigation at any time until after the department<sup>or its designee</sup> has  
7 conducted a face-to-face interview with the elderly person who is the subject of the report  
8 of harm. However, if the department has reasonable cause to believe that the elderly person is  
9 incapacitated, the department may petition the superior court under AS 13.26 for appointment of  
10 a guardian or temporary guardian for the elderly person for the purpose of obtaining consent to  
11 continue the investigation.

12 \* ~~Sec. 2. AS 47.24.100(6) is amended to read:~~

*Deleted w/o objection -*

13 (6) ~~"elderly person" means a resident of Alaska who is 55 [65] years of age or~~  
14 ~~older;~~ *Sec 2*

*47.24.020 add "or its designee" in  
this statute. also. This amendment of*

*adopted.*

FAX  
258-4968

Count Fiscal  
Note  
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Lauterbach  
3/15/91

CS FOR SENATE BILL NO. 3 (JUDICIARY)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATORS KERTTULA, Rodey, Uehling, Sturgulewski

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to protection of elderly persons from harm."

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

3 \* Section 1. AS 47.24.020(a) is amended to read:

4 (a) Upon receiving a report of harm, the department shall promptly initiate an  
5 investigation to determine the economic or physical condition of the elderly person named in the  
6 report and whether action or services are needed for the protection of the elderly person. The  
7 department or its designee shall personally interview the elderly person during the investigation  
8 unless the elderly person is unconscious or otherwise physically or mentally impaired to such an  
9 extent as to be unable to respond to questions.

10 \* Sec. 2. AS 47.24.020(c) is amended to read:

11 (c) The department shall immediately terminate an investigation under this section upon  
12 the request of an elderly person who is the subject of a report of harm, except that the  
13 department may not terminate an investigation at any time until after the department or  
14 its designee has conducted a face-to-face interview with the elderly person who is the subject

1 of the report of harm. However, if the department has reasonable cause to believe that the  
2 elderly person is incapacitated, the department may petition the superior court under AS 13.26  
3 for appointment of a guardian or temporary guardian for the elderly person for the purpose of  
4 obtaining consent to continue the investigation.

ANCHORAGE TIMES May 13, 1990



# Elderly remain silent to abuse

Kathy

By JULIA SOPALSKI  
Times Writer

Abuse of the elderly in Alaska is a quiet problem. Its victims mostly are silent.

State officials are aware of incidents involving senior citizens, but the extent of the problem is unknown because official reports are never filed, said William O'Connor, an ombudsman for the Older Alaskans Commission. Senior citizens in trouble often are too intimidated to admit they are in an abusive situation, O'Connor said.

The Division of Family and Youth Services in 1980 received 265 reports of abuse of adults over 60 years of age, down from 303 in 1988. But O'Connor said the statistics can be misleading because there is not enough money for social workers to follow up and investigate the reports. There may be more than the numbers indicate, he said.

A mandatory reporting law was passed in Alaska in 1983, requiring health and social workers to report suspected abuse of an elderly person. Failure to do so can result in a fine.

But the report is only recorded in division statistics if a caseworker has time to check it out, O'Connor said.

"I remember a case in the Kenai a few years back where a physician tried for more than six months to report a case of elderly abuse," O'Connor said. "If they won't listen to a physician, what happens when the person calling is only a concerned neighbor?"

The big problem is the shortage of workers in adult protection services, O'Connor said. Across the state, only three social workers are employed full time in adult protection — two in Anchorage and one in Fairbanks. All other caseworkers with the DFYS carry a combined load of child and adult cases.

"With all the children we have being sexually and physically abused, with blood like that running under the door, of course they take priority," he said.

Establishing the prevalence and needs of children in abusive situations is easier, partially because of staff resources, said Pat O'Brien, DFYS social services program officer in Juneau. O'Brien has worked for the agency for 19 years.

Alaska's mandatory reporting law was passed with little funding to back it up, O'Brien said. When the division was deluged with reports of child abuse several years ago, the state cut back

on Adult Protective Services, O'Brien said, and the program has never recuperated.

Social workers with Adult Protective Services say working for a child in an abusive situation can be easier than helping a senior in trouble. The social worker can investigate a report of child abuse with or without the agreement of the child or parents.

For adults, the social worker is in an advocacy role, said John Burke with the DFYS office in Anchorage. Adults are considered competent to make their own decisions, and an investigation of reported abuse cannot be continued if the suspected victim denies the allegation, he said.

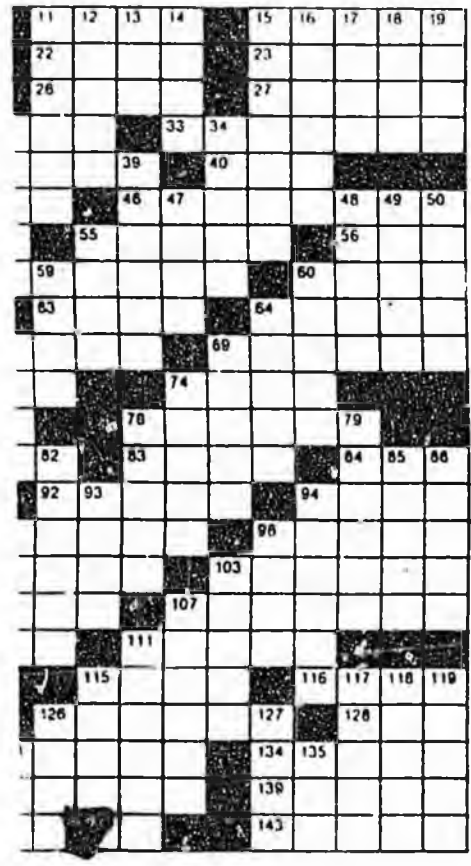
Burke said abuse of the elderly, physical abuse in particular, is not a severe problem in Anchorage. When there is abuse, it often is a result of alcohol or drug abuse and a dysfunctional family setting, the same conditions that give rise to child abuse.

The problem of abuse of the elderly also existed in the past, Burke said, but today there are options allowing senior citizens more control over their situation. The elderly in the Anchorage area inform each other of public health and housekeeping services and gather at the senior

See Elderly, page C-4

AGE  
OLD

97 Seed coat
98 Deprivation
100 Turn aside
101 Cosmetologist
102 Auditor
103 Norman Vincent
105 Russian
107 Library patron
109 Bowling units
110 Actress Dahl
111 Lacking
114 Western movie
115 Join
117 Straight in
118 Mongolian
119 Elevate
120 Turmeric
121 Singer
122 Pell
123 New Haven
125 Li I Abnour
126 English
127 Barn
131 Young insect
133 Robot play
135 Annoy



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responsibility of the majority to govern." Rep. Dan Glickman, a Democrat from Kansas who was first elected in 1976, believes his colleagues have grown increasingly timid and speculates that the grass-roots firestorm Ronald Reagan stirred up in 1981 "terrorized" Democrats. (He fails to mention that Democrats terror-

Every day, at 10 a.m., three vans packed with hot meals begin their daily trips to the homes of housebound senior citizens scattered from Government Hill to Potter's Marsh.

In April, these Meals On Wheels vans delivered 2,714 warm meals.

Judy Moor, regional supervisor of Alaska Management Technologies, oversees 25 homemakers who go out each day to help 120 senior citizens with their laundry, shopping and house cleaning.

These are organizations that provide daily necessities allowing senior citizens to remain independent in their own homes. Without the help, many would be forced to enter nursing homes.

But as these workers and drivers go about their daily routine of providing clean living spaces and nutritious meals, they perform another invaluable task.

"For a lot of these seniors we are the only contact with other people they have on a daily basis. So the drivers become my eyes and ears," said Scott Earl, home-care manager for the Salvation Army.

Moor's business is contracted by the Alaska State Homemaker Program to provide domestic services throughout the state. The homemakers for Moor's agency are trained to spot neglect, trouble and possible abuse, she said.

"They tell me if something seems wrong. For example, Mr. Jones had \$3,000 in his account, but it's suddenly gone, and then I can ask a state social worker to check on the senior," she said.

These in-home, community-based services are lifelines for many senior citizens, and both organizations have a waiting list. Social workers and senior advocates believe the services also can be a preventive measure in the area of abuse of the elderly.

Such abuse is a process that builds over a period of time, said John Burke. Burke is an adult-protection social worker for the Division of Family and Youth Services in Anchorage. A young family may decide that a grandparent would be better off living with them, and have all the best intentions, he said.

# Elderly

Continued from page C-1

ior centers where they can exchange information.

In-home services available to seniors allow them to live independently and not become dependent on families, or vulnerable to situations that could put them at risk, Burke said.

Ronald Parker, regional manager for DFYS in Nome, has worked for 15 years in social services in rural Alaska. He said he sees very little physical abuse with seniors and actually has recorded a decrease in cases reported to his office. He said the re-emergence of interest in Native cultural values is responsible for the decrease, specifically Native respect for elders.

"There are not enough health and social services available in the villages so people get together and co-operatively provide the help and services their elders need," Parker said. Of the reports received by the office in Nome, which oversees the western section of the state, only two or three a year are substantiated. Those usually are linked to alcohol and substance abuse, Parker said.

But Lare Farmer-Lamm, an adult-protection social worker

who has worked with the division in Fairbanks for seven years, disagreed with Parker's estimate.

"I know from what I hear in the community and on the streets that there is physical abuse out there," she said. "The problem is the same as in the rest of the country. Seniors are ashamed to talk about it."

"Older people don't want to tell on their kids, or they're afraid we'll take them away from their family," Farmer-Lamm said.

Farmer-Lamm said her office often hears about the abuse too late, when the senior is in the hospital and the police have taken the case.

Statistics collected by the Fairbanks office show a slow, but steady, increase in cases of abuse of the elderly, she said. During the first three months of 1985, the office had about 29 clients who were victims. For the same period this year, there are 55 clients.

People are starting to report more incidents, Farmer-Lamm said, but without funding for more field workers to check more reports, collecting statistics is impossible. She is the only adult-protection worker for a large area covering Interior Alaska. She said, for now, the program has to be crisis-oriented, giving the most severe cases priority.

O'Connor agreed with

Farmer-Lamm. As long-term care ombudsman he travels the state investigating complaints concerning senior citizens. He said his focus is on problems of seniors in nursing home facilities, but added that the problem of abuse is not in institutions.

"Our nursing homes and other facilities for seniors are non-profit. This avoids a lot of the problems that occur in homes down below where they must cut corners to make a profit," he said.

The high standards of Alaska's Pioneers Homes are a model for facilities outside Alaska, O'Connor said.

Medicaid reimbursement for nursing home care in Alaska is the highest per diem reimbursement in the nation, and that allows the homes to hire better-qualified staff, he said. That helps make nursing homes in Alaska a safer place to live.

It is the elderly living in private homes that concerns him, O'Connor said.

Sixty percent of the complaints he investigates come from people who live in private residences, he said. When O'Connor has a social worker check out a complaint, the elderly person often is too intimidated to admit they are in an abusive situation.

"They think, 'I should have raised my children better than this,' and don't want to tell on their own kids," O'Connor said.

# Conference renews battle against elder abuse

by Pamela Cravez

A new elder abuse task force in Ketchikan is steaming ahead with plans to coordinate services among agencies to provide more help to neglected or abused adults.

Palmer social workers are talking about applying for grants to help abused elders in the Mat-Su Valley.

And the Division of Family and Youth Services (DFYS) has gathered statewide support for a budget increase to add four more social workers in adult protection.

These efforts to beef up services for seniors and vulnerable adults are just part of the enthusiasm to combat elder abuse generated by an October conference in Anchorage.

"I think a lot of people came away from (the conference) with a real sense of excitement and awareness that there have been too few services available to a real at-risk population," said Becky Smith, a social worker with DFYS in Ketchikan.

Smith and about 130 other social service providers, seniors, members of the Older Alaskans Commission (OAC) and hospital workers attended the conference, "Elder Abuse: A Front Line Perspective," sponsored by Providence Hospital, DFYS and the OAC.

Keynote speaker Dr. Sue M. Parkins, an emergency room doctor and member of an adult

protective team in Toledo, Ohio, discussed the signs and symptoms of elder abuse.

"The classic victim is a 75-year-old frail woman who has some medical problems," Parkins said. "The profile of the abuser is characterized by stress . . . substance abuse, financial stress," she said.

Most abuse occurs in families which have always been abusive, Parkins said. The family may have an abusive member or just be dysfunctional.

Parkins gave an example of how an abusive situation may evolve. A young man loses his job and moves in with his mother because he can no longer manage financially. He probably has a substance abuse problem which gets worse the longer he is unemployed.

As long as the mother is healthy the situation is okay, but as she gets older and more frail things deteriorate.

"Mom becomes more and more of a burden and starts being neglected or frankly abused," Parkins said.

"Mom may get dependent to the degree that she can't care for herself and really needs professional care or placement. If mom gets placed then her assets have to be liquidated," Parkins said, referring to Medicaid requirements to spend down assets before a person may receive nursing home coverage.

There is no incentive for the son

**Most abuse occurs in families which have always been abusive. The family may have an abusive member or just be dysfunctional.**

to place the mother since he then loses his place to live. Instead, he starts collecting his mother's Social Security checks and other entitlements. And the mother steadily declines without the help she needs.

#### Unreported abuse

In 1983 there were 273 reported cases of elder abuse in Alaska, Parkins said. But she is uncomfortable with these statistics.

"We can see those abused and try to imagine how many others there are," she said.

Typically, one out of every eight victims reports abuse, according to Parkins. Seniors are hesitant to report abuse for a number of reasons. Often it is their own family members abusing them, Parkins said.

Abused seniors also are fearful of what will happen if they report. Will they have to leave their home and enter a nursing home?

Not only are seniors hesitant to report abuse, health care professionals and service providers

may not recognize signs of abuse.

"A lot of elder abuse findings relate to hygiene," Parkins said. Look for bed sores, she suggested.

Dehydration and malnutrition also are indicators. Seniors are more fragile than children when it comes to nutritional needs, Parkins said. If dentures are fitting improperly, it could mean the person has lost a lot of weight.

Look at a person's skin, Parkins said.

Are there bruises? Burn or frostbite injuries?

If there are injuries, ask the person what happened.

"Listen to the story you're being told and if it doesn't make sense . . . then you have to wonder (if abuse is occurring)," Parkins said.

Documentation is key to getting more resources for combatting elder abuse, Parkins said.

#### Coordinating services

In a later panel discussion, conference participants discussed ways to improve the current system for dealing with elder abuse in the state.

"One of the keys that people identified at the conference was greater coordination of already existing services for elders and other vulnerable adults," said DFYS director Russ Webb.

Strategies for increasing coordination include community organizing, case assistance, increasing basic services such as foster homes, and developing a

central office responsible for coordinating services at the state level.

Conference participants spent much time in individual groups hashing over the best ways to tackle the elder abuse problem.

"The group I went to was on community organization," said social worker Becky Smith.

"(The group) identified some criteria on how to make that happen. In a sense that's what we're doing," Smith added, referring to the elder abuse task force she later started in Ketchikan.

The Ketchikan task force is one of four elder abuse task forces in the state. Others are located in Anchorage, Fairbanks and Juneau.

"Our goals are to identify what services are being provided and what the criteria for receiving those services are," Smith said.

People may be denied services because they don't fit income or age requirements, Smith said. She and the 11 other members of the Ketchikan task force want "to do some brainstorming" on how to provide services to these people.

"Our goal is to line up all service agencies to do a coordinated public presentation," she said.

For more information on the Ketchikan task force call Becky Smith at 225-6611.

For information on elder abuse in your community or to report elder abuse, call the Division of Family and Youth Services.

Jan 1989 p. 20

# Elder abuse law not solving growing problem

It's been five years since the Alaska legislature tackled the problem of elder abuse and passed a reporting law. But just about everyone dealing with the law says it hasn't even come close to solving the problem.

The law encourages people to report abuse. It requires people in a number of professions, such as doctors, police officers, pharmacists, administrators of nursing homes, social workers and employees of projects funded by the Older Alaskans' Organization to report suspected abuse.

But many of these people aren't reporting.

For example, said Anita Stevens, supervisor for the Anchorage office of the Division of Family and Youth Services (DFYS), the office has received no reports from the Anchorage Police Department, even though there has been at least one case involving the department. The case was later reported by another social service agency. (See story, page 21.)

There are all kinds of reasons why people aren't report-

ing, said Pat O'Brien, statewide DFYS consultant for adult services in Juneau.

"We don't realize that elders are vulnerable," she said. It's hard to tell whether a senior is being abused or if they are just "crotchety," she added.

Many seniors are reluctant to "tell on" their abusive children, O'Brien said. They look at it as confirmation that they are "losing it," she said. And others just don't want to get the abuse in trouble.

"Some (of those who should be reporting) think DFYS isn't going to do anything," O'Brien said.

Even though elder abuse is not being reported every time it occurs, the tally of abuse reports from July 1987 through June 1988 shows an alarming problem. DFYS received more than 900 reports of abuse of people age 60 and older. That was more than 60 percent of all adult abuse reported.

By most accounts this is only the tip of the iceberg.

"In this state we have a long way to go," said O'Brien, who just returned from a national conference on elder abuse.

## Stories by Pamela Cravez

"The field is booming," O'Brien said.

The lack of reporting in Alaska is a real stumbling block, according to Taki Pulliam, head of the Elder Abuse Task Force in Anchorage.

Proper statistics are needed before programs can be developed to deal with elder abuse, Pulliam said. Even though there seems to be ample need for an elder abuse shelter and elder abuse respite care, you can't get money to deal with the problem without first having statistics that show the extent of the need, she explained.

In Juneau there used to be a fairly active elder abuse task force. But the lack of reporting made it hard to keep working on the problem, according to Norma Nicholas. Nicholas, who is an advocate for older women at the Aiding Women From Abuse and Rape Emergencies (AWARRE) shelter in Juneau, has no doubt that elder abuse exists in Juneau.

"What I do is public speaking to raise awareness," Nicholas said.

"Caroleen is generally the abuser," she added.

If an elder is being abused, social workers have very few options for taking them out of

the abusive situation. There is only one foster home in Juneau, according to Ramona Green, a social worker with DFYS in Juneau. And that home is licensed to care for only five people.

Green referred one elderly man to the foster home when conditions at his own home became intolerable.

Three generations were living in the same home, Green said. The grandson kept demanding money from the grandfather. He'd take the grandfather around town carousing through the bars with him, spending his money and sexually harassing him.

"The grandfather's son was distressed and, so, was cooperative," Green said. "We placed the grandfather in an adult foster home and he was delighted."

The Juneau man was lucky. Many seniors being abused or neglected have no one in their community. In many Alaskan communities there are no adult care foster homes, nursing homes, or even adequate homemaker services to help relieve the stress and strain that often leads to abuse by a caregiver.

In Fairbanks, for instance, where there is an active and effective elder abuse task

force, there are few alternatives for seniors who are being abused or neglected.

"Some of the folks just aren't appropriate for foster care," said Play MacI'hea, staff manager for the Fairbanks office of DFYS. "And medically they don't qualify for nursing home care," she added. The big need is for an intermediate care facility. Currently, a person has to go to Anchorage to get that sort of care, she said.

The 1983 elder abuse reporting law allows an elder to refuse help, to halt an investigation into reported abuse. Often, a senior does just that, especially when the only alternative to an abusive situation is miles away in an unfamiliar city far from friends and relatives.

What follows on these two pages are individual stories about Alaskan seniors in abusive situations. These are elders who have been physically abused, financially abused or neglected. As with many elder abuse situations in Alaska, the only "revolution" to some of these cases was a decision to continue to put up with the situation, for lack of better alternatives.

But actual solutions to elder abuse problems are sometimes as hard to come by in Alaska as the statistics that define the extent of the problem.

## Statistics on Abuse

Alaska's elder abuse reporting statute requires people in a number of professions to call the Department of Health and Social Services' Division of Family and Youth Services (DFYS) if they suspect a person 60 or older is suffering harm.

Below are statistics from reports made to DFYS from July 1987 through June 1988. Pat O'Brien with DFYS in Juneau explained that the numbers don't add

up in all categories because of differing reporting practices in DFYS offices around the state. Some reports contain just the name and age of the person abused, O'Brien said.

If a case was not confirmed, that does not mean there was no abuse occurring, O'Brien said. Sometimes it meant a senior would not talk to DFYS, or a DFYS worker could not get in touch with the person.

<b>Number of Reports</b>	
Age 60 and over	275
Age 60 - 64	25
Age 65 - 69	185
Total	480
<b>Sex of Victim</b>	
Male	185
Female	305
<b>Type of Harm</b>	
Abandonment	17
Abuse	171
Economic Harm	127
Neglect	173
<b>Relationship of Perpetrator to Victim</b>	
Wife	7
Husband	40
Son	43
Daughter	19
Other Male Family Member	30
Other Female Family Member	19
Other Male	48
Other Female	52
<b>Did the Victim Request that the Investigation be Terminated?</b>	
Yes	117
No	160
<b>Type of Reporter:</b>	
Mandatory	189
Other	77
<b>Was the Report Confirmed:</b>	
Yes	150
No	184

Source: Division of Family and Youth Services, Department of Health and Social Services Adult Protective Services Annual Report, Fiscal Year ending June 30, 1988.

## Neglect: Devastating as physical blows

Rashen James was seeing himself regularly. A couple of times he was found in the cold in Bethel without enough clothes on. Though his family was supposed to pay his bills, buy his food and take care of his medical needs, they did not. Old age ambulance checks were being cashed on James' behalf but he wasn't getting the money.

"Everybody thought it was outrageous," said a Division of Family and Youth Services (DFYS) social worker in Bethel. "Something needed to be done."

James (not his real name), in his 70s, was a victim of elder abuse. He wasn't being beaten, he was neglected. For an elderly person who can't take care of himself, neglect can be just as devastating as outright physical blows.

Bethel Community Health Director Dr. Grace Alfonso remembers seeing an older man with a dislocated shoulder. He was brought in five or six days after it happened.

His wife was an alcoholic, and so were his kids. The man couldn't take care of himself and had fallen out of bed.

They let him sit for days, Alfonso said. And that kind of injury hurts like heck, she added.

Alfonso, who had practiced in Chicago where she saw many cases of elder abuse, made an Eskimo respect for elders with holding down the amount of elder abuse she

Alfonso has seen people put up with less-than-desirable conditions to stay with their families.

case in Bethel.

There are many elderly in the Bethel area, said the social worker who related the story of Rashen James, but few reports of elder abuse.

If she had to guess, the social worker said she would put the number of elder abuse reports at no more than one or two a month.

But both the social worker and Alfonso say there are probably more cases than they are aware of.

James' family neglected him because they were drinking, the social worker said. They didn't pay attention to James' needs.

He needed help cleaning himself, he couldn't hear, and he was almost blind, the social worker said.

DFYS handled James' problem by holding family meetings. At the meetings the family admitted that they were unable to care for James.

DFYS tried to get James into the Arlajak Apartments, senior housing in

Bethel, where he could stay with another relative, but there wasn't any space available. So James was sent to a nursing home in Seward, far from friends and relatives.

He died two years later. "I don't think he really wanted to leave," the social worker said. "If he had a choice he would have stayed in the condition he was staying in," she added.

Alfonso has seen people put up with less-than-desirable conditions to stay with their families.

Alfonso talks about an elderly woman who had a stroke and was determined to stay with her daughter, even though the daughter had her own family to care for.

Alfonso got reports that the daughter was neglecting her mother. But after visiting the home, Alfonso determined the daughter was doing the best she could.

The mother was confined to bed and refused to come to the hospital for rehabilitation, Alfonso said. She needed constant care, she needed to be turned every two hours, to be fed and bathed.

"Mom" was a 24-hour nursing home patient," Alfonso said. But, Alfonso recommended the mother be allowed to remain in the home and helped the daughter get homemaker services.

A homemaker now comes and helps the daughter with chores four hours a day.

It gives the primary caregiver a break, Alfonso said.

## They love their children so they deprive themselves

When money that could pay for warm clothes and food is regularly taken from an elder by younger relatives and used for something else, an alert social worker would likely classify this as elder abuse.

But far too often, the older person isn't aware of being abused. And even if they don't like the situation, they don't want anyone coming in to try to fix it.

"They don't understand the word 'abuse,'" said Arnon Moore, an elder abuse worker at Fairbanks' Women In Crisis-Counseling Assistance (WIC-CA).

Moore, 48, has seen many younger relatives manipulating grandpas or grandpas to get at the elder's money. The older may not understand there are options, and they may not even think Moore's

agency is trying to help, Moore explained.

"Because they love their children and grandchildren, they deprive themselves of their own needs," Moore said.

"By the end of the month they don't have enough food or clothing."

And in Fairbanks, where winter is severe, lack of adequate clothing can be serious.

"I can't go in there and say 'stop doing that,'" Moore said. "It's their own life."

That is one major difference between elder abuse and child abuse. In cases of suspected child abuse, a social worker can take the child away from the family if he or she is being harmed.

"We can intervene against a child's will," said Floyd

**In a real low voice the Kaltag woman whispered, 'I don't know why she does it.'**

MacPhee, staff manager for the Fairbanks office of the Division of Family and Youth Services (DFYS).

In elder abuse, the elder must be willing to accept services, and often that doesn't happen, MacPhee said.

"It's hard (for an elder) to admit that maybe it's their child abusing them. It's a shameful thing," MacPhee said.

Because the law recognizes that older people are capable of making their own decisions, the court can intervene without the elder's consent only after an elder is declared incompetent, according to MacPhee.

Many of the cases Moore sees do not involve incompetent elders, just frail or dependent elderly being taken advantage of by children or younger members of the community.

"I know one case where the mother is crippled and has a drinking problem," Moore said. Her son takes money away from her, telling her she is no good.

He uses her drinking as an excuse to argue with her.

"She gets scared and she gives money to get rid of him. . . he beats her up if she don't give it to him," Moore said.

Moore spoke with another woman from Kaltag whose daughter was suspected of beating her. The mother denied that her daughter broke her arm and told Moore she fell on the wood pile.

"I speak her language," Moore said. "And I told her her daughter was abusing her," Moore said.

In a real low voice the Kaltag woman whispered, "I don't know why she does it."

That was all the woman would say about the abuse.

"She knows it's there," Moore said. But she depends on her daughter for everything.

"She (the daughter) cleans house, gets water and wood for me," the woman told Moore.

Without her daughter, the woman said, she simply couldn't manage.

## Physical abuse: He'd rather handle it himself

Jim McKay's stepson liked to take sucker shots at him.

One day when McKay (not his real name) reached down to turn off the TV, his stepson caught him off guard and belted him one.

McKay, in his 70s, is a victim of elder abuse. Like a number of other Alaskan elder abuse victims, he figures he'd rather handle it himself, with police help when necessary, than get involved with restraining orders or the state social service bureaucracy.

"He (the stepson) smokes

pot, gets drunk, pushes people around," McKay explained. "His 26-year-old stepson."

More than once McKay has called the police to kick the stepson out of the house.

McKay, a recovering alcoholic himself, is a small self-possessed man with a shock of graying hair and an infectious smile.

"I wasn't afraid," McKay said. "I didn't want to hurt him because I know this much about me . . . if I start it I'd go a little too far and it don't pry . . . I'm too old to

spend time in that place where those bars are," he said.

Even after his wife's death, McKay has been harassed by her children.

They begrudged him the new home he moved into. He and his wife — who was part Native — had qualified for the home before she died. Afterwards, the lender assured McKay he could continue his application for the home, even though one of the qualifications of ownership was Native ethnicity. The stepchildren didn't agree.

"They wanted to get the house for themselves," McKay said. He offered to let them live with him and even offered to let his stepson live in the old trailer rent-free.

Nothing seemed to satisfy them. The stepchildren would get drunk and become abusive to McKay.

The stepson kicked down the door of McKay's new home. His stepdaughters stole family photos and mementos while McKay was out. One stepdaughter physically attacked McKay, punching him in the nose

and scratching him all over the face.

McKay explained that he tried to hold her arms and stop her but she was able to wriggle free.

The last time the police came to take the stepson, McKay saw their report. It listed every time they had had to intervene between McKay and the stepson.

The policeman told McKay he should get a restraining order from the court to stop his stepson from contacting him, but McKay refused.

McKay hasn't seen his stepson since.

## Where to report abuse

If you suspect elder abuse contact the nearest Division of Family and Youth Services (DFYS) office. DFYS staff is required to investigate all reports of elder abuse and to provide protective services where needed. The investigation will be terminated upon the elder's request.

Some DFYS numbers to call are:  
 • Anchorage, general reporting number 276-1450; David Tom, 265-6010; Andy Linn, 265-6008.  
 • Fairbanks, 452-1844.  
 • Juneau, Ramona Green, 598-1881.  
 • Ketchikan, Eleanor Etkes, 225-6611.

## WANTED: COMPUTER

Employment-oriented computer classes for low-income senior citizens need computers for practice and lab work.

Especially helpful would be an IBM-compatible PC (a computer that will accept DOS and 5 1/4" disks). We are open to loans or donations of equipment for the four-month duration of the class.

These JTPA classes are employment-oriented and have helped many seniors return to work with new skills.

Loans/donations are tax deductible and would greatly benefit both Anchorage and Mat-Su seniors.

Please call Jane at Older Persons Action Group, Inc. 276-1059.



Some people can't make it alone. They think no one cares.

## C.R.I.S.I.S. Inc.

Crisis Referral Information and Suicide Intervention Service  
 2511 Fairbanks, Suite A  
 Anchorage, Alaska 99503-2822

Just a few hours of your time each week can mean the difference between life and death for a person experiencing a crisis. Volunteers are urgently needed. The decision is yours. You can write down our number and call us, or you can walk away.

Anchorage 276-1600 Statewide 800-478-1600



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