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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In Re)

THE EXXON VALDEZ)

PRINCE WILLIAM SOUND CONSERVATION)
ALLIANCE, ALASKA CENTER FOR THE)
ENVIRONMENT, DEFENDERS OF WILDLIFE,)
GREENPEACE, U.S.A., NATIONAL)
AUDUBON SOCIETY, NATURAL RESOURCES)
DEFENSE COUNCIL, NORTHERN ALASKA)
ENVIRONMENTAL CENTER, SIERRA CLUB,)
and TRUSTEES FOR ALASKA,)

Plaintiffs,)

v.)

EXXON CORPORATION, EXXON SHIPPING)
COMPANY, and ALYESKA PIPELINE)
SERVICE COMPANY,)

Defendants.)

No. A89-095 Civil
(Consolidated)

A89-359 CIV
No. _____ Civil

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
AND PENALTIES

I. NATURE OF THE CASE

1. This case concerns the wreck of the vessel EXXON VALDEZ against Bligh Reef on March 24, 1989, and release of over 11 million gallons of crude oil into the pristine and productive waters of Prince William Sound, Alaska. The spill from the EXXON VALDEZ is the largest oil spill ever in North America and one of the largest oil spills yet to occur anywhere in the world. Plaintiffs, Prince William Sound Conservation Alliance, Alaska Center for the Environment, Defenders of Wildlife, Greenpeace USA, National Audubon Society, Natural Resources Defense Council, Northern Alaska Environmental Center, Sierra Club, and Trustees for Alaska, seek to require defendants Exxon Corporation and Exxon Shipping Company (collectively "Exxon," unless otherwise noted) and defendant Alyeska Pipeline Service Company to abate, remove, and clean up the existing pollution resulting from the EXXON VALDEZ oil spill and to take all steps necessary to facilitate the complete restoration and replacement of the environment and natural resources damaged by that pollution and to require Exxon to pay civil penalties.

2. Plaintiffs' claims against Exxon and Alyeska for declaratory and injunctive relief and civil penalties are based on sections 301(a), 309(d), and 505(a), respectively, of the Federal Water Pollution Control Act of 1972 (commonly known and hereinafter referred to as the "Clean Water Act," or CWA), 33 U.S.C. §§ 1311(a), 1319(d), and 1365(a), and section 7002(a)(1)(B) of the

Solid Waste Disposal Act (commonly known and hereinafter referred to as the "Resource Conservation and Recovery Act" or "RCRA"), 42 U.S.C. § 6972(a)(1)(B).

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over the plaintiffs' first claim for relief pursuant to section 505(a) of the CWA, 33 U.S.C. § 1365(a), 28 U.S.C. § 1331, and 28 U.S.C. §§ 2201-2202.

4. This Court has jurisdiction over the plaintiffs' second claim for relief pursuant to section 7002(a) of RCRA, 42 U.S.C. § 6972(a), 28 U.S.C. § 1331, and 28 U.S.C. §§ 2201-2202.

5. This Court is the proper venue for this action pursuant to section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), 28 U.S.C. § 1391(b), and section 7002(a) of RCRA, 42 U.S.C. § 6972(a).

III. PARTIES

6. Plaintiff Prince William Sound Conservation Alliance is an Alaska based non-profit membership corporation that works for the protection, exploration, and scientific study of Prince William Sound, and for public education regarding the natural resources of the Sound. Prince William Sound Conservation Alliance's business address is 301 Egan St., P.O. Box 1697, Valdez, Alaska 99686. It has approximately 150 members, many of whom reside in communities ringing Prince William Sound, including Whittier, Cordova, and Valdez, and who use and enjoy Prince William Sound and the Gulf of

Alaska's coastal and marine environments. The defendants' unlawful actions adversely affect Prince William Sound Conservation Alliance's organizational interests, as well as its members' use and enjoyment of the lands, waters, fish and wildlife, and other natural resources of Prince William Sound and the Gulf of Alaska which have been damaged by the EXXON VALDEZ oil spill disaster. The Prince William Sound Conservation Alliance files this action on its own behalf and on behalf of of its adversely affected members.

7. Plaintiff Alaska Center for the Environment is an Alaska based non-profit membership corporation that is dedicated to the conservation and protection of air and water quality, and other natural resources of Alaska and, particularly, Southcentral Alaska, including Prince William Sound, the Gulf of Alaska, and Cook Inlet. The Alaska Center for the Environment's business address is 700 H Street, Suite 4, Anchorage, Alaska 99501. It has approximately 1,000 members, most of whom reside in Alaska, and many of whom use and enjoy Prince William Sound and the Gulf of Alaska's coastal and marine environments. The defendants' unlawful actions adversely affect the Alaska Center for the Environment's organizational interests, as well as its members' use and enjoyment of the natural resources of Prince William Sound and the Gulf of Alaska which have been damaged by the EXXON VALDEZ oil spill disaster. The Alaska Center for the Environment files this action on its own behalf and on behalf of its adversely affected members.

8. Plaintiff Defenders of Wildlife is a national non-profit membership corporation organized for the protection of wildlife, including marine mammals and migratory birds, their natural diversity, and the habitats important to the well-being of wildlife. Defenders of Wildlife's principal business address is 1233 Nineteenth St., N.W., Washington, D.C., 20036. Defenders of Wildlife has approximately 69,000 members, approximately 380 of whom reside in Alaska. Members of Defenders of Wildlife use and enjoy the coastal and marine environments of Prince William Sound and the Gulf of Alaska for recreation, wildlife viewing, scientific research, and public education purposes, among others. The defendants' unlawful actions adversely affect Defenders of Wildlife's organizational interests, as well as its members' use and enjoyment of the Prince William Sound and Gulf of Alaska areas damaged by the EXXON VALDEZ oil spill disaster. Defenders of Wildlife files this action on its own behalf and on behalf of its adversely affected members.

9. Plaintiff Greenpeace, U.S.A. is a national non-profit membership corporation which works for the preservation of the natural environment of the coastal regions, the oceans, and marine life, including Prince William Sound and the Gulf of Alaska. Greenpeace's principal business address is 1436 U St., N.W., Washington, D.C., 20009. Greenpeace also maintains a regional office in Alaska, which is located at 711 H St., Suite 300, P.O. Box 104432, Anchorage, Alaska 99501. Greenpeace has approximately

1,400,000 supporters in the United States, including approximately 2,000 who live in Alaska. Members of Greenpeace use and enjoy the coastal and marine environments of Prince William Sound and the Gulf of Alaska. The defendants' unlawful actions adversely affect Greenpeace's organizational interests, as well as its members' use and enjoyment of the Prince William Sound and Gulf of Alaska areas damaged by the EXXON VALDEZ oil spill disaster. Greenpeace files this action on its own behalf and on behalf of its adversely affected members.

10. Plaintiff National Audubon Society is a national non-profit membership corporation which is dedicated to the conservation and wise use of natural resources and the protection of the environment, including the environment of Prince William Sound and the Gulf of Alaska. The National Audubon Society's principal business address is 950 Third Avenue, New York, New York, 10022. The National Audubon Society also maintains a regional office in Alaska, which is located at 308 G Street, Suite 219, Anchorage, Alaska 99501. The National Audubon Society has approximately 580,000 members, including five chapters and approximately 2,600 members who reside in Alaska. Members of the National Audubon Society use and enjoy Prince William Sound and the Gulf of Alaska's coastal and marine environment. The defendants' unlawful actions adversely affect the National Audubon Society's organizational interests, as well as its members' use and enjoyment of the Prince William Sound and Gulf of Alaska areas damaged by the

EXXON VALDEZ oil spill disaster. The National Audubon Society files this action on its own behalf and on behalf of its adversely affected members.

11. Plaintiff Natural Resources Defense Council is a non-profit membership organization incorporated under the laws of New York with its principal place of business at 122 E. 42nd St., New York, New York 10017. The Natural Resources Defense Council combines an interdisciplinary approach in protecting natural resources and has particular expertise in air and water pollution, toxic substances, and Alaska resources, among other issues. The Natural Resources Defense Council has approximately 97,500 members, including approximately 350 members who reside in Alaska. Members of the Natural Resources Defense Council use and enjoy the natural resources of Prince William Sound and the Gulf of Alaska's coastal and marine environments. The defendants' unlawful actions adversely affect the Natural Resource Defense Council's organizational interests, as well as its members' use and enjoyment of the natural resources of Prince William Sound and the Gulf of Alaska which have been damaged by the EXXON VALDEX oil spill disaster.

12. Plaintiff Northern Alaska Environmental Center is an Alaska based non-profit membership corporation which is dedicated to the protection of the environment in Alaska and the wise use of its natural resources. The Northern Alaska Environmental Center's business address is 218 Driveway, Fairbanks, Alaska 99701. It has

approximately 600 members, most of whom reside in Alaska and many of whom use and enjoy Prince William Sound and the Gulf of Alaska's coastal and marine environment. The defendants' unlawful actions adversely affect the Northern Alaska Environmental Center's organizational interests, as well as its members' use and enjoyment of the Prince William Sound and Gulf of Alaska areas damaged by the EXXON VALDEZ oil spill disaster. The Northern Alaska Environmental Center files this action on its own behalf and on behalf of its adversely affected members.

13. Plaintiff Sierra Club is a national non-profit membership corporation dedicated to the exploration, enjoyment and protection of the public lands and waters, including the coastal and marine environments of Prince William Sound, and the national parks, national wildlife refuges, state parks, state critical habitat areas, state game sanctuaries, and the coastal and marine environments of the Gulf of Alaska. The Sierra Club's principal business address is 730 Polk Street, San Francisco, California 94109. The Sierra Club also maintains a regional office in Alaska, which is located at 241 E. Fifth St., Suite 205, Anchorage, Alaska 99501. The Sierra Club has approximately 495,425 members, approximately 1,645 of which are members of the Alaska Chapter of the Sierra Club. Members of the Sierra Club use and enjoy Prince William Sound and the Gulf of Alaska's coastal and marine environment. The defendants' unlawful actions adversely affect the Sierra Club's organizational interests, as well as its members' use

and enjoyment of the public lands and waters damaged by the EXXON VALDEZ oil spill disaster. The Sierra Club files this action on its own behalf and on behalf of its adversely affected members.

14. Plaintiff Trustees for Alaska is an Alaska based non-profit corporation that provides legal services to promote the rational use and protection of Alaska's natural resources and compliance with federal and state environmental laws. Trustees for Alaska's business address is 725 Christensen Drive, Suite 4, Anchorage, Alaska 99501. It has approximately 1,100 members, many of whom reside in Alaska and use and enjoy Prince William Sound and the Gulf of Alaska's coastal and marine environments. The defendants' unlawful actions adversely affect the Trustees for Alaska's organizational interests, as well as its members' use and enjoyment of the lands and waters, fish and wildlife, and other natural resources damaged by the EXXON VALDEZ oil spill disaster. Trustees for Alaska files this action on its own behalf and on behalf of its adversely affected members.

15. Defendant Exxon Corporation is a corporation organized under the laws of the State of New Jersey, with its principal place of business at New York, New York. Exxon Corporation is a multinational corporation engaged in the business of exploration for and production, transportation, and sale of oil and natural gas and other petroleum products. Exxon Company, USA is a division of Exxon Corporation with its principal place of business at Houston, Texas. Exxon Company, USA is responsible for the Corporation's oil

and gas operations in the United States. Exxon Corporation, directly and through Exxon Company, USA, is the owner of the crude oil spilled from the vessel EXXON VALDEZ and, through its wholly controlled subsidiary, Exxon Shipping Company, is the owner and operator of the vessel EXXON VALDEZ.

16. Defendant Exxon Shipping Company is a maritime subsidiary of, and is wholly controlled by, Exxon Corporation and is organized under the laws of the State of Delaware, with its principal place of business at Houston, Texas. Exxon Shipping Company is an owner and operator of the vessel EXXON VALDEZ.

17. Defendant Alyeska Pipeline Service Company (hereinafter "Alyeska"), is a corporation organized under the laws of Delaware, with its principal place of business at Anchorage, Alaska. Alyeska is owned and controlled by subsidiaries of seven major oil and gas companies, including Exxon Corporation. Alyeska operates the Trans-Alaska Pipeline System, including the terminal at Valdez, Alaska. Alyeska was responsible for preparing adequate oil spill contingency plans for the pipeline, terminal and Prince William Sound and for emergency response to the release of oil from the EXXON VALDEZ and clean-up of the oil from the environment.

IV. FACTS

18. On the evening of March 23, 1989, the vessel EXXON VALDEZ left the Alyeska Terminal at the port of Valdez, Alaska, the southern terminus of the Trans-Alaska Pipeline System, bound for Long Beach, California.

19. The 987 foot vessel's eleven oil tanks were carrying approximately 53,094,510 gallons of crude oil which had been shipped from Alaska's North Slope through the Trans-Alaska Pipeline.

20. At about 12:04 a.m. on March 24, 1989, the vessel struck Bligh Reef, just offshore of Bligh Island, on the southeastern side of Valdez Arm in Prince William Sound, roughly 25 miles from the Alyeska terminal in Valdez. The grounding and subsequent efforts by the captain and crew to free the vessel from the reef tore holes in three saltwater ballast tanks extending the full length of the vessel, and cut open at least eight of the vessel's eleven oil cargo tanks.

21. Immediately following the initial grounding at 12:04 a.m. on March 24, the vessel released crude oil into the waters of Prince William Sound at a rate of about 20,000 barrels per hour. By roughly 3:30 a.m., the vessel had released approximately 138,000 barrels of crude oil into Prince William Sound. By early the next morning, the oil spilled from the vessel had formed a slick roughly 1,000 feet wide and four to five miles long. The spilled oil, driven by the winds, tides, and currents, continued to spread out over the waters of Prince William Sound, and began coating beaches on Little Smith, Naked, and Knight Islands within a matter of days. Within a week of the spill, the oil slick had moved in a southwesterly direction through the entrance to the Sound past Montague and LaTouche Islands and out into the Gulf of Alaska. The

oil has moved hundreds of miles along the coast of Alaska in the weeks since the vessel went aground on Bligh Reef, coating beaches on the Kenai and Alaska Peninsulas, Kodiak Island and Lower Cook Inlet, in addition to the hundreds of miles of coastline covered with oil inside the Sound. All told, the vessel lost at least 11 million gallons of crude oil during the days following the March 24 grounding.

V. IMPACTS OF THE SPILL

22. In the days and weeks following the EXXON VALDEZ's grounding on Bligh reef, the oil spilled from the vessel spread over and polluted thousands of square miles of the ocean surface, affected approximately 1,800 miles of coastline both inside and outside Prince William Sound, contaminated the ocean bottom and sediments and the near shore sub-tidal zone, and it continues to affect new areas as time goes on. The areas which have been affected thus far include: the proposed College Fjords-Nellie Juan wilderness area in the Chugach National Forest in western Prince William Sound; the Kenai Fjords and Katmai National Parks and Preserves; portions of the Becharof, Alaska Peninsula, Aniakchak, Alaska Maritime, and Kodiak National Wildlife Refuges; special-status State areas including the Katchemak Bay State Park and Critical Habitat Area, Shuyak Island State Park, and the McNeil River State Game Sanctuary.

23. The continuing presence of the oil in the water, on the ocean floor, and on the coastline has had the following effects on the environment, among others:

(a) The water in the areas where the oil has spread has become polluted with toxic crude oil and its constituents. As it has weathered, some of the oil has become entrained in the water column, where it will continue to pollute the ocean for years in the future. Oil which has contaminated the shoreline and bottom sediments will continue to be released into the water column in the future, thus further polluting the water for many years to come.

(b) Living natural organisms of Prince William Sound and the areas beyond the Sound have been (i) killed outright, (ii) damaged, (iii) had their reproductive cycles disrupted, or (iv) displaced by smothering, adsorption, absorption, ingestion, or otherwise coming in contact with oil from the spill, directly or indirectly. These resources include, among others: (i) marine mammals, including whales, sea otters, seals, sea lions, and porpoises; (ii) birds, including bald eagles, migratory birds, waterfowl, shorebirds, and seabirds such as auks, puffins, guillemots, murrelets, murres, loons, grebes, and sea ducks; (iii) terrestrial mammals, including bears, Sitka black-tailed deer, river otters and mink; (iv) commercial and non-commercial sea life and intertidal dwellers, including fish and shellfish species, and pelagic

and benthic organisms such as plankton, jellyfish, squid, bottom dwelling invertebrates, sea grasses, seaweed, and algae. Deaths and chronic damage to these species will continue as long as the toxic crude oil, and its constituents, remains in the environment where it can adversely affect each of these living organisms.

(c) The food chain for all the living resources which reside in, spend part of their life cycle in, or migrate through, the waters and coastline contaminated with oil has been and will continue to be adversely affected as long as the toxic crude oil, and its constituents, remains in the environment or bioaccumulates and/or biomagnifies in species which serve as food sources of other living resources.

(d) The waters and coastline of Prince William Sound and the areas beyond the Sound which have been contaminated with oil have been so polluted, and the natural beauty and living resources of the area so damaged and destroyed, that the plaintiffs' members and others' use and enjoyment of the natural resources of the area for purposes such as fishing and hunting, wildlife viewing, camping and other recreational pursuits, scientific research, and public education, have been significantly reduced, and in some cases eliminated, and will be for years to come.

VI. CLEAN-UP EFFORTS

24. From the very outset of the oil spill disaster, when the vessel EXXON VALDEZ went aground on Bligh Reef on March 24, 1989, Alyeska's and Exxon's response and clean-up efforts have been unreasonably slow and inadequate.

25. At the time the oil spill occurred, Alyeska had in place oil discharge contingency plans, which are required under Alaska law. The contingency plans described how Alyeska would respond to oil spills that might occur along the Trans-Alaska pipeline, at the oil terminal in Valdez, or in Prince William Sound. The plans and their modifications represented that:

- (a) Alyeska had the best technology available to contain and clean up oil spills;
- (b) Alyeska could promptly encircle and contain an oil spill;
- (c) Alyeska had the equipment available to exclude spilled oil from more than 130 environmentally sensitive sites, including fish hatcheries, fish spawning grounds, and important marine mammal and bird use areas;
- (d) Alyeska could clean up a spill of 100,000 barrels of oil in Prince William Sound within 48 hours;
- (e) Alyeska could respond initially to an oil spill event in Prince William Sound within five hours;
- (f) In the event of a 200,000 barrel oil spill, Alyeska would have two oil skimmers and 4,500 feet of boom at the spill scene within three hours and that a barge, a third skimmer,

and 3,000 additional feet of boom would be at the scene within five hours.

26. Contrary to the representations in Alyeska's existing oil discharge contingency plans, Alyeska was not in compliance with the requirements of the plans at the time of the vessel EXXON VALDEZ oil spill, and did not have the resources available to conduct an adequate clean-up operation.

27. Alyeska's oil discharge contingency plans were inadequate to ensure the containment and clean-up of a major oil spill the size of the EXXON VALDEZ disaster and were not based on realistic scenarios for an oil spill in Prince William Sound.

28. Alyeska's and Exxon's response to the oil spill was inadequate. The crew of the EXXON VALDEZ notified the Coast Guard office in Valdez of the spill at 12:28 a.m. on March 24. Despite the requirement in Alyeska's own oil discharge contingency plan that the initial response effort to an oil spill event in Prince William Sound be in place at the vessel within five hours of notification, Alyeska failed to respond until well after the time required.

29. At the time the spill occurred, Alyeska's only containment barge was stripped for repairs at the Valdez terminal and was not operational. Alyeska had failed to notify the State of Alaska that the equipment had been taken out of service, as required by its contingency plan. Neither Alyeska nor Exxon had immediate access to the booms, skimmers, and other equipment and

trained personnel needed to contain and remove the oil, and to protect the environmentally sensitive areas of Prince William Sound and other areas in Alaska, when the spill occurred.

30. When Alyeska's initial response equipment did arrive at the vessel Exxon Valdez several hours late, the booms and other equipment were not sufficient to encircle the vessel, contain the spill, or remove the oil. Despite the fact that the weather was calm for the first two days following the spill, and therefore ideal for containment and removal, Exxon and Alyeska failed to contain or remove the oil.

31. Sufficient boom was not deployed even to surround the vessel until the second day of the spill. By that point, the oil slick was already at least 1,000 feet wide and four to five miles long extending away from the vessel.

32. In order to offset their lack of adequate oil storage capacity for the response operation, Exxon allowed the vessel EXXON BATON ROUGE to pump its ballast into Prince William Sound in preparation for lightening crude oil from the EXXON VALDEZ. This incident caused the discharge of oil, oily water and/or toxic substances into Prince William Sound which mingled with the oil spilled from the EXXON VALDEZ.

33. On information and belief, neither Alyeska nor Exxon efficiently or effectively requisitioned or made use of commercial vessels and manpower, or clean-up equipment which was on hand or could be requisitioned quickly, to contain the spread of the oil

and clean it up as much as possible before it spread, despite numerous offers of assistance by individuals and clean-up equipment manufacturers.

34. As a result of Alyeska's and Exxon's failures to contain and recover the spilled oil efficiently and effectively, the oil slick continued to move through Prince William Sound, polluting the water, contaminating the ocean bottom, and heavily oiling beaches on the western side of the Sound and at Little Smith, Naked, Ingot, Knight, Seal, Eleanor, Green, Montague, and LaTouche Islands, among others. The oil then proceeded out through the entrance to the Sound into the Gulf of Alaska and down the Gulf coastline in a westerly direction, contaminating the shoreline, water, and ocean bottom there as well.

36. In the days following the spill, Alyeska and Exxon failed to expeditiously deploy sufficient boom or take other effective protective actions with respect to virtually any of over a hundred identified environmentally sensitive areas in Prince William Sound or outside the Sound which were in the path of the advancing oil slick. Fishermen and the State of Alaska mounted their own emergency, last-ditch effort to save major salmon hatcheries at Main Bay, Sawmill Bay, and Esther Island. As a result of Alyeska's and Exxon's failure to protect sensitive areas quickly enough, marine mammal pupping and haul-out areas, bird rookeries, and exceptionally productive bays and lagoons were severely contaminated by oil days after the original spill occurred, as the

wind and tides continued to drive the oil around the islands of the Sound and out into the Gulf of Alaska.

37. Exxon submitted its first shoreline clean-up plan for Prince William Sound to the Coast Guard on April 15, 1989. Exxon submitted a revised version of the Prince William Sound plan on May 1, 1989. On May 24, 1989, Exxon submitted another amendment for the Prince William Sound plan and, for the first time, submitted separate shoreline plans to the Coast Guard covering affected areas outside Prince William Sound, including the Homer-Lower Kenai Peninsula, Seward, and Kodiak areas. Thus, Exxon was unreasonably slow in developing and implementing shoreline clean-up strategies in Prince William Sound and the Gulf of Alaska. It lost valuable time early in the spill event when clean-up activities could have been most effective.

38. The shoreline plans set out Exxon's operational plans for shoreline clean-up, including equipment, personnel, and clean-up techniques, but they contain no plans for rehabilitating and restoring the environment. The plans also do not include a process for identifying impacts to, let alone clean-up and restoration of, any affected areas other than shorelines. In addition, the plans fail to consider an adequate range of methods for cleaning the wide variety of affected shorelines.

39. Exxon's shoreline plans are inadequate to ensure a full clean-up of the oil contaminating the coastline of Prince William Sound and the Gulf of Alaska and restoration of the environment.

Among other deficiencies, Exxon's shoreline clean-up plans fail to give adequate consideration to ecological recovery objectives for the different species of marine organisms which inhabit the areas affected by oil. The plans fail to set out how such objectives will be used to decide when, how, and whether to apply specific clean-up techniques to particular oiled areas. Exxon's shoreline clean-up plans also fail to consider or to set out any mechanism for gathering sufficient information about the particular organisms which inhabit or utilize the intertidal and near-shore areas of each oiled coastal segment, their concentrations, and the relative importance and sensitivity of those species at different times to particular clean-up techniques. Because of these significant problems with the plans, Exxon cannot determine whether particular clean-up activities are in fact having a beneficial or detrimental effect on the environment over the short and/or long term; nor can informed decisions be made regarding the steps necessary to complete restoration of the natural environment in the affected areas.

40. The oil contaminating the coastline of Prince William Sound and the Gulf of Alaska coastline outside the Sound has not been removed or the environment restored by Exxon's shoreline treatment efforts to date. In many places, even after a beach has been "treated" several times pursuant to Exxon's shoreline clean-up plan, oil is still visible standing in pools among the rocks, and oil which has soaked down into the beach sediments -- in some

places as deep as 2 feet below the surface -- continues to percolate upwards to re-oil the surface as the tides move in and out of the area. In many areas, beaches observed a few days after "treatment" is considered complete by Exxon cannot be distinguished from untreated beaches. Exxon and Alyeska have failed to mobilize sufficient resources, or devote sufficient effort, to clean adequately all affected shorelines this year. Moreover, Exxon and Alyeska have unreasonably failed to devote sufficient effort to clean some of the most sensitive or heavily oiled beaches, instead treating many beaches of lesser importance first.

41. Exxon's conduct of the shoreline clean-up has caused and contributed to additional adverse impacts on the environment over and above the effects of the original oil contamination from the EXXON VALDEZ. These impacts include, among others:

- (a) physical trampling of shoreline organisms by workers and equipment;
- (b) scalding, and washing away of living organisms along the shoreline and in the intertidal zone with the high-pressure and high-temperature washing and flushing methods;
- (c) tracking of oil from contaminated areas to uncontaminated areas by the workers and equipment;
- (d) erosion of beaches subjected to high pressure washing;
- (e) sedimentation of the near-shore areas with oiled beach material washed off in the clean-up, leading to additional smothering and contamination of sub-tidal zone organisms;

- (f) washing of oil back into the near-shore marine environment, where it may cause more biological harm than on the beaches, and driving it deeper into the substrate where it will be even more difficult to remove;
- (g) failure to recapture much of the oil which is washed from the beaches during the clean-up due to Exxon's failure to deploy booms adequately or at all, failure to repair booms that break, or to clean oiled booms, inadequate oil recovery operations near the coastline being cleaned, and leaking booms which allow the oil to escape back into the marine environment;
- (h) physical and noise disturbance of species already adversely affected by the oil spill, including, particularly, marine mammals, birds, bears and deer;
- (i) failure to work at the appropriate tide levels to avoid contamination of rich marine communities in previously un-oiled areas;
- (j) leaving garbage and oily waste materials at the work sites along the coastline after the treatment has been completed;
- (k) impacts to the inter-tidal and near-shore areas from landing skiffs and anchoring barges;
- (l) additional oil and other contaminants spilled, leaked and discharged from clean-up vessels and equipment;

(m) impacts from workers, both on-duty and off-duty, entering into relatively untrammelled uplands;

(n) wholesale removal of whole sections of beach, including stream banks, killing countless organisms and releasing oily sediments into the water.

42. Exxon and Alyeska have failed to follow the advice and direction provided by the Coast Guard and other federal and state agencies regarding the resources and steps necessary to complete an adequate clean-up of affected areas.

43. Exxon and Alyeska have failed to prepare adequate plans to ensure the complete cleanup of the affected environment after September, 1989, and have failed to take the steps necessary to facilitate the complete restoration or replacement of damaged resources. As a result, Exxon and Alyeska cannot assure that the affected environment will be cleaned up or restored.

VII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF - CLEAN WATER ACT

A. PROHIBITION AGAINST UNAUTHORIZED DISCHARGES

44. Plaintiffs reallege and incorporate herein by reference the allegations of paragraphs 1 to 43.

45. Section 101(a) of the CWA states that the objective of the Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). That section also declares, as a national policy, that the

discharge of pollutants into the navigable waters be "eliminated" by 1985. Id.

46. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states that the "discharge of any pollutant by any person shall be unlawful" unless the discharge falls within one or more categories authorized by specific provisions of the CWA.

47. Section 502(5) of the CWA defines the term "person" to include an "individual, corporation," or "association." 33 U.S.C. § 1362(5).

48. Section 502(19) of the CWA defines the term "pollution" as "the man-made or man-induced alteration of the chemical, physical, biological . . . integrity of water." 33 U.S.C. § 1362(19). Section 502(6) defines the term "pollutant" broadly to include "biological materials" and "chemical" and other "waste[s] discharged into water." 33 U.S.C. § 1362(6).

49. Section 502(12) of the CWA defines the term "discharge of a pollutant" as including "any addition of any pollutant to navigable waters from any point source. . . ." 33 U.S.C. § 1362(12).

50. Section 502(7) of the CWA defines the term "navigable waters" as "waters of the United States, including the territorial seas." Section 502(8), in turn, defines "territorial seas" as the "belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters,

and extending seaward a distance of three miles." 33 U.S.C. § 1362(7) and (8).

51. Section 502(14) of the CWA defines the term "point source" as a "discernible, confined and discrete conveyance, including but not limited to any . . . discrete fissure . . . vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

B. CITIZEN SUITS FOR CIVIL PENALTIES AND TO ENJOIN ONGOING VIOLATIONS OF SECTION 301(a)

52. Section 505(a) of the CWA provides that "any citizen may commence a civil action on his own behalf -- (1) against any person . . . who is alleged to be in violation of (A) an effluent standard or limitation under [the CWA]" 33 U.S.C. § 1365(a). Section 505(a) also authorizes district courts to "enforce such an effluent standard or limitation . . . and to apply any appropriate civil penalties under section [309(d)] of [the CWA]." Id.

53. Section 309(d) of the CWA provides that "[a]ny person who violates section [301] of [the Act] . . . shall be subject to a civil penalty not to exceed \$25,000 per day for each violation." 33 U.S.C. § 1319(d).

54. Section 505(g) of the CWA defines the term "citizen," for purposes of section 505, as "a person or persons having an interest which is or may be adversely affected." 33 U.S.C. § 1365(g).

55. Section 505(f) of the CWA defines the term "effluent standard or limitation" to include "an unlawful act under subsection (a) of section [301]" of the Act. 33 U.S.C. § 1365(f).

56. Section 505(b)(1)(A) of the CWA provides that "[n]o action may be commenced -- (1) under subsection (a)(1) of this section . . . prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the Administrator, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator of the standard, limitation, or order" 33 U.S.C. § 1365(b)(1)(A).

C. VIOLATIONS OF THE CLEAN WATER ACT

57. Plaintiffs are "citizens" within the meaning of section 505(a) and (g) of the CWA, 33 U.S.C. § 1365(a) and (g).

58. The Exxon defendants are "persons" within the meaning of sections 301(a) and 502(5) of the CWA, 33 U.S.C. §§ 1311(a) and 1362(5).

59. The waters of Prince William Sound and within the line marking the outer limit of the United States territorial seas along the coast of Alaska are "navigable waters," within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).

60. The release of more than 11 million gallons of oil from the EXXON VALDEZ, beginning March 24, 1989 and occurring continuously or intermittently until the EXXON VALDEZ left the navigable waters of the United States adjacent to Alaska, constitutes the discharge of a pollutant from a point source into navigable waters, within the meaning of sections 301(a) and 502(6), (7), (12), and (14) of the CWA, 33 U.S.C. §§ 1311(a) and 1362(6), (7), (12), and (14).

61. The discharge of oil from the EXXON VALDEZ does not fall within one or more of the enumerated exceptions in section 301(a) of the CWA, 33 U.S.C. § 1311(a), to the general prohibition in that section of discharges of pollutants from a point source.

62. Each day that oil is discharged from the EXXON VALDEZ represents a distinct violation of section 301(a) of the CWA, 33 U.S.C. §1311(a).

63. Because a significant portion of the more than 11 million gallons of oil spilled from the EXXON VALDEZ remains in the environment and is susceptible to being removed from the environment, the EXXON VALDEZ spill represents an ongoing and continuing violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), for purposes of sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d) and 1365(a).

64. Each day that oil from the EXXON VALDEZ remains in the environment and is susceptible to being removed is a distinct violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

65. Neither the Administrator of the United States Environmental Protection Agency (EPA), nor the State of Alaska, has commenced and is diligently prosecuting a civil or criminal action against Exxon in a court of the United States or a State to require compliance with the Clean Water Act, for purposes of section 505(b)(1)(B) of the CWA, 33 U.S.C. § 1365(b)(1)(B).

D. NOTICE OF VIOLATION

66. Pursuant to section 505(b)(1) of the CWA, 33 U.S.C.

§ 1365(b)(1), on April 18, 1989, plaintiffs issued to Exxon, to the Administrator of the EPA, and to the State of Alaska -- by both certified and registered mail -- a notice of violation of section 301(a) of the CWA. A copy of that notice is attached as Plaintiffs' Exhibit 1.

67. More than sixty days have passed since the issuance of the notice and, therefore, plaintiffs have satisfied the notice requirements in section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A).

SECOND CLAIM FOR RELIEF - RESOURCE

CONSERVATION AND RECOVERY ACT

68. Plaintiffs reallege and incorporate herein by reference the allegations in paragraphs 1 to 43.

69. Section 7002(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a), provides that "any person may commence a civil action on his own behalf --

(1)(B) against any person . . . who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment . . .

70. Section 1004(3) of RCRA defines the term "disposal" to include:

the discharge, . . . spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

42 U.S.C. § 6903(3).

71. Section 1004(27) of RCRA defines the term "solid waste" as "garbage, refuse, . . . and other discarded material, including solid, liquid, [or] semisolid . . . material resulting from industrial, commercial, [or] mining . . . operations. . . ." 42 U.S.C. § 6903(27).

72. Section 1004(15) of RCRA defines the term "person" to include individuals, corporations, and associations. 42 U.S.C. § 6903(15).

73. Section 7002(a) of RCRA authorizes this Court to:

restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste . . . , to order such person to take such other action as may be necessary, or both,

42 U.S.C. § 6972(a).

74. Each of the plaintiffs are "persons," within the meaning of section 1004(15) of RCRA. 42 U.S.C. § 6903(15).

75. Exxon and Alyeska are corporations, and as such, are "persons," within the meaning of section 1004(15) of RCRA. 42 U.S.C. § 6903(15).

76. The oil spilled from the EXXON VALDEZ into Prince William Sound, along the coast of the Gulf of Alaska, and other areas of Alaska, is a "solid waste," within the meaning of section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

77. Exxon and Alyeska are contributing or have contributed to the past or present handling, treatment, and disposal of such solid waste, for purposes of section 7002(a)(1)(B) of RCRA, 42

U.S.C. § 6972(a)(1)(B), by spilling the oil from the EXXON VALDEZ and taking or failing to take various steps to control and remove the oil from the environment.

78. The spilling of oil from the EXXON VALDEZ, the continuing presence of oil in the environment, and the techniques used to control and remove the oil have created and are creating conditions which may present "an imminent and substantial endangerment to health or the environment" within the meaning of section 7002(a)(1)(B) of RCRA, 42 U.S.C. §6972(a)(1)(B).

79. Pursuant to section 7002(b)(2)(A) of RCRA, 42 U.S.C. § 6972(b)(2)(A), on April 18, 1989, plaintiffs gave notice of the endangerment to the environment to defendants Exxon and Alyeska and to the Administrator of the EPA and the State of Alaska by certified and registered mail. A copy of that notice is attached to this complaint as Plaintiffs' Exhibit 1.

80. On information and belief, a copy of the notice was received by Exxon, Alyeska, the Administrator of the EPA, and by the State of Alaska, on or before April 21, 1989.

81. More than ninety days have passed since plaintiffs notified Exxon, Alyeska, the Administrator of the EPA, and the State of Alaska of the endangerment and, therefore, plaintiffs have satisfied the notice requirements of section 7002(b)(2)(A) of RCRA, 42 U.S.C. § 6972(b)(2)(A).

82. On information and belief, the Administrator of the EPA has not (a) commenced and diligently prosecuted a claim under RCRA

section 7003 or section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), (b) engaged in a removal action under CERCLA section 104, (c) incurred costs to initiate a Remedial Investigation and Feasibility Study (RIFS) under CERCLA section 104 and diligently proceeded with a remedial action under CERCLA, or (d) obtained a court order or issued an administrative order under RCRA section 7003 or CERCLA section 106 pursuant to which a responsible party is diligently conducting a removal action, RIFS, or proceeding with a remedial action. 42 U.S.C. § 6972(b)(2)(B).

83. On information and belief, the State of Alaska has not (a) commenced and diligently prosecuted a claim under RCRA section 7002(a)(1)(B), (b) engaged in a removal action under CERCLA section 104, or (c) incurred costs to initiate a RIFS under CERCLA section 104 and diligently proceeded with a remedial action under CERCLA. 42 U.S.C. § 6972(b)(2)(C).

VIII. PRAYER FOR RELIEF

Plaintiffs respectfully request the Court to grant the following relief:

(a) a declaration that each day that oil is released from the EXXON VALDEZ constitutes a distinct violation of section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), for which Exxon is liable;

(b) a declaration that the continuing presence in the environment of oil spilled from the EXXON VALDEZ is an ongoing

violation of section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), for which Exxon is liable;

(c) a declaration that the oil spilled from the EXXON VALDEZ is a solid waste and that the oil spill and defendants' efforts to control and clean up that spill have contributed to and are contributing to an imminent and substantial endangerment to health and the environment, for purposes of section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B);

(d) a preliminary and permanent injunction requiring Exxon and Alyeska to abate and remove from the environment the pollution resulting from the discharge of oil from the EXXON VALDEZ, to undertake a thorough evaluation of clean-up techniques and the development of a complete clean-up plan, to protect the natural resources of the region from further and future harm, to take all steps necessary to facilitate the complete restoration of the environment and ensure that all oil clean-up activities are consistent with and advance such restoration, and to acquire equivalent resources for those that cannot fully be restored;

(e) an order directing Exxon to pay civil penalties in the full amount authorized by sections 505 and 309 of the Clean Water Act, 33 U.S.C. §§ 1365, 1319;

(f) an award to plaintiffs of their costs of litigation and attorneys and expert witness fees;

(g) and any other relief the Court deems necessary and proper.

Respectfully submitted,

DATED: August 23, 1989

Lauri J. Adams

LAURI J. ADAMS
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STEWART ELGIE
Sierra Club Legal Defense Fund, Inc.
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(907) 586-2751

DATED: August 23, 1989

Michael M. Wenig

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DATED: August 23, 1989

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Frank Iarossi, President
Exxon Shipping Company
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G. M. Nelson, President
Alyeska Pipeline Service Co.
1835 Bragaw Street
Anchorage, Alaska 99512

Admiral Paul Yost, Commandant
U.S. Coast Guard
2100 Second Street SW
Washington, D.C. 200593-0001

Rear Admiral Edward Nelson, Jr.,
United States Coast Guard
Commander 17th Coast Guard District
P.O. Box 3-5000
Juneau, Alaska 99802

Gentlemen:

This is to notify you of violations of the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6991i, and the Clean Water Act, 33 U.S.C. §§ 1251-1387, occurring in relation to the catastrophic oil spill from the tanker *Exxon Valdez* in Prince William Sound, Alaska. This notice is being provided by the Sierra Club Legal Defense Fund and Trustees for Alaska on behalf of our clients Prince William Sound Conservation Alliance, Alaska Center for the Environment, Defenders of Wildlife, Greenpeace, National Audubon Society, Natural Resources Defense Council, Northern Alaska Environmental Center, Oceanic Society-Friends of the Earth, U.S.-Environmental Policy Institute, Sierra Club, The Wilderness Society, and Trustees for Alaska.

April 18, 1989

William Reilly, Administrator
U.S. Environmental Protection Agency
401 M Street SW
Washington, D.C. 20460

Robie G. Russel
Regional Administrator
U.S. Environmental Protection Agency
Region X
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Attorney General of the
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Washington, D.C. 20540

Samuel Skinner, Secretary
U.S. Department of Transportation
400 Seventh Street S.W.
Washington, D.C. 20590

Commissioner Dennis
Alaska Department of Environmental Conservation
P.O. Box 0
Juneau, Alaska 99801

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SIERRA CLUB
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EXHIBIT 1



SIERRA CLUB LEGAL DEFENSE FUND, INC.

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Commissioner Dennis Kelso
Alaska Department of
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P.O. Box O
Juneau, Alaska 99811-1800

April 18, 1989

Gentlemen:

This is to notify you of violations of the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6991i, and the Clean Water Act, 33 U.S.C. §§ 1251-1387, occurring in relation to the catastrophic oil spill from the tanker *Exxon Valdez* in Prince William Sound, Alaska. This notice is being provided by the Sierra Club Legal Defense Fund and Trustees for Alaska on behalf of our clients Prince William Sound Conservation Alliance, Alaska Center for the Environment, Defenders of Wildlife, Greenpeace, National Audubon Society, Natural Resources Defense Council, Northern Alaska Environmental Center, Oceanic Society-Friends of the Earth, U.S.-Environmental Policy Institute, Sierra Club, The Wilderness Society, and Trustees for Alaska.

EXHIBIT 1

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Page 2

Crude oil from the tanker Exxon Valdez is a solid and hazardous waste which is being and has been handled, stored, treated, transported and disposed of in a manner which may present an imminent and substantial endangerment to health or the environment within the meaning of section 7002(a)(1)(B) of the Solid Waste Disposal Act, 42 U.S.C. § 6972(a)(1)(B). The approximately 10 million gallons of crude oil that has escaped from the tanker beginning on March 24, 1989, and continuing since then has caused and will continue to cause severe adverse impacts to fish and wildlife and the formerly pristine environment which is their habitat.

The spill has contaminated large areas of Prince William Sound and the Gulf of Alaska, and many miles of coastline in south central Alaska, including Kenai Fjords and Katmai National Parks. Thousands of seabirds and marine mammals have been and will continue to be injured and killed. Fish populations in the region may be severely affected and even terrestrial animals, such as bears, deer, and bald eagles, are likely to be harmed from ingesting contaminated plants, animals, and fish, and from habitat loss. Adverse impacts to public health may also result from exposure to the spilled oil and contaminated fish and wildlife.

These and other threats to the environment have been and are being caused by the continuing presence of the oil from the tanker in the water and on land, the ineffective clean-up measures being undertaken, the abandonment of oil not recovered, the inadequate program for storage, treatment, and disposal of the recovered oil and oil-contaminated materials, and inadequate oil spill contingency plans.


Alyeska Pipeline Service Company bore the original responsibility for immediate response to the spill. Exxon Corporation and Exxon Shipping Company are also responsible for the spill as owners of the tanker Exxon Valdez and the oil it contained. Several federal and state agencies are responsible for undertaking necessary approvals and response measures, including the U.S. Coast Guard, U.S. Environmental Protection Agency, and the Alaska Department of Environmental Conservation.

The discharge of oil from the tanker Exxon Valdez is also an unauthorized discharge of a pollutant into navigable waters in violation of section 301 of the Clean Water Act, 33 U.S.C. § 1311. This unlawful discharge began on March 24, 1989 and, to the best of our knowledge, is continuing. Exxon Corporation and Exxon Shipping Company are responsible for this violation.

This notice of violations is being provided pursuant to the Clean Water Act, § 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), and the Solid Waste Disposal Act, § 7002(b)(2)(A), 42 U.S.C. § 6972(b)(2)(A), which require 60 and 90 days notice, respectively, of alleged violations prior to the commencement of a citizen suit. This notice is provided on behalf of the above listed organizations (the addresses of which are included on the attached list) by the Sierra Club Legal Defense Fund, 325 Fourth Street, Juneau, Alaska, 99801, (907) 586-2751, and Trustees for Alaska, 725 Christensen Drive, Suite 4, Anchorage, Alaska, 99501, (907) 276-4244.

Sincerely yours,

SIERRA CLUB LEGAL DEFENSE FUND, INC.
TRUSTEES FOR ALASKA

By: Lauri J. Adams 
Lauri J. Adams

cc: C T Corporation System, Registered Agent

Notice is provided on behalf of the following organizations:

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Peter Bahouth, Executive Director
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