

March 20, 2009

via email / fax/mail

U.S. Attorney General Eric Holder  
U.S. Department of Justice  
Robert F. Kennedy Building  
950 Pennsylvania Ave., NW  
Washington DC 20530-2000

Acting Attorney General Richard Svobodny  
Alaska Department of Law  
P.O. Box 110300  
Juneau, AK 99811-0300

**RE: Collection of Exxon Valdez Oil Spill \$100 million *Reopener for Unkown Injury* claim from Exxon Mobil Corporation**

Dear Attorneys General Holder and Svobodny,

On August 31, 2006, your offices demanded that Exxon Mobil Corporation pay the United States and State of Alaska an additional \$92, 240,982.00 pursuant to the "Reopener for Unkown Injury" provision of the Agreement and Consent Decree (Civil Actions No. 3:91-0082 and 3:91-0083) entered October 9, 1991 to resolve government claims from the Exxon Valdez Oil Spill in Alaska. Yet to date, more than 2 ½ years later, the governments have yet to collect this remaining payment for our nation's worst oil spill.

With regard to next week's 20<sup>th</sup> anniversary of the Exxon Valdez tragedy, we request that you *immediately* petition the U.S. District Court for the prompt and full collection from Exxon Mobil Corporation of the entire \$100 million "Reopener for Unkown Injury" for use at the discretion of the governments to assist ecological recovery of the injured ecosystem.

The Exxon Valdez Oil Spill was one of the most significant man-made environmental disasters in history. The spill covered over 10,000 square miles of Alaska's coastal ocean; oiled 1,300 miles of shoreline, including a national forest, two national parks, two national wildlife refuges, five state parks, four state critical habitat areas, one state game sanctuary, and many ancestral lands for Alaska natives; killed hundreds of thousands of birds, marine mammals, fish, invertebrates; and seriously disrupted the economy, culture, and livelihoods of coastal residents.

The historic 1991 legal settlement between Exxon, the State of Alaska, and the United States resolving damage claims due to the 1989 spill set forth the most extensive attempt in history to restore environmental damage from an industrial disaster. In addition to the \$900 million civil recovery, the \$100 million criminal restitution, and the \$25 million fine, the legal settlement provided a “Reopener for Unknown Injury” (Section 17) that committed Exxon to pay up to an additional \$100 million in the years 2002-2006 for natural resource damages that “could not reasonably have been known...nor anticipated” at the time of settlement.

This provision was a key factor in addressing the uncertainty at the time in the public, the Alaska Legislature, the U.S. Congress, the State of Alaska and U.S. administrations, and the U.S. District Court regarding the potential for future damages, and thus in winning approval of this landmark environmental settlement.

Today, 20 years after the spill (and over 17 years after the settlement was approved), there exist extensive damages to the environment and natural resources of the oil spill region that were not anticipated at the time of settlement. The State and Federal Exxon Valdez Oil Spill Trustee Council (EVOSTC) currently list only 10 of the 31 injured resources and services they monitor as “Recovered”. And even 20 years later, some fish and wildlife populations are listed as “Not Recovering”.

However, in the context of this severe long-term injury, we feel that the government’s June 1, 2006 Restoration Plan for using Reopener funds falls far short of what is necessary for assisting in the full recovery of the coastal ecosystem. The plan addresses residual oil in beaches, but virtually none of the other populations and services that have not recovered.

There are many cost-effective restoration options to further enhance recovery of these long-term damages that should be explored. These include: additional coastal habitat protection projects; establishing and managing new Marine Protected Areas (MPAs) in the spill region; additional protections on public lands in the spill region (e.g. wilderness and national monument designations in the Chugach National Forest); retiring the subsurface estate beneath the village corporation habitat protection deals; a buy-back of commercial herring fishing permits in Prince William Sound; endowing the Prince William Sound Keeper, Cook Inlet Keeper, and the Bird Treatment and Learning Center; enhanced protections on critical fish and wildlife habitats and populations; and so on.

The government’s Reopener restoration plan submitted in June 2006 was developed without a public process or external scientific peer review, and thus is lacking in both public buy-in and scientific credibility. We can and must do better.

As Exxon Mobil Corporation has been recalcitrant by not paying the government’s August 31, 2006 demand for payment, we ask that you immediately petition the U.S. District Court to order the following:

1. Exxon Mobil pay the governments the full \$100 million allowed by the Consent Decree, and
2. Allowance for use of the funds at the complete discretion of the governments, in the highest and best interest of broad ecological recovery
3. Conduct of a broad public and scientific review process for use of these funds

Prince William Sound and the rest of the injured coastal environment of Alaska deserve our utmost effort in assisting full recovery. Toward this end, it is clearly in the interest of the citizens of the United States and Alaska that their governments collect full payment of these additional damages by Exxon Mobil, and to use these as effectively as possible in assisting recovery.

Sincerely,

Jeff Ruch  
Executive Director, PEER

Rick Steiner  
Professor, University of Alaska

cc. Honorable Judge H. Russel Holland, U.S. District Court, District of Alaska