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U.S. DISTRICT COURT
DISTRICT OF ALASKA
By Meg Deputy

Attorney for the United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA)	
)	No. A90-015 CR.
Plaintiff,)	
)	
v.)	
)	
EXXON CORPORATION)	<u>PLEA AGREEMENT</u>
)	
and)	
)	
EXXON SHIPPING COMPANY,)	
)	
Defendants.)	

I. INTRODUCTION

This document contains the complete plea agreement between the United States of America, plaintiff in the above-captioned action, and the defendants, EXXON SHIPPING COMPANY ("EXXON SHIPPING") and EXXON CORPORATION ("EXXON").

A. The defendant, EXXON SHIPPING, is charged in Counts One, Two and Three of an indictment filed in the District of Alaska with violations of the Clean Water Act, Title 33, United States Code, Sections 1311(a) and 1319(c)(1)(A); the Refuse Act, Title 33, United States Code, Sections 407 and 411; and

the Migratory Bird Treaty Act, Title 16, United States Code, Sections 703 and 707(a).

B. The defendant, EXXON, is charged in Count Three of an indictment filed in the District of Alaska with a violation of the Migratory Bird Treaty Act, Title 16, United States Code, Sections 703 and 707(a).

C. The defendant, EXXON SHIPPING, agrees to enter a plea of guilty to the Counts in paragraph IA.

D. The defendant EXXON agrees to enter a plea of guilty to the Count in paragraph IB, subject to the factual basis for the plea being that it was oil owned by EXXON, and transported under contract with EXXON SHIPPING, that killed migratory birds, for which EXXON had no permit.

II. DEFENDANTS' AGREEMENT AND UNDERSTANDING

The defendant, EXXON SHIPPING, is represented by James F. Neal, Esq., James F. Sanders, Esq., and Robert C. Bundy, Esq. The defendant EXXON, is represented by Patrick Lynch, Esq., Edward J. Lynch, Esq., and John F. Clough, III, Esq. The defendants acknowledge that their attorneys have explained all of the elements of each offense charged against them.

A. If EXXON SHIPPING pled not guilty, the United States would have to prove beyond a reasonable doubt each and every one of the following charges to the unanimous satisfaction of a jury:

1. That on or about March 24, 1989, in the District of Alaska, and elsewhere, the defendant, EXXON SHIPPING, did

negligently cause the discharge of pollutants, namely more than ten million gallons of crude oil, from a point source, namely the tank vessel "EXXON VALDEZ," into Prince William Sound, a navigable water of the United States, without a permit, all of which is in violation of and contrary to Title 33, United States Code, Sections 1311(a) and 1319(c)(1)(A).

2. That on or about March 24, 1989, in the District of Alaska, and elsewhere, the defendant EXXON SHIPPING unlawfully did throw, discharge and deposit, and did cause, suffer, and procure to be thrown, discharged and deposited, refuse matter, namely more than ten million gallons of crude oil, from a ship, namely the "EXXON VALDEZ," into Prince William Sound, a navigable water of the United States, without a permit, all in violation of and contrary to Title 33, United States Code, Sections 407 and 411.

3. That on or about March 24, 1989, in the District of Alaska, and elsewhere, the defendant, EXXON SHIPPING, without being permitted to do so by regulation as required by law, did kill migratory birds in violation of Title 16, United States Code, Sections 703 and 707(a) and Title 50, Code of Federal Regulations, Section 21.11.

B. If EXXON pled not guilty, the United States would have to prove the following charge to the unanimous satisfaction of a jury beyond a reasonable doubt:

That on or about March 24, 1989, in the District of Alaska, the defendant EXXON, without being permitted to do so

by regulation as required by law, did kill migratory birds in violation of Title 16, United States Code, Sections 703 and 707(a) and Title 50, Code of Federal Regulations, Section 21.11.

C. Legal Basis for the Fines

The defendants, EXXON SHIPPING and EXXON, agree, solely for the purpose of this plea agreement and for no other purpose, that there is a legal basis with respect to the offenses charged in the indictment for the Court to impose the fines agreed to in paragraph IIIC.

D. Consequences of the Plea

1. EXXON SHIPPING understands that by pleading guilty to the Counts under paragraph IC, it is admitting the essential elements of the charges in those Counts.

2. EXXON understands that by pleading guilty to the Count under paragraph ID, it is admitting the essential elements of the charge in that Count on the factual basis set forth in paragraph ID.

3. Each defendant understands that by pleading guilty, it gives up the following rights:

- a. The right to be tried by jury;
- b. The right to challenge and object to the composition or procedures of the grand jury; and
- c. The right to confront and cross-examine witnesses.

E. Upon acceptance of the pleas and imposition of sentence by the Court, the United States will immediately move

to dismiss Counts 4 and 5 as to EXXON SHIPPING and Counts 1, 2, 4, and 5 as to EXXON.

III. AGREEMENT OF THE PARTIES REGARDING IMPOSITION OF SENTENCE

A. The United States agrees not to seek additional criminal charges or any civil or administrative penalties, except as provided in paragraph IIIB below, against the defendant EXXON, or any of its present or former officers, directors or employees, or any of its wholly-owned subsidiaries, their present or former officers, directors or employees, 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 documents to the federal or state government.

B. The parties agree that nothing in this plea agreement limits the right of any agency of the United States, other than the Department of Justice, to seek and take civil or administrative action against EXXON SHIPPING, EXXON, or any other EXXON subsidiaries, or their employees, including any such action relating to suspension or debarment or listing, but not including the civil or administrative penalties referred to in paragraph IIIA.

C. The parties agree, following the entry of pleas by EXXON SHIPPING and EXXON, and the acceptance by the Court thereof, that the defendants shall be sentenced in accordance with the provisions of Rule 11(e)(1)(C), Fed. R. Crim. P., and

that under that procedure the appropriate disposition at the time of sentence is the imposition of fines which total \$150 million, as follows:

1. With respect to EXXON SHIPPING, the fine shall be \$125 million.

2. With respect to EXXON, the fine shall be \$25 million.

3. With respect to EXXON SHIPPING, \$105 million shall be remitted, and with respect to EXXON, \$20 million shall be remitted. The remission of these amounts is appropriate in view of the following facts:

(a) The defendants recognized their responsibilities with respect to the grounding of the "EXXON VALDEZ" and the resulting oil spill;

(b) The defendants have expended in excess of \$2.1 billion in response to and clean up of the oil spill in Prince William Sound and its environs;

(c) The defendants have paid in excess of \$300 million to claimants allegedly injured by the oil spill; and

(d) The defendants cooperated in the federal criminal investigation of the grounding of the "EXXON VALDEZ" and the resulting oil spill.

(e) The defendants had earlier adopted and have updated environmental policies, toxic substances policies and safety policies. These policies are attached as Appendix A;

(f) The defendants support the environmental codes of conduct adopted by the American Petroleum Institute and the Chemical Manufacturing Association. These codes are attached as Appendix B;

(g) The defendants' environmental expenditures averaged more than \$1 billion per year during the 1980s, and defendant will spend \$1.6 billion in 1991 on capital projects to enhance environmental and safety performance, all apart from the expenditures relating to the oil spill;

(h) The defendants have committed to contribute \$50 million to fund, with contributions from other companies, improvement of the oil industry response capability to deal with large-scale oil spills;

(i) The defendant Exxon's division for U.S. oil and gas operations has created a New Environmental and Safety Department to review and coordinate the management of environmental and safety concerns;

(j) The defendant Exxon Shipping has established a New Environmental Affairs Group and hired as Consultants two former Coast Guard captains with oil spill experience;

(k) The defendants have taken action to prevent recurrence of the offense including actions to improve vessel operating safety, personnel training and oil spill response capability. \$40 million has been spent on these activities since the oil spill.

(1) The defendant are currently spending \$160 million annually on environmental and safety research which is 25 percent of Exxon's total research expenditure.

D. The parties agree that the fines described in paragraph IIIC represent the full extent of the criminal sanctions to be imposed upon the defendants pursuant to this agreement, and are in full satisfaction of the criminal charges referred to in the indictment and all criminal charges or claims for civil or administrative penalties referred to in Paragraph IIIA. The payment of \$20 million by EXXON SHIPPING and \$5 million by EXXON shall fully discharge the criminal sanctions to be imposed pursuant to this agreement.

E. The parties agree that \$7 million of Exxon Shipping's fine and all of Exxon's \$5 million fine be imposed for violation of the Migratory Bird Treaty Act. By operations of law, Title 16, United States Code, Section 4406(b), this fine is to be deposited into the North American Wetlands Conservation Fund to be used solely by the U.S. Department of the Interior to carry out approved wetlands conservation projects in the United States, Canada and Mexico.

IV. RESTITUTIONARY PAYMENTS

A. The defendants, EXXON SHIPPING and EXXON, agree to make payments to the State of Alaska and the United States which total \$100 million, \$50 million of which shall be paid to the State of Alaska and \$50 million of which shall be paid to the United States, within 30 days of the acceptance of this

plea agreement by the Court. All monies paid by EXXON SHIPPING and EXXON under this paragraph IVA are remedial and compensatory payments. Such monies are to be used by the State of Alaska and the United States exclusively for restoration projects, within the State of Alaska, relating to the "EXXON VALDEZ" oil spill. Restoration includes restoration, replacement and enhancement of affected resources, acquisition of equivalent resources and services, and long-term environmental monitoring and research programs directed to the prevention, containment, cleanup and amelioration of oil spills.

B. The parties agree that the administration of the monies to be paid under paragraph IVA shall be under the control of each recipient and that upon payment, such monies and any interest which accrues thereon shall be available for the purposes described in paragraph IVA without objection, challenge, or judicial or administrative review.

C. The defendants, EXXON SHIPPING and EXXON, agree, solely for the purpose of this plea agreement and for no other purpose, that there is a legal basis for the Court to impose the payments agreed to in paragraph IV as damages recoverable for compensatory and remedial purposes.

D. The parties agree that all payments made under paragraph IVA are exclusively remedial, compensatory, and non-punitive and are separate and distinct from the fines described in paragraph IIIC and from any other criminal, civil, or administrative penalties that could have been imposed upon the

defendants.

V. GENERAL PROVISIONS

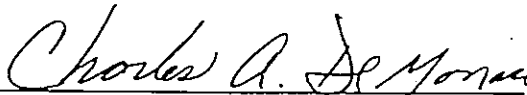
A. EXXON guarantees payment of the fine imposed on EXXON SHIPPING under this plea agreement. In the event that defendant EXXON SHIPPING fails to make timely payment of the fine, EXXON shall, within thirty (30) days of the date of demand, make payment in EXXON SHIPPING's stead.


B. The defendants, EXXON SHIPPING and EXXON, understand that the Court has discretion to accept or reject this plea agreement, and that if the Court rejects the plea agreement or does not dismiss the charges referred to in paragraph IIE, each defendant will be permitted to withdraw its plea of guilty.


C. The parties agree, subject to the decision of the Court, that there is in the record information sufficient to enable the meaningful exercise of sentencing authority, pursuant to Rule 32(c) F.R. Cr. P., and agree that waiver of a presentence investigation and report would be appropriate.

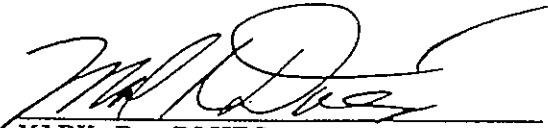
The above-stated terms and conditions comprise the entire plea agreement between the United States of America, defendant EXXON SHIPPING and defendant EXXON, and there are no other terms or conditions, express or implied.

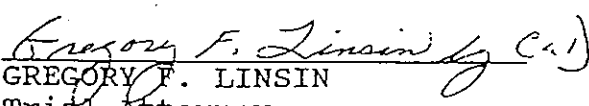
FOR THE UNITED STATES
OF AMERICA:


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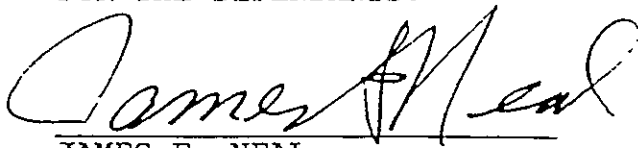

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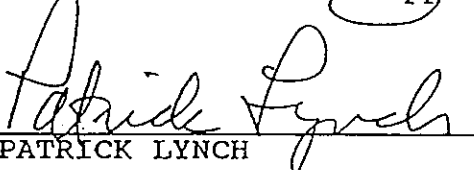

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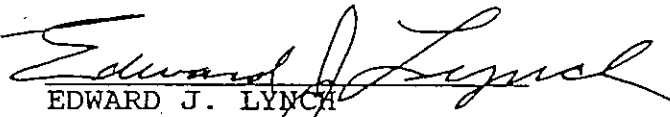

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DATED THIS 26th day of September, 1991