



U.S. Department of Justice

Environment and Natural Resources Division

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AUG 21 2009

Mr. Jeff Ruch, Executive Director
Public Employees for Environmental Responsibility
2000 P Street, N.W., Suite 240
Washington, D.C. 20036

Re: PEER Letter Concerning the Exxon Valdez Oil Spill

Dear Mr. Ruch:

This responds to your letter dated March 20, 2009 to the Attorney General, on behalf of Public Employees for Environmental Responsibility (PEER), concerning the "reopener" claim that the United States and the State of Alaska have presented to Exxon Mobil Corporation under the October 9, 1991 consent decree in United States v. Exxon Corporation (D. Alaska). As PEER's letter notes, that consent decree resolved the governments' civil claims stemming from the enormous harm to the environment and natural resources caused by the Exxon Valdez Oil Spill (Spill). The settlement provided for the payment of \$900 million to the governments, most of which was dedicated to the restoration, replacement, enhancement, or acquisition of the equivalent of injured natural resources and natural resource services. Working through a Trustee Council composed of senior officials from three federal agencies and three Alaska agencies, the United States and the State are engaged in a continuing program to use this natural resource damages recovery to restore and preserve the injured natural resources.

PEER's letter urges the United States to use the consent decree's reopener provision to supplement the original natural resource damages recovery. As explained below, however, the consent decree provides a substantially narrower and more constrained cause of action under the reopener than PEER's letter suggests.

The "Reopener for Unknown Conditions" provision of the 1991 consent decree does not allow the governments to reassert their original broad claims for natural resource damages. Rather, by its terms, the reopener limits the additional amounts the governments may seek from Exxon to the costs of implementing specific projects in the area affected by the Spill to restore one or more populations, habitats, or species that suffered a substantial loss or substantial decline as a result of the Spill where that loss or decline was unknown and could not reasonably have been anticipated from information available to the governments on the effective date of the settlement, *i.e.*, September 25, 1991. All demands under the reopener had to be asserted by September 1, 2006, and, to invoke the reopener, the governments were required to submit to Exxon, at least 90 days before demanding payment, a plan for each proposed restoration project that would be part of the demand. The reopener specifies that any such plan must include a

statement of the projects' estimated costs – which may not be grossly disproportionate to the project's anticipated benefits -- and the information upon which the governments relied in preparing the restoration plan.

In evaluating potential claims under this reopener, the governments carefully considered the vast amount of information available from the Trustee Council's research and monitoring of natural resources in the Spill area, as well as the synthesis report on the current conditions of affected natural resources that Integral Consulting, Inc. produced for the Trustee Council in 2005-2006. To satisfy the substantive requirements for a reopener claim, the injury had to amount to a substantial loss or decline of a population, habitat, or species, and must have been unknown to and not reasonably foreseeable by the governments at the time of the settlement in 1991. Ultimately, the governments determined that the only injuries that qualified for reopener consideration were those associated with the presence of oil from the Spill that continues to linger in the intertidal zones of some Prince William Sound and the Gulf of Alaska beaches. Before adopting that conclusion, the State of Alaska held a series of public meetings in communities in or near the Spill area, seeking input on the reopener issues.

On May 31, 2006, the Department of Justice and the Alaska Department of Law, on behalf of the federal and state natural resource trustees, submitted a "Comprehensive Plan for Habitat Restoration Project Pursuant to Reopener for Unknown Injury" and supporting materials to Exxon Mobil Corporation and SeaRiver Maritime Financial Holdings, Inc. (Exxon), the successors or renamed continuations of Exxon Corporation and Exxon Shipping Company. This submission was publicly announced by the governments, and the Habitat Restoration Plan was made available to the public.

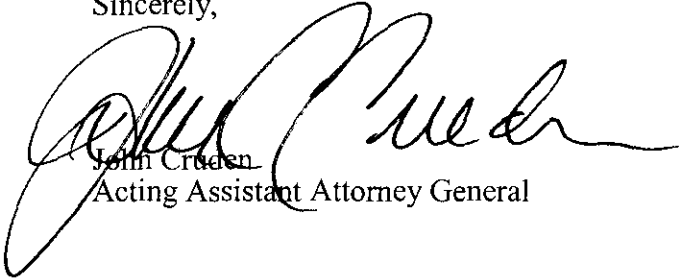
On August 31, 2006, the governments took the second step identified in the consent decree for invoking the reopener by presenting a demand to Exxon for payment of \$92,240,982.00, the estimated cost of implementing the Habitat Restoration Plan. That step, too, was announced publicly.

While the governments and Exxon have engaged in discussions concerning the lingering oil issues and the proposed Habitat Restoration Plan, the governments have also continued to conduct scientific studies relating to the lingering oil, as contemplated in the Habitat Restoration Plan. For example, the Trustee Council's ongoing monitoring effort continues to examine the degree to which various species may be exposed to any lingering oil. The Council has also funded studies to predict more accurately the extent and locations of lingering oil patches in Prince William Sound, to identify the factors that have limited degradation of this oil in situ, and to assess the potential to enhance the rate of degradation of the lingering oil. These studies are consistent with the Habitat Restoration Plan and are also relevant to the Trustee Council's broader restoration mission. The studies' results have been published, or will be published when they are completed, for all to consider. These studies may well affect the scope of the governments' reopener claim.

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We appreciate your interest in the Exxon Valdez Oil Spill and in the United States' ongoing efforts to address the Spill's effects on the quality and uses of natural resources and we hope this information is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "John Cruik". The signature is fluid and cursive, with a large initial "J" and "C".

John Cruik
Acting Assistant Attorney General