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1 EXXON VALDEZ OIL SPILL  
2 TRUSTEE COUNCIL  
3 TRUSTEE COUNCIL MEETING

4 April 25, 1997  
5 4:00 o'clock p.m.

6 Fourth Floor Conference Room (Teleconference)  
7 645 G Street  
8 Anchorage, Alaska

9 TRUSTEE COUNCIL MEMBERS PRESENT:

|  |                        |
|--|------------------------|
| 10 U.S. DEPARTMENT OF COMMERCE - NMFS: | MR. STEVE PENNOYER,    |
| 11 (Telephonically)                    | CHAIRMAN               |
| 12 STATE OF ALASKA -                   | MR. CRAIG TILLERY      |
| 13 DEPARTMENT OF LAW:                  | Trustee Representative |
| 14 STATE OF ALASKA - DEPARTMENT        | MR. FRANK RUE          |
| 15 OF FISH AND GAME: (Telephonically)  | Commissioner           |
| 16 U.S. DEPARTMENT OF INTERIOR:        | MS. DEBORAH WILLIAMS   |
| 17 (Telephonically)                    | Special Assistant      |
| 18 U.S. DEPARTMENT OF AGRICULTURE -    | MR. JIM WOLFE FOR      |
| 19 U.S. FOREST SERVICE                 | PHIL JANICK            |
| 20 (Telephonically)                    | Regional Forester      |
| 21 STATE OF ALASKA - DEPARTMENT        | MS. MICHELE BROWN      |
| 22 OF ENVIRONMENTAL CONSERVATION:      | Commissioner           |
| 23 (Telephonically)                    |                        |

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1 TRUSTEE COUNCIL STAFF PRESENT:

2 MS. MOLLY McCAMMON

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4 MR. ERIC MYERS

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6 MS. TRACI CRAMER

7 (Telephonically)

8 MS. GINA BELT

9 (Telephonically)

10 DR. BOB SPIES

11 (Telephonically)

12 MR. STAN SENNER

13 MR. DAVE GIBBONS

14 MR. JOE SULLIVAN

15 MS. GINNY FAY

16 (Telephonically)

17 MR. BRUCE WRIGHT

18 (Telephonically)

19 MS. CLAUDIA SLATER

20 MR. BARRY MORSE

21 (Telephonically)

22 MS. DIANNE MUNSON

23 MS. LESLIE PEARSON

24 MS. KATHRYN BURKE

25 MR. MICHAEL BENNETT

Executive Director

EVOS Trustee Council

Director of Operations

EVOS Trustee Council

Director of Administration

EVOS Trustee Council

EVOS Staff

Chief Scientist

Science Coordinator

U.S. Forest Service

State of Alaska, ADF&G

Department of Environmental

Conservation

NOAA

Department of Fish and Game

Department of Environmental

Conservation

Department of Interior

Dept. Natural Resources

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P R O C E E D I N G S

1  
2 (On record - 4:06 p.m.)

3 CHAIRMAN PENNOYER: Okay. Well, then let's go  
4 ahead and start this meeting. This is a recessed meeting.  
5 We're taking up the discussion primarily today on the Chenega  
6 De-oiling Project. And this is -- all the Trustee Council  
7 agencies representatives are present and accounted for. And,  
8 Molly, why don't you go ahead and lead us through this agenda  
9 if you would.

10 MS. McCAMMON: Mr. Chairman, there's only on  
11 item on the agenda today and that's continued discussion of the  
12 Chenega Shoreline Cleanup Project. Because this is a  
13 discussion of an issue that involves the public I did add a  
14 section for public comment if anyone did wish to make comment  
15 at this meeting, but that's the only item on the agenda today.

16 CHAIRMAN PENNOYER: Okay, Molly. Well, I guess  
17 what I'm asking you is I recognize that and I presume we'll  
18 have a discussion first, then take public comment and then get  
19 into the final decision mode.

20 MS. McCAMMON: That's correct.

21 CHAIRMAN PENNOYER: I thought that perhaps what  
22 you needed to do or Bob is run us through the meeting that  
23 occurred earlier this week and the various documents that we  
24 have in front of us relative to that meeting and to the  
25 decision.

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1 MS. McCAMMON: All right. Mr. Chairman, I'll  
2 start with the first one which was my memo, which I hope all of  
3 you have received, it was faxed out earlier today. But at your  
4 direction Dr. Spies convened a three hour meeting on Wednesday  
5 afternoon to discuss the project. It was organized by the  
6 Forest Service liaison, Dave Gibbons, with support from our  
7 staff here. We had more than 25 people participating,  
8 representing all of the Trustee agencies, in addition the  
9 Alaska Department of Natural Resource, the Chenega Village  
10 Corporation was present. There were also experts from the  
11 University of Alaska at Fairbanks and the University of  
12 California at Santa Cruz that were also there.

13 I began the meeting with a brief history of the project  
14 and purpose of the meeting. This was followed by Dianne Munson  
15 at DEC who described how and why PES-51 was selected as the  
16 preferred cleaning agent for the project. Dr. Spies conducted  
17 an extensive discussion of the data and opinions on the  
18 effectiveness and toxicity of PES-51 and also the possible use  
19 of hot water injections as an alternative. We also then went  
20 on to discussing the monitoring protocol and some suggestions  
21 for enhancing the monitoring program.

22 I think, as my memo indicates, there were five major  
23 conclusions that I drew from this meeting. The first one,  
24 notwithstanding the extended discussion there are still  
25 uncertainties and differences of opinion about the toxicity and

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1 effectiveness of PES-51. This is gone into in greater length  
2 in Dr. Spies' memo which was an attachment to mine and he can  
3 address this separately.

4 The second main conclusion was that although these  
5 uncertainties and differing opinions cannot be dispelled easily  
6 there was agreement that an enhanced monitoring program and  
7 other mitigating measures could substantially increase the  
8 comfort level of a decision to proceed with this project. And  
9 while the increased -- the enhanced monitoring project itself  
10 does not eliminate the risk it should enable all concerned to  
11 have more confidence that the appropriate work is being done  
12 and that there's some way of evaluating afterwards its overall  
13 effects.

14 The third major conclusion was that Chenega Bay  
15 continues to make clear that they find the presence of oil on  
16 their beaches unacceptable, that they are not persuaded by any  
17 of the technical experts who assure them that the presence is  
18 not supposed to be harmful to people in subsistence resources  
19 and, in fact, as you'll see in their letter that I faxed to  
20 everyone they are categorically supportive of going forward  
21 with the project and the use of PES-51 as the alternative to  
22 ridding the beaches of oil.

23 The fourth conclusion was that although not all parties  
24 may be satisfied with the protocols for determining whether  
25 PES-51 is safe and effective, the fact remains that this

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1 product has met both the standards set by the U.S.  
2 Environmental Protection Agency National Contingency Plan  
3 Product Schedule and the State of Alaska technology protocols,  
4 which are part of the Alaska Federal/State Preparedness Plan  
5 for Response to Oil and Hazardous Substance Discharge Releases,  
6 which is the so-called "Unified Plan". And this has been  
7 adopted by the Alaska Regional Response Team which consists of  
8 the U.S. Departments of Interior, Commerce, Agriculture, Health  
9 and Human Services, Energy, Defense, Justice, Transportation  
10 and Labor, the Federal Emergency Management Agency, and the  
11 Alaska Department of Environmental Conservation.

12 And then the fifth conclusion was that some individuals  
13 have suggested that it would be desirable to test hot water  
14 injections as an alternative to PES-51, but we found that this  
15 possibility itself introduces a whole new series of questions  
16 and complications, concerns about lack of effectiveness, the  
17 added cost of setting up additional test and control  
18 situations, the lethal effect of hot water on intertidal  
19 organisms. And in addition a very strong concern that hot  
20 water would, in fact, introduce more toxic oil residues into  
21 the water column itself. As opposed to using PES-51 which  
22 brings oil to the surface where it can be skimmed and  
23 collected.

24 Following this we did discuss the monitoring and  
25 mitigation program and came up with some suggested enhancements

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1 to that, and Dr. Spies could go through those in more detail.  
2 But one of those would be to leave protective booms in place  
3 beyond a minimum of four days following application and I  
4 believe that DEC can talk about that in more detail.

5 In addition Chenega residents would be advised not to  
6 resume use of the beaches until laboratory analyses confirm  
7 that contaminant levels in mussels, chitons and other resources  
8 are within acceptable levels. The third was to actually  
9 enhance the actual monitoring program itself.

10 The next issue that we discussed in detail was the  
11 question of precedent. There was concern by a number of the  
12 agencies that the use of PES-51 in this particular restoration  
13 project would be setting a precedent both in terms of the level  
14 of advance information needed for determining whether a  
15 particular product should be used and in terms of request to  
16 use this agent in responding to future oil spills. After much  
17 discussion we believe that the use of PES-51 should not be  
18 construed as precedent setting for these reasons.

19 First of all, in regard to the product protocols the  
20 use of PES-51 does not set a precedent because it already has  
21 met the standards established in the Unified Plan and by EPA.  
22 I understand that there are some questions about the protocols  
23 themselves and I understand that this will be something the  
24 ARRT will be considering separately, possibly in the future.

25 In regard to application of PES-51 on the Chenega

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1 beaches setting a precedent, we believe that this is very  
2 specifically a set of unique circumstances, it is a restoration  
3 project. This chemical was chosen after consideration of such  
4 factors as the heavily weathered character of the oil, the  
5 presence of natural impediments to cleanup by conventional  
6 methods. In other words, there are such large boulders that  
7 mechanical means could not be used. The fact that the  
8 intertidal life on these eight beaches is rather sparse, and a  
9 limited area to be treated. Approximately one mile within a  
10 total of two linear miles. These same factors have little  
11 bearing in an immediate response situation.

12 So after the meeting and discussion with the various  
13 agency personnel represented there and revising the monitoring  
14 program and a discussion based on the recommendation from the  
15 chief scientist my recommendation to you today would be to  
16 proceed with the project as recommended with the enhanced  
17 monitoring. To approve up to \$150,000.00 in extra funds for  
18 that additional monitoring and to go forward with finalizing  
19 the environmental assessment and the finding of no significant  
20 impact prepared by the Forest Service.

21 CHAIRMAN PENNOYER: Molly, before we get into  
22 the discussion of the motion perhaps we can do things, one,  
23 take the report from Dr. Spies on toxicity, second, ask  
24 questions for clarification and then perhaps take public  
25 testimony and then get into the discussion.

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1 MS. McCAMMON: Yes, Mr. Chairman.

2 CHAIRMAN PENNOYER: Bob, could you give us your  
3 report or a summary of your report on the toxicity of PES-51?

4 DR. SPIES: Certainly, Mr. Chairman. At the  
5 meeting there was a fairly extensive discussion of the  
6 available information on toxicity of PES-51, as I've summarized  
7 in the memo dated today, April 25th.

8 Just briefly as background, PES-51, the active agent is  
9 d-limonene, it is a diterpane or alkylated cyclohexene. It is  
10 a surface-active agent and it is pretty effective in separating  
11 oil from rock surfaces that we have in the area. It is fairly  
12 insoluble in sea water, the maximum solubility is probably in  
13 the range of about 50 parts per million. There's some toxicity  
14 available, some of the fairly recent, which indicates that the  
15 toxicity of PES-51 is near its limit of solubility. There's  
16 some more recent information that indicates that it has -- it  
17 can be toxic at little bit lower concentrations but I'll get to  
18 that consideration in a minute. It is less toxic than fresh  
19 oil but it's probably a little bit more toxic than highly  
20 weathered oil, at least in acute exposures.

21 Based on the available literature it appears that  
22 PES-51's primary ecological risk is in short term exposures and  
23 right around the air-knife. When the air-knife goes in there's  
24 going to be concentrations that are fairly high, close to the  
25 air-knife, and probably within a couple of meters. However,

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1 the exposures are going to be for fairly short periods of time  
2 because the material will be diluted by the tidal cycle. And  
3 as far as whether we have to worry about low level chronic  
4 toxicity is my judgment the available information doesn't  
5 support some sort of longer lasting low level chronic toxicity.  
6 The acute toxicity is the major problem. This is based on some  
7 trout bioassay where the toxicity after seven days was  
8 approximately about the same as it was in 96 hour exposure and  
9 that they measured survival and growth of trout in that  
10 particular assay.

11 Also in terms of bacterial breakdown it looks like  
12 bacteria are very active towards this PES-51 and it doesn't  
13 appear to inhibit their activities it, in fact, encourages  
14 their activities in high concentration. And it is my  
15 presumption based on this that it's going to be broken down  
16 fairly quickly in water soluble compounds, such as alcohols,  
17 and then those will be disbursed pretty quickly in the  
18 environment.

19 There was a previous concern about the breakdown  
20 products that might include a toxaphene type compound, that is  
21 chlorinated hydrocarbons with a aromatic ring, but that concern  
22 hasn't really held up with a little closer examination, so  
23 that's really not an issue in my opinion. And in the opinion  
24 of any other qualified chemist that we've consulted on this  
25 issue.

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1           The intertidal community at risk is one typical bolder-  
2 cobble beaches in the Prince William Sound. I think many of  
3 you have been out on these kinds of environment. This is a  
4 relatively instable environment in terms of these material  
5 shifting around under heavy wave action and winter storms and  
6 so forth, so it's unable to form very stable rich communities,  
7 it's a fairly depauperate intertidal community in terms of  
8 numbers of species and individuals. As far as risk to offshore  
9 pelagic organisms, such as salmon fry, I think it is fairly  
10 low, as PES-51 will be skimmed from the sea surface, it'll be  
11 floating on the sea surface and the exposures will all be of  
12 relatively short duration and to very diluted solutions of the  
13 compound.

14           We explored the possibility, in fact, of putting some  
15 larvae or some juvenile pink salmon in cages out there and  
16 decided that -- to monitor the effects, but we decided that was  
17 rather impractical and there was a very low probability, in  
18 most people's opinion, that there was going to be a serious  
19 problem. Besides most of the pink salmon are probably going to  
20 be out in the main channels not close to shore at that time of  
21 year. It's kind of at the end of the migratory period.

22           None of the experts that were there at the meeting were  
23 experts in human health but there were some comments made -- as  
24 we all know, d-limonene is a natural product, it's been  
25 isolated from citrus peel and also it so exists in the peels of

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1 lemons and other kinds of citrus fruit. It also exists in  
2 caraway seed and some other natural products. So it is a  
3 natural compound to human diet, so from that perspective I  
4 think low level exposure is probably not a big issue here. But  
5 most of the problems that have been cited are probably due to  
6 high concentration like direct contact of pure compound can  
7 cause skin rashes. Also apparently high concentrations that  
8 can cause problems with kidney toxicity probably because of  
9 acerbic active properties. And there have been some reports of  
10 carcinogenicity, but some of the -- one of the health  
11 scientists that I conferred with, Dr. Jim Felton at the  
12 Lawrence Livermore National Laboratory, who's an expert on  
13 genetic toxicity of natural compounds, kind of questioned the  
14 basis for this sort of conclusion.

15 From the perspective of people who test these compounds  
16 comparatively and there's been quite a bit of this sort of work  
17 done by HazMat and other people that are worried about the best  
18 selection of compounds to use in spill cleanup. This is one of  
19 the more toxic compounds so it may not appear to be the best  
20 choice. However, I think if you look at it from the standpoint  
21 of the community at risk, the limited exposure and the fact  
22 that we know that this material works then you may come to a  
23 different sort of judgment as to whether the likely ecological  
24 risks proposed by cleaning the beaches under these  
25 circumstances are worth ridding the beaches of oil, which the

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1 people of Chenega believe are convinced needs to be done. And  
2 they are apparently willing to accept any potential risk in any  
3 sort of cleanup.

4 I think the fact that we will be proposing in the  
5 Monitoring Plan to eliminate any kind of subsistence resources  
6 from these beaches until after a year's period or until after  
7 any detectible com -- PES-51 has been eliminated from tissues  
8 of brain organisms I think guards against the possibility of  
9 any sort of low level -- I mean, even low level exposure.

10 CHAIRMAN PENNOYER: Thank you, Bob. Do you  
11 want to comment for a moment on the Monitoring Plan and then  
12 we'll take questions on clarification of what has been stated  
13 here.

14 DR. SPIES: Certainly, I was just about to get  
15 to that. The -- we're going to use the kind of  
16 geomorphological approach that's been used in the past,  
17 particularly by Jacqui Michel and others that have developed it  
18 just after the spill and did work for DEC. This involves  
19 transects along the beach with digging pits to estimate the  
20 amount of subsurface oil. That's the first point as far as  
21 what the expanded Monitoring Plan would include.

22 Secondly, the evaluation of -- will be done chemically  
23 in sediments by GCMS methods and will not only evaluate how  
24 much hydrocarbons have been removed but also what -- how much  
25 PES-51 will remain in the sediments after the proposed cleanup

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1 process.

2           And thirdly, there was expanded measurement of effects  
3 of PES-51 and this will involve visual observations of the  
4 material that's collected in the booming areas over some period  
5 of time after the spill. I mean, after the treatment.  
6 Measurement of hydrocarbons and PES in mussels and chitons that  
7 are native to the area. And also suspending caged mussels at  
8 all treatment sites in the water column to see what materials  
9 might be exposed to water column organisms so we can come to  
10 some conclusions after this as to what those source of  
11 exposures might be. Although we do think that those are rather  
12 -- probably of measurable amounts and those are probably fairly  
13 low. Or at least not lasting very long.

14           And finally to address some of the ecological questions  
15 we will be doing some photoquadrats at representative treated  
16 oiled sites, before and after treatment, and with several weeks  
17 after treatment and finally subsequent to -- at some period  
18 subsequent to two weeks after treatment. And these are, of  
19 course, directed at measuring any potential changes in  
20 intertidal community.

21           CHAIRMAN PENNOYER: Thank you, Bob. Why don't  
22 we have questions, then, from the Trustee Council members of  
23 the presentations we've heard from Ms. McCammon and Dr. Spies  
24 and then maybe we'll see if anybody wants to give us public  
25 testimony on this issue. Anybody wish to ask clarification

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1 questions?

2 MR. RUE: I have a question.

3 CHAIRMAN PENNOYER: Shoot.

4 MR. RUE: Is that a shoot?

5 CHAIRMAN PENNOYER: That was a shoot. Go

6 ahead, maybe that's better. Don't shoot.

7 MR. RUE: We don't use that term lightly around

8 here.

9 CHAIRMAN PENNOYER: I understand, not in

10 dealing with Fish and Game, I understand that. Go ahead,

11 Commissioner Rue.

12 MR. RUE: Okay. Dr. Spies, the question -- I

13 think we've suggested in the past that we try hot water

14 injections and I gather the group discussed that. And I guess

15 the question I have is if PES-51 is toxic right around the

16 injection-knife, whatever we're calling it, is it as -- one of

17 the problems with hot water injection is that it cooks

18 everything right around it. That's one of the problems or one

19 of the issues. Do you think that PES-51 would be less toxic in

20 terms of cooking everything around it, maybe killing everything

21 around it, is that what I'm hearing you say? It's not going --

22 this short exposure will not have the effect of immediately

23 killing everything that comes in contact with it because it'll

24 be a short exposure and so it's not as lethal as a hot water

25 injection?

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1 DR. SPIES: That's a good question. It's very  
2 difficult to tell right now but I think it'd be certainly that  
3 the hot water is going to kill organisms around where the air-  
4 knife is injected. It's less certain to me that the PES-51  
5 would have those. But even it does, if we assume a worse case  
6 scenario, I believe that the effects will be limited to an area  
7 within several meters of the air-knife injections because these  
8 are short, but that's a judgment on my part and I can't say  
9 that with a high degree of surety.

10 MR. RUE: Um-hum. So the -- I mean, assuming  
11 that it may be more -- so the issue may become one of hot water  
12 is certain to kill everything, this is less certain to kill  
13 everything. Hot water may suspend stuff in the water column,  
14 this is not likely to suspend -- resuspend oil in the water  
15 column or less likely; is that sort of the -- is that the  
16 discussion that you all had?

17 DR. SPIES: Yes, I think it is. I think that  
18 the proper context for your judgment today has to be, you know,  
19 what -- are you willing to take the chance that we may be  
20 killing organisms locally, with several meters of the air-  
21 knife, and that in context of whether it's worth going ahead  
22 with the beach clean to meet the objectives of the Chenega  
23 people.

24 MR. RUE: Right. But assume we'd be going  
25 ahead -- all right, I think you answered my question.

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1 CHAIRMAN PENNOYER: Okay. Anybody else?

2 MS. D. WILLIAMS: Mr. Chairman, I have a few  
3 question.

4 CHAIRMAN PENNOYER: Shoot - go ahead.

5 MS. D. WILLIAMS: I want to basically work off  
6 of Molly's April 25th memo, particularly with respect to the  
7 Monitoring/Mitigation on page three, items, one, two, three and  
8 then I have, I guess, a four and five. I'd like to start with  
9 number 1, protective booms could be left in place beyond the  
10 minimum of four days following application.

11 One of the more interesting things I heard in the  
12 course of some of the recent deliberations on this is  
13 apparently Ed Owens, one of the nationally known experts on  
14 this and other stuff, was one of the people who went to Sleepy  
15 Bay after the PES-51 test and he was there a week after the  
16 test. He said he saw lots and lots of oil and sheen and other  
17 stuff.

18 And one of my major concerns is making sure we pick up  
19 as much of the PES-51 as we can, get it out of there and also  
20 pick up, you know, the sheen, the oil. We don't want this oil,  
21 you know, oiling other beaches. DOI is particular sensitive,  
22 as you probably know, when there's a little oil spill be it at  
23 Valdez with Alyeska and there's a sheen or anywhere. I don't  
24 think any of the Trustees want a sheen spreading outside of  
25 this area.

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1           And so one thing that would give me a lot more comfort  
2 and I think go along way to being able to look at a finding of  
3 no significant impact is to really beef up the booming and  
4 collection of both the PES-51 and the oil sheen and the oil  
5 product, the hydrocarbon product.

6           I would like to see and maybe there is, you know, I  
7 didn't have a chance to complete restudy the EA. I'd like to  
8 see some test or some standard for when we take the boom out,  
9 maybe and candidly, Jim and I were talking a little beforehand  
10 and we thought maybe going two days without visible sheen; is  
11 that possible? Or what's the test going to be, how we going to  
12 be confident on this and, yeah, how can the Trustees have some  
13 little confidence we're getting most of the PES-51 and we're  
14 not going to be reoiling beaches all over the place?

15           MS. McCAMMON: Mr. Chairman, this is Molly. I  
16 would suggest that I did discuss that issue with Dianne Munson  
17 at DEC following an earlier conversation with Ms. Williams and  
18 she is prepared to respond to that.

19           MS. D. WILLIAMS: Good.

20           CHAIRMAN PENNOYER: Go ahead.

21           MS. MUNSON: Well, first of all let me say that  
22 -- give you a little background on what's happening out there  
23 now. The beaches aren't -- the beaches sheen now, there's --  
24 especially on a warm day, if you walk on the beach itself,  
25 pools of water on the beach will have sheening occurring in

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1 them.

2 MS. D. WILLIAMS: Did you see -- I mean I went  
3 out there a couple years ago with Molly, we didn't see any  
4 sheen in the ocean, it wasn't necessarily a hot day. I agree  
5 there was a little bit of sheening in some collection pools,  
6 but is there sheening in the ocean now?

7 MS. MUNSON: I would say there's not a lot in  
8 the ocean but that on the beaches themselves there's sheen.

9 MS. D. WILLIAMS: Right. Well, I'm talking  
10 about sheening in the ocean.

11 MS. MUNSON: Okay. Well -- okay. Well, from  
12 the '93 test I have been told, although I wasn't out there,  
13 that after about seven to 10 days that there was no more --  
14 there was -- the sheening that occurred offshore of the beach  
15 there wasn't any after about seven to 10 days.

16 MS. D. WILLIAMS: Okay. Owens must have been  
17 there on day six or seven, I guess. So what do you propose as  
18 a test for when the booms come out, what would be acceptable  
19 environmentally? I mean some concrete test.

20 MS. MUNSON: I guess I would propose that if  
21 there was any sheen coming off -- on shore, near shore, that we  
22 would have the booms in place.

23 MS. D. WILLIAMS: Okay.

24 MS. MUNSON: But you can't guarantee against  
25 sheening occurring on the beach itself because I think that

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1 certainly the treatment is going to cause the beach -- there's  
2 going to be sheening on the beach and there is already. But if  
3 there was any kind of what we call active sheening or near  
4 shore sheening that the booms would stay in place.

5 MS. D. WILLIAMS: Okay. Could put that in the  
6 EA?

7 MS. MUNSON: Sure.

8 MS. D. WILLIAMS: Okay. You want to test it  
9 like one or two days of no active sheening?

10 MS. MUNSON: Okay.

11 MS. D. WILLIAMS: Two days?

12 MS. MUNSON: Two days.

13 MS. D. WILLIAMS: Okay.

14 CHAIRMAN PENNOYER: They're various -- but you  
15 keep the minimum just the same.

16 MR. RUE: Yeah.

17 MS. D. WILLIAMS: Right.

18 CHAIRMAN PENNOYER: Beyond that, okay. What's  
19 your next question, Deborah?

20 MS. D. WILLIAMS: Okay. That's a big one, so  
21 thank you very much. I guess that's in way of an amendment,  
22 Molly, to your letter so I don't know if we have a motion on  
23 the table for the recommendations in your letter but that would  
24 be by way of amendment, Mr. Chair, that it be -- booming be in  
25 place for a minimum of four days, but no less than two days of

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1 no active sheening.

2 CHAIRMAN PENNOYER: Deborah, I think we're not  
3 doing a motion right now, we're taking questions for  
4 clarification, we're going to take public input if there is  
5 any.

6 MS. D. WILLIAMS: Okay. Very good. Moving on  
7 then to Chenega residents not harvesting subsistence resources  
8 off the oiled beaches. I guess there are two issues associated  
9 with that or maybe three, maybe four. The more I think about  
10 the more issues. Issue number 1 is monitoring of species on  
11 the beach. How often do we propose -- I guess -- here's the  
12 very first issue. The first issue is, and Dr. Spies alluded to  
13 this, in Molly's letter she talks about a touch laboratory  
14 analysis to confirm the contaminant levels in blah, blah, blah,  
15 or within acceptable levels. Now that is an ambiguous phrase,  
16 but Dr. Spies several times used the phrase "no detectible  
17 amount". No detectible levels, no detectible amounts in those  
18 species. I would certainly feel comfortable with that as the  
19 criteria, is that -- can we redefine -- can we eliminate the  
20 phrase "acceptable levels" and put in "no detectible amounts"?

21 DR. SPIES: Mr. Chairman.

22 CHAIRMAN PENNOYER: Yeah, go ahead, Bob.

23 DR. SPIES: I think the prudent thing might be  
24 to make sure that we're not having levels that are detectible  
25 over background, and I can't tell you exactly what background

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1 is. There will be some background hydrocarbons present in the  
2 area, whether those are detectible in the tissues or not, I  
3 couldn't tell you right offhand, but I think we would want to  
4 couch it in those sorts of terms. And also PES-51 will not --  
5 limonene I don't think will be a detectible in background  
6 concentrations so we can probably put that in absolute terms.

7 MS. D. WILLIAMS: Okay, great. So I'd be happy  
8 with no detectible over baseline.

9 MR. RUE: (Indiscernible) limonene?

10 DR. SPIES: Over natural backgrounds.

11 MS. D. WILLIAMS: Over natural backgrounds.

12 CHAIRMAN PENNOYER: That's the PES-51 or  
13 hydrocarbons or both?

14 MS. D. WILLIAMS: Both.

15 MR. SENNER: No, no.

16 MR. RUE: (Indiscernible - simultaneous  
17 speech).....

18 MR. SENNER: It has the oil at background.....

19 MS. McCAMMON: Why don't -- Mr. Chairman, I  
20 think -- can Stan Senner just add a comment here? Is that on  
21 Stan? I'm not sure it is.

22 MR. SENNER: Yeah. Mr. Chairman.

23 CHAIRMAN PENNOYER: Go.

24 MR. SENNER: I think what we need to  
25 distinguish between is we want to have hydrocarbon residues at

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1 no more than background levels and the PES-51 at no detection.

2 MS. D. WILLIAMS: Right.

3 CHAIRMAN PENNOYER: I did think that's where we  
4 were going.

5 MR. SENNER: Yeah. It wasn't clear in the room  
6 here.

7 MS. D. WILLIAMS: Okay. That clarification  
8 would help a lot. Secondly then is the monitoring on this.  
9 We'd monitor once a year until -- at least once a year; more  
10 than once a year until we reached the no detectible over  
11 background and no detectible levels; is that a commitment we're  
12 making?

13 CHAIRMAN PENNOYER: I don't -- Bob, my  
14 understanding is we would do it at one year, and I guess the  
15 anticipation was that you wouldn't find anything, but if you  
16 did, I'd presume you'd keep going through that until you  
17 didn't?

18 DR. SPIES: Absolutely, we don't have a  
19 detailed protocol set out for that sampling, but I think  
20 something like that, Steve, would be appropriate.

21 MR. RUE: Excuse me, this is Frank. Would you  
22 have to come back to the Council for funding for more than one  
23 year?

24 MS. McCAMMON: Yes.

25 MR. SENNER: Yes.

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1 MR. RUE: Okay.

2 CHAIRMAN PENNOYER: Yeah, the funding we had  
3 was the one year test and obviously if you had to go back then  
4 and you were going to do it every month or every six months or  
5 whatever it would require additional funding I believe.

6 MS. BROWN: It does.

7 CHAIRMAN PENNOYER: An amount or what? I mean,  
8 it's rather obvious you're only going to be doing testing and  
9 not going to do the other parts of the protocol, so it would be  
10 less than 150, right?

11 MS. McCAMMON: I think it would be a fairly  
12 minimal amount, but yes. The way the testing is proposed now  
13 it would be two weeks after -- two weeks, approximately six  
14 weeks and then a year after.

15 MR. SENNER: Right.

16 CHAIRMAN PENNOYER: Bruce Wright may want to  
17 comment but I believe we'd probably be talking less than 10 or  
18 \$15,000.00 here. Bruce, is sitting here smiling, does the  
19 smile mean yes or no, Bruce?

20 MR. WRIGHT: It means yes.

21 CHAIRMAN PENNOYER: It means yes, okay.

22 MS. D. WILLIAMS: Okay. So I sure don't want  
23 to -- you know, basic understand we keep doing it until found  
24 it accept (indiscernible - phone cutout) clean.

25 Third is a posting. I know we can communicate with

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1 Chenega folks but I for one as, you know, an occasional kayaker  
2 where every once in a while I'll go to a beach, take a pot, put  
3 some mussels and chitons in and boil them. Are we going to  
4 post these beaches until no detectible levels as we discussed;  
5 is that something that we can do?

6 CHAIRMAN PENNOYER: Anybody care -- Molly, you  
7 care to answer that?

8 MS. McCAMMON: It was not planned, it was not  
9 anticipated. I don't know what the -- I really don't have  
10 anything off the top other than that, other than we could  
11 consider it, but I'm not sure beaches are posted for PSP or  
12 other kinds of levels or even for the presence of oil right  
13 now, so I'm not sure. It's something we could take up and talk  
14 about but.....

15 MR. WOLFE: What did you have -- Deborah, what  
16 did you have in mind in the way of posting? Just no eating  
17 and.....

18 MS. D. WILLIAMS: Yeah, exactly. We post it  
19 until we met our standards.

20 MR. WOLFE: This would be the intertidal area.

21 MS. D. WILLIAMS: Right, exactly.

22 MR. WOLFE: I would -- Craig, do you think DNR  
23 would have a problem with that? The uplands are national  
24 forest I believe for the most part.

25 MR. BENNETT: This is Mike Bennett with

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1 Department of Natural Resources and.....

2 (Indiscernible on telephone line -- multiple voices)

3 MR. WOLFE: Okay. And the others are private

4 so.....

5 MS. McCAMMON: They can't hear you, Mike,

6 so.....

7 MR. BENNETT: Okay.

8 CHAIRMAN PENNOYER: Craig, do you want to take  
9 a crack at that?

10 MR. BENNETT: This is Mike.....

11 MR. TILLERY: DNR is.

12 MR. BENNETT: This is Mike Bennett with  
13 Department of Natural Resources, we would support the posting.

14 As a matter of fact we would probably -- we're considering  
15 putting that in the permit itself that posting would be  
16 required.

17 MR. SENNER: Mike, who does that if -- whose  
18 responsibility is it to post?

19 MR. BENNETT: It would be the -- well the  
20 project applicant or in this case, it would be the Prince  
21 William Sound Economic Development Council or DEC to post it.  
22 And that'll be a condition of the permit.

23 CHAIRMAN PENNOYER: Deborah, does that take  
24 care of it for you?

25 MS. D. WILLIAMS: That's great, we'll just

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1 throw that in the EA, too.

2 MR. SENNER: Okay.

3 MS. D. WILLIAMS: Super. I guess I just have  
4 one, and this is more purely in the form of a question. No, I  
5 guess I have two, I'm sorry. One is, let us -- one thing when  
6 we do a knife injection, you know, we assume that some mussels  
7 near the injection or lipids or chiton or whatever are going to  
8 die. Are we going to take those off the beach? Are we collect  
9 those?

10 CHAIRMAN PENNOYER: Down in the gravel,  
11 Deborah?

12 MS. D. WILLIAMS: Well, I don't know, maybe --  
13 some of the mussels aren't so -- I mean, you know, they're kind  
14 of there. I guess that is in the form of a question or a  
15 comment. Should we -- if we're assuming that they're going to  
16 be getting a real heavy dose and that likelihood is that they  
17 will not survive (indiscernible) should not survive, should we  
18 just get them off the beach so bears or foxes and other guys  
19 don't eat them.

20 DR. SPIES: Mr. Chairman.

21 CHAIRMAN PENNOYER: Yeah, Bob.

22 DR. SPIES: I think that would be -- I think  
23 it's an interesting thing to think about but I think there's  
24 going to be some impracticalities in terms trying to determine  
25 of the number of a lot of different small animals are dead or

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1 not and then try to scrape them off the rock and so forth, I  
2 think it could be very labor intensive sort of thing.

3 CHAIRMAN PENNOYER: Deborah.

4 MS. D. WILLIAMS: Does anyone have a comment  
5 about -- I mean obviously the last question I have in this  
6 category is, you know, the possibility of bioaccumulation by  
7 bear and fox and I'm not sure all the animals that eat these  
8 intertidal organisms but.....

9 MR. RUE: Probably birds would be the most.

10 MS. D. WILLIAMS: Birds -- yeah, Frank, that's  
11 right, birds.

12 MR. SENNER: This is Stan. Dr. Spies, you may  
13 want to comment, but I think our perception is this is not a  
14 material that's going to bioaccumulate. This is not a DDT or,  
15 you know, some of the other things, the organo-chlorines that  
16 are known to accumulate. We expect depth degradation not  
17 accumulation.

18 DR. SPIES: Yeah, if something ate a big number  
19 of these -- the thing is we go out there in the intertidal and  
20 look around there isn't a lot of there in terms of these  
21 mussels and barnacles and lipids and small snails and so forth.  
22 I don't know what forages on that beach, I wouldn't think it  
23 would be a great place to forage, there's probably a lot better  
24 places to forage as far as true availability of food because  
25 the biomasses are not very high at all. But you're right the

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1 chlorinated hydrocarbons like PCBs and DDTs are the ones that  
2 accumulate through several steps in the food chain and this  
3 material, the active material, d-limonene, is a hydrocarbon  
4 itself and like other hydrocarbons it does accumulate through  
5 several steps in the food chain, although it can accumulate  
6 like, for instance, from sediments into mussels and so forth.  
7 So there could possibly be some dose to animals that were  
8 foraging a large extent on the beaches. I don't know if you  
9 want to put some component of the monitoring program in there  
10 to understand that there is a lot of foraging going on by  
11 animals or to make some determination of that. I think it's a  
12 concern that -- it's something that I wouldn't worry about too  
13 much myself but it something we need to think about.

14 CHAIRMAN PENNOYER: Deborah, did you have a  
15 specific suggestion on that?

16 MS. D. WILLIAMS: No, I really don't. And I  
17 don't know, I would leave it up to Frank and some others as to  
18 whether that should be a part of the monitoring program,  
19 whether, you know, birds, eagles -- I don't know if eagles eat  
20 those or what birds eat it or bear or fox. I know, you know,  
21 eating behavior, of course, is modified when you have people  
22 watching, but I'd leave that up to Frank to see if he wanted  
23 that as part of the monitoring program or maybe one of the  
24 experts. Maybe all I would ask in that context, Bob, is that  
25 you just raise that as an issue when you talk with your peer

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1 reviewers on monitoring.

2 DR. SPIES: I'll certainly do that, Deborah.

3 MS. D. WILLIAMS: That'll be great. Okay.

4 MR. RUE: I have a question before you leave  
5 this one.

6 CHAIRMAN PENNOYER: Go ahead, Frank.

7 MR. RUE: Yeah. Will you be able -- this is  
8 for Dr. Spies. Will you be able to incorporate the comment  
9 "the peer reviewers" into your monitoring program?

10 MS. D. WILLIAMS: That's my next question,  
11 Frank.

12 DR. SPIES: I hope so. Of course, you never  
13 know what they're going to say but, you know, given the amount  
14 of money that you might include today as an amount to spend on  
15 this project we would try to, of course, bring those concerns  
16 in and address them with the given amount funds. If there are  
17 some things that people object to so strenuously that we feel  
18 can't satisfy the reviewers or the proposers can't satisfy the  
19 reviewers then we would have to come back to the Trustee  
20 Council with those concerns and indicate that, you know, it's  
21 going to take a larger program. But we haven't received the  
22 comments yet, so it's difficult to say.

23 I think there's a quite good chance that we'll be able  
24 to take into account the reviewers' comments and satisfy them  
25 without increasing the costs, certainly that would be my intention.

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1 MR. RUE: And you left yourself enough time as  
2 much to do that?

3 DR. SPIES: It's going to be real tight, we're  
4 going to have to get turn around from the reviewers within a  
5 matter of days. I think we can do that. If they raise things  
6 that we can't satisfy them on then it is a potential wrench in  
7 the works here.

8 CHAIRMAN PENNOYER: Well, again, my presumption  
9 is, Dr. Spies, that if that happens you will come back to us  
10 and if that's a -- if it really is a major consideration that's  
11 the way it is.

12 DR. SPIES: That's correct.

13 CHAIRMAN PENNOYER: Further questions?

14 MS. D. WILLIAMS: Mr. Chairman, I just had, I  
15 think, one final question and that is the liability issue that  
16 Department of Natural Resources raised and I know some other  
17 people have raised. Craig, can we get an indemnification  
18 agreement from the manufacturer or what's the word.....

19 UNIDENTIFIED: Manufacturer.

20 MS. D. WILLIAMS: .....the manufacturer of PES-  
21 51 and/or the applicator?

22 MR. TILLERY: I don't know. I would doubt it.  
23 An indemnification for whom and for what?

24 MS. D. WILLIAMS: Feds, State and the Trustee  
25 Council members and the Trustee Council. I mean what is the

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1 possibility that if, you know, either one of the applicators  
2 get very sick or someone down the line claims they ate a  
3 contaminated bird or bear and they get sick. Or, you know,  
4 some child, despite posting, goes on the -- you know, there's  
5 some collection on the beach or maybe the posting got knocked  
6 down and they get sick. What is the chance that the Trustee  
7 Council could be sued in its capacity or the Fed or State could  
8 be sued or the individual -- us individual Trustees could be  
9 sued and damages levied? I am for the moment most concerned  
10 about the Trustee Council itself. I don't think any of us want  
11 Trustee Council money to go to damages in a lawsuit or  
12 individual Trustees or even the State and the Federal  
13 government. And why wouldn't the manufacturer and the  
14 applicator be willing to do an indemnification agreement with  
15 the confidence they have with the lack of harm this will do to  
16 the individuals and the environment?

17 MR. TILLERY: The chances of the Trustee  
18 Council being sued are -- successfully are almost negligible.  
19 The Council -- I not even convinced that the Trustee Council is  
20 a suable entity, that it has sort of legal entity standing. I  
21 think we had this conversation with Craig Conner five or six  
22 years ago. The -- but the way this works is Exxon gives the  
23 money for restoration to the court which gives the money to the  
24 Council to do restoration, which makes the decision to offer  
25 the State to have this money to do on -- to do this project.

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1 It then goes to the State of Alaska, it is appropriated by the  
2 Legislature to DEC, DEC give a -- or enters into a contract  
3 with Prince William Sound Development Corporation, which then  
4 enters into a contract with someone who actually does the work.  
5 I think is the way this works. There's a whole lot of layers  
6 between the Trustee Council and anyone being injured by this  
7 application, including a legislative appropriation. I don't  
8 think that there is much of a chance.

9 And you got to distinguish I think between two things.  
10 One is the decision to use PES-51 and the other is sort of a  
11 negligent application of it. Somebody turns around with a  
12 sprayer and gets somebody right in the eye, just sort of  
13 negligent. That kind of negligence, applicator negligence, is  
14 something that would be -- I would expect DEC to be concerned  
15 about and that I would expect DEC and its contract to ask for  
16 indemnification from the contracting agency for that kind of --  
17 for the negligence of the applicator.

18 As far as the decision to use PES-51 on here, under  
19 State law this would probably -- I would anticipate that would  
20 be viewed as a discretionary decision and would be immune from  
21 legal action.

22 MS. BROWN: I would mimic that on the Federal  
23 side, Craig.

24 CHAIRMAN PENNOYER: Deborah, does that help?

25 MS. D. WILLIAMS: DEC, are you going to have

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1 the indemnification language in there for negligent  
2 application?

3 MS. FAY: Yes.

4 MS. BROWN: Yes. This is fairly standard for  
5 us, I believe, in the contracts we have for this kind of work.

6 MS. D. WILLIAMS: Okay. If the indemnification  
7 language is in for negligent application that addresses my  
8 major concern.

9 CHAIRMAN PENNOYER: Okay. Are there further  
10 questions or do you want see if there is public comment on  
11 this?

12 MR. RUE: I have one short one, I think.

13 CHAIRMAN PENNOYER: Sure, Frank, go ahead.

14 MR. RUE: I started to dwell on it a little  
15 bit. Since we pushed the idea of hot water injection, Molly,  
16 let me understand. It was rejected by the other people at the  
17 meeting because, one, it -- I'm looking at your number 5. One,  
18 it throws in a bunch of complications, one of which is it's  
19 perhaps less effective, more expensive to set up a test and  
20 control. Certainly we know it will kill, hot water will kill  
21 the things exposed to high temperature and may introduce oil  
22 and toxic residue of oil into the water column that PES-51  
23 wouldn't. So the logic was that -- did you all consider the  
24 direct toxicity of PES-51 that we just talked about? And am I  
25 catching -- was that a pretty much unanimous agreement on hot

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1 water was just not worth trying?

2 MS. McCAMMON: Mr. Chairman, I think you do  
3 capture kind of the sentiment of the group there. There was  
4 very strong feelings on both the lethal effect of hot water,  
5 the immediate lethal effect of hot water, but also I think  
6 there was stronger concern about the potential of introducing  
7 more oil into the water column itself and the potential toxic  
8 effects of that. And in trying to set up some kind of -- there  
9 was some suggestion of trying to do both at the site and see  
10 which one would be more effective, but it was a question of  
11 whether it was effective in removing oil or whether what would  
12 the long term effects to the resources. So it was too  
13 difficult to set up any kind of a controlled test or it would  
14 be extraordinarily difficult, I think, to set up a controlled  
15 test to show either what was more effective in removing oil or  
16 what had greater longer term toxicity.

17 MR. RUE: Was it the lack of effectiveness or  
18 the introduction of lethal stuff that was most compelling to  
19 folks?

20 MS. McCAMMON: I think it was both. There was  
21 speculation that hot would work but there was no proof that it  
22 would work. It hadn't -- so I think that was a major aspect of  
23 it. But then it was also concern about it's potential effects.  
24 The advantage, and all along for PES-51, is that it does go to  
25 the surface and that you can skim and retrieve it.

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1 CHAIRMAN PENNOYER: Frank, does that satisfy  
2 your question?

3 MR. RUE: That makes me understand better why  
4 people have rejected hot water.

5 CHAIRMAN PENNOYER: Okay. Are there further  
6 questions or do we want to see if we should take -- if there's  
7 any public testimony?

8 (No audible responses)

9 CHAIRMAN PENNOYER: Molly, do we have other  
10 sites on line or just Juneau and Anchorage?

11 MS. McCAMMON: Juneau and Anchorage.

12 CHAIRMAN PENNOYER: Is there anybody in  
13 Anchorage that wishes to testify on this topic?

14 MS. McCAMMON: No, Mr. Chairman.

15 CHAIRMAN PENNOYER: Okay. There's nobody at  
16 our site in Juneau, though Mary keeps waving her hand around.  
17 Frank, or anybody else have any -- well, you were by yourself,  
18 you can't get to do that.

19 MR. RUE: I can invite someone in if you want.

20 CHAIRMAN PENNOYER: Well, that's all right.

21 MS. McCAMMON: I don't know if there's anyone  
22 with Traci, that's the public site in Juneau.

23 MS. CRAMER: Nobody here.

24 CHAIRMAN PENNOYER: Okay, then am I correct  
25 that there is no public testimony on this item then?

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1 MS. McCAMMON: That's correct.

2 CHAIRMAN PENNOYER: I'm going to open it for  
3 Trustee Council discussion then, is there a motion or other  
4 suggestions at this time?

5 MR. RUE: Mr. Chairman, we did get a letter  
6 from Chenega. I don't know if we call that.....

7 MS. McCAMMON: Yeah, Mr. Chairman, I just would  
8 like to note for the record the letter from Chenega which  
9 continues -- which reiterates its continued support for the  
10 project. And we also did receive a letter today from the City  
11 of Whittier in support of the project.

12 CHAIRMAN PENNOYER: Thank you very much. Yeah,  
13 they were in the package and I'm glad you pointed that out for  
14 the record. Is there any other comment or does somebody wish  
15 to make a motion?

16 MS. BROWN: Mr. Chairman.

17 CHAIRMAN PENNOYER: Yes.

18 MS. BROWN: This is Michele Brown, I'd like to  
19 make a motion. I'd like to move that the Trustee Council adopt  
20 the memorandum dated April 25, 1997 that Ms. McCammon,  
21 Executive Director, and Dr. Robert Spies prepared as findings  
22 on the record for us. And also that we approve additional  
23 funding not to exceed 150,000 for additional monitoring to be  
24 included in Project 97291 and -- well, that'll be the end of my  
25 motion but I do have something else I'd like to add a

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1 discussion point on.

2 CHAIRMAN PENNOYER: I think there were other  
3 points brought up during the discussion earlier about things we  
4 would like to see in the EA and in peer review process. Are  
5 these appropriate for this motion at this time? Deborah, do  
6 you want to add those?

7 MS. BROWN: My only other thing was I didn't  
8 have a dollar amount, but no substitute problem with them.  
9 Deborah, if you would like to add them, please go ahead.

10 MS. D. WILLIAMS: Okay. The additions. The  
11 first addition is the protective booms will stay in place for a  
12 minimum of four days and no less until there are two days with  
13 no active sheening. Second modification is that the beaches  
14 will be -- oh, the second modification is that, you know, we  
15 will seek to not have any consumption of the mussels, chitons  
16 and other intertidal resources until there are no detectible  
17 amounts of hydrocarbons over a natural background and no  
18 detectible amounts of PES-51 and its byproducts. That we will  
19 post the beaches -- I guess (indiscernible) that the beaches  
20 will be posted, I'll put that in passive voice, the beaches  
21 will be posted until lab tests confirm the two items I just  
22 stated. That we will ensure that the DEC contracts will say  
23 that -- will indemnify all of us against negligent application.  
24 It seemed like there was one more. I didn't jot them  
25 down unfortunately as I was writing them (sic). Was there one

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1 other thing? And this is less of a part of the modification  
2 motion, but Dr. Spies will work with Frank Rue and others to  
3 determine if there needs to be a monitoring component involving  
4 higher trophic consumption of the intertidal animals.

5 CHAIRMAN PENNOYER: Are there further parts of  
6 the motion before I ask for a second?

7 MS. McCAMMON: Mr. Chairman, there was one  
8 addition that I jotted down. And that was that the monitoring  
9 would continue until there was no detectible levels.

10 MS. D. WILLIAMS: Oh, yes, thank you. Thank  
11 you, Molly, precisely.

12 MR. RUE: And I hope you meant Fish and Game,  
13 not me personally.

14 MS. D. WILLIAMS: No, Fish and Game.

15 DR. SPIES: Mr. Chairman.

16 CHAIRMAN PENNOYER: Dr. Spies.

17 DR. SPIES: In relation to detecting breakdown  
18 products of PES-51, I can't assure that those methods are  
19 available, so I don't know if the Trustee Council wants to  
20 commit to something that we don't know we can do yet.

21 MS. D. WILLIAMS: The PES-51 -- what was the  
22 some people thought was a toxic byproduct, Bob?

23 DR. SPIES: Yeah, some people thought that  
24 there was -- it could end up in resulting in the toxaphene like  
25 compounds. That is -- that's been discounted on further

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1 examination, that will not happen under the conditions that  
2 we're proposing. One would have to have a very strong acid  
3 environment which doesn't exist here. So that is not an issue.

4 MS. D. WILLIAMS: Okay. I'd be fine in just  
5 saying PES-51 residues then.

6 CHAIRMAN PENNOYER: Okay. Are there further  
7 pieces to this that we need to make at this time?

8 MS. BROWN: Mr. Chairman, this is Michele  
9 Brown. I just wanted to clarify that the additional booming  
10 will take place only until there's an absence of sheening in  
11 the near shore waters because it was just stated, I think, as  
12 an absence of sheening and we want to make sure that's not  
13 necessarily beaches.

14 MS. D. WILLIAMS: Absolutely. I'm not sure I  
15 used the word active sheening but it's fine to define it that  
16 way, Michele.

17 CHAIRMAN PENNOYER: Okay. Can I have a second  
18 to this motion?

19 MR. WOLFE: I'll second.

20 CHAIRMAN PENNOYER: Jim Wolfe seconded, the  
21 motion's been made. Is there any further discussion on it?

22 (No audible response)

23 CHAIRMAN PENNOYER: Is there any opposition to  
24 this motion?

25 MS. BROWN: One point of discussion, I think,

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1 is we don't have a dollar amount on the additional booming  
2 time. And I don't know if we want to put some dollar amount  
3 not to exceed -- and we're looking through some documents now  
4 to see if we can put an estimate that we could cap at or what  
5 the pleasure of the group would be to cope with that extra  
6 cost.

7 CHAIRMAN PENNOYER: I thought that the motion  
8 was fairly clear on what we were going to do and I would guess  
9 that if we cap it, what would you then? So if we reached the  
10 cap you'd take the booms away and we wouldn't fulfill the  
11 motion's tenants? I don't think that's probably acceptable to  
12 those making the motion, so I'm not sure what you wish to do  
13 with that.

14 MS. BROWN: Well, I think the question is do we  
15 have sufficient -- just the fact that the motion has directed  
16 us to do that, will that be, then, sufficient ability to come  
17 back and collect the cost? For instance, on the monitoring we  
18 have put in a cost amount.

19 MR. RUE: We have a \$2,000,000.00 budget, I  
20 would assume that someone would set aside enough of a  
21 contingency fund to maintain boom. I think the people of  
22 Chenega would want to be sure of this, too. I don't know, is  
23 that enough incentive if they've got, what, a \$2,000,000.00  
24 project.....

25 CHAIRMAN PENNOYER: Well, wait a minute. What

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1 is the outside figure that his might be? I mean this doesn't  
2 sound like it's all that expensive and if it's 50,000 outside  
3 that or something?

4 MS. FAY: My guess is it's less -- this is  
5 Ginny. My guess is it's less than that. In the proposed  
6 budget, which I clearly state has just been a draft given to  
7 me, the cost of the amount of the amount of boom that will be  
8 purchased for this is approximately \$12,000.00. The cost for  
9 tending that boom is approximately \$11,000.00. So if we said  
10 that we ended up doubling what it would be, we're talking about  
11 maybe another 25, so maybe you could put an upward limit  
12 of.....

13 CHAIRMAN PENNOYER: Make it 175 total for the  
14 program addition then and let's just -- if that's acceptable,  
15 150 for monitoring, not to exceed 25 for the (indiscernible) I  
16 suppose. Is that okay for everybody?

17 MS. FAY: That sounds (indiscernible -  
18 simultaneous speech).....

19 MR. RUE: Pardon?

20 MS. D. WILLIAMS: I think this is like the  
21 monitoring fee, what we probably want is, you know, for  
22 example, as you point out, if Bob thinks and the group thinks  
23 we need a little more monitoring to do the job he'd come back  
24 to us and also if we're active sheening, you know, like mad and  
25 we run through the 25, I think the Trustee Council is going to

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1 not want to say, no, no, lift the booms, active sheen away. I  
2 think we'll want to revisit it.

3 CHAIRMAN PENNOYER: So I don't if we -- do we  
4 really -- your question is not whether -- the one you raised or  
5 the question is whether somebody can recover the money if they  
6 do have to leave the booms out, and I guess our answer is  
7 probably, yes, given the numbers that I'd heard. I don't think  
8 any of us -- well, I'd ask but I don't think any of us is going  
9 to have the concern for that, so how do we express that?

10 I don't think -- I agree with you, Deborah, I don't  
11 think we want to say, okay, dollar's up, if active sheening,  
12 pull the boom out, but on the other hand people are concerned  
13 about being able to recover the funds. Is it openended enough  
14 for us then? Do we need to -- Craig, help me, do we need to  
15 state an amount?

16 MR. TILLERY: Gosh, I don't think so. Why  
17 don't just leave it openended. I think you're right. If stuff  
18 is sheening off the beach we're not going to pull the booms.

19 MS. D. WILLIAMS: Right.

20 MR. WOLFE: Mr. Chair.

21 CHAIRMAN PENNOYER: Go ahead, Jim.

22 MR. WOLFE: I guess I would assume that once  
23 DEC's had a chance to get into the project and further evaluate  
24 it in more detail that if they need additional money or expect  
25 they'll need additional money that they'll come back and ask

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1 for it well before the project is completed.

2 CHAIRMAN PENNOYER: Well, isn't our statement  
3 that we want this to include the booming, which is in the  
4 monitoring program, it's part of the contract, enough to get us  
5 there. Or the total amount of the contract should cover  
6 \$20,000.00 or (indiscernible) seems like we're not talking  
7 about an awful a lot of money compared to what we're spending  
8 here, so I don't think we need to spend more time on it except  
9 our statement is that we don't want the booms taken out if  
10 there's active sheening and that then I think should give you  
11 enough consideration that the money would be forth coming or it  
12 needs to be found in the contract or something.

13 MS. McCAMMON: Mr. Chairman, this is Molly. I  
14 would assume that they would have to know this before they even  
15 started the project. The beaches are being done sequentially,  
16 with the idea that after the first beach is done then the boom  
17 gets move on to the next beach or the third beach or they hop  
18 over each other or whatever. But they're going to have to know  
19 that before they go into the field and we'll know if we can  
20 keep the monitoring to under a 175,000 probably within the next  
21 week to two weeks.

22 CHAIRMAN PENNOYER: Fine, then you can come  
23 back to us if there's additional requirements?

24 MS. McCAMMON: Yes.

25 MS. BROWN: Yeah, and from our perspective

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1 there won't be a cash flow problem because the monitoring is  
2 going afterwards. We can always use the cash for that and come  
3 back for the monitoring money.

4 CHAIRMAN PENNOYER: Fine.

5 MS. BROWN: So there won't be an immediate cash  
6 flow problem.

7 CHAIRMAN PENNOYER: Okay. Then, Bruce, you  
8 want cash now, is that why you're looking at me? So we'll --  
9 I'll ask the question again, then is there any objection to  
10 this motion?

11 (No audible responses)

12 CHAIRMAN PENNOYER: Okay, that being not  
13 hearing any the motion is passed. I would then ask the second  
14 question, Molly, in terms of the FONSI, does this mean, in  
15 effect, that we've dealt with that or do we need to do  
16 something separately?

17 (Phone line cut off at this point)

18 MS. McCAMMON: Mr. Chairman, it's my  
19 understanding you will have to sign the FONSI and then a letter  
20 of concurrence for the State Trustees is being prepared and  
21 that will be circulated. We anticipate that being done  
22 probably early next week.

23 Mr. Chairman? Hello. Is Juneau still on?

24 (Off record - 5:00 p.m.)

25 (On record - 5:03 p.m.)

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1 MS. McCAMMON: The Chairman recessed the  
2 meeting because of a glitch in the telephone system. We were  
3 not able to actually move to adjourn the meeting, therefore,  
4 the Chairman recessed it until some other time.

5 (MEETING RECESSED - 5:06 p.m.)

6 \* \* \* \* \*

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1 C E R T I F I C A T E

2 UNITED STATES OF AMERICA )

3 ) ss.

4 STATE OF ALASKA )

5 I, Joseph P. Kolasinski, Notary Public in and for the  
6 State of Alaska and Owner of Computer Matrix do hereby certify:

7 THAT the foregoing pages numbered 3 through 46 contain  
8 a full, true and correct transcript of the Exxon Valdez Oil  
9 Spill Trustee Council's Teleconference Meeting recorded  
10 electronically by Dorothy Wenzel on the 25th day of April 1997,  
11 commencing at the hour of 4:00 p.m. and thereafter transcribed  
12 by me to the best of my knowledge and ability.

13 THAT the Transcript has been prepared at the request  
14 of:

15 EXXON VALDEZ TRUSTEE COUNCIL, 645 G Street,  
16 Anchorage, Alaska 99501;

17 DATED at Anchorage, Alaska this 28th day of April  
18 1997.

19 SIGNED AND CERTIFIED TO BY:

20  
21  
22  
23  
24

\_\_\_\_\_  
Joseph P. Kolasinski  
Notary Public in and for Alaska  
My Commission Expires: 04/17/00