Exxon Valdez Oil Spill Trustee Council
Financial Procedures
Adopted: October 28, 2013

Table of Contents

Exxon Valdez Oil Spill Trustee Council

Financial Procedures

I. SETTLEMENT FUNDS

A. Joint Trust Funds

The Joint Trust Funds consist of all payments received or to be received by the United States and the State of Alaska pursuant to the Agreement and Consent Decree issued in United States v. Exxon Corporation, et al. (No. A91-082 CIV) and State of Alaska v. Exxon Corporation, et al. (No. A91-083 CIV), including any interest accrued thereon.

B. Investment Fund(s)

Pursuant to Court Order and in accordance with the Terms of the Memorandum of Agreement and Consent Decree, from December 1991 through October 5, 2000, the Joint Trust Funds were placed in an interest-bearing account in the Court Registry Investment System (CRIS) administered through the United States District Court. The Governments sought and obtained Congressional approval to expand options for investment of the settlement proceeds.

1. **Public Law 106-113 –** the Consolidated Appropriations Act, 2000, was enacted November 29, 1999.

2. **Section 350 of H.R. 3423 –** authorizes deposit of all or a portion of the Joint Trust Funds previously received, or to be received, by the Governments in the Natural Resource Damage Assessment and Restoration Fund or accounts outside the United States Treasury or both.

C. Investment Fund(s) Disbursement

Upon unanimous approval of the Trustee Council, the Alaska Department of Law and the United States Department of Justice shall be requested to notify the United States District Court for the District of Alaska.

1. **Notification –** shall consist of legal documents required by the Court and documentation demonstrating the unanimous agreement of the Trustee Council.

2. **Payment instructions –** Concurrently, the Alaska Department of Law and the United States Department of Justice shall be requested to provide

the custodian(s) of the Investment Fund(s) with payment instructions.

3. **Interest –** When appropriate, interest earned on the federal and state accounts and/or unobligated balances from prior years' authorizations shall be subtracted from the disbursement.

D. Authority to Spend

No obligations shall be incurred until such time as

1. a Court Order is entered by the United States District Court for the District of Alaska, or

2. a notification is filed with the United States District Court for the District of Alaska, and

3. any terms and conditions placed on the funding by the Trustee Council have been met.

E. Federal Account

In accordance with federal law, funds required for federal project implementation are deposited in the Natural Resource Damage Assessment and Restoration (NRDA&R) Fund managed by the Department of the Interior.

F. State Account

In accordance with state law, funds required for state project implementation are deposited in the *Exxon Valdez* Oil Spill Settlement Fund.

II. PROJECT AUTHORIZATION

A. General

Authorization to expend personal services, travel, contractual, commodities, equipment and general administration funds shall be consistent with the project budgets approved by the Trustee Council.

B. Fiscal Year

For Trustee Council approvals after September 2012, and unless otherwise approved by the Trustee Council, the fiscal year begins on February 1 and ends on January 31. In the event the Trustee Council approves

1. a project with a different fiscal year, the fiscal year must be clearly stated in the approval motion;

2. in a single approval motion, multiple fiscal years of funding for a project, the project must be designated as a "multiple-year project" in the approval motion and the fiscal year in which the funds will lapse must be specified in the approval motion; or

3. a capital project, the designation as a capital project must be clearly stated in the approval motion.

C. Adjustments between Projects

As long as an adjustment does not alter the underlying scope or objectives of the affected projects, agencies have the authority to move funds into or out of projects up to the cumulative amount of $10,000 or up to 10% of the authorized level of funding for each affected project, whichever is less.

1. Justification and supporting documentation as to the reason for all such adjustments shall be maintained by the agencies.

2. All such adjustments must be reported to the Executive Director in the Annual Financial Report. For further information regarding the Annual Financial Report, refer to the Accounting section IV of these procedures.

D. Adjustments between Line Items

As long as an adjustment does not alter the underlying scope or objectives of the project, agencies are authorized to move, within a single project, budgeted funds between line items and may change detailed items of expenditure to accommodate circumstances encountered during budget implementation.

1. Justification and supporting documentation as to the reason for all such adjustments must be maintained by the agencies.

2. All such adjustments must be reported to the Executive Director in the Annual Financial Report. For further information regarding the Annual Financial Report, refer to the Accounting section IV of these procedures.

E. Adjustments between Fiscal Years of a Multiple-Year Project

As long as an adjustment does not alter the underlying scope or objectives of the project, agencies are authorized to carry forward budgeted funds to the subsequent fiscal year of a multiple-year project.

1. Justification and supporting documentation as to the reason for all such adjustments must be maintained by the agencies.

2. All such adjustments must be reported to the Executive Director in the Annual Financial Report. For further information regarding the Annual Financial Report, refer to the Accounting section IV of these procedures.

F. Revisions

1. Trustee Council action is required to move amounts greater than that authorized in section II.C., above. Trustee Council action is also required if

    a) the adjustment changes the scope or objectives of a project,

    b) establishes a new project, or

    c) terminates an approved project before its scheduled completion.

2. In the event the proposed adjustment changes the scope or objectives of a project, establishes a new project, or terminates an approved project before its scheduled completion, the public shall be given a reasonable opportunity to review and comment on the proposed change prior to action of the Trustee Council.

G. Withholding of Funding Pending Deliverables

1. Ten percent (10%) of project funding will be withheld by project managers until the following have been completed:

    a) the final report has completed peer review and format review and has been accepted by the Science Coordinator;

    b) all print copies of the final report have been delivered to the Alaska Resources Library and Information Service (ARLIS);

    c) an electronic copy of the final report has been delivered to the Trustee Council office; and

    d) all project data and metadata have been submitted to approved archives, in accordance with the Trustee Council Data Policy.

2. The Executive Director has the discretion to alter the due date on deliverables, whether planned or for other grounds the Executive Director determines are reasonable.

3. The 10% withholding will apply to the final year of multi-year projects.

4. No further funding will be released or awarded to proposers with tardy

Trustee Council deliverables or who receive an unsatisfactory review of a deliverable.

III. PROJECT COSTS

A. Direct Project Costs

Direct costs are those costs that can be identified with or linked to a specific project.

B. Indirect Project Costs

Indirect costs are those costs that are incurred for common or joint projects and therefore cannot be identified readily and specifically with a specific project. In the case of governmental agencies, indirect costs are covered through a general administration formula. The appropriate indirect rate for contractors shall be approved on a case-by-case basis.

C. General Administration Formula

The general administration formula is used to reimburse governmental agencies for indirect project costs incurred in implementing the restoration program.

1. The general administration formula is nine percent (9%) of each project's direct costs.
2. General administration funds may be spent at the agency's discretion provided they are spent on indirect costs incurred in implementing activities funded by the Trustee Council.
3. Agencies are entitled to one hundred percent (100%) of their budgeted general administration funds regardless of how much of their budgeted direct project funds have been expended.

D. Unallowable Costs

Restoration funds shall be used only for costs that directly benefit Trustee Council approved projects with the exception of reimbursement of general administration (i.e., indirect) costs that are calculated in accordance with the general administration formula.

E. Bonuses

Bonuses for personnel working on Trustee Council-funded activities are allowable costs.

1. Agencies shall follow their standard operating procedures in determining bonus awards.

2. Bonuses shall be considered an indirect project cost and, if awarded, shall be paid with general administration funds.

IV. ACCOUNTING

A. General

It is the responsibility of agency personnel, Team Leads and certifying officers to make certain that all actions are based on sound accounting and budgetary practices.

B. Source Documentation

Adequate justification and supporting documentation shall be maintained for each project.

C. Appropriateness

Expenditures charged to a project shall be directly attributable to or allocated to the project benefiting from the activity. Salaries and benefits may be charged for the time an individual is working directly on a project, when supported by time sheets and when work performed by such individuals is necessary to the project.

D. Reasonableness

Costs attributable to a project shall be necessary and reasonable to achieve the objectives of the project and be consistent with the policies and procedures governing other activities of the agency.

E. Segregation

Accounts shall be properly designed and maintained to ensure that funds are expended in accordance with Trustee Council approval.

F. Expended (Outlays)

The term expended shall be defined as the actual outlay of funds through the issuance of checks or warrants, the disbursement of cash, or the electronic transfer of funds. The term expenditure shall be defined as the act of expending.

G. Obligation (Encumbrances)

1. The term obligation shall be defined as a commitment to acquire goods or services during the fiscal year or, for multiple-year projects, a commitment to acquire goods or services prior to the project's specified lapse date.

2. The term obligation shall also be used to accommodate contracts where the length of time for completion of the service extends into the following

fiscal year or, for a multiple-year project, beyond the project's specified lapse date.

3. An obligation is a commitment to pay and should not be considered an expenditure until the goods or services have been received and the invoice paid.

4. Funds approved for contracts in which the length of time for completion of the service extends into the following fiscal year may be obligated at year end or, for a multiple-year project, prior to the project's specified lapse date. As a general rule, agencies shall have one year from a project's specified lapse date to satisfy all obligations.

H. Reporting: Annual Financial Reports

By March 31 of each year, agencies shall report to the Executive Director the total expended for each project, plus any valid obligations relating to the fiscal year just ended. For Trustee Council-Funded Programs, such as the Long-Term Monitoring or Herring Programs, the report shall reflect the total amount authorized by line-item, any revisions approved by the Trustee Council, any adjustments between projects, any adjustments between line-items, and, for multiple-year projects, any adjustments between fiscal years for which the project was approved.

V. LAPSE

A. General

Subject to the exceptions noted in sections V.B. and V.C. below, the unexpended and unobligated balance of a project shall lapse on the last day of the month before the close of the fiscal year for which the project was approved. For example, for a project with an October 1 – September 30 period, the last day is September 30; for a project with a February 1 – January 31 period, January 31 is the close of the fiscal period. However, an undisclosed obligation may be established and/or paid during the Close-Out Period.

B. Multiple-Year Projects

1. The unexpended and unobligated balance of a multiple-year project shall be carried forward to the lapse date specified by the Trustee Council in the project's approval motion.

2. If no specific date is specified, the unexpended and unobligated balance shall lapse on the last day of the month before the close of the fiscal year

specified by the Trustee Council. *See* General, V.A. above.

C. Capital Projects

The unexpended balance of a capital project shall be carried forward for two subsequent fiscal years. At the end of the three-year period, the unexpended and unobligated balance shall lapse. Trustee Council action is required to extend the project lapse date beyond the three year period.

D. Close-Out Period

1. For three months after the close of a fiscal year, agencies or Team Leads of Trustee Council-Funded Programs, such as the Long-Term Monitoring or Herring Programs, may pay from funds an expense that was undisclosed during that fiscal year. For example, for an October 1 fiscal year, expenses may be paid during the months of October, November and December (through December 31) from the funds from the fiscal year just ended on September 30. For a February 1 fiscal year, these may be paid during February, March and April.

2. In addition, agencies or Team Leads may establish obligations to accommodate an expense that was undisclosed during that fiscal year. Any such payments or obligations must be reported to the Executive Director in the Annual Financial Report. For further information regarding the Annual Financial Report, refer to the Accounting section IV of these procedures.

E. Expenses Discovered after the Close-Out Period

1. Expenses discovered after the Close-out Period (i.e., for an October 1 fiscal year, after December 31 and for a February 1 fiscal year, after April 30) may be charged to the subsequent year's project budget if the project has multiple years of funding and sufficient funds are available.

2. In the event there is no subsequent year's project budget, or in the event the agency or Team Lead determines that insufficient funds are available to charge the expense to the subsequent year's budget, authority to adjust a prior year Annual Financial Report is required.

3. During the six months after the Close-Out Period, authority to adjust a prior year Annual Financial Report may be provided by the Executive Director. For example, for an October 1 fiscal year: January through June; for a February 1 fiscal year: May through October.

4. For expenses discovered after this six-month period, authority to adjust a prior year Annual Financial Report may be provided by the Trustee Council.

VI. EQUIPMENT

A. Definition

Equipment shall be defined as non-expendable items having an estimated life of more than one year and a unit value greater than $1,000.

B. Title and Use

This section shall apply to all equipment purchased under the restoration program, for projects already in progress or completed as well as for projects funded in the future.

1. Title –

   a) Items with an original per unit cost of under $5,000 shall belong to the acquiring agency. At the end of a project, if the equipment was purchased by a contractor, the agency may, at its discretion and if agency regulations allow, transfer the title to the contractor.

   b) Items with an original per unit cost of $5,000 and over shall belong to the acquiring agency on behalf of the Trustee Council. At the end of a project that has equipment with an original per unit cost of $5,000 or more, the Executive Director shall determine if the equipment item shall be used for another Trustee Council project or if the item shall remain with the acquiring agency. If the equipment shall be used for another Trustee Council project administered by an agency other than the acquiring agency, the title for the equipment shall be transferred to the agency administering the new project. If the equipment shall remain with the acquiring agency, and it was purchased by a contractor, the agency may, at its discretion and if agency regulations allow, transfer the title to the contractor.

2. Use – Equipment shall be used for the project for which it was acquired.

3. Surplus – Equipment that belongs to the acquiring agency shall be surplused in accordance with agency procedures.

4. Inventory – Property records shall be maintained in accordance with agency procedures.

5. Repair, Maintenance and Safeguarding – The repair, maintenance and safeguarding of equipment purchased with joint funds shall be accomplished in accordance with agency procedures.

6. Disposal – Equipment that ceases to function shall be disposed of in accordance with agency procedures.

7. Reporting – By December 31 of each year, agencies shall report all equipment with an original per unit cost of $5,000 or more to the Executive Director. The report shall include a description of the equipment (make and model), date the equipment was purchased, the purchase price, where the equipment is located and the condition of the equipment. The report shall also identify the project that is using the equipment.

VII. CONTRACTS

A. General

Agencies and Team Leads shall ensure that contracts for professional and non-professional services are accomplished in accordance with the terms, conditions, and specifications of the project approved by the Trustee Council and in accordance with applicable Trustee Council policies, Federal and State laws.

B. Definitions

1. **Professional Services –** means contracts for professional, technical, or consultant services that result in the production of a report or the completion of a task, and includes analysis, evaluation, prediction, planning, or developing a recommendation.

2. **Non-professional Services –** means contracts for services that are primarily manual in nature, and includes boat charters, printing, and other. Non-professional services contracts usually provide a service rather than resulting in a product or report.

3. **Named Recipient –** In the event the Trustee Council determines that, in order to carry out its mandate under the Memorandum of Agreement and Consent Decree, a particular person or entity should implement all or a portion of a project through a state Trustee agency, the Trustee Council may, by unanimous vote, name a contract recipient.

   a) The approval motion shall include the reason for selecting the contract recipient.

b) If the contracting agency determines that an award to an entity different than that named by the Trustee Council would better serve the restoration program, the basis of that determination shall be stated in writing to the Executive Director and forwarded to the Trustee Council for approval.

4. **Indirect Rates –** The appropriate indirect rate for contractors shall be determined on a project-by-project basis or through a memorandum of understanding with a contractor that provides for a consistent rate and methodology.

5. **Equipment –** Equipment purchased by the contractor shall remain the property of the contracting agency unless other conditions prevail. *See* Equipment, Title and Use, VI.B. for specific details.

6. **Special Considerations –** All notes and other data developed by the contractor shall be subject to the Trustee Council's Data Policy.

VIII. GRANTS

A. General

Grants may be used as a procurement mechanism, but only to the extent they are permitted under existing state and federal laws. Federal Trustee agencies were given grant authority specific to the Trustee Council's restoration program under Public Law 106-113 (1999).

IX. AUDITS

A. General

The purpose of an audit is to ensure public trust and accountability regarding the use of settlement funds. An audit provides credibility to the information reported by or obtained from management by independently acquiring and evaluating the evidence.

B. Definition

The term audit includes both financial and performance audits.

C. Readiness

When an agency or Trustee Council-Funded Program receives funding from the Trustee Council, the agency or Team Leads, as appropriate, assume certain responsibilities with respect to those funds. These include ensuring that source documentation is organized and available for review, internal controls are documented and individuals knowledgeable about the projects are available to answer questions.

D. Contracts

Contractors who receive funding for professional or non-professional services are not automatically subject to an annual audit. However, this does not preclude the Trustee Council or the agency or Trustee Council-Funded Program from making a determination that an audit is required in addition to an agency or Program's review of expenditure documentation and work produced by a contractor.

E. State and Federal Audits

Each Federal agency and the State of Alaska have audit functions. In the event an audit is performed on a Trustee Council-funded activity, a copy of the audit shall be provided to the Executive Director.

F. External Audits

All external audits shall be conducted in accordance with Governmental Auditing Standards. In addition, the firm and the staff assigned to conduct the audit shall be independent of the Trustee Council, the funding agencies, the Alaska Department of Revenue, the Court Registry Investment System, Exxon Corporation, Exxon Shipping Company and Exxon Pipeline Company.

APPENDIX A: FEDERAL INTERNAL PROCEDURES

I. NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION FUND

A. Segregation

All principal and interest shall be accounted for separately by the Department of the Interior, Office of the Secretary. Each disbursement shall be assigned an appropriate account, sub-activity and/or project number when deposited to the aggregate Natural Resource Damage Assessment and Restoration Fund within the Federal Reserve Bank. Confirmation of the deposit shall be provided to the Treasury Department, which reconciles the deposit with the Federal Reserve Bank.

B. Investments

By law, the funds may only be invested in Treasury Securities and all ownership is maintained in the name of the Natural Resource Damage Assessment and Restoration Fund. Based on an estimate of cash flow requirements, the Department of the Interior, Office of the Secretary generates instructions for investment and forwards the instructions to the National Business Center. The National Business Center develops and submits an Investment Confirmation Letter that indicates which account investments are being purchased, the scheduled maturity dates and the investment type(s) to the Department of Treasury, which purchases the securities. At maturity, interest income is paid directly to the account.

C. Reports

The Department of the Interior shall report interest income to the Executive Director annually, at a minimum. If requested by the Executive Director, disbursements to the federal agencies shall be reported to the Executive Director. By March 31 of each year, the Department of Interior shall report to the Executive Director all lapsed funds returned to the Natural Resource Damage Assessment and Restoration Fund by the federal agencies.

II. AUTHORIZATION

A. General

Congress permanently appropriated funding approved by the Trustee Council in Section 207 of Public Law 102-227. However, all authorization is subject to compliance with any terms and conditions imposed by the Trustee Council.

B. Budget and Reports

Under Section 207, agencies are required to comply with directions published by the Federal Office of Management and Budget. This includes submitting a budget for the upcoming fiscal year and documentation associated with the current and prior fiscal year.

C. Obligation Authority

Prior to the obligation of any funds, agencies must first complete the allocation process required by their respective budget offices to establish codes for each project. The allocation process provides the authority, amount of funding and the guidance with which to obligate funds.

D. Instructions for Transfer

Federal agencies are required to submit an annual cash flow plan to the United States Department of the Interior, Office of the Secretary, Natural Resource Damage Assessment and Restoration Office, and instructions regarding the transfer of settlement funds. The instructions shall specify the purpose of the transfer, which account the funds are to be transferred to, and an estimate of cash flow requirements. Unless the transfer represents a one-time payment, the cash flow estimate shall be structured on a quarterly basis. Any change in cash flow requirements that occurs during the fiscal year shall be communicated to the United States Department of the Interior, Office of the Secretary, Natural Resource Damage Assessment and Restoration Office, in writing. A change is defined as a decrease in the cash flow requirement due to an unanticipated delay in a project or an increase in the cash flow requirement due to an unanticipated change in the schedule, or subsequent Trustee Council action.

E. Fund Transfers

The vehicle used for transfers is a SF1151, a non-expenditure transfer. The SF1151 is initiated, prepared, and approved by the Natural Resource Damage Assessment & Restoration Office, Office of the Secretary and then sent to Treasury where the funds are transferred within the Treasury system.

F. Return of Unobligated Balances

By June 1of each year, federal agencies must return to the Natural Resource Damage Assessment and Restoration Fund the unobligated balance for any projects which have terminated. Concurrently, the agencies must return any de-obligated funds. Agencies are required to submit to the United States Department of the Interior, Office of the Secretary, Natural Resource Damage Assessment and Restoration Office, a report reflecting the total unobligated balances of current projects as of June 1 and the amount of funding recovered from any prior year de-obligations. The vehicle used for transfers is a SF1151, non-expenditure transfer. The Department of the Interior shall report the total unobligated balance and de-obligated balances to the Executive Director by July 1 of each year.

APPENDIX B: STATE INTERNAL PROCEDURES

I. *EXXON VALDEZ* OIL SPILL SETTLEMENT FUND

A. Segregation

All principal and interest shall be accounted for separately by the Alaska Department of Revenue, Division of Treasury. Each disbursement shall be deposited in a Department of Law sub-account, *Exxon Valdez* Oil Spill Settlement Fund. Confirmation of the deposit shall be provided by the bank to the Alaska Department of Revenue.

B. Investments

The Alaska Department of Revenue, Division of Treasury shall calculate the daily income amount and provide for daily compounding (including weekends and holidays). The income shall be credited to the fund and posted in the Alaska State Accounting System on a monthly basis.

C. Reports

The Alaska Department of Revenue, Division of Treasury shall report income earned to the Executive Director on a monthly basis.

II. AUTHORIZATION

A. General

Pursuant to Alaska Statute 37.14.405(a), a state agency may not expend money received from the trust unless the expenditure is in accordance with an appropriation made by law. However, prior to the expenditure of funds, Trustee Council approval must be obtained, the notice filed, any terms and conditions placed on the funding by the Trustee Council met, and the funds transferred from the Investment Fund to the *Exxon Valdez* Oil Spill Settlement Fund, if necessary.

B. Budget and Reports

To meet the requirements of Alaska Statute 37.14.415, agencies are required to comply with directions published by the State Office of Management and Budget, Division of Budget Review. Alaska Statute 37.14.415 states: The state trustees shall

1. submit to the governor and the legislature by December 15 of each year a report setting out, for each object or purpose of expenditure, the amounts approved for expenditure from the trust during the preceding state fiscal year and the amounts actually expended during the preceding state fiscal year;

2. prepare and submit, under AS 37.07, a budget for the next state fiscal year setting out, for each object or purpose of expenditure, the Trustees' estimate of the amounts that are, during the next state fiscal year, to be funded by the trust and expended by state agencies; and

3. prepare and submit to the legislature, at the same time the budget for state agency expenditures is submitted under (b) of this section, a proposal setting out, for each object or purpose of expenditure, the trustees' estimate of the amounts that are to be funded by the trust in the next state fiscal year and that are not included in the budget submitted under (2) of this section.

C. Legislative Budget and Audit Committee

Alaska Statute 37.14.405(b) allows agencies to meet the requirements of an appropriation conditioned on compliance with the review provisions of AS 37.07.080(h). In accordance with the procedures of the Alaska Office of Management and Budget (OMB), agencies are required to submit a request to OMB for transmittal to the Legislative Budget and Audit Committee.

D. Expenditure Authority

Authorization to receive and expend shall be recorded in the Alaska State Accounting System within the *Exxon Valdez* Oil Spill Settlement Fund. Following legislative action, OMB will record the authorization by approving an Authorized Budget Transaction (AB).