

TRUSTEES FOR ALASKA

A Nonprofit Public Interest Law Firm Providing Counsel to Protect and Sustain Alaska's Environment

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August 27, 2003

Via FedEx

Union Oil Company of California/
Unocal Alaska
2141 Rosecrans Ave., Ste. 4000
El Segundo, CA 90245

Ms. Marianne Lamont Horinko, Acting Admin.
U.S. Environmental Protection Agency
401 M Street, N.W.
Washington, D.C. 20460

CT Corporation System
Registered Agent for Union Oil Co. of California
801 W. 10th St., Ste. 300
Juneau, AK 99801

Union Oil Company of California/Unocal Alaska
909 W. 9th Ave.
P.O. Box 196247
Anchorage, AK 99519-6247

Re: Notice of Violations and Intent to File Suit under the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.

Dear Unocal Oil Company of California and Ms. Horinko:

This letter is written on behalf of Cook Inlet Keeper (“Keeper”), a non-profit organization dedicated to preserving and protecting the watershed of Alaska’s Cook Inlet and the life it sustains, and constitutes a **Notice of Violation and Intent to File Suit** under the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.*, also known as the Clean Water Act (“CWA”). This notice is provided pursuant to Section 505(b) of the CWA, 33 U.S.C. § 1365(b), which requires that 60 days prior to the initiation of a civil action under Section 505(a) of the CWA, 33 U.S.C. § 1365(a), a citizen must give notice of intent to sue, and notice of the alleged violations.

Based on information available to the Keeper, it is clear that Unocal Oil Company of California (“Unocal”) has violated and continues to violate the CWA and National Pollutant Discharge Elimination System (“NPDES”) Permit No. AKG258000 (“Permit”) at its facilities located in Cook Inlet in Alaska: (1) Granite Point Production Facility (NPDES No. AKG258001); (2) Trading Bay Production Facility (NPDES No. AKG258002); (3) Anna Platform (NPDES No. AKG258004); (4) Baker Platform ((NPDES No. AKG258005); (5) Bruce Platform (NPDES No. AKG258006); (6) King Salmon Platform (NPDES No. AKG258008); (7) Dolly Varden Platform (NPDES No. AKG258009); (8) Granite Point Platform (NPDES No.

AKG258015); (9) Grayling Platform (NPDES No. AKG258016); (10) Monopod Platform (NPDES No. AKG258017); and (11) Steelhead Platform (NPDES No. AKG258019).

I. BACKGROUND

Cook Inlet is the only location in the United States where oil platforms may lawfully discharge produced water and other toxic drilling wastes directly into coastal waters via a general permit.¹

A. Unocal's Cook Inlet Operations

Unocal currently operates 10 offshore drilling platforms in Cook Inlet. Four of these platforms discharge produced water directly to Cook Inlet following oil-water separation: Anna, Bruce, Baker, and Dillon. The Platforms may discharge drilling wastes directly into Cook Inlet pursuant to the Permit issued by EPA Region 10.

In addition, Unocal operates two onshore facilities that discharge produced water directly into Cook Inlet following oil-water separation, Granite Point Tank Farm (also known as Granite Point Production Facility) and Trading Bay Production Facility. Granite Point Tank Farm receives a crude oil-water mixture from the Granite Point offshore platform. Trading Bay Production Facility receives crude oil-water mixtures from the Monopod, King Salmon, Grayling, Steelhead, and Dolly Varden offshore platforms. Following produced water removal, Unocal ships the remaining crude oil from Granite Point Tank Farm and Trading Bay Production Facility via the Cook Inlet Pipeline Company pipeline to the Drift River Terminal for tanker transport across Cook Inlet to the Tesoro Refinery in Nikiski, Alaska.

B. Citizen Enforcement

In 1994, Greenpeace, Trustees for Alaska, and Alaska Center for the Environment filed suit against Unocal and other operators for violations of the NPDES permit that was in effect at that time. The environmental groups documented over 4,200 violations of the Clean Water Act, and a settlement was reached in 1995.

C. EPA Enforcement

Under the Permit, Unocal must submit monthly and quarterly Discharge Monitoring Reports ("DMRs"), which summarize monitoring results. Permit No. AKG285000, Section IV.A. In addition, non-compliance with the Permit must be reported in some cases within 24 hours, otherwise in the DMRs, and always in writing. Permit No. AKG285000, Section IV.G & H.

¹ There are some exceptions for certain Texas dischargers that are not included in the Texas general permit, and in Louisiana for "open bay" dischargers that discharge produced water. *Development Document for Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category*, U.S. Environmental Protection Agency, EPA-821-R-96-023, October 1996, p. II-4." See also 61 Fed. Reg. 66086, 66091 and 66101 (Dec. 16, 1996).

Based on the documents received from EPA Region 10, it appears that Unocal provided written notices of non-compliance for various violations over the period of the Permit. However, in July, August, and September 2002, Unocal provided written notification to EPA of errors in DMRs submitted between 1998 and 2002, which Unocal apparently “discovered” as part of an internal “compliance audit.”

In November 2002, Unocal approached EPA to discuss potential settlement of the violations disclosed in 2002 as well as all other violations disclosed in Unocal’s DMRs during the period 1998 through 2002. As a result, EPA negotiated Consent Agreements and Final Orders (“CAFO”), Docket Nos. CWA-10-2003-0070 through CWA-10-2003-0080, with Unocal purporting to settle the violations. The Keeper and other environmental groups submitted comments on those proposed CAFOs.

II. VIOLATIONS OF THE CLEAN WATER ACT

Section 301 of the CWA, 33 U.S.C. § 1311, prohibits any discharge of pollutants unless the discharge is specifically permitted by an NPDES permit. Section 301 also prohibits any discharge of pollutants in excess of the effluent limitations established in an NPDES permit. The Permit establishes effluent limitations and monitoring and reporting requirements, with which Unocal must comply. Each of Unocal’s facilities in Cook Inlet described in this letter has violated, and continues to violate the Permit, as detailed in the attached exhibits for each facility. The Keeper hereby puts you on notice that after the expiration of 60 days from the date of this Notice of Violation and Intent to File Suit, it intends to file suit in Federal Court against Unocal for violations of the CWA.

A. Granite Point Production Facility

At the Granite Point Production Facility, Unocal failed to collect samples on at least 11 occasions, misreported monitoring results on at least 2 occasions, failed to report monitoring results on at least 41 occasions, exceeded pH effluent limitations on at least 6 occasions, exceeded whole effluent toxicity standards on at least 186 occasions, and exceeded oil and grease effluent limitations on at least 94 occasions, for a total of at least 340 violations.² See Granite Point Production Facility Violations (NPDES No. AKG259001), attached as Exhibit A.

B. Trading Bay Treatment Facility

At the Trading Bay Treatment Facility, Unocal misreported monitoring results on at least 9 occasions, failed to report monitoring results on at least 42 occasions, failed to collect samples on at least 37 occasions, submitted samples that exceeded the holding time on at least 5 occasions, exceeded whole effluent toxicity standards on at least 63 occasions, and exceeded oil

² Violations since August 27, 1998 have been counted for purposes of this Notice of Intent to File Suit. The United States Code provides for a 5-year statute of limitations “for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise.” 28 U.S.C. § 2462.

and grease effluent limitations on at least 32 occasions, for a total of at least 188 violations. *See* Trading Bay Treatment Facility Violations (NPDES No. AKG258002), attached as Exhibit B.

C. Platform Anna

At Platform Anna, Unocal misreported monitoring results on at least 10 occasions, failed to collect samples on at least 1 occasion, and failed to report on at least 42 occasion, for a total of at least 53 violations. *See* Platform Anna Violations (NPDES No. AKG258004), attached as Exhibit C.

D. Platform Baker

At Platform Baker, Unocal misreported monitoring results on at least 8 occasions, failed to collect samples on at least 1 occasion, failed to report on at least 42 occasions, and exceeded zinc effluent limitations on at least 61 occasions, for a total of at least 112 violations. *See* Platform Baker Violations (NPDES No. AKG258005), attached as Exhibit D.

E. Platform Bruce

At Platform Bruce, Unocal misreported monitoring results on at least 2 occasions, failed to report monitoring results on at least 53 occasions, discharged domestic waste water above the surface on at least 1 occasion, exceeded oil and grease effluent limitations on at least 91 occasions, exceeded TSS effluent limitations on at least 30 occasions, and exceeded BOD effluent limitations on at least 32 occasions, for a total of at least 209 violations. *See* Platform Bruce Violations (NPDES No. AKG258006), attached as Exhibit E.

F. Platform King Salmon

At Platform King Salmon, Unocal discharged materials that created an oil sheen on at least 1 occasion, failed to report monitoring results on at least 41 occasions, for a total of at least 42 violations. *See* Platform King Salmon Violations (NPDES No. AKG258002), attached as Exhibit F.

G. Platform Dolly Varden

At Platform Dolly Varden, Unocal misreported monitoring results on at least 4 occasions, failed to report monitoring results on at least 41 occasions, illegally discharged oil-based workover/completion fluids on at least 1 occasion, failed to collect samples on at least 1 occasion, discharged non-contact cooling water with free oil on at least 1 occasion, exceeded TSS effluent limitations on at least 32 occasions, and exceeded BOD effluent limitations on at least 62 occasions, for a total of at least 142 violations. *See* Platform Dolly Varden Violations (NPDES No. AKG258009), attached as Exhibit G.

H. Platform Granite Point

At Platform Granite Point, Unocal exceeded TSS effluent limitations on at least 28 occasions, and failed to report monitoring results on at least 42 occasions, for a total of at least 70 violations. *See Platform Granite Point Violations (NPDES No. AKG258015)*, attached as Exhibit H.

I. Platform Grayling

At Platform Grayling, Unocal misreported monitoring results on at least 3 occasions, and failed to report monitoring results on at least 39 occasions, for a total of at least 42 violations. *See Platform Grayling Violations (NPDES No. AKG258016)*, attached as Exhibit I.

J. Platform Monopod

At Platform Monopod, Unocal misreported monitoring results on at least 5 occasions, discharged materials that created an oil sheen on at least 2 occasions, discharged domestic wastewater to Cook Inlet on at least 1 occasion, failed to report monitoring results on at least 32 occasions, and exceeded oil and grease effluent limitations on at least 30 occasions, for a total of at least 70 violations. *See Platform Monopod Violations (NPDES No. AKG258017)*, attached as Exhibit J.

K. Platform Steelhead

At Platform Steelhead, Unocal misreported monitoring results on at least 4 occasions, failed to report monitoring results on at least 44 occasions, exceeded BOD effluent limitations on at least 30 occasions, exceeded Total Residual Chlorine effluent limitations on at least 1 occasion, and exceeded TSS effluent limitations on at least 32 occasions, for a total of at least 111 violations. *See Platform Steelhead Violations (NPDES No. AKG258019)*, attached as Exhibit K.

In addition to the 1,379 violations set forth above, this notice covers all violations of the CWA by Unocal evidenced by information that becomes available to the Keeper after the date of this Notice of Intent to File Suit.

Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, each of the 1,379 above-described violations of the CWA subjects the violator to a penalty of up to \$27,500 per day per violation for violations occurring after August 27, 1998. In addition to civil penalties, the Keeper will seek injunctive relief preventing further violations of the CWA pursuant to Sections 505(a) & (d), 33 U.S.C. §§ 1365(a) & (d), and such other relief as is permitted by law. Lastly, the Keeper will seek costs, and attorneys' and expert witness fees pursuant to Section 505(d) of the CWA, 33 U.S.C. § 1365(d).

III. PERSON(S) RESPONSIBLE FOR THE VIOLATIONS

Based on information available to the Keeper, officers, and directors of Unocal, as well as Unocal itself are, or may be, responsible for the violations of the CWA at Unocal's facilities in Cook Inlet, Alaska.

IV. LOCATION OF THE VIOLATIONS

The enumerated violations have occurred and are occurring at the Unocal platforms located in Cook Inlet, Alaska, and the two Unocal production facilities operated onshore adjacent to Cook Inlet, Alaska.

VIII. IDENTITIES OF NOTICING PARTIES

Cook Inlet Keeper is a non-profit organization dedicated to preserving and protecting the watershed of Alaska's Cook Inlet and the life it sustains. Its mission includes enforcing environmental laws and regulations.

The name, address and telephone number of the noticing party is as follows:

Cook Inlet Keeper
P.O. Box 3269
Homer, AK 99603
(907) 235-4068, ext. 22
Contact: Bob Shavelson, Cook Inlet Keeper

IX. LEGAL COUNSEL FOR NOTICING PARTIES

The Keeper has retained legal counsel to represent it in this matter. All communications should be addressed to:

Victoria Clark
Staff Attorney
Trustees for Alaska
1026 W. 4th Ave., Ste. 201
Anchorage, AK 99501
(907) 276-4244, ext. 113

The Keeper believes that this Notice of Intent to File Suit sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period or shortly thereafter to file a citizen suit under Section 505(a) of the CWA against Unocal for violations at its Cook Inlet facilities.

During the 60-day notice period, we would be willing to discuss effective remedies and civil penalties for the violations noted in this letter.

Very truly yours,

Bob Shavelson
Cook Inlet Keeper

Victoria Clark
Staff Attorney, Trustees for Alaska

cc:

Mr. John Ashcroft, U.S. Attorney General
U.S. Department of Justice
Tenth Street and Constitution Ave., N.W.
Washington, D.C. 20530

Mr. L. John Iani, Regional Administrator
U.S. Environmental Protection Agency
Region 10
1200 6th Avenue
Seattle, WA 98101

Mr. Thomas Chapple, Division Director
Division of Air and Water Quality
Alaska Department of Environmental Conservation
555 Cordova Street
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