

**Dealing with Critical Incidents of Oil Pollution:  
Ramifications from the Exxon Valdez Oil Spill (EVOS)**  
*Zygmunt Plater, Boston College Law School – ELI, 24 May '10*

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See: SPILL: The Wreck of the Exxon Valdez,  
the Final Report of the State of Alaska Oil Spill Commission, February 1990  
available: [www.bc.edu/natlaw](http://www.bc.edu/natlaw) – then Aspen site – Authors' Updates – Chap. 3 materials.

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LIABILITY & REMEDY ISSUES: 7 sectors of statutory, 7 sectors of nonstatutory

Statutory

- Criminal statutes, including manslaughter charges, as well as pollution penal violations: ex. CWA
- Jones Act; DOHSA; OSHA
- OPA-90: Congress's post-EVOS amendment to CWA & LSLA-1851 –
  - Responsible party: no apportionment defenses; contribution
  - Cost of "removal," other OPA-90 damages: *include Natural Resource harms, economic harms, etc.*
  - Civil fines: \$25000/day or \$1000/barrel? §4301
  - OPA-90's liability cap? for primary responsible parties
    - doesn't apply to nonstatutory claims; doesn't apply where gross neglig., wilful misconduct, violation of relevant fed. regulation
    - RCACs – currently in Alaska waters only [a good transparency and operational mechanism] – more...
- Other state and federal statutory actions
- Shareholder derivative suits
- the Re-opener Clause precedent from EVOS
- New legislation and regulations: inevitably

NonStatutory brought by govts, and/or by people claiming legal injury

- The public trust doctrine [PTD]-federal & state
- Parens patriae
- Maritime tort law [EVOS precedent]
- State common law actions, e.g. Public Nuisance, for torts w/i state territorial waters
- Punitives in class actions [not available under OPA] – *ExxonShipping v. Baker* = 1:1
- Equitable Remedies via judicial order – note the significant array of available equitable orders – potentially far more stringent than regulatory remedies and far less vulnerable to entropy.
- Contract: PWS RCAC was initially a contractual settlement