

CAPITALIZING ON ENVIRONMENTAL DISASTERS:  
EFFICIENT UTILIZATION OF GREEN CAPITAL

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I. INTRODUCTION

It has been said that every cloud has a silver lining. If this metaphor was accurate, then some good would inevitably result from any type of disaster. At first glance one would be hard pressed to articulate any benefits deriving from an environmental disaster. Inherently, the destruction of any part of our ecosystem is a tragedy. However, environmental disasters do in fact have a silver lining. They provide a window of opportunity within which to effectuate positive environmental change. The purpose of this Comment is to articulate the benefits derived from ecological tragedies, and outline ways in which those benefits can be maximized.

The silver lining of an environmental disaster comes in many forms, has a definite shelf life, and is not absolutely quantifiable. It does, however, exist. Utilization of opportunities that arise from environmental disasters will be referred to throughout this article as “green capital.” Green capital is not tangible, it is merely a term of art, denoting the utilization of opportunities that develop as a result of environmental disasters. Green capital can be used to help prevent future ecological tragedies, as well as to improve local and national responses when they do occur.

This Comment is in no way intended to condone eco-terrorism.<sup>1</sup> If green capital generated from environmental disasters provides environmentalists with sufficient ammunition to achieve positive environmental change, some might argue that it would be efficient for environmental activists to instigate disasters, banking on the green capital generated as a result. Regardless of the opportunities derived from ecological disasters, it is absurd to condone the destruction of any part of the ecosystem even for a supposed greater good.

However, given that environmental disasters are inevitably going to occur, environmental groups should be prepared to react in a way that will provide for an efficient use of the green capital generated. This Comment outlines the different ways in which green capital can be used to further environmental goals. Not all methods are effective in every situation, and not all parties should utilize green capital in the same way. The purpose of highlighting alternative approaches is to provide the reader with a proactive plan which emphasizes the most efficient utilization options for a particular type of organization.

Throughout this Comment reference will be made to the Exxon Valdez disaster, which resulted in over 11 million gallons of raw crude spilling into Prince William Sound's environmentally rich waterways.<sup>2</sup> The Valdez spill is considered one of the nation's worst environmental disasters,<sup>3</sup> and provides numerous examples of different types of green capital utilization. The Valdez spill uncovered and thrust into the limelight a number of shortcomings in existing legislation, response efforts, funding, prevention, and liability.

Utilization of green capital in the aftermath of an ecological tragedy provides an effective means for realizing positive change. It was easy for the environmental community to rally around a disaster the magnitude of Valdez. Unfortunately, green capital generated from any environmental disaster, even enormous ones, has a definite shelf life.<sup>4</sup>

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1. An individual would be considered an eco-terrorist if he/she consciously caused an environmental disaster for the sole purpose of generating green capital.

2. Prince William Sound is considered one of the world's most pristine waterways. 135 CONG. REC. H1015 (daily ed. April 11, 1989) (statement of Rep. McDermott).

3. *Transcripts Show Confusion in the 1989 Oil Spill*, N.Y. TIMES, Nov. 19, 1992, at A21.

4. Telephone Interview with Ms. Dorothy Smith, Greenpeace representative (Feb. 2, 1995). Ms. Smith was interviewed in order to ascertain how large environmental organizations respond to environmental disasters. According to Ms. Smith, "it's only five years after the spill, and people are not listening anymore." *Id.*

This reality poses a number of problems for the environmental movement.

It is of the utmost importance that people realize green capital is ephemeral. As public interest wanes, industry moves in and tries to undo much of what environmentalists achieved in the aftermath of the environmental disaster.<sup>5</sup> Industry goals are long term, and they can afford to wait until green capital runs out before retaking control of a situation. "Peoples' interests, on the other hand, have a short half life."<sup>6</sup>

Environmentalists are aware of this problem and attempted to counter it in new ways after the Valdez spill. According to Rick Steiner, Marine Advisor for Prince William Sound, "we have to stop with this ambulance chaser mentality, here one day gone the next, and work towards maintaining a level of involvement that will encourage environmentally safe ideologies throughout the industry."<sup>7</sup>

In a democracy, the most important thing to do is to get people involved for the long haul. "For the environmental community to get involved *now* and stay involved is in orders of magnitude more important than responding to a disaster after it occurs."<sup>8</sup> Larger, national environmental groups with a more global agenda have a better chance of maintaining long-term participant interest.

With regard to the Exxon Valdez, complacency on a local level, both by the oil industry and the citizenry, resulted in an avoidable environmental disaster. Currently, national environmental complacency may cause a reversal in the benefits derived from that tragedy. Although the utilization of green capital is quite effective in generating pro-environmental change, unless people are willing to commit for the long haul, much of what was gained will be lost. In addition to setting out alternative green capital utilization techniques and ways to prolong green

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5. "Once public interest wanes, industry starts chipping away at the progress gained by environmentalists." Telephone Interview with Ricki Ott, President of the now-defunct Oil Reform Alliance (Feb. 2, 1995). In the wake of the Valdez spill Ms. Ott formed a local coalition in order to effectuate positive environmental reform for the State of Alaska.

6. Telephone Interview with Dr. H. Wenk, an appointee to the Exxon Valdez Commission (Feb. 8, 1995). Dr. Wenk has been working in the field of marine safety since 1941. He was assigned to a special task force which investigated the Exxon Valdez spill.

7. Telephone Interview with Rick Steiner, marine advisor for Prince William Sound (Feb. 6, 1995). Mr. Steiner was able to provide information with regard to the difficulty in effectuating positive environmental reform on a local level prior to the Valdez spill.

8. Steiner, *supra* note 7.

capital utilization, this Comment reveals some of the tactics industry uses to counter environmental gains achieved after a disaster.

## II. UTILIZATION OF GREEN CAPITAL IN THE LEGISLATURE

Green capital is extremely useful in effectuating legislative reform. Numerous statutes protecting the environment have been enacted in response to environmental disasters.<sup>9</sup> In fact, the increased ability of pro-environment legislators and environmental groups to push through environmental friendly legislation in the aftermath of an ecological disaster is one form of efficient green capital utilization.<sup>10</sup>

It is undisputed that the Exxon Valdez spill served as a vital component in the passage of the Oil Pollution Act of 1990 (Act).<sup>11</sup> Prior to the spill, many would agree that the influential power of the oil industry in Washington was far greater than that of environmental lobbyists. However, green capital generated from the spill was powerful enough to push comprehensive oil spill legislation through both houses of Congress. "The Exxon tragedy finally provided the necessary catalyst for resolution of congressional differences and passage of a comprehensive bill."<sup>12</sup>

The spill "galvanized public support behind legislation to assure that future oil spills are minimized, that effective responses are made to those that do occur, and that responsible parties pay for damages and are subject to severe penalties."<sup>13</sup> The Act was considered "possibly the harshest action Congress ha[d] ever taken against the domestic energy

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9. The Love Canal incident prompted Superfund legislation. The enactment of CERCLA legislation, the Clean Air Act and Clean Water Act can also be largely attributed to environmental disasters.

10. The Exxon Valdez spill was responsible for the enactment of oil spill legislation that had been log-jammed in Congress for over three years. According to Jim Young, a lobbyist with the Sierra Club, the ability of environmental groups to push through "green" legislation increased substantially after the spill. Telephone Interview with Jim Young, lobbyist with the Sierra Club (Mar. 8, 1991). Mr. Young was able to describe the effects the Valdez spill had in Washington.

11. Oil Pollution Act of 1990, Pub. L. No. 101-380, § 5002(d), 104 Stat. 546. Public and internal outrage from the Valdez incident motivated both the House and Senate to pass comprehensive oil spill liability legislation, ending over fifteen years of political infighting and log-jamming. George Hager, *Panel's Oil Spill Liability Bill to Pre-empt State Law*, CONGRESSIONAL QUARTERLY, May 27, 1989, at p. 1250. The President signed the Oil Pollution Act of 1990 into law fourteen days after unanimous House and Senate approval. *Id.*

12. Elizabeth R. Millard, *Anatomy of an Oil Spill: The Exxon Valdez and the Oil Pollution Act of 1990*, 18 SETON HALL LEGIS. J. 331, 346 (1993).

13. Russell V. Randle, *The Oil Pollution Act of 1990: Its Provisions, Intent, and Effects*, 21 ENV'T'L. L. REP. (ENV'T'L. L. INST.) 10,119, 10,119 (1991).

industry, and one of the most far-reaching environmental-protection bills . . .” of the time.<sup>14</sup>

A sense of emergency is generated when environmental disasters occur. There is a common belief that something must be done immediately, in order to prevent such a tragedy from repeating itself. Capitalizing on this sense of urgency is a form of green capital utilization. After the Valdez spill, many thought that the most effective way to curb future oil spills was to enact comprehensive oil spill legislation. The Act is considered by many to be the “legislative response” to the spill.<sup>15</sup>

Many different green capital utilization techniques were employed by environmental proponents in order to guarantee passage of the Act. One technique, previously used by the oil industry to sway legislators in their favor, was the distribution of promotional video tapes. After the Valdez spill, many environmental groups joined the visual awareness bandwagon in hopes of effectuating change in Congress. The impacts of the spill were especially graphic. Video tapes of news coverage generated immediately after the Exxon spill were sent to representatives in Congress, and helped environmental concerns by countering oil industry videos.

Children also provide a very effective conduit for green capital utilization. After the Valdez spill a fifth grade class in Alameda, California, wrote to its Congressman, expressing concerns for the environment.<sup>16</sup> Congressman George Miller read some of those letters on the floor of the House of Representatives in an effort to gain support for the Oil Pollution Act of 1990.<sup>17</sup> The Congressman used the spill to

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14. Phil Kuntz, *Oil Pollution Cleanup Bill Is Set for Final Hurdle*, CONGRESSIONAL QUARTERLY, Aug. 4, 1990, at 2504. Primary elements of the bill include: a comprehensive Federal liability scheme, a \$1 billion unified federal fund for cleanup costs, and a mandatory worst case scenario scheme, requiring oil companies to generate contingency plans capable of cleaning up a “worst case” oil spill, which is defined as the loss of a vessel’s entire cargo in adverse weather conditions, and prevention and oil tanker safety standard requirements. *Oil Pollution Act of 1990*, *supra* note 11, at Title IV.

15. Randle, *supra* note 13, at 10,119.

16. 135 CONG. REC. E1712-13 (daily ed. May 16, 1989) (statement of Rep. Miller).

17. *Id.* The following is an excerpt from Rep. George Miller’s remarks:

I believe these [5th grade] students typify the feelings of children everywhere. They show great sensitivity to the environment, and they’re extremely perceptive . . . I take their comments seriously, and I don’t want to let these kids down. They are putting their trust in us to find solutions to this problem and to make sure the environment and our natural resources are protected. We have to do the best we can to meet that trust.

promote the Act and emphasized the importance of preserving the environment for future generations.

A significant area of concern for environmentalists should be the implementation of laws enacted as a result of green capital utilization. There is a general misconception that the fight is won once environmentally sound legislation is enacted. However, this notion couldn't be farther from the truth.<sup>18</sup> For example, over five years have passed since the Valdez spill, yet only one-third of the Act has been implemented.<sup>19</sup> "There is high viscosity in the implementation of the Oil Pollution Act of 1990, and environmental laws in general."<sup>20</sup>

To counter this problem, environmental groups need to stay involved throughout the implementation process. Otherwise, much of what they have worked for might never come to fruition. It is also important to note that political ideology in Washington has shifted. Many environmentalists are concerned that the Republican Congress will place the Oil Pollution Act of 1990 on the chopping block and remove much of its bite.<sup>21</sup>

A number of legislators used green capital generated from the Valdez spill to promote a broader platform of energy conservation. Two and a half weeks after the Valdez incident, a special order was arranged in the House of Representatives, during which legislators were allowed to speak on issues regarding the spill.<sup>22</sup> This special order, in and of itself, is indicative of the effect green capital had on the federal government. Some representatives used this special session as an opportunity to discuss the broader problem of future energy sources.<sup>23</sup> According to Representative Torres, "now is the time, in light of Three Mile Island, global warming, acid rain, and the Exxon Valdez Spill to get serious about energy conservation."<sup>24</sup> Representative Clement used this opportunity to push for nuclear energy, as an "economically viable option

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*Id.*

18. Dr. Wenk, *supra* note 6.

19. *Id.*

20. *Id.*

21. Telephone Interview with Anne Roce, Representative of Trustees for Alaska (Jan. 27, 1995). Ms. Roce provided background information on Alyeska and the Oil Pollution Act of 1990.

22. 135 CONG. REC. H1015 (daily ed. April 11, 1989) (statement of Rep. Eckart).

23. *Id.*

24. *Id.* at H1021. Representative Torres then articulated the need to develop "extensive energy conservation measures [including] wind energy, biomass, solar energy, fuel efficiency, and anything else brilliant minds can think up." *Id.*

to meet our future energy needs.”<sup>25</sup> Nuclear power comes with its own environmental concerns. It is notable that not all users of green capital are necessarily environmental proponents.

### III. UTILIZATION OF GREEN CAPITAL ON A LOCAL LEVEL

Although large ecological tragedies have national and sometimes even global effects, local communities directly impacted by a disaster are typically hardest hit. Green capital utilization techniques differ depending on how the user was affected by a disaster. Goals of green capital manipulators also vary.

When an environmental disaster occurs, local communities affected should focus attention on specific goals that benefit their locale. For example, after the Exxon Valdez spill much emphasis was placed on revamping Alyeska,<sup>26</sup> enacting stringent state oil spill laws, and seeking compensation for damage incurred. In general, local communities impacted by an environmental disaster should direct green capital utilization on a micro-level.

Concentrating all attention on a few local goals increases the potential for achieving those goals. However, once success is realized, community sentiment may move on to other concerns. Consequently, the shelf life of green capital is shorter for local communities than it is for organizations that use green capital to support a more global agenda.

#### A. *Emergency Response*

It is unfortunate that it took an accident such as the Valdez for Alyeska and the rest of America to realize the real life consequences of emergency response complacency. The spill illustrated the ineptitude of Alyeska’s response mechanism. However, green capital generated from the spill enabled local communities to effectuate positive change.

The ability to contain an oil spill within the first few hours is crucial. A reconstruction of the Exxon Valdez spill, and its aftermath, “shows that much of the 10 million or so gallons of oil now fouling Alaska’s shorelines and coastal waters could have been confined” in the

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25. *Id.*

26. Alyeska is a company created and funded by a consortium of oil companies which was intended to provide a first line of defense in case of an oil spill in Alaska.

hours immediately following the spill.<sup>27</sup> The Valdez disaster made it quite apparent that “current levels of oil spill prevention, preparedness and response were not adequate for such a major spill.”<sup>28</sup>

Part of the problem was that Alyeska underestimated the potential for a major spill.<sup>29</sup> In fact, prior to the spill Alyeska had been cutting back significantly on oil spill response capabilities.<sup>30</sup> In 1981, the oil industry decided to disband a twenty-member oil response team whose purpose was to provide immediate around-the-clock response to spills in Prince William Sound.<sup>31</sup> Oil company officials received only modest reaction to this decision. In response, they stated that “a full time team wasn’t necessary and would be a waste.”<sup>32</sup> Oil company representatives responded to critics of this measure by maintaining that any spill in Prince William Sound would be contained within five hours.<sup>33</sup> Although this bold assertion proved faulty just a few months prior to the Valdez spill,<sup>34</sup> Alyeska chose a course of continued indifference. The oil

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27. Richard Witkin, et al., *How the Oil Spilled and Spread: Delay and Confusion Off Alaska*, N.Y. TIMES, Apr. 16, 1989, at 1-1.

28. H.R. REP. NO. 242, 101st Cong., 1st Sess., pt. 1, at 28 (1989). Emergency contingency plans are required for many environmental hazardous activities. According to Alyeska contingency plans, any large spill was to be contained within the first five hours of an accident. *Exxon Oil Spill*, pt. 2: Hearing before the Senate Commerce, Science and Transportation Comm., 101st Cong., 1st Sess. at 163 (1989). In actuality, the first full emergency crew did not even arrive at Prince William Sound until more than 14 hours after the vessel struck Bligh Reef, and “the crippled 987-foot-long ship was not surrounded by floating oil containment booms for another 21 hours.” Witkin, *supra* note 27 at 1-1.

29. According to Alyeska’s oil spill contingency plan for Prince William Sound, the likelihood of a spill of 200,000 barrels of oil was once in every 241 years. Their statistical studies further showed that a spill of more than 1,000-2,000 barrels was highly unlikely. *Exxon Oil Spill*, *supra* note 28 at 162. Regardless of Alyeska’s estimates, the point is that spills can and will occur.

30. Alyeska’s contingency plan used to include oil spill response personnel who were on call 24 hours a day and seven days a week, in order to effectuate an immediate response. Witkin, *supra* note 27 at 1-1. However, in the early 1980s these teams of response experts and their equipment were disbanded in order to save money. Keith Schneider, *Under Oil’s Powerful Spell, Alaska Was Off Guard*, N.Y. TIMES, Apr. 2, 1989, at A1.

31. Schneider, *supra* note 30.

32. *Id.*

33. *Id.*

34. George J. Church, *The Big Spill Bred from Complacency; the Valdez Fiasco Goes from Bad to Worse to Worst Possible*, TIME, Apr. 10, 1989, at 40. “Lulled by almost twelve years of oil shipping through Valdez without a major accident, Alyeska let its old equipment run down to the point that it was taxed to the limit when it cleaned up a small spill of a mere 1,500 bbl. in January.” *Id.*



industry concluded that the costs of maintaining a fully staffed response team was unwarranted.<sup>35</sup>

Utilization of green capital generated from the Valdez spill forced the oil industry to reevaluate its role in spill response efforts. Pressure was put on the oil industry to improve response and prevention techniques.<sup>36</sup> As a result, millions of dollars were invested in creating one of the highest graded response teams in the world.<sup>37</sup> Alyeska currently possesses a highly sophisticated and comprehensive cleanup system. If another spill similar to the Valdez, or an even larger spill, were to occur in Alaska, Alyeska is currently equipped to provide the type of support that it claimed was possible prior to the Exxon disaster.

According to Exxon, additional steps have been taken with regard to prevention as well. "Operation procedures have been modified to improve safety and reduce even further risk of a spill."<sup>38</sup> Procedure improvements include the implementation of transit speed controls, ice navigation procedures, and tanker towing drills.<sup>39</sup> In addition, Alyeska is currently equipped with a special fleet of vessels and crew whose sole purpose is to escort laden tankers through Prince William Sound, ensuring safe passage.<sup>40</sup> So long as oil transport continues throughout the Alaskan region, it is of the utmost importance that these current systems are maintained and periodically upgraded. Exxon has paid a high price for complacency in the past. Hopefully, this lesson will not be lost with time.

The improvements made to Alyeska would not have occurred without the utilization of the green capital generated from the Valdez spill. Local communities were among those who pressured Exxon into taking steps that ensure another Valdez will never occur in Alaska. Steps

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35. Witkin, *supra* note 27 at 1-1.

36. The oil industry has taken steps to diminish the potential of future spills. Caleb Solomon, *Plan for Texas-Size Deep-Water Platform May Shield Shore From Oil-Tanker Spills*, WALL STREET J., Sept. 7, 1990, at B-1. Oil consortiums are looking into the development of giant offshore platforms "at which Supertankers would unload far from beaches and crowded ports." *Id.* By avoiding inlets, ports and narrow waterways, tankers are less likely to hit something and rupture. The system would be similar to the Louisiana Offshore Oil Port. The environmental attractiveness of the project makes the platform "a plus in planners' and regulators' minds." *Id.*

37. Roce, *supra* note 21.

38. Excerpt from an Exxon promotional brochure entitled *Three Years After: Conditions in Prince William Sound and the Gulf of Alaska*, October 1992, at 30-31.

39. *Id.*

40. *Id.* The Ship Escort/Response Vessel Systems (SERVES) stay within one half mile of the tankers and are prepared to respond immediately to any vessel distress call. *Id.*

have also been taken to strengthen response capabilities on a national level.<sup>41</sup>

*B. Local Organizations*

Ad-hoc citizen grass-root organizations that form as a direct result of an environmental disaster are extremely effective. "It is quite remarkable what they can achieve."<sup>42</sup> In the event of an environmental disaster, local activists will emerge very quickly. Environmental communities should be ready to funnel money to these groups when they form. State and national organizations should be able and willing to provide them with the start-up capital needed to form a cohesive group. "We need to get money to these people so that they can do their thing."<sup>43</sup> These groups can be tremendously powerful because nobody is pulling their strings. The groups have a specific agenda and intend to utilize green capital generated from environmental disasters to achieve their goals.

In the aftermath of the Valdez spill, preventing future spills became a primary goal of the Alaskan citizenry. Utilization of green capital derived from the spill opened many doors for environmentalists. On a local level, environmental groups such as Oil Reform Alliance formed as a direct result of the spill. The group was created with a specific goal in mind: enactment of the country's most stringent and comprehensive state oil spill regulations.<sup>44</sup> Once this goal was realized, the group disbanded.

Oil Reform Alliance is a perfect example of how to utilize green capital, on a smaller scale, to reach a very specific goal. Preventing future spills became the group's primary agenda. Consequently, the organization had to act fast. Once the Valdez spill was out of the limelight, the group would lose its influential capability. Oil Reform Alliance helped counter this propensity by focusing its attention in

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41. The Valdez spill also served as an impetus to response improvements on a national level. Currently, the Marine Spill Response Corporation (MSRC) is the primary national oil spill response mechanism. If a member of the organization that finances MSRC experiences a major spill, MSRC will immediately deploy a response team from one of its twenty five pre-staging areas which are strategically located around the coast of the United States. Telephone Interview with Andrea Hunnicutt, employee of MSRC (Feb. 2, 1995).

42. Ott, *supra* note 5.

43. *Id.*

44. Roce, *supra* note 21.

Alaska, where the spill's effects will be prevalent for years. Thus, it was able to achieve its goal before running out of green capital.

According to Ricki Ott, President of Oil Reform Alliance, much of the group's effectiveness was due to its unique structure.<sup>45</sup> Oil Reform Alliance was the first real environmental coalition. Constituents of the group not only consisted of environmentalists, but also numerous representatives from Alaskan commercial fishing groups. Diverse representation from all facets of society gave the group the clout it needed to help push through the toughest state oil spill law in the nation.

Forming a coalition enabled Oil Reform Alliance to tap a constituent base much larger than would have otherwise been possible. Creating a huge network of supporters is essential in achieving success. Without a diverse citizen base, Oil Reform Alliance would not have been nearly as effective.<sup>46</sup>

The Coastal Coalition was another local organization formed as a result of the Valdez spill. The organization, founded by Rick Steiner, was comprised of a loose net of local groups from around the state. Much like the Oil Reform Alliance, this coalition focused all of its attentions towards a single objective. The specific focus in this case was to exact from Exxon a settlement for natural resource damages. The parties pursuing the claim included the State of Alaska and the federal government. The Coastal Coalition was instrumental in exacting a 1 billion dollar settlement from Exxon. The money generated from this settlement was used to purchase 100,000 acres of threatened coastal acreage. Had the government chosen to go to court instead of settling, chances are that no money would have changed hands as of yet, and 100,000 acres of threatened coastline would still be in jeopardy. Once the Coastal Coalition realized its goal, the group disbanded.

An additional area for local organizations to focus green capital is the establishment of a citizens advisory council. Two years prior to the Valdez incident, Rick Steiner proposed to Alyeska and the state legislature a plan that would establish a citizens advisory council. His proposal was quickly dismissed by both parties. According to Steiner, a

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45. Ott, *supra* note 5.

46. *Id.* According to Ricki Ott, if oil lobbyists were influencing state legislators, all she had to do was "activate the network" and the representative would be inundated with numerous calls from constituents demanding environmentally sound state legislation. An effective network may very well be the best way to achieve your goals.

citizens council is the sort of thing that should be in place before a disaster occurs. A "group of well informed local citizens making sure that the Coast Guard, state and federal government do their job,"<sup>47</sup> is of the utmost importance.

Such a council would ensure that an effective chain of command was in place, enabling local government to effectively manage environmental problems as they arise.<sup>48</sup> Another important aspect of a citizens council is that it creates a direct line of communication between industry and the citizenship of a community. Citizens councils provide an extra check on all parties involved in environmentally hazardous endeavors. Unfortunately, it was not until after the Exxon Valdez spill that citizens councils were established in Alaska.<sup>49</sup>

#### IV. UTILIZING GREEN CAPITAL ON A MORE GLOBAL SCALE

Green capital can also be used to promote a comprehensive agenda. Greenpeace, the Sierra Club, and a number of other large environmental groups chose to capitalize on the Valdez spill in this fashion.

Greenpeace decided not to direct its attention toward strengthening response mechanisms, or the enactment of stricter oil pollution laws.<sup>50</sup> Instead, the organization focused on what it thought was the real cause of the Valdez spill: oil dependency. The spill "is the most graphic illustration of what potential disaster exists when there is dependency on oil".<sup>51</sup> According to Greenpeace, unless we decrease our dependency on oil, spills like Valdez are inevitable.

One way to decrease our reliance, and to protect the environment, is to restrict access to oil reserves in sensitive areas. The spill has been

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47. *Id.* "You have got to turn up the volume on public oversight before an environmental disaster occurs in order to ensure the government responds appropriately." *Id.*

48. Steiner, *supra* note 7. The Valdez spill, for example, brought to light the problems inherent in interfacing local, state, and federal disaster management protocols. For the first six months after the spill there was no explicit chain of command. Telephone Interview with Jim Butler, an environmental lobbyist (March 11, 1991). Clean-up operations would have been much more effective had each party understood its proper role. *Id.*

49. Section 5002 of the Oil Pollution Act of 1990, Public Law 101-380 (Aug. 18, 1990), established a Regional Citizens Advisory Council for the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Demonstration Programs. The Councils currently receive \$2 million a year from Alyeska for upkeep. Steiner, *supra* note 7.

50. Smith, *supra* note 4.

51. *Id.*

used as a tool in preventing additional oil and gas exploration and development in Alaska. After the spill, green capital utilization helped persuade President Bush “to place many sensitive coastal areas off-limits to drilling, and [the spill] dissuaded Congress from heeding Mr. Bush’s plea to open up the Arctic National Wildlife Refuge for exploration.”<sup>52</sup> According to Rick Steiner, a marine advisor for Prince William Sound, the spill forced Congress to table the Arctic National Wildlife Refuge (ANWR) issue for six years, and it has only recently returned to the floor of Congress for debate.<sup>53</sup>

Decreased access to these natural resources can have many effects. Greenpeace maintains that the result will be forced energy efficiency. Alternatively, as time passes and the Alaskan coastline recuperates, green capital will be lost, and the oil industry will most likely pressure legislators to open these areas for exploration and development.

A major shortcoming of green capital is that it dwindles with time, regardless of whether it is utilized. As images of the spill wane, so does interest and involvement in this particular environmental issue.<sup>54</sup> Environmental groups move on to the next pressing ecological issue and public sentiment may shift to an entirely unrelated area. “As soon as the problem is not right in front of their faces, people tend to go back to sleep.”<sup>55</sup> We need to find a way to get the public to remember these lessons on a long-term basis.<sup>56</sup>

One way in which Greenpeace is dealing with this problem is by tapping into the constituency hardest hit by environmental disasters. With regard to the Valdez spill, local fishermen and native Alaskans were hardest hit, and represent a potential contingent of long-term advocates for curbing oil development. Once local communities achieve success with regard to their immediate goals, including improved emergency response, strict state laws, and compensation for damages, they may be willing to support a more global agenda, such as oil dependency.

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52. *Long Shadow of the Exxon Valdez*, N.Y. TIMES, Sept. 21, 1994, at A-22. Alaska’s Arctic National Wildlife Refuge is “one of the last large tracts of U.S. wilderness virtually untouched by man.” Church, *supra* note 34 at 39. The Exxon Valdez spill was effective in thwarting oil industry access to the refuge because it “illustrated in a devastating way how delicate the environment of Alaska can be and how impotent we are to protect it from our own mistakes.” *Id.*

53. Steiner, *supra* note 7.

54. Roce, *supra* note 21.

55. Smith, *supra* note 4.

56. *Id.*

The adverse effects of the spill on local fishing communities and native Alaskans may not be fully realized for years.<sup>57</sup> Consequently, previously complacent communities<sup>58</sup> may very well become the oil industry's largest obstacle. One of the objectives of Greenpeace is to get these people involved in the decision making process and thwart future oil development, thereby, preventing future oil spills.<sup>59</sup>

The ability of Greenpeace to solicit supporters in local communities where the environmental disasters occur offer an innovative approach to green capital utilization. Although local groups such as Oil Reform Alliance disbanded after their immediate goals were met, communities directly affected by an environmental disaster may provide a potential stronghold of long-term constituent support.

Environmental disasters also provide environmental organizations with the opportunity to promote membership and grassroots activity on a national level. The Exxon spill proved quite effective in this regard. Due to the fact that the spill was so visible, a large number of people who already cared for the environment but lacked a more particular cause was mobilized. Membership in virtually every environmental group soared, as did the number of environmental protests and media coverage.<sup>60</sup> "The Valdez spill, with its dramatic television footage of a huge and grotesque environmental disaster was the 'Pearl Harbor' of the U.S. environmental movement."<sup>61</sup>

In fact, the spill had such an overwhelming impact on a national level that local environmental groups from other states were able to capitalize on the disaster. In North Carolina, for example, environmentalists had long maintained that state regulations regarding oil spills were inadequate. The Valdez disaster thrust these concerns into the

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57. *Valdez Spill Toll is Now Called Far Worse*, N.Y. TIMES, Apr. 17, 1992, at 1-6.

58. Prior to the spill most Alaskans sat idly by while oil development progressed. Strong bonds between Alaskans and oil companies led to a false sense of security. "All through this decade, while earning billions from petroleum, Alaskans have allowed the oil industry to save money by curtailing preparations for an environmental emergency like the one that has now fouled Prince William Sound." Schneider, *supra* note 30 at 1. Periodic proposals for enhancing current levels of safety inspectors and experts were stymied by the oil companies' political strength. Even the curtailment of emergency preparedness raised only a modest reaction from Alaskans. The oil consortium was strong enough to convince Alaskans that "enough safeguards were in place to prevent an accident," when in fact there were not. *Id.*

59. Smith, *supra* note 4.

60. Young, *supra* note 10.

61. Randle, *supra* note 13.

limelight. It gave environmentalists and commercial concerns the needed leverage to effectuate positive change.<sup>62</sup>

In July of 1989, merely four months after the Valdez incident, the General Assembly of North Carolina “enacted comprehensive legislation dealing specifically with oil spill liability and cleanup.”<sup>63</sup> Although not as comprehensive as its Alaskan counterpart, enactment of North Carolina’s Oil Spill Act is primarily due to the ability of local environmentalists to tap into the green capital generated from the Valdez spill.

#### V. GREEN CAPITAL’S AFFECT ON CORPORATIONS

The effective scope of green capital stretches beyond legislative and political arenas as well. On a much broader front, economic coalitions formed as a result of the Valdez spill. In response to an overwhelming perception of ineptitude and indifference on the part of Exxon in reaction to the spill, the Coalition of Environmentally Responsible Economies was formed (CERES).<sup>64</sup> The organization consists of a consortium of seventeen environmental groups and sixteen social investment funds.<sup>65</sup> The coalition’s purpose is to “set forth broad standards for evaluating activities by corporations that directly or indirectly impact the Earth’s biosphere.”<sup>66</sup> CERES has determined that the most effective way to promote its agenda is through shareholder proxy proposals.<sup>67</sup>

The coalition “developed what it calls the ‘Valdez Principles,’ a set of broad principles designed to provide an environmental responsibility signpost for investors to follow when choosing among

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62. Gary V. Perko, *Spillover from the Exxon Valdez: North Carolina’s New Offshore Oil Spill Statute*, 68 N.C. L. REV. 1214, 1215 (1990). “[B]oth environmentalists and commercial interests worried that a spill off the North Carolina coast would ‘foul the state’s beaches and blacken the reputation of its tourism and fishing industries.’” *Id.*

63. *Id.*

64. W. EDWARD STEAD & JEAN GARNER STEAD, *MANAGEMENT FOR A SMALL PLANET: STRATEGIC DECISION MAKING AND THE ENVIRONMENT* 156 (1992).

65. *Id.*

66. *Id.*

67. Any shareholder of a corporation can request that a specific proposal be added to the annual proxy statement of the corporation. The Board of Director’s decision whether to include a specific shareholder proposal on the proxy card is governed by Rule 14(a)(8) of the Securities and Exchange Commission Rules. The proxy statement, with all approved proposals, is mailed to all shareholders of the corporation, who then vote on each proposal. CHARLES R. O’KELLY, JR., *CORPORATIONS AND OTHER BUSINESS ENTERPRISES* 212-34 (1992).

investment opportunities.”<sup>68</sup> Many of the ten Valdez Principles deal with issues that were of the utmost concern immediately after the spill.<sup>69</sup> CERES encourages companies to promote these principles “in order to signify their long-term commitment to the process of achieving environmental sustainability.”<sup>70</sup>

Although the Valdez Principles have appeared on the proxy statements of numerous corporations, including Exxon’s, a majority of shareholders has yet to approve the proposal.<sup>71</sup> However, CERES is encouraged by the fact that the affirmative responses received constitutes a large enough shareholder stake to ensure that the proposal will be added to subsequent proxy statements. CERES’ expectation is that “[a]s these principles appear on more and more proxy proposals, organizations will feel increased stakeholder pressures to be more environmentally responsible.”<sup>72</sup> The coalition also maintains a list of environmentally conscious investments for “green investors.”<sup>73</sup>

## VI. INDUSTRY’S RESPONSE TO GREEN CAPITAL

Industry has accused environmental groups of grandstanding around environmental disasters, using accidents to promote green ideologies to the public and government.<sup>74</sup> According to Brian Trim, a consultant for Exxon, most environmentalists are very shrewd: they wait until an ecological disaster occurs and then focus primarily on the emotional issues involved.<sup>75</sup> Playing on people’s emotions enables

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68. STEAD, *supra* note 64.

69. The ten principles deal with “biosphere protection, resource sustainability, risk reduction, product safety, damage compensation, disclosure of environmental mishaps, appointment of environmentalists to board of directors and management positions, and annual self-audits of environmental activities.” STEAD, *supra* note 64. The first six of these principles concern issues raised after the Valdez spill.

70. *Id.* at 157.

71. *Id.* Other corporations that have included the proposal on their proxy cards include American Express, Atlantic Richfields, Kerr-McGee, Union Pacific, and Southern Companies. *Id.*

72. *Id.*

73. Barbara A. Boczar, *Toward a Viable Environmental Regulatory Framework: From Corporate Environmental Management to Regulatory Consensus*, 6 DEPAUL BUS. L.J. 291, 291 (1994).

74. Smith, *supra* note 4.

75. Telephone Interview with Brian Trim, consultant with Woodward Clyde Consulting (Feb. 7, 1995). Mr. Trim works for Woodward Clyde Consulting, a firm hired by Exxon after the Valdez spill to carry out studies on the spill’s effects. Due to the fact that at the time of this interview Exxon litigation was pending, Mr. Trim could not comment directly on the Exxon Valdez



environmental groups to maximize constituent response on a particular cause.

In fact, much of what industry maintains in this regard is true.<sup>76</sup> “Incidents become the vice which agitates the system.”<sup>77</sup> The most effective way for environmental groups to effectuate positive change is to capitalize on green capital generated from environmental disasters, such as the Valdez spill. People simply do not listen to reports or statistics. Unless they can actually see the detrimental effects of a particular industry action, citizens do not seem to want to get involved. “Everything we said after Valdez we had said a million times before, but no one listened.”<sup>78</sup> Prior to the spill, the environmental community could not seem to raise the warning flag sufficiently to achieve adequate oil spill response and prevention measures.<sup>79</sup>

Given the fact that environmentalists are going to capitalize on industry-precipitated environmental disasters, certain defensive posturing on the part of industry will also inevitably occur. After the Valdez incident, Exxon pulled all advertising for a full year.<sup>80</sup> Then, once the oil company thought that most of the green capital derived from the spill had dissipated, they reentered the advertising medium full throttle.<sup>81</sup>

According to Ricki Ott, President of the now-defunct Oil Reform Alliance, industry’s objectives are long term. They can afford to wait out a public relations nightmare and still recover. Industry proponents acknowledge that one area in which industry is lacking is effective public relations campaigning in the wake of an environmental disaster.<sup>82</sup>

Industry has also responded to green capital utilization on a global scale. Because environmental regulations have increased the costs of doing business in the United States, many industries are currently focusing their attentions internationally. A number of oil companies, including Exxon, Mobil, and Penzoil, are actively pursuing oil exploration overseas because it is more economically efficient.

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spill. The information which Mr. Trim provided is based on his extensive dealings with other projects.

76. Smith, *supra* note 4 (“We have no choice but to grandstand around disasters”).

77. Wenk, *supra* note 6.

78. *Id.*

79. Steiner, *supra* note 7.

80. Ott, *supra* note 5.

81. *Id.* Waiting for the public to lose interest in a particular environmental disaster and then blitzing them with advertising is a tactic that industry uses to recoup lost revenues and support. *Id.*

82. Trim, *supra* note 75.

Environmental laws and regulations, such as the Act, have increased the cost of oil exploration and transport to the point where it is cheaper to go overseas, where environmental restrictions and regulations are minimal.<sup>83</sup>

Besides loss of domestic revenues, this increasing propensity to seek foreign markets also has detrimental environmental effects. Less stringent international regulations will inevitably result in an increased number of international ecological tragedies. This creates quite a quandary for environmentalists here in the United States. The more effective they are in enhancing environmental regulations and standards, the more likely that industry will relocate overseas, thereby escalating the chances of an international environmental disaster. On a global scale this does not seem to be an environmentally efficient result.

Industry's increasing propensity to focus attention on overseas markets can also be looked at from a conservation perspective. Accordingly, driving industry overseas can be viewed as beneficial, since natural resources are limited.<sup>84</sup> By exploiting international markets today, we are protecting our own resources for tomorrow. "In the long run we will have access to resources that would have otherwise been depleted."<sup>85</sup> An additional environmental benefit might also be realized by preserving our natural resources for the immediate future. Foreseeable advancements in oil extraction and transportation techniques may result in the ability to harvest natural resources with minimal potential adverse effects on the environment. The aforementioned tactics should be taken into account prior to utilizing green capital to achieve a specific goal.

## VII. CONCLUSION

Although the primary focus of this Comment has been on the Exxon Valdez spill, green capital is generated from any type of environmental disaster. In fact, opportunities to effectuate positive change after a tragedy are not limited to environmental predicaments. It

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83. *Id.* "We are effectively legislating and regulating ourselves out of business." *Id.* Mr. Trim further maintains that "with environmental laws we are working the system to the point where we can not compete in the world market, and the economy is going to suffer as a result." *Id.* Some industry experts maintain that stiff environmental regulations alone would be insufficient to push industry overseas. Wenk, *supra* note 6.

84. Wenk, *supra* note 6.

85. *Id.* We should try to protect our own resources from early exploration, if that means going overseas then so be it. *Id.*

is truly unfortunate that in many instances the most productive way to further an agenda is to grandstand around a tragic situation.

However, only by improving upon green capital utilization will it be possible to reduce the chance of future accidents. Furthermore, the most effective way for industry to combat green capital is to prevent environmental disasters from occurring in the first instance. According to D.L. McClean, Exxon representative in 1991, the Valdez spill “raised everyone’s awareness, I just wish someone else could have paid for the lesson.”<sup>86</sup>

There is a general agreement among environmentalists that so long as it is profitable for the oil industry to operate in an unsafe manner, they will continue to do so. In order to curb this propensity, costs of environmental disasters need to be assessed directly against the polluter. Last year’s record verdict against Exxon should force industry into rethinking the way it interacts with the environment.<sup>87</sup> Industry mentality needs to become proactive instead of reactive.<sup>88</sup>

Each of the environmental advances mentioned throughout this Comment can be traced back to utilization of green capital derived from the Valdez spill. As stated in the introduction, the purpose of this Comment was to set forth a proactive plan for green capital utilization. Environmental groups must be prepared to react to the next environmental disaster. Due to the fact that green capital is ephemeral, efficient utilization of opportunities that arise from ecological tragedies is essential. This Comment has outlined some of the most effective green capital techniques and should help interested parties in determining where their time and energies would be best spent.

JAY SCHOENFARBER

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86. Telephone Interview with D.L. McClean, Exxon representative (March 11, 1991). Mr. McClean was interviewed in order to ascertain Exxon’s stance on the Valdez spill and green capital utilization.

87. The \$5 billion civil jury punitive award levied against Exxon was the largest such verdict ever entered against a corporation. Steiner, *supra* note 7. It should be noted that filing law suits against those responsible for an environmental disaster is another way to utilize green capital and achieve publicity, change, and recompense.

88. If industry is going to be held liable for billions of dollars in the event of a preventable major environmental disaster, logic would dictate that steps be taken to prevent such disasters from occurring, rather than focusing on response after the fact.