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WHY CORPORATIONS SHOULD ADOPT THE VALDEZ PRINCIPLES

MARY ELLEN WEST*

The Valdez Principles ("Principles"), a set of ten guidelines that govern the environmental practices of corporations, was created by the Coalition for Environmentally Responsible Economies ("CERES") "after the Roman goddess of agriculture."¹ CERES is a coalition of environmental groups, investment groups, institutional investors, government agencies, and economists that was founded in 1989. The group draws on the experience of many of its members in shareholder proposal matters,² and its influence is enhanced by the fact that member institutional investors control over \$150 billion in assets.³

The goal of CERES in promoting the Valdez Principles is to "create a voluntary mechanism of corporate self-governance that will maintain business practices consistent with the goals of sustaining our fragile environment for future generations, within a culture that respects all life"⁴ CERES hopes the Principles will provide a minimum environmental standard to be used by pension fund, individual, religious, and college endowment investors in their investment decisions.⁵

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1. Barnaby J. Feder, *Who Will Subscribe to the Valdez Principles?*, N.Y. TIMES, Sept. 10, 1989 at 6, col. 1. The Principles were inspired by the Sullivan Principles, which provide guidance to U.S. corporations doing business in South Africa, and the MacBride Principles, which address corporate issues relating to religious discrimination in Northern Ireland. Laura L. Castro, *A Matter of Principles; Companies and Environmental Awareness*, NEWSDAY, Sept. 8, 1989 at 47 (Nassau and Suffolk ed.).

2. Art Kleiner, *Who Owns Exxon? We Do*, GARBAGE, May-June 1991 at 56.

3. Robert D. Rosenbaum & Michael E. Korens, *Trends in Institutional Shareholder Activism: What the Institutions are Doing Today*, in CORPORATE LAW 1990, 45 (PLI Litig. & Admin. Practice Course Handbook Series No. 704 (1990)).

4. Joan Bavaria, *Business, Clean Up Your Environmental Act; Withholding Investments Can Influence Corporate Actions*, NEWSDAY, Sept. 7, 1989 at 5 (Nassau and Suffolk ed.).

5. Daniel H. Pink, *The Valdez Principles: Is What's Good for America Good for General Motors?*, 8 YALE L. & POL'Y REV. 180, 188 (1990).

The Principles actually were written before the 1989 oil spill⁶ but were christened the "Valdez Principles" memorialize the grounding of the Exxon Valdez tanker on Bligh Reef where 110,000 barrels of crude oil leaked into Alaska's pristine waters.⁷ CERES used the anniversary celebration of Earth Day in 1990 to publicize the Principles and to submit shareholder proposals to dozens of corporations to encourage adoption and compliance.⁸

After a review of the Principles, this article will analyze the advantages and disadvantages to corporations considering adoption. The author concludes that corporations committed to environmental reform and interested in the accompanying economic benefits should adopt the Valdez Principles.

THE PRINCIPLES

The Valdez Principles⁹ ask companies to agree to the following statements:

1. Protection of the biosphere.

We will minimize and strive to eliminate the release of any pollutant that may cause environmental damage to the air, water or earth and its inhabitants.

6. Crocker Snow, Jr., *Putting Mother Earth in the Boardroom*, WORLD PAPER, June 1990, at 15.

7. Joan Bavaria, CERES co-chair, said: "We're not Exxon-bashing We wish to memorialize the accident at Valdez so that we won't have it happen again." Castro, *supra* note 1, at 47.

The spill, the United States' largest, killed thousands of birds, mammals, and fish, and devastated the Alaskan coastline. Linda Kanamine, *Exxon to Pay \$25 Million More in Spill Deal*, USA TODAY, Oct. 1, 1991 at 1A.

Initially, the Exxon Valdez's captain, Joseph Hazelwood, bore the blame for the spill. Although Hazelwood was accused of drinking before operating the supertanker, he was acquitted by a jury of operating the ship while intoxicated. Hazelwood is currently appealing his conviction of negligent discharge of oil. *Id.* Others believe that such a spill was inevitable, due to cost-cutting measures implemented by corporations like Exxon. See Dennis Drabelle, *The Sound of Disaster; Before and After the Exxon Valdez Fiasco*, (Book Review) WASH. POST, Apr. 26, 1991 at B3 (final ed.).

The spill has induced extensive negotiation and litigation. Negotiations between Exxon and the federal government resulted in a much criticized deal where Exxon entered a plea of guilty to misdemeanor environmental violations in exchange for its payment of criminal and civil fines of \$1 billion. Kanamine, *supra* this note.

8. Stephen C. Jones & Brad A. De Vore, *Companies Eye Valdez Principles; 10-Point Code*, NAT'L L.J., Sept. 2, 1991 at 23.

9. Coalition for Environmentally Responsible Economies, Valdez Principles (Sept. 7, 1989), reprinted in *The Text of the Valdez Principles*, NAT'L L.J., Sept. 2, 1991 at 24.

We will safeguard habitats in rivers, lakes, wetlands, coastal zones and oceans and will minimize contributing to the greenhouse effect, depletion of the ozone layer, acid rain, or smog.

2. Sustainable use of natural resources.

We will make sustainable use of renewable natural resources, such as water, soils and forests. We will conserve non-renewable natural resources through efficient use and careful planning. We will protect wildlife habitat, open spaces and wilderness while protecting biodiversity.

3. Reduction and disposal of waste.

We will minimize the creation of waste, especially hazardous waste, and wherever possible recycle materials. We will dispose of all wastes through safe and responsible methods.

4. Wise use of energy.

We will make every effort to use environmentally safe and sustainable energy sources to meet our needs. We will invest in improved energy efficiency and conservation in our operations. We will minimize the energy efficiency of products we produce or sell.

5. Risk reduction.

We will minimize the environmental, health and safety risks to our employees and the communities in which we operate by employing safe technologies and operating procedures and by being constantly prepared for emergencies.

6. Marketing of safe products and services.

We will sell products or services that minimizes [sic] adverse environmental impacts and that are safe as consumers commonly use them. We will inform consumers of the environmental impacts of our products or services.

7. Damage compensation.

We will take responsibility for any harm we cause to the environment by making every effort to fully restore the environment and to compensate those persons who are adversely affected.

8. Disclosure.

We will disclose to our employees and to the public incidents relating to our operations that cause environmental harm or pose health or safety hazards. We will disclose potential environmental, health or safety hazards posed by our operations, and we will not take any action against employees who report any condition that creates a danger to the environment or poses health and safety hazards.

9. Environmental directors and managers.

At least one member of the Board of Directors will be a person qualified to present environmental interests. We will commit management resources to implement the Principles, including the funding of an office of vice president for environmental affairs or an equivalent executive position, reporting directly to the

CEO, to monitor and report upon our implementation efforts.¹⁰

10. Assessment and annual audit.

We will conduct and make public an annual self-evaluation of our progress in implementing these Principles and in complying with all applicable laws and regulations throughout our world-wide operations. We will work toward the timely creation of independent environmental audit procedures which we will complete annually and make available to the public.

THE ADVANTAGES OF SIGNING ON TO THE VALDEZ PRINCIPLES

There are four main advantages to a corporation that agrees to adopt the Valdez Principles. First is the positive publicity that substantially could help a corporation's image in the eyes of its shareholders and consumers in this age of "green consumerism." Second, corporations will experience reduced costs associated with waste hauling fees, coupled with potential revenues generated by recycling in accordance with the Principles. Third, corporations that voluntarily strengthen their environmental standards may avoid financially devastating environmental disasters. The fourth advantage to corporations adopting the Valdez Principles is favorable investment in that corporation by CERES members.

1. *The Value of an Environmentally Responsible Corporate Image*

CERES has promoted the Valdez Principles in ways calculated to bestow upon signatories public image benefits. The approach to convincing companies to become Valdez signatories included an organized "media blitz" focused on the anniversary celebration of Earth Day in 1990. CERES has also indicated its intent to conduct environmental compliance ratings of both Valdez signatories and non-signatories, and to broadcast their findings in a second media campaign.¹¹

Another factor that may encourage corporations to sign on to the Valdez Principles is the political, economic and media clout of the sponsor.¹² Among CERES members are some of the country's most influential environmental groups such as the National Wildlife Federation, the Sierra Club, and the National Audubon Society, which collectively

10. Considering the fact that Ralph Nader proposed the then controversial "constituency director" idea in 1976, this idea is hardly unfamiliar to the corporate community. RALPH NADER, MARK GREEN & JOEL SELIGMAN, *TAMING THE GIANT CORPORATION* (1976).

11. Jones & De Vore, *supra* note 8, at 23.

12. *Id.*

claim ten million members. Also included in CERES' ranks are the pension funds of California and New York City and over 250 Catholic and Protestant church groups.¹³ Some of these groups have expressed a willingness to exert economic pressure, such as consumer boycotts, on corporations that fail to adopt the principles or at least address their concerns.¹⁴ Potential lost profits from boycotts, possible loss of investment money, and the public relations nightmare of dealing with negative publicity generated by CERES are problems that a company could avoid by voluntarily signing on to the Valdez Principles.¹⁵

Additionally, The Council on Economic Priorities has agreed to publicize information generated by environmental audits done under the Valdez Principles.¹⁶ The Council publishes a guide which summarizes the social responsibility of corporations so that consumers can contemplate purchases in a more socially conscious manner.¹⁷ Inclusion of environmental audit information could help corporations gain positive recognition by consumers who read the Council's popular and widely circulated shopper's handbook.¹⁸

Organizers of the effort are keenly aware of the need for recognition of corporations that adopt and comply with the Valdez Principles. Joan Bavaria, a prominent organizer, stressed that CERES is trying to develop rewards for companies who have progressive environmental programs.¹⁹ These rewards may come in the form of favorable publicity among shareholders and consumers, which could develop into a valuable competitive tool for the adopting corporation.²⁰ No business concerned with its public image in this decade can help but be intrigued by the goodwill benefits that inure to a corporation adopting

13. Kleiner, *supra* note 2, at 56.

14. Feder, *supra* note 1, at 6.

15. Jones & De Vore, *supra* note 8, at 23.

16. Feder, *supra* note 1, at 6.

17. *Id.*

18. *Id.* Alice Tepper Marlin, a vigilant environmentalist who formed the Council in 1969, heads the Council on Economic Priorities. This group publishes *SHOPPING FOR A BETTER WORLD* and *THE BETTER WORLD INVESTMENT GUIDE*, books which educate consumers on things such as grocery products' impact on the environment and the social responsibility of corporations' business policies. Robert Cooke, *Newsday Student Briefing Page on the News*, *NEWSDAY*, Apr. 25, 1991 (Nassau and Suffolk ed.).

19. Feder, *supra* note 1, at 6.

20. *Id.*

the Valdez Principles.²¹

Consumers often use the projected environmental image of a company to make decisions on what products to buy. This is the concept of "green consumerism." While some downplay this phenomenon as merely an attempt by the marketing industry to use a novel approach to sell the same products found on store shelves for years,²² a recent survey discovered that a large majority of consumers polled would be willing to pay more for products they viewed as environmentally responsible.²³

Additionally, investment funds that screen out stocks of environmental polluters or that seek to buy stock in firms that are involved in revolutionary energy generation methods have sprung up and are performing well.²⁴ The fact that these types of funds succeed financially, however, is not a surprise to those who believe that "environmentally sound policies are fiscally sound policies . . ."²⁵ Such funds are capitalizing on a recent offspring of "NIMBY" (Not In My Back Yard) environmental activism that has been labeled "NIMP" or "Not In My

21. Furthermore, this change in consumer attitudes is not confined to the United States. Surveys in Britain and Canada found that consumers use the environmental responsibility of products and manufacturers as a factor in their purchasing choices. *Nationwide Survey Shows: American Consumers Going 'Green,' as Environment Plays Large Role in Purchases*, PR NEWSWIRE, July 20, 1989.

22. Anita Manning, *Sales Are Ringing Up For Ecology-Friendly Products*, USA TODAY, Mar. 21, 1990 at 5D.

23. "Environmental concerns are having a profound effect on consumer behavior . . . When it comes to the environment, American consumers are -- to a surprising extent -- putting their money where their mouths are." *Most Shoppers Lean to 'Green,'* SUPERMARKET NEWS, Sept. 11, 1989 at 20. A survey by the Michael Peters Group found that 89% of Americans are concerned about the environmental impact of the products they buy and that 77% say that a company's reputation for environmental responsibility influences their purchasing decisions. Most significant is the statistic that 78% of those polled said they would be willing to pay more for something sold in recyclable or biodegradable packaging. *Id.*

24. Examples of green investment funds include New Alternatives, Schield Progressive Environmental Fund, Merrill Lynch Eco-Logical Trust, Fidelity Select Environmental Services, Freedom Environmental and Kemper Environmental. Ronit A. Rose, *Environmental Investing*, GARBAGE, Sept.- Oct. 1990 at 48.

25. Nicholas Boyle, *SEC Dismisses Exxon's Attempts to Remove 'Valdez Principles' From Shareholder Proxy*, BOND BUYER, March 11, 1991 at 28. As of October 1990 there were 14 investment funds with "some type of environmental component." Returns on these 14 funds bettered the average return for all equity mutual funds during the first half of 1990. Rose, *supra* note 24, at 48.

Portfolio" activism.²⁶

Increased media exposure as an environmentally responsible corporation in the decade of "green consumerism" will work to the advantage of signatories of the Valdez Principles as both consumers and investors look beyond traditional measures of valuation and include in their calculus the environmental costs and benefits to society.

2. *Reduced Waste Hauling Costs and Recycling Revenues*

Companies with progressive environmental policies have received unexpected economic benefits in the form of reduced expenses for waste removal and added revenues from the sale of recycled materials. Corporations that adopt the Valdez Principles may also see these types of benefits because the third Principle mandates that signatories reduce waste and recycle whenever possible.

The company that produces Claussen Pickles provides an instructive example. In 1987, the distribution manager decided to buy a cardboard baler for \$10,000.²⁷ In four months, the baler had paid for itself through decreased costs for waste removal coupled with income from the sale of the cardboard for recycling.²⁸ Claussen now recycles metal caps, glass and plastic jars from its packaging plant, and hopes to convince farmers to buy rejected cucumbers for feed or fertilizer.²⁹ The estimated savings to Claussen from reduced waste hauling fees total \$150,000 a year.³⁰

Hyatt Hotels similarly reaped unexpected benefits when it instituted a recycling plan. To please environmentally conscious employees the hotel chain implemented an environmental policy in its 106 offices and hotels worldwide.³¹ Hyatt trained employees to recycle cardboard, aluminum and glass, thereby saving the corporation \$2 million in one year, primarily as a result of decreased waste hauling fees.³²

Such examples suggest that corporations that adopt the Valdez Principles at least will experience reductions in garbage removal expenses. Not only will signatories benefit from their environmentally conscious

26. Mary Lowengard, *IR and the Environment: Lean, Mean and "Green,"* PUB. RELATIONS J., Apr. 1991 at 8.

27. Martha Engber, *Waste Watchers*, CHICAGO TRIBUNE, Aug. 25, 1991 at 3.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

public image, they will reap financial rewards as well.

3. *Present Dedication of Financial Resources to the Environment Will Lead to Long Term Savings*

By adopting the Valdez Principles, corporations may evade future environmental accidents and their financial effects. Admittedly, the adoption of the Valdez Principles would force a company to dedicate significant financial resources to environmental compliance. Yet short term costs should result in the reduction of a company's long term exposure to environmental liability.³³

The extent of corporate environmental liability can be staggering. For example, Exxon suffered a decrease in earnings of \$1.68 billion due to expenses for cleanup, restoration and litigation after the 11 million gallon oil spill in Alaska.³⁴ The criminal fine entered against Exxon as a result of this spill was \$1.25 million.³⁵ In March of 1991, Exxon agreed to pay \$1.1 billion in damages for this single environmental catastrophe.³⁶

Corporate decision makers should recognize the prudence of accepting the costs of environmental protection programs that may avert such massive liability. Such decisions, if made in accordance with the Valdez Principles, may receive unexpected support. Shareholders increasingly are realizing that they bear much of the risk of corporate environmental disasters and the ensuing financial ramifications.³⁷ In addition, many people, including pension fund managers, believe that a corporation's bottom line success is not only a function of revenues and expenses, but of how the business is run as well.³⁸

The traditional maxim that "an ounce of prevention is worth a

33. Jones & De Vore, *supra* note 8, at 6.

34. Nicholas Boyle, *New York City Pension System Appeals to Exxon For Adoption of Environmental 'Valdez' Code*, BOND BUYER, Dec. 3, 1990 at 2.

35. Kanamine, *supra* note 7, at 1A.

36. Janin Friend, *Exxon Back on Firing Line*, DALLAS TIMES HERALD, April 20, 1991, § B at 1. Critics of Exxon's bargain believe that the spill killed more wildlife and produced more long-term damage than originally anticipated. Some question whether the huge sum of \$1.1 billion is enough to make Exxon feel the pinch. *Id.*

37. Dennis J. Block, Stephen A. Radin & Michael J. Maimone, *Institutional Investors: Passive Fiduciaries to Activist Owners*, in CORPORATE LAW 1990, at 161 (PLI Litig. & Admin. Practice Course Handbook Series No. 704 (1990)).

38. Nicholas Boyle, *Expanding Assets, New-Found Activism Cast Long Shadows Over the Boardroom*, BOND BUYER, July 23, 1990 at 1A.

pound of cure" may well hold true in the context of corporate environmental policy. In light of the tremendous liabilities produced by environmental mishaps, corporations balancing the costs of adopting the Valdez Principles must realize that in the long run they may gain through avoided accidents and increased support from shareholders and outsiders.

4. *Favorable treatment of Valdez signatories by CERES*

Another advantage for Valdez Principles signatories is that pension fund managers who are CERES members may look favorably on investing in signatories' stock. The Principles themselves have been described as "both a stick and a financial carrot for a new corporate consciousness."³⁹ As such, the adoption of the Valdez Principles should reward signatories with investment dollars while non-signatories risk the withdrawal of investments because of perceived environmental insensitivity.⁴⁰

The membership of pension funds in CERES indicates that this type of financial rewarding and punishment could indeed take place. Although individual pension funds may lack clout with certain corporations,⁴¹ the fact that American employees annually set aside billions of dollars in over 50,000 pension funds⁴² indicates the potential influence of such funds' investment practices. For example, the New York City Employees Retirement System has actively pressured Exxon to adopt the Valdez principles.⁴³ Additionally, in 1989, pension fund administrators used their influence to persuade Exxon to put an environmentalist on its board,⁴⁴

39. Bavaria, *supra* note 4, at 5.

40. *Id.*

41. The New York City Employees Retirement System, when it asked Occidental Petroleum and Champion International to abide by the Valdez Principles, owned \$16.3 million shares of Occidental and \$5.5 million shares of Champion. In each case, however, the pension fund owned less than 0.002% of all stock outstanding. Boyle, *supra* note 38, at 2. Additionally, when pension funds from California, Massachusetts and New York City assembled to ask Exxon to adopt six environmental policies, in aggregate they controlled only 2% of Exxon's stock. Boyle, *supra* note 38, at 1A.

42. Kleiner, *supra* note 2, at 56.

43. Boyle, *supra* note 25, at 28.

44. Robert D. Rosenbaum & Michael E. Korens, *Institutional Shareholder Activism and Related Proposals for Legislative and Regulatory Changes to Corporate Governance Rules*, in CORPORATE LAW 1990, at 621 (PLI Litig. & Admin. Practice Course Handbook Series No. 696 (1990)). The director appointed to represent environmental interests on Exxon's board was marine scientist John Steele. Marcia Parker, *Oil Spill Rallies Funds; 3 Seek Support for Environmental Code*, PENSIONS & INVESTMENT AGE, September 18, 1989 at 1.

and in 1990, several pension funds threatened a battle to remove the board if Exxon did not agree to increase its commitment to environmental protection.⁴⁵

THE DISADVANTAGES OF ADOPTING THE VALDEZ PRINCIPLES

Corporate America, especially publicly held companies, have given the Valdez Principles a cool reception. The group of U.S. signatories to date is comprised of small, privately held corporations.⁴⁶ The reluctance of major companies may be explained by the disadvantages to adoption of the Valdez Principles.

These perceived disadvantages are dominated by the corporate fear of increased liability for environmental mishaps. In addition, critics cite as disadvantages such things as excessive costs associated with compliance and reporting, and the fear of negative publicity. Many corporations considering the Principles have balked at the public disclosure requirements and the mandatory appointment of an environmental director. Still other corporations refuse to adopt the Valdez Principles, claiming to have environmental policies specific to their activity or industry. These corporations believe that adoption of the Valdez Principles would duplicate their own efforts and that industry specific policies better fit their needs.

1. *The Bottomless Pit of Liability?*

Many corporations believe that the major disadvantage to adoption of the Valdez Principles is the possibility of increased liability. Some corporations claim that to adopt the Principles is to admit that they are part of the environmental problem, publicly conceding their role in the ecological deterioration of our planet.⁴⁷

One fear is that disclosures required under the eighth Principle that admit to environmental weaknesses will incur increased liability.⁴⁸ A

45. Rosenbaum & Korens, *supra* note 44, at 621.

46. Louise Kehoe, *Business and the Environment; The Tide Has Turned After Exxon Valdez*, FINANCIAL TIMES, March 27, 1991, §1 at 17. According to Ms. Kehoe, only 22 U.S. companies have so far adopted the Valdez Principles. *Id.*

47. Pink, *supra* note 5, at 191.

48. Kehoe, *supra* note 46, at 17. Peter Huber of the Manhattan Institute for Policy Research feels that even a suggestion of environmental difficulty could be a "magnet for lawsuits." Elizabeth S. Kiesche, *Facing Up to Hidden Liabilities*, CHEM. WEEK, Feb. 14, 1990 at 58. The litigation burden already is high; there were more than 170 lawsuits filed against Exxon in connection with the Valdez oil spill. Harry Berkowitz, *Shareholders'*

corporation also may be legally impaired by the seventh Principle, which calls for voluntary assumption of blame for any injury to individuals or the environment. While signatories may be willing to own up to their mistakes, many opponents of the Principles believe that the Principles' ambiguous language and broad terms will subject corporations to unknown and possibly unlimited liability.⁴⁹

Some commentators are quick to point out that voluntary adoption of the Valdez Principles does not legally obligate the corporation in any way.⁵⁰ Others disagree and warn that adoption of the principles could be interpreted by courts to impose extra legal duties on the signatory.⁵¹ Under this reasoning, a corporation's potential liability easily could surpass liability that could be imposed by common law or statute.⁵²

Fears about additional liability caused by adoption of the Valdez Principles seem misplaced considering the fact that many corporations already have in place policies that conform to the dictates of the principles. Any additional liabilities that could be imposed on a Valdez signatory could just as easily be imposed on a company that has its own environmental policy that goes above and beyond existing laws. Furthermore, those who suggest that additional legal duties will be imposed on Valdez Principles signatories offer only vague grounds for their fears.⁵³

2. *Costs of Compliance; Negative Publicity*

In the debate over General Motors' adoption of the Valdez

Votes Back Exxon, NEWSDAY, Apr. 26, 1990 at 15. CERES understands corporate concerns about liability, but counters that the "bottomless pit" arguments are misleading; CERES simply wants companies to face up and accept accountability for the environmental harm they create. Cheryl Hogue, *Lawyers Differ On Wisdom of Adopting 'Valdez Principles' for Corporate Conduct*, 40 TOXICS L. REP. (BNA) 1276 (Mar. 13, 1991).

49. Jones & De Vore, *supra* note 8, at 23.

50. Hogue, *supra* note 48, at 1276.

51. James P. O'Brien, an environmental attorney, believes that companies could be taking on legal duties not explicitly enumerated in the principles themselves. He analogizes the adoption of the Valdez Principles situation to a line of insurance cases where the court found that insurance companies' voluntary inspection bestowed a duty on the company even though the inspection was not meant to benefit the public. *Id.*

52. Jones & De Vore, *supra* note 8, at 23.

53. See *supra* note 51.

Principles,⁵⁴ the chairman of the Board of Directors argued against the Principles by likening them to federal clean air regulations that allegedly cost the company billions of dollars but result in minimal environmental benefits.⁵⁵ Under this view, voluntary acceptance of the Valdez Principles and the ensuing costs of compliance would be economically irrational. Some commentators, however, question the accuracy of such cost/benefit appraisals and believe that the environmental benefits including the cost of accidents unquestionably outweigh the costs of preventive environmental practices.⁵⁶

Another disadvantage cited by corporations is the fear of negative publicity. Although CERES has structured the Principles so that corporations can use their adoption as a media tool, there are those who fear that increased public scrutiny would result. Recognizing that no company has an absolutely clean environmental record, the fear has been expressed that "signatories might receive negative publicity for problems they are working on while non-signatories whose problems are less public would escape notoriety."⁵⁷ This fear is misplaced, however, since the credibility presumably gained by adoption and adherence to the principles should ensure fair public treatment of signatories that suffer any environmental accidents.

3. *Disadvantages of Disclosure*

The opponents of the Valdez Principles mention as a disadvantage the required public disclosure of environmental concerns regarding corporate operations. Statutes currently compel companies to submit to extensive disclosure, and many are not willing to voluntarily obligate themselves further.⁵⁸ CERES is also aware of opposition that may come from those who believe that the mandated disclosure could interfere with the confidentiality of new product development.⁵⁹ In addition, Thomas P. Grumbly, president of Clean Sites Inc., predicts that the disclosure

54. Shareholders rejected the proposal 90.9 percent against, 9.1 percent in favor. *Environment, GM Shareholders Reject Adoption of Valdez Environmental Principles*, DAILY RPT. FOR EXECUTIVES (BNA) No. 102, at A-11 (May 28, 1991).

55. *Id.*

56. Berkowitz, *supra* note 48, at 15.

57. Feder, *supra* note 1, at 6.

58. *Id.*

59. Howard Fine, *Stockholder Proposals 'Greening' Companies*, ORANGE CO. BUSINESS J. July, 2, 1990, § 1 at 6.

required by the Principles could lead to an increase in the number of personal injury cases filed against the adopting corporations.⁶⁰ CERES co-chairperson Joan Bavaria rebuts the arguments that the required disclosure would be prohibitively burdensome for corporations. She likens environmental disclosure to the financial disclosures that corporations are continually forced to, and do make, without much difficulty.⁶¹

4. *Environmental Director on the Board*

When the Amoco Corporation ("Amoco") resisted the recent shareholder proposal suggesting that it adopt the Valdez Principles, it indicated that one of the reasons for its opposition was the requirement of an "environmental" directorship.⁶² Amoco announced its contempt for the idea of constituency directors in its proxy statement: "Special interest directorships, environmental or otherwise, are . . . bad policy from the standpoint of corporate governance."⁶³

In another case, the American Electric Power Company ("AEP") opposed the idea of an environmental director and they fought the inclusion of a Valdez Principles shareholder proposal based on Securities & Exchange Commission ("SEC") Rule 14a-8(c)(6).⁶⁴ AEP argued that the Principles would require them to nominate candidates with environmental qualifications.⁶⁵ Fortunately for the proponents of the Valdez Principles, the SEC disagreed with AEP and compelled them to include it on the proxy.⁶⁶

Corporations clearly view the requirement that they place a person to represent environmental interests on the board as a disadvantage of the Valdez Principles.⁶⁷ Opponents feel that constituency directors will lose

60. Clean Sites, Inc. is a Washington, DC based non-profit organization that assists parties involved in superfund cleanups. Hogue, *supra* note 48, at 1276.

61. *Id.*

62. *Amoco Opposes Environmental Proxy Proposal*, REUTERS, Apr. 3, 1991.

63. *Id.*

64. This regulation allows corporations to omit shareholder proposals if they relates to the election of directors. *Power Company May Omit Proposal On Valdez Principles*, 23 SEC. REG. & L. REP. (BNA), No. 4 at 131 (Jan. 25, 1991).

65. *Id.*

66. *Id.*

67. However, Exxon (and others) actually have placed an environmental director on their boards. Mark Alpert, *The Shareholder Who Roared*, FORTUNE, June 19, 1989 at 161.

sight of the most important group, the shareholders.⁶⁸

Yet, the claim by corporations that environmental directors will be unable to appropriately represent shareholders is unconvincing. Such an argument ignores the reality that state legislatures have endorsed the use of constituency directors by enacting statutes to allow corporate boards to do exactly that, and to be concerned about other interests including employees, customers, communities, and the environment.⁶⁹ Shareholder interests, moreover, may be best served by having someone on the board who, in addition to looking to increase shareholder dividends, can represent environmental interests and ensure that analysis of corporate problems properly takes into account environmental costs and benefits.

5. *Substitute Policies*

Some corporations have resisted adopting the Valdez Principles because they believe that their own environmental policies are adequate and that adoption of an additional set of guidelines would be counterproductive. For example, Waste Management asserted that its own "Environmental Principles" embody a more powerful statement of environmental procedures than the Valdez Principles.⁷⁰ Waste Management's environmental record, however, suggests that its principles are either not as powerful as the corporation believes or that it is not complying with its own guidelines. Waste Management has committed numerous regulatory and criminal environmental infractions and has paid large sums in fines and settlements.⁷¹

Arco Chemical ("Arco") is another corporation that has shunned the Valdez Principles in favor of a different set of environmental standards. Arco instead adopted the Responsible Care initiative formulated by the

68. A.A. Sommer, Jr., *Corporate Governance In the Nineties: Managers vs. Institutions*, 59 U. CIN. L. REV. 357, 378 (Fall 1990).

69. Robert S. Karmel, *CalPERS Versus the Business Roundtable*, N.Y.L.J., Feb. 21, 1991 at 3.

70. Waste Management is the world's largest environmental services company. Waste Management's Board opposed the stockholder proposal calling for the company to adopt the Valdez Principles. *Waste Management Stockholders Elect Four Members to Board of Directors*, PR NEWSWIRE, May 10, 1991.

71. Since 1980, Waste Management has paid fines and settlements of \$18.5 million, and \$5 million more, over the past 20 years, in criminal fines. Rose, *supra* note 24, at 48.

Chemical Manufacturers Association⁷² specially for the chemical industry. According to Lodwick M. Cook, Chairman of Arco: "We believe that the goal of a safe and environmentally sound chemical industry can most effectively be achieved by implementing this industry-specific program rather than the more general Valdez Principles."⁷³

Commentators, however, have criticized of the Chemical Manufacturers Association's initiative as vaguely worded corporate double-talk.⁷⁴ CERES supports the goals of Responsible Care but dislikes the fact that the program's advisory board has no real power.⁷⁵ In addition, CERES stresses the need for an objective, outside party to monitor a corporation's environmental performance.⁷⁶

The Securities and Exchange Commission has remained loyal to its practice of generously allowing inclusion of environmental proposals and has mandated inclusion of Valdez Principles proposals even though the corporation already has environmental guidelines.⁷⁷ While many corporations see the Valdez Principles as a wasted, duplicative exercise, the fact remains that if corporate environmental practices were as successful as they are believed to be, proponents of the Valdez Principles would not be advocating their adoption.

CONCLUSION

According to Thomas P. Grumbly, president of Clean Sites Inc., "The Valdez Principles are 'the wave of the future'. . . . This is what the

72. The Chemical Manufacturers Association was formed after the tragedy in Bhopal, India where 3,000 people died as a result of a chemical accident at a Union Carbide subsidiary plant. Snow, *supra* note 6, at 15; K. Heller, *Public Outreach: The Stakes Are High*, CHEM. WEEK, July 17, 1991 at 81.

73. *Arco Chemical's New CEO Sees Opportunities*, PR NEWSWIRE, May 9, 1991.

74. Scott M. Slaba, *When US Corporations Go 'Green' - Watch Out*, CHRISTIAN SCIENCE MONITOR, May 18, 1990 at 19.

75. Hogue, *supra* note 48, at 1276.

76. *Id.*

77. Sommer, *supra* note 68, at 378. Dow Chemical argued that it could omit a shareholder proposal of the Valdez Principles because their own set of environmental standards made the proposal moot. Under the Securities & Exchange Commission's Rule 14a-8(c)(10), a shareholder proposal may be omitted from a company's proxy statement if the issue it addresses is moot. The SEC disagreed and said that it could not determine, from the information that was provided, that the company's existing policies were in keeping with the policies embodied in the Valdez Principles. *Staff Rules on Proxy Proposals on Shareholder Approval, Environment*, 23 SEC. REG. & L. REP. (BNA) No. 11 at 422 (Mar. 15, 1991).

public wants."⁷⁸ This article has attempted to provide a rational argument for why corporations should respond to such public sentiment and adopt the Valdez Principles.

The view has been expressed that American corporations will eagerly adopt the Valdez Principles only when their influence goes "directly and forcefully to a corporation's primary interest -- the bottom line."⁷⁹ In fact, the Valdez Principles do address the bottom line in terms of lessened expenses and increases in sales and revenues. First, corporations, by adopting the Principles, will reap the benefits of the rising tide of "green consumerism." According to Jacquelyn Ottman, president of J. Ottman Consulting, consumers are starting to "shop corporations instead of brands."⁸⁰ She believes that the creation of the "green" shopper is just the beginning of a long trend, and that corporations' revenues soon will begin to reflect the public's response to their environmental responsibility or irresponsibility.⁸¹

Second, corporations that adopt the Valdez Principles will enjoy additional economic benefits. Expenses will decrease for items like waste removal, and recycling may actually bring in extra revenue. Furthermore, corporations that pledge money to environmental safety today will see future returns when potential accidents are avoided or their severity lessened.

While a few U.S. corporations readily have adopted the Valdez Principles, many reject the Principles for a variety of reasons, including: perceived potential increases in liability and costs; a resistance to public disclosure requirements and environmental directorships; and an adherence to inadequate environmental policies. Such arguments have been made forcefully, but all are ineffectual and imply that their proponents simply are not interested in environmental reform.

78. Hogue, *supra* note 48, at 1276.

79. Pink, *supra* note 5, at 192.

80. J. Ottman Consulting is a New York City firm that offers consulting services for companies interested in creating environmentally sensible policies. Lowengard, *supra* note 26, at 8.

81. *Id.*