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Information

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Dear Honorable Senators and Representatives:

Maria Cantwell  
Edward Markey  
Lisa Murkowski  
Patty Murray  
Ron Wyden  
Mark Begich  
Barbara Boxer  
Dianne Feinstein  
Rep. Trent Franks  
Rep. Henry Waxman  
A.G. Crowe (LA. State)

c/o  
Washington, D.C.

## **Urgent-Chemical Dispersants vs. the Clean Water Act Cease and Desist Pre-Authorization**

### **Inaccurate EPA and NOAA Science Blocking Non-Toxic Replacements for Dispersants in Oil Spill Response Plans**

Dear Senators:

Please find enclosed copies of correspondence between the National Response Team (NRT) Chairman, EPA, Coast Guard and other interagency officials representing a sampling of several years of stonewalling, failure to comply with FOIA and other action requests from the Lawrence Anthony Earth Organization (LAEO) concerning oil spill cleanup methodology. We are sending this information package to you (attempts to send info copies to you by email were not received) and we are requesting your assistance because the situation described herein impacts your region and you have already taken an active interest in this issue in the not too distant past.

In short, the situation is this: There are no oil or hazardous chemical spill response plans in place that would prevent the catastrophic consequences of a major spill in the Arctic; nor, for that matter, are we prepared for another spill of significance in the Gulf of Mexico or on any other U.S. Coastline.

LAEO has gathered considerable evidence that current EPA and Coast Guard policy and directives and, the way in which these are acted upon--up to present--by Regional Response

Team (RRT) and National Response Team (NRT) officials, involve lack of transparency, lack of truthfulness, a blatant violation of federal procurement policy and we believe, violations of the Clean Water Act based on their permitting and advocating for the pre-authorization and use of chemical dispersants/Corexit™<sup>i</sup> in the National, Regional and Area Contingency Plans to the exclusion of other products that have been proffered in the last 25 years, many of which are/were more effective, less costly and less toxic to U.S. Fisheries, and marine mammals, with less damage to the national environment. It is curious to note that Corexit, an Exxon developed product, is manufactured by NALCO which per numerous reports is a company that BP and Exxon held a majority shares in prior to and during the Gulf of Mexico BP disaster.

Our work specifically involves finding and implementing solutions for cleaning up the Gulf of Mexico, Niger Delta and other notable spill sites around the world. We have done a substantial amount of research and compiled materials and data to educate and encourage global cooperation to invest in the technological advancements that have been made in spill response and oil cleanup. We have also sent educational materials to all interagency members of the U.S. National and Regional Response Teams.

During the course of our work we've witnessed and have personal knowledge of numerous instances where EPA and NRT officials have abused their power by illegally and arbitrarily blocking the use of more effective, non-toxic methods of oil spill cleanup that we and other stakeholders have requested be used. EPA and NRT members by their actions, will not use anything but Corexit/dispersants despite the fact that other remedies have been listed on the EPA's official National Contingency Plan list of products authorized to be selected for use on a spill and, despite all required NCP/CFR 40 Subpart J procedures having been followed. We contend this exclusion and arbitrary blockage practice in favor of certain chemical dispersants also took place during the Deepwater Horizon BP Spill. We published a 44-page research paper in April of 2012 detailing some of this information.

LAEO is now running into this same stonewalling situation in Alaska in opposition to our efforts to engage with the Alaska Regional Response Team (ARRT) and assist federally recognized Tribes and other stakeholders who strongly object to the ARRT's proposed plans for expanded chemical dispersant use in Alaskan waters as stated in their Dispersant Plan Revisions (posted on their site for public comment). Chemical dispersants are highly toxic to wildlife and people and contaminate air and water, but even if that were argued, more significant is that these chemicals are not effective at removing hydrocarbon pollutants from the environment as required by the Clean Water Act while *adding* chemicals that are in themselves pollutants.

In Alaska where the people subsist off the land and waters in the Arctic, a healthy environment is crucial to the health of the native peoples and their children. The majority of the peoples of Alaska (including qualified scientists and professionals who have reviewed ARRT's plan—for example PWSRCAC<sup>ii</sup>) object to the use of chemical dispersants in their waters and have done so with ample scientific documentation going back to the 1989 Exxon Valdez spill, which, to this day, exhibits un-cleaned oil still contaminating the beaches and seabed. A form of Corexit was used during that response and was a colossal failure as it was in the 2010 Gulf spill. (See detailed information on the Alaska situation at: [www.protectmarinelifenow.org](http://www.protectmarinelifenow.org) under *Alaska Briefing* and facts on dispersants specifically related to Alaska at: <http://www.pwsrcac.org/programs/environmental-monitoring/dispersants/> )

Current ARRT activities amount to federal government interagency officials running a chemical dispersant public information and education campaign along with legally questionable Tribal government to government engagement practices using tax payer dollars to ram through their predetermined decision to use Corexit/dispersants. This is being done regardless of citizens' strenuous objections to dispersant use and the known negative impacts to Alaska Native communities subsistence, commercial fisheries and the long term risks posed to the ecological and human health of the region. The ARRT's public comment and Tribal consultation Dispersant Plan have been a public deception conveying only positive attributes while omitting any negative information on the subject. The EPA and USCG's unreasonable and unshakable determination to use these chemicals has made many wonder if the people making these decisions are somehow connected to the oil and gas industry. Their total lack of reason in the face of data and scientific fact that better technologies are available (as demonstrated in many other parts of the world that have banned dispersant use) is curious and raises important questions. Natural Resource Trustees have held this unwavering dispersant-position despite qualified Alaska-specific science based reviews to the contrary and despite clear evidence during and after the Deepwater Horizon disaster in the Gulf of Mexico and Exxon Valdez that these chemicals absolutely do have questionable efficacy with lethal effects on marine and human lives.

To summarize key points:

1. Repeated requests, petitions, formal submissions, Tribal Resolutions, emails and phone calls, and public comment submissions at official meetings expressing concerns over government plans to pre-approve, stockpile and use chemical dispersants in Alaskan waters (where they have even been scientifically proven as not effective in cold Arctic waters), have been ignored by EPA/NRT (National Response Team) officials responsible, as Trustees, for safeguarding the natural resources, environments and waters of the United States.
2. To bring more strength to the message, several organizations representing Tribes with sovereign nation status, and international water protection advocates have formed a coalition with the Change Oil Spill Response Global Alliance (COSRGA). COSRGA's Alaskan Delegation made a formal submission to the ARRT in May 2013 which has received no definitive response. (Please see Attachment C.) Recently, eleven tribal resolutions were officially enacted to ban the use of chemical dispersants in their areas. After five months there has been no action on COSRGA's request, but they instead have moved forward with seeking public approval for their chemical dispersant plan. Separately, the Chairman of the National Response Team (NRT), Ms. Dana Tulis, an EPA official, directed the Alaska RRT (Regional Team) Chairmen to defer *portions* of our submission to the (National Team) NRT level. This is unprecedented and unusual. (See Attachment A)
3. LAEO's Science Advisory Board did an analysis of key EPA/NOAA internal oil spill response guidance documents. The study found key documents in their material contained false and misleading information and faulty science being used by the EPA to justify the continued use of toxic dispersants and to continue to obstruct effective, non-toxic solutions. LAEO's science advisors provided suggested revisions, with full documentation, to correct those inaccuracies. The information was not acted on by EPA officials, including Mr. Craig Matthiessen, Director of the Regulation and Policy Development Division, Office of Emergency Management ([matthiessen.craig@epa.gov](mailto:matthiessen.craig@epa.gov))

who claimed budget constraints, lack of resources and time to review the material. (A few weeks ago, after escalating our protest of the inaction to the EPA Administrator, we are now in discussions with Mr. Matthiessen. However, based on all our data and experience to hand, we are not expecting a positive outcome but we are working to move the process forward nonetheless.) We additionally sent a separate request to the EPA Chair of the National Response Team: Dana Tulis to intervene. (See Attachments A and D)

4. Dana Tulis appears to have delegated to Craig Matthiessen as the EPA official with whom LAEO and COSR Global Alliance are to discuss these issues. However, Mr. Matthiessen has been aware of effective, non-toxic solutions to oil spills for many years and appears to have consistently played a key part in the EPA's on-going blockade and illegal sole source use of Corexit, an industry favored product. Additionally, EPA HQ relayed to us that they hold no responsibility for any decisions made to use chemical dispersants and/or deny non-toxic products although we have evidence that this is a complete falsehood.
5. This is a very serious situation. Any intent to further employ chemical dispersants (especially in Alaska and the Arctic which urgently need spill removal solutions that will actually work) is in our opinion a felony violation of and major failure to uphold the Clean Water Act. All EPA officials refusing to review documentation calling for urgent correction should be held accountable for human health and ecosystem destruction caused by out of date science and their refusal to employ better current technology in favor of allowing oil companies to profit from spills by sole sourcing Corexit. (See Attachments C and D)
6. Government policies on transparency and disclosure dictate that the EPA should precisely respond to our submissions, and other formal requests on this same subject over the past years. According to these policies they must respond *in writing*, giving the precise reasons they will not allow a specific product to be used that is being requested by responsible parties and the community and that is already on the EPA's official National Contingency Plan's Product Schedule (NCP) list. They have never done so and have employed a wide variety of tactics to avoid releasing their final decision on this. Such a decision must exist since EPA and USCG to the best of our knowledge have not used or stockpiled any product other than Corexit for approx 20 years despite being pressed to do so.
7. EPA/RRT behavior as demonstrated in Alaska, Gulf of Mexico States and others, amount to failure to take the affected public into account, a failure to recognize the sovereign rights of Alaskan Natives to have meaningful say in government actions that affect their subsistence and amounts to EPA's failure to abide by its own mission by denying Tribes and residents their fundamental right to clean water and a clean environment.
8. Based on the information we currently have to hand, earlier actions taken by numerous state and federal legislators with the EPA on our and others' behalf were met with a similar lack of response. For instance, EPA never responded to a specific set of questions sent in from Congressman Trent Franks. Hearings were held in California late last year in which evidence re the damaging effects of chemical dispersants was so compelling that the Committee openly declared doubt about there being any convincing science that supports their use along the California coast. Evidence is mounting against dispersant use throughout the world; yet Alaska RRT and we believe the Coast Guard HQ in DC is heavily pushing for the dispersant pre-authorization plans—but we do not know *why*, as, based on all the data we know they have, it is highly illogical.

**After you have reviewed this information, we are requesting to schedule a phone conference with yourself and designated aides to discuss how your office can assist us and all stakeholders with:**

- a. Suspending Chemical Dispersant *Pre-Authorization* Plans being proposed by ARRT in Alaska with a public comment period deadline of 14 Feb, 2014. This should remain in place until such time that the contrary data and uncertainties in science and efficacy can be reconciled.

Further, we urge that the pre-authorization status of chemical dispersants throughout all other U.S. *Regions* be suspended until such time there is unequivocal science that supports safe and effective usage. (Attachment C)

We recommend the set up of a task force consisting of the best and most qualified minds in Science and Technology associated with hazardous spills to find workable solutions to be incorporated into the NCP to solve the problems chemical dispersants do not solve. This would include liaison with the research efforts ongoing by the Arctic Council to devise Oil Spill Response Plans throughout the Circumpolar Arctic hemisphere.

- b. Demanding that the NRT correct their inaccurate science concerning the use of Bioremediation Agents (See Attachment D). Form an objective task force of independent scientists and oil spill response professionals, including members of LAEO's Science and Technology to participate and observe the activities of this task force.
- c. Obtaining a complete answer to LAEO's FOIA Request from the NRT/EPA Officials who are overdue in providing this information requested on Oct 23<sup>rd</sup>. (See Attachment A & B) The ultimate goal being to employ a known effective non-toxic bioremediation solution to the Gulf of Mexico extant BP spill remains.
- d. To sort out charged matters in Alaska between RRT and Tribes and ensure that Tribes whose peoples will be affected by dispersant use are heard and their opinion is factored into any decision made, we suggest the creation of a neutral Tribal Government Natural Resources Observer and Liaison Committee with voting members serving on the ARRT to observe and ensure every step of all planning and engagement processes by the ARRT and other government agencies concerned meet the legal requirements that Tribal sovereignty is entitled to receive.

We believe that *Alaska Inter-Tribal Council* (AI-TC) in partnership with the *National Tribal Emergency Management Council* would be qualified to act in this capacity. These organizations could be tasked to form up area Tribal emergency management, preparedness and hazardous spill response teams in designated regions as well as form up a core team of science and technology specialists to provide expert consultation for the tribal regions that would be funded through the National Response Team. Tribal Liaisons with the Coast Guard and other Federal Agencies would work with the AI-TC Natural Resources Tribal Government Liaison Committee. The Committee would

advise the ARRT on Tribal government matters, help form Tribal area response teams (counterparts of the ARRT), provide research and educational support, information exchange and communications support with/for Tribal Governments to ensure response measures are adequate and fully in place and prepared.

- e. And lastly, we respectfully request your assistance with getting the U.S. NRT to better invest time and resources into finding effective solutions for:
- Effectively addressing the threat of a major oil spill or chemical accident. The lessons learned from the BP spill have resulted in absolutely no significant change in chemical agent plans as part of the U.S. NCP (virtually the same response plan as used on the Exxon Valdez spill decades ago). Current regulatory reviews are way off target—although officials claim much is being done it amounts to the same old decisions over and over to the detriment of the American people, and the environment. For example if there were a significant spill by tanker vessels or drilling in Arctic waters, this would be an international nightmare to deal with due to the unique *ice* and oceanographic conditions, in addition to the fact that the Arctic is where many fish species and bird species reproduce. Such a spill would crash our fisheries and bring economic devastation to Alaska. There are no spill plans in place that would prevent the catastrophic consequences of a major spill in the Arctic; nor, for that matter, are we prepared for another major spill in the Gulf of Mexico.
  - The devastating effects of existing toxic waste spills that are not being effectively addressed throughout the United States.
  - Holding industry to higher standards in spill countermeasure plans. Their current plans remediate less than 25% of any hazardous spill – which is an unacceptable plan. Federal agencies need to stop approving and endorsing such plans!

Respectfully Submitted,

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VP Operations & Public Information  
LAEO U.S.  
&  
Change Oil Spill Response Global Alliance

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<sup>i</sup> Corexit 9500 and 9527 and other versions have been almost exclusively used and stockpiled throughout coastal regions of the United States and other parts of the world—physical reality vs. statements by EPA, Coast Guard et al that no specific products are ‘approved’ for use and that use is up to the FOSC/OSC [under the advice of the RRT/NRT] – see Attachment B. We believe there to be hidden directives to gain pre-authorization for chemical dispersants in all Regions, with particular focus now on the Arctic regions.

<sup>ii</sup> Prince William Sound Regional Citizens Advisory Council-their website, data base contains considerable science and oil spill response experts review of the ARRT plan and in general dispersant use in Alaska.