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Key proposed rule changes & comments to the National Contingency Plan

Subpart J – Use of Dispersants, and Other Chemicals

Item	Section/Subject	Description of Proposed Changes, presented by EPA	ALERT comments/recommendations
	Title		
1.	<i>Subpart J – Use of Dispersants, and other Chemicals</i>	<i>Use of Dispersants, and Other Chemical and Biological Agents</i>	Remove emphasis on dispersants. Dispersants are a chemical agent and only one of several potential agents. <i>NO FAVORITES</i>
	§300.900		
2.	<i>General Requirements.</i>	Clarify EPA (Environmental Protection Agency) duties to prepare a Schedule identifying biological and chemical agents and substances that may be used in oil spill response and waters in which they may be used.	Add: “quantities which can be used safely in such waters”. <i>DON'T TURN OIL SPILLS INTO CHEMICAL SPILLS</i>
	§300.910		
3.	<i>Authorization of Agent Use.</i>	No clarification of existing EPA authority to make decisions on agent use.	Need to clarify existing authority. Note that during BP DWH spill, USCG (United States Coast Guard) asserted authority over EPA regarding dispersant use, an abuse of authority that likely led to more harm to people and the environment <i>RECOGNIZE THE DECIDER: EPA</i>

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4.	<i>Use of Agents.</i>	Include RRTs (Regional Response Teams) as entity with responsibility to develop preauthorization plans.	<p>Reserve responsibility of developing preauthorization plans for Area Committees as required by law.</p> <p><i>REALITY CHECK – YOU HAVE TO KNOW THE AREA</i></p>
5.	<i>Plan Development.</i>	Increase scope of preauthorization plans and considerations in areas without preauthorization plans to include agent use parameters (quantity limits, duration, water depth, distance to shore, proximity to people), discharge scenarios, inventory quality, availability of equipment and agent.	<p>Add more agent use parameters including stop use conditions, proximity to drinking water supply and/or intakes, long-term monitoring of agent use.</p> <p>Add provisions for tracking agent and oil in air and water; evacuation and area closures; ecological and human risk assessments; alternative water supplies, safe storage and staging locations for agents; availability of personal protective equipment for workers; 40-hour HAZWOPER (Hazardous Waste Operator) training and prescreening health tests for workers (no exceptions); monitoring of worker health with OEM (Occupational and Environmental Medicine)-trained observers; and disposal of recovered oil and oily debris as hazardous waste.</p> <p><i>PROTECT PUBLIC HEALTH & WELFARE – BE PREPARED</i></p>

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6.	<i>Plan Approval.</i>	Require EPA, DOI (Department of the Interior)/NOAA (National Oceanic and Atmospheric Administration), DOC (Department of Commerce)/USCG, state RRT to approve preauthorization plans developed by RRT and/or Area Committees; defaults withdrawal of concurrence to consultation status.	<p>Add: OSHA (Occupational Safety and Health Administration), DHHS (Department of Health and Human Services), and Tribes.</p> <p>Remove: RRT as developer of preauthorization plans.</p> <p>Revise: No concurrence = NO GO or a block on activities.</p> <p><i>LET THE EXPERTS ON HUMAN HEALTH SPEAK & 'NO GO' VOTES</i></p>
7.	<i>Plan Review.</i>	Require review of ACPs (Area Contingency Plans) and RCPs (Regional Contingency Plans) every 5 years and triggering conditions for reviews within 5-year window including SONS – Spill of National Significance, new ESA – Endangered Species Act listing, revisions to Schedule, and other changes that affect agent use.	<p>Add more triggering conditions such as using “anything, anywhere exemption,” extended use of agent, unanticipated results from environmental monitoring data, and worker and/or public health concerns.</p> <p><i>KEEP PLANS CURRENT</i></p>
8.	<i>Burning Agents.</i>	OSC (On Scene Coordinator) may authorize “preauthorized” burns.	<p>Authorize only on case-by-case basis with concurrence of agencies including OSHA and DHHS and RRT (see #6).</p> <p><i>OIL IN AIR MAKES PEOPLE SICK</i></p>

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9.	<i>Exception.</i>	Allow OSC to use anything, any time, to prevent or reduce threat to human life up to 48 hours without concurrence of other agencies and RRT.	<p>Authorize use of only agents on Schedule and substances on List and, for spills of UOG (Unconventional Oil and Gas), only those listed agents or substances that have been tested on UOG, as with the other two test oils. Require that use of exemption triggers a plan review.</p> <p><i>TIGHTEN LOOPHOLE; ADD ACCOUNTABILITY</i></p>
10.	<i>Prohibited Agents.</i>	Proposed short list: Sinking Agents and agents that contain nonylphenol and nonylphenol ethoxylates.	<p>Add to list substances or agents that:</p> <ul style="list-style-type: none"> • Contain known or suspected human health hazards including neurotoxins, endocrine disruptors, carcinogens, mutagens, teratogens, chemicals causing hemolysis; • Contain proprietary ingredients; and • Carry warnings on SDS (Safety Data Sheets) in the case of accidental spills to keep substance out of surface waters or sewers. <p>Add to list certain sorbents in bulk form.</p> <p>Prohibit use of dispersants in fresh water, in waters with less than 20 ppt (parts per thousand) salt, or subsurface. In addition, prohibit use of refined petroleum products as burning agents. Prohibit use of substances and agents on discharges of UOG that fall outside of range of test oil characteristics unless products are tested on UOG oils of concern, as for test oils.</p> <p><i>IF WE DON'T KNOW, YOU DON'T GO</i></p>



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11.	<i>Storage and Use of Agents.</i>	Require documentation of storage conditions and agent testing to ensure efficacy when needed.	<i>ENSURE READINESS OF QUALITY AGENTS</i>
12.	<i>Supplemental Testing.</i>	Give RRTs authority to request additional testing and monitoring during planning and use to address ecosystem-specific concerns; give OSC authority to require same of spiller during response.	Give similar authority to Area Committees. Require OSC to direct Scientific Advisory Committee to conduct studies, not spiller. <i>DON'T PUT THE SPILLER IN CHARGE OF THE TESTING</i>
13.	<i>Recovery of Agents from Environment.</i>	Require removal action to “adequately” contain, collect, store, and dispose of agents “intended to be recovered”	Add: Substances and oil-agent or oil-substance combinations. Establish criteria and monitoring of removal actions. <i>OUR WATER IS NOT A DUMP; PUT IT IN – TAKE IT OUT</i>
14.	<i>Reporting of Use.</i>	Require OSC to report, to RRT, data and info collected from testing and environmental monitoring within 30 days of completion	Add: Substances. Require reporting to Area Committees and data sharing on daily basis. <i>DID IT WORK? FEEDBACK LOOP & ACCOUNTABILITY</i>



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§300.913			
15.	<i>Monitoring the Use of Dispersants.</i>	Establish monitoring requirements for dispersant use in response to spills over 100,000 gallons in 24 hours (BP DWH 42,000–210,000 gallon in 24 hours), any subsurface use situations, and for extended use over 96 hours.	<p>Monitor during and for at least 10 years after use of all chemical and biological agents and certain sorbents, any time agents are used for any size of spill, for any length of time. Use PWSRCAC (Prince William Sound Regional Citizens’ Advisory Council) monitoring protocols for dispersants.</p> <p><i>PROVE IT WORKS NO MATTER HOW BIG OR SMALL THE SPILL</i></p>
§300.915			
16.	<i>General Product Information for Listing on Product Schedule.</i>	Revise and/or establish requirements for designation of and testing for all product categories under which listing is requested, providing: SDS, use procedures including documentation for removal actions, storage conditions, environmental fate and persistence information, component identities and concentration, all test data and calculations, production capabilities, whether product is EPA-certified Design for the Environment, and international product testing and use data, if any.	<p>Add testing and monitoring requirements for certain sorbents.</p> <p>Require use of accepted standard methods for <u>all</u> testing, monitoring, and certification; accredited laboratories to use standard methods and materials and list them on their analysis; environmental fate and persistence information for breakdown products and oil-product combinations, and data and information on whether product is anticipated to enhance interactions with suspended particulate matter and sedimentation.</p> <p><i>RIGHT TO KNOW: MORE INFO FOR LISTING</i></p>

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17.	<i>Dispersant Testing and Listing Requirements.</i>	Revise: efficacy testing methodology using a baffled flask test and acute toxicity testing methodologies; eliminate averaging of test results; establish new developmental and subchronic toxicity testing requirements; require comparison of test results to ecotoxicity benchmarks; limit use to saltwater environments.	Require use of accepted standard methods for <u>all</u> testing and monitoring including efficacy tests; use of internationally-accepted standard in addition to two temperatures. Limit use in brackish water (less than 20 ppt salt) and temperatures below 10°C (50°F). <i>NO CHEATING: PROVE IT WORKS</i>
18.	<i>Testing and Listing Requirements for Surface Washing Agents, Bioremediation Agents, Herding Agents, and Solidifiers.</i>	Revise acute toxicity testing methodology and listing requirements; establish efficacy testing requirements, and establish use limitations based on product testing for salt and/or freshwater environments.	Require testing, monitoring, and certification for all agents (not just dispersants) using accepted standard methods. Require a minimum effectiveness and a maximum standard toxicity for all agents, not just dispersants. Limit use in drinking water or near water intakes, near recreational areas (i.e., close areas for one week after use). Limit use to spills of oil that fall within range of test oil characteristics unless toxicity and efficacy tests and monitoring protocols have been conducted for UOG reference oils. For surface washing agents, use tests developed by Environment Canada. For bioremediation agents, require tests to determine toxicity of oil-agent mixtures; for biodegradation and biodegradation products, use other (than GC – Gas Chromatography) standard methods to analyze for oxygenated breakdown products. For solidifiers, require tests to prove cross-linking between molecules (i.e., not sorbent). <i>RULES FOR FRESH WATER</i>

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19.	<i>Sorbent Requirements.</i>	Establish publicly-available Product List for known, non-proprietary sorbents in lieu of listing sorbents on Product Schedule. Revise requirements for data and information for sorbent products with components other than those specifically identified in the rule.	<p>Require, for inorganic mineral sorbents and synthetic sorbents, certain General Information [(a)(1)–(8), (10), (11), (12)(i), (vi), and (vii), (19), (20)]. Require toxicity and efficacy listing criteria using standard methods. Limit use to manufactured products (no bulk forms) and to spills of oil that fall within range of test oil characteristics unless toxicity and efficacy tests and monitoring protocols have been conducted for UOG reference oils.</p> <p><i>CLOSE LOOPHOLE FOR SORBENTS</i></p>
§300.950			
20.	<i>Submissions of Confidential Business Information.</i>	Require public disclosure of product ingredients, but not the formulation.	<i>KEEP THE RECIPE BUT TELL US THE INGREDIENTS</i>
§300.955			
21.	<i>Addition of a Product to the Schedule.</i>	Revise changes to product listings to same rules for all products; establish transition for <u>all</u> listed products from the current Schedule to new Schedule.	<p>Require retesting for any product that is reformulated. Shorten transition period for retesting from 24 to 12 months. Establish priority for using products listed on new Schedule over those on current Schedule.</p> <p><i>USE THE NEW SCHEDULE</i></p>



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	§300.970		
22.	<i>Removal of a Product from the Schedule.</i>	Establish a public process for removal and appeals.	<p>Add more criteria for product removal including product discontinuation, environmental monitoring studies that find unanticipated consequences to the environment and/or human health, or changes in community acceptance especially in areas where product was used.</p> <p><i>REMOVE PRODUCTS THAT DON'T WORK AS INTENDED</i></p>

Subpart A - Definitions

Item	Section/Subject	Description of Proposed Changes, presented by EPA	ALERT comments/recommendations
1.	<i>General.</i>	Revised or new definitions for chemical and biological agents; asserts agents designed to facilitate removal of oil and mitigate harm from oil.	<p>Indicate that agent is not likely to cause additional harm, either alone or in combination with oil, to public health or welfare or to the environment; that agent <u>may not</u> perform as intended; and if agent is intended to be collected and recovered from the environment.</p> <p><i>CURSE OR CURE?</i></p>
2.	<i>General.</i>	Distinguish between agents and substances (burning agents and sorbents). Propose screening tests and monitoring requirements for agents listed on Product Schedule, but no screening or monitoring for substances listed on Product List.	<p>Add monitoring for certain sorbents such as minerals and plastic microbeads.</p> <p><i>TESTING & MONITORING LOOPHOLE FOR SUBSTANCES</i></p>

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3.	<i>Burning agents.</i>	Note: As defined, both inorganic gelling agents, consisting of gasoline, jet fuel, or a diesel/gas mixture, and organic fuel (e.g., gasoline) meet the definition of burning agents.	Prohibit use of refined petroleum products as burning agents. <i>DON'T SPILL MORE OIL TO FUEL THE FIRE</i>
4.	<i>Chemical agents.</i>	Describe chemical agents as being designed to facilitate removal of oil and mitigate impacts.	Add synthetic sorbents. Distinguish between chemical agents that perform as described; sinking agents that do not remove oil or mitigate impacts; and dispersants that act as sinking agents and do not mitigate impacts. <i>STATE WHAT IS TRUE</i>
5.	<i>Dispersants.</i>	Describe as moving oil from surface to beneath surface.	Clarify that moving oil from surface to beneath surface is <u>sinking oil</u> and that dispersants increase sedimentation and deposition of oil, and increase harm to environment rather than mitigate it. <i>STATE WHAT IS TRUE</i>
6.	<i>Products.</i>	Describe only agents, not substances.	Add <u>burning agents</u> and <u>substances</u> that are manufactured using a unique composition or formulation. <i>CLOSE LOOPHOLES</i>

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7.	<i>Sinking agents.</i>	Narrow definition describes only substances, not agents such as dispersants, and only to those substances with a specific gravity of 1.0 or greater that act to physically sink oil. Note: Does not include agents or substances with specific gravity of less than 1.0 and that chemically interact with oil and suspended particles to form oily plumes in the water column, thus indirectly – but not “deliberately” – sinking oil over time, although the plumes may not sink oil “to the bottom of a water body.” In other words, this definition allows for sinking agents without saying so.	<p>Clarify: include agents and substances irrespective of specific gravity that submerge or act to submerge oil beneath the water surface.</p> <p><i>STOP PLAYING GAMES WITH WORDS</i></p>
8.	<i>Sorbents.</i>	Allow use of sorbents in bulk form such as clay, ash, and plastic microbeads that have a specific gravity of less than 1.0.	<p>Prohibit use of sorbents in bulk form.</p> <p><i>THEY'RE TAKING MICROBEADS OUT OF FACIAL SCRUBS FOR A REASON</i></p>
9.	<i>Oil.</i>	<i>No proposed changes</i>	<p>Change definition of oil to include the harms listed under current definition of pollutants; i.e., that exposure to oil may reasonably be anticipated to cause death, disease or infection, behavioral abnormalities, cancer, genetic mutation, endocrine disruption, reproductive malfunction and other physiological malfunctions in exposed organisms and their offspring, including humans</p> <p><i>YOU DON'T FILL YOUR WATER BOTTLE AT THE GAS PUMP – RECOGNIZE & TREAT OIL AS A HAZARDOUS SUBSTANCE</i></p>

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10.	<i>Remove or removal.</i>	<i>No proposed changes</i>	<p>Change definition to include some of the elements reserved for hazardous substances such as action to: treat and dispose of recovered oil and oily debris as hazardous waste; provide for temporary evacuation, housing, and alternative water supplies; and emergency assistance under the Disaster Relief Act of 1974.</p> <p><i>YOU DON'T FILL YOUR WATER BOTTLE AT THE GAS PUMP – RECOGNIZE & TREAT OIL AS A HAZARDOUS SUBSTANCE</i></p>

Appendix C to Part 300

Item	Section/Subject	Description of Proposed Changes, presented by EPA	ALERT comments/recommendations
1.	Requirements for Product Testing Protocols and Summary Test Data	Revise two reference test oils from a light and medium weight crude to medium and heavier weight crude.	<p>Add two UOG reference oils – Bakken shale oil and oil sands-diluent (dilbit).</p> <p>ADD TESTING PROTOCOLS FOR UOG: NO TESTING, NO SHIPPING</p>
2.	Dispersant Baffled Flask Efficacy and Toxicity Tests	Revised efficacy test for dispersants and new subchronic toxicity tests for dispersants only.	<p>Proposed Baffled Flask Test is non-standard method designed by industry to replace Swirling Flask Test designed by EPA Canada. We do not support use of the Baffled Flask Test. EPA should use accepted standard methods for <u>all</u> testing, monitoring, and certification; require accredited laboratories to use standard methods and materials and list them on their analysis. We support addition and use of standardized subchronic toxicity tests.</p>

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3.	Standard Acute Toxicity Test for Bioremediation Agents, Surface Washing Agents, Herding Agents, and Solidifiers	Propose only acute tests, not subchronic tests, for other agents.	Require subchronic toxicity tests for all agents, not only dispersants; acute and subchronic toxicity tests should be conducted with accepted standard methods by accredited laboratories. Require efficacy tests for all agents, not only dispersants and bioremediation agents; efficacy tests should be conducted with accepted standard methods by accredited laboratories. EPA should set minimum efficacy standards and maximum toxicity standards for all agents.
4.	Bioremediation Agent Efficacy Test	Propose updated efficacy tests	Support?



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ACRONYMS:

- ACP – Area Contingency Plan
- DHHS – Department of Health and Human Services
- DOC – Department of Commerce
- DOI – Department of Interior
- DWH – Deep Water Horizon
- EPA – Environmental Protection Agency
- ESA – Endangered Species Act
- GC – Gas Chromatography
- HAZWOPER – Hazardous Waste Operator
- NCP – National Contingency Plan
- NOAA – National Oceanic and Atmospheric Administration
- OEM – Occupational and Environmental Medicine
- OSC – On Scene Coordinator
- OSHA – Occupational Safety and Healthy Administration
- PPT – Parts Per Thousand
- PWSRCAC – Prince William Sound RCAC
- RCP – Regional Contingency Plan
- RRT – Regional Response Team
- SDS – Safety Data Sheets
- SONS – Spill of National Significance
- UOG – Unconventional Oil and Gas
- USCG – US Coast Guard