



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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OFFICE OF
ENVIRONMENTAL CLEANUP

December 6, 2011

MEMORANDUM

SUBJECT: Status of Dispersant Pre-Authorization in Alaska

FROM: EPA Co-Chair to the Alaska Regional Response Team

TO: US Coast Guard District 17 Sector Captains;
Alaska Regional Response Team Members;
Chair and Vice-Chair, National Response Team

The intention of this memorandum is to clarify the current status of dispersant pre-authorization in Alaska. Although the EPA does not speak for the other agencies involved in dispersant pre-authorization, as defined at 40 CFR 300 subpart J, as a Co-Chair to the Alaska RRT, EPA shares responsibility for ensuring clear policy and guidance to FOSCs on the use of dispersants.

Prior to utilizing dispersants on an oil spill, the NCP requires the FOSC to consult with DOI and NOAA representatives as practicable and gain concurrence from the EPA and the State representative to the RRT when State waters are threatened or impacted. The NCP also says that the FOSC can attain pre-authorization for use of dispersants when the EPA, State, DOI and NOAA approve of a “dispersant pre-authorization plan.”

In 1989, an approved dispersant pre-authorization plan was added to the Alaska Unified Plan (AUP), which serves as the Regional Contingency Plan, the Area Contingency Plan and the State Plan. Then, in 2008, DOI unilaterally withdrew their agency approval for the dispersant pre-authorization plan. This raised questions about whether pre-authorization remained in effect with respect to the EPA, State and NOAA. The AUP was then updated to state that consultation was only required with DOI in the pre-authorization zones.

The intent of the NCP is not clear in this regard. However, EPA’s legal counsel has determined that if one of the four agencies withdraws their approval, then the dispersant pre-authorization plan is no longer approved as required by the NCP and therefore “preauthorization” is not in effect. Therefore, it is EPA’s current interpretation that the pre-authorization language in the AUP is not valid and that the FOSCs in Alaska must gain concurrence from the EPA Co-Chair to the ARRT before applying dispersants to a spill in waters of the United States, even in the former pre-authorization zones. The ARRT will pursue a revision to the language in the AUP to reflect this current interpretation as soon as practicable.

EPA is committed to ensuring that dispersants and in-situ burn are viable tools in the FOSC tool box. The December 16, 2010 “Dispersant Memo” from the National Response Team emphasizes the importance of valid and current dispersant policy and pre-authorization plans. It tasks the RRTs with reviewing and updating related policies and guidance. This clarification memo is an important step in revisiting the pertinent Alaska policies and plans. Time will be allotted on the agenda at the February 2012 Alaska RRT meeting for questions and discussion on this important matter.