



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
1689 C Street, Room 119
Anchorage, Alaska 99501-5126



9044.2a
PEP/ANC

March 30, 2012
Via Electronic Mail

Dear Alaska Regional Response Team Members and U.S. Coast Guard Federal On-Scene Coordinators:

The purpose of this letter is to notify Alaska Regional Response Team (RRT) members and Alaska-based U.S. Coast Guard (USCG) Federal On-Scene Coordinators (FOSCs) that, after consulting with appropriate Alaska-based U.S. Department of the Interior (DOI) Bureaus, and contingent upon the four items listed below; effective April 1, 2012, DOI is reinstating its approval of preauthorization of the use of dispersants in areas known as Zone 1 in Prince William Sound (PWS) and Cook Inlet. Zone 1 areas in PWS and Cook Inlet are identified in the March 1989 *RRT Oil Dispersant Guidelines for Alaska (Guidelines)*, which are Attachment 1 of the Enclosure.

DOI's reinstatement of its approval of preauthorization of dispersant use under Section 300.910 of the *National Oil and Hazardous Substances Pollution Contingency Plan (NCP)* for these Zone 1 areas in PWS and Cook Inlet is contingent upon the appropriate FOSC(s): (1) providing notification to DOI in accordance with Section 300.135(j)(1) of the *NCP* of any incident where a dispersant request has, or will be made; (2) consulting with DOI on an incident-specific basis in accordance with Section 300.135(j)(2) of the *NCP* following receipt of a dispersant request and prior to the FOSC taking action on the request; (3) fulfilling any necessary incident-specific Endangered Species Act (ESA) Section 7 consultation with DOI-Fish and Wildlife Service ESA experts regarding the potential use of dispersants; and (4) seeking input on the proposed use of dispersants from appropriate Federally-recognized tribes.

This reinstatement by DOI is in response to a request by Mr. Larry Stanton (the Environmental Protection Agency (EPA) National Response Team Chair) at the February 22-23, 2012, Alaska RRT work session/meeting for DOI to review its September 26, 2008, letter (see Enclosure) to determine if dispersant preauthorization could be reinstated while maintaining DOI's need for incident-specific consultation on any proposal for dispersant use. This reinstatement is in accordance with the statements made at the Alaska RRT meeting and in previous correspondence by the State of Alaska, U.S. Department of Commerce (DOC), and EPA, that each of those entities continue to support the preauthorization of dispersant use in Zone 1 areas in PWS and Cook Inlet.


This reinstatement ensures that: (1) the USCG can require dispersant capabilities in Alaska in accordance with the USCG August 31, 2009, 33 CFR Parts 154 and 155 "Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions; Final Rule", which links (for the first time) a requirement for plan holders to maintain a dispersant capability in Alaska only if there is dispersant preauthorization in the region; (2) the

State of Alaska, DOC, and EPA may maintain their respective dispersant preauthorization of dispersant use in Zones 1 in PWS and Cook Inlet; (3) DOI will be afforded the opportunity to provide incident-specific recommendations regarding dispersant use to FOSCs, which in turn, FOSCs may accept or reject; and (4) appropriate Federally-recognized tribes will be afforded the opportunity to provide incident-specific input regarding dispersant use to FOSCs, which in turn, FOSCs may accept or reject.

DOI continues to stand ready to participate in a process that updates the *Guidelines*, which includes all interested Alaska RRT members and which seeks input from Federally-recognized tribes and stakeholders.

Please feel free to contact me at 907-271-5011, if you have any questions regarding this reinstatement.

Sincerely,



Pamela Bergmann
DOI Alaska RRT Representative
Regional Environmental Officer – Alaska

Enclosure

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cc: Mr. Larry Stanton, U.S. Environmental Protection Agency

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United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
1689 C Street, Suite 119
Anchorage, AK 99501-5126

September 26, 2008
Via Electronic Mail

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PEP/ANC

Dear U.S. Coast Guard Federal On-Scene Coordinators and Alaska Regional Response Team Members:

The purpose of this letter is to notify Alaska-based U.S. Coast Guard (USCG) Federal On-Scene Coordinators (OSCs) and Alaska Regional Response Team (RRT) members that effective September 27, 2008, the U.S. Department of the Interior (DOI) no longer approves of the preauthorization of the use of dispersants in Prince William Sound and Cook Inlet, the only areas in Alaska where dispersant use has been preauthorized. These preauthorized areas are referred to as Zone 1 in the *RRT Oil Dispersant Guidelines for Alaska (Oil Dispersant Guidelines)* (see Attachment 1). Therefore, to obtain authorization for the use of dispersants anywhere in Alaska, Federal OSCs will now need to follow the concurrence and consultation process required in the *National Oil and Hazardous Substances Pollution Contingency Plan (NCP)*.

The use of dispersants in a particular incident may not adequately protect DOI resources; therefore, preauthorization of dispersants without incident-specific information is no longer appropriate. Trust resources for which DOI has responsibility in Zone 1 in Prince William Sound and Cook Inlet include, but are not limited to: migratory birds; sea otters; Native allotments; and National Wildlife Refuge lands and National Park System Units, including biological resources and historic properties associated with those refuge lands and park system units.

DOI continues to believe that the use of dispersants is an important response option to be considered following an oil discharge. As has always been the case, DOI will continue to provide timely input to any Federal OSC request for dispersant use anywhere in Alaska.

Authorizations of Use

Section 300.910 of the *NCP* (see Attachment 2) requires RRTs to address the use of dispersants, other chemical countermeasures, and burning agents in their planning and to include, as appropriate, preauthorization plans that address the specific contexts in which those products should and should not be used. The *NCP* further provides that “[T]he RRT representatives from the EPA and the states with jurisdiction over the waters of the area to which a preauthorization plan applies and the DOC and DOI natural resource trustees shall review and either approve, disapprove, or approve with modification the preauthorization plan...”. If those representatives

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and natural resource trustees "... approve in advance the use of certain products under specified circumstances as described in the preauthorization plan, the OSC may authorize the use of the products without obtaining the specific concurrences described in paragraphs (b) and (c) of this section."

Paragraph (b) of Section 300.910 of the *NCP* provides that for spills for which there is no preauthorization, the Federal OSC, with the concurrence of the U.S. Environmental Protection Agency (EPA) representative to the RRT and, as appropriate, the concurrence of the RRT representative from the states with jurisdiction over the navigable waters threatened by the release or discharge, and in consultation with the U.S. Department of Commerce (DOC) and DOI natural resource trustees, when practicable, may authorize the use of dispersants and other chemical countermeasures that are listed on the *NCP* Product Schedule. Paragraph (c) outlines the same concurrence and consultation requirements for the Federal OSC for the authorization of the use of burning agents.

In-Situ Burning Guidelines for Alaska

As you know, on March 28, 2008, the Alaska RRT approved the *In-Situ Burning Guidelines for Alaska (ISB Guidelines)*. This action was supported by Alaska-based Federal and State OSCs in a memorandum to Alaska RRT members sent via electronic mail on March 26, 2008 (see Attachment 3). The newly approved *ISB Guidelines* no longer provide for preauthorization of *in-situ* burning in the marine waters of Alaska. As a result, all requests to conduct *in-situ* burning in the marine environment as well as on inland lands and waters throughout the State, must now be considered on a case-by-case basis.

Reasons for removing preauthorization for *in-situ* burning from the revised *ISB Guidelines* included, but were not limited to, the following:

- Improved technology (e.g., cell phones, pagers, BlackBerry devices, and satellite telephones) and proven ability for Federal OSCs to contact the Alaska RRT representatives from the EPA and the State of Alaska and the DOC and DOI natural resource trustees 365 days a year, 24 hours a day.
- Proven ability for the RRT representatives from the EPA and State of Alaska and the DOC and DOI natural resource trustees to provide consensus and timely input to Federal OSCs on similar requests including dispersant use and potential places of refuge.
- Recognition that there is sufficient time for case-by-case concurrences and consultations to occur. Following an oil discharge where use of *in-situ* burning may be appropriate, a checklist that provides incident-specific information regarding the proposed use of *in-situ* burning must be completed and provided to the Federal OSC for their review and consideration. This process takes time, typically a minimum of several hours following the incident. Likewise, the mobilization of vessels/aircraft, equipment, materials, supplies, and personnel to conduct any approved *in-situ* burning operation takes, at a minimum, several hours. As soon as *in-situ* burning is considered as a response option for an incident (prior to receiving the completed checklist), the appropriate agency representatives can be notified by the Federal OSC so that the consultation/concurrence process can begin.

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- Recognition that each incident is unique and typically includes actions and/or considerations that were not previously anticipated.
- Recognition that information on environmental conditions not only changes over time, but is also incomplete. In addition, assumptions regarding the timing and numbers of biological resources (e.g., sea otters and migratory birds) in a given location may be incorrect, and therefore, incident-specific information could significantly affect input on whether conducting an *in-situ* burn would be appropriate. Also, the legal status of some biological resources changes over time. For example, additional species (e.g., Spectacled Eiders) have been placed on the Endangered Species List and critical habitat areas have been established, which require incident-specific consultations under, or pursuant to, the Endangered Species Act.
- Recognition that it is not possible to predict that conducting an *in-situ* burn will result in a “net environmental benefit” in all incidents.

All of the reasons identified above are also applicable to decision-making regarding the use of dispersants.

Oil Dispersant Guidelines

The *Oil Dispersant Guidelines* and specific dispersant use guidelines for Cook Inlet were approved by the Alaska RRT in April 1986. The specific dispersant use guidelines for Prince William Sound were approved by the Alaska RRT in March 1989. Thus, information forming the basis of policies included in those guidelines is 20 or more years old.

The *Oil Dispersant Guidelines* “... allow the timely and effective use of dispersants as an oil-spill-response tool to minimize environmental impacts. The guidelines are to be in force for the application of dispersants in any marine waters of Alaska” (Annex F, Appendix 1, Section 1, last paragraph). The guidelines further state that “Decisions concerning potential dispersant use must be based on an evaluation of potential impacts from dispersed versus undispersed oil since dispersing a slick at one site introduces more oil into the water column than would be caused by a surface slick. This means that effects on water column organisms may be increased at one site so that effects can be decreased or eliminated at other sites” (Annex F, Appendix 1, Section 2, first paragraph). A key question in Figure 1, the Dispersant Decision Matrix, which is to be used for Federal OSC decision-making, is: “Will environmental impacts association with chemical dispersion be less than those occurring without chemical dispersion?”

Tab C of the *Oil Dispersant Guidelines* “Oil Spill Response Checklist: Dispersant Use in Zone 1” is the checklist to be completed by the party requesting the use of dispersants and the Federal OSC. While this checklist includes detailed information regarding the incident and the operational requirements related to dispersant use, there is no information on the biological resources and/or historic properties at risk, or on the commercial and/or subsistence use of biological resources. In Zone 1 (the preauthorization zone), the assumption is that the consideration and evaluation of trade-offs regarding potential environmental impacts have already been performed by the natural resource trustees and no further consultation is necessary. This assumption, which is based on 20-year-old information, is no longer valid for DOI, nor is it

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practical or necessary for the reasons identified above under *In-Situ Burning Guidelines for Alaska*.

DOI is not alone in recognizing that the *Oil Dispersant Guidelines* are outdated. From March 2003 to June 2005, the Dispersant Subgroup (Subgroup) of the Alaska RRT Science and Technology Committee worked on revisions to the dispersant use checklists and the “Specific Guidelines for the Use of Dispersants in Prince William Sound.” The Subgroup included representatives from the USCG, EPA, DOI, DOC, Alaska Department of Environmental Conservation, Prince William Sound and Cook Inlet regional citizens advisory councils, oil industry, and Cook Inlet Spill Prevention and Response, Inc. Recognizing that the zones in the existing guidelines were no longer appropriate, the Subgroup was working to re-draw the boundaries of the zones in Prince William Sound prior to re-examining the zones in Cook Inlet. The Subgroup was also in the process of re-writing the checklists to address other points, such as: (1) the Zone 1 preauthorization is too broad; i.e., it includes all petroleum products, rather than just crude oil; (2) requirements need to be included for real-time monitoring following dispersant application; and (3) information needs to be corrected on which entities the Federal OSC needs to seek concurrence and consult with, in areas where there is no dispersant use preauthorization. While the Subgroup’s work on the *Oil Dispersant Guidelines* was halted in 2005 at the request of the Alaska RRT Co-Chairs (in favor of working on revisions to the *ISB Guidelines*), the Subgroup had nonetheless recognized that the existing guidelines are outdated and need to be revised.

Use of Dispersants in Alaska

As with *in-situ* burning, DOI believes that the use of dispersants is an important response option to be considered following an oil discharge. We further believe DOI has a track record of considering, both objectively and in a timely manner, requests for the use of dispersants. Since 1987, Alaska-based Federal OSCs have requested the use of dispersants in only three cases: (1) the 1989 *Exxon Valdez* oil spill, (2) the 2004 M/V *Selendang Ayu* oil spill, and (3) the 2005 M/V *Cougar Ace* incident. Following the *Exxon Valdez* oil spill, DOI supported the use of multiple dispersant applications, including (within the first 24 hours of the spill) the use of dispersants in Zone 3, where dispersants “are not recommended, but may be approved.” DOI also supported the use of dispersants, with incident-specific conditions, following the 2004 M/V *Selendang Ayu* oil spill and 2005 M/V *Cougar Ace* incident. DOI will continue to provide timely input to any Federal OSC request for dispersant use anywhere in Alaska.

As discussed above, Paragraph (b) of Section 300.910 of the *NCP* states that in spill situations where there is no dispersant preauthorization, “...the OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of dispersant.” At the same time, we believe it is important for Federal OSCs to be mindful of the requirement of Section 300.135(j)(1) of the *NCP* (see Attachment 4), which states, “The OSC/RPM shall ensure that the trustees for natural resources are promptly notified of discharges or releases” and the Section 300.135(j)(2) requirement that “The OSC or RPM shall coordinate all response activities with the affected natural resources trustees and, for discharges of oil, the OSC shall consult with the affected trustees on the appropriate removal

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actions to be taken.” Timely notification of the natural resource trustees by the Federal OSCs of oil discharges (and hazardous substance releases) will help ensure that incident-specific consultation can be provided in a timely manner. In turn, this partnership helps ensure that natural and cultural resources and historic properties for which we have a trust responsibility are considered in a decision regarding the potential use of dispersants.

Summary

In order to fulfill our responsibility to our trust resources and to be consistent with the recent action regarding *in-situ* burning, effective September 27, 2008, DOI no longer approves of the preauthorization of the use of dispersants in Prince William Sound and Cook Inlet in the areas referred to as Zone 1 in the *Dispersant Use Guidelines for Alaska*. As a result, to obtain authorization for the use of dispersants anywhere in Alaska, Federal OSCs will need to follow the concurrence and consultation process required in the *NCP*.

All DOI Bureaus in Alaska with management responsibility for the potentially-affected trust resources identified above concur in the decision to revoke DOI’s support for preauthorization of dispersant use. While we appreciate and acknowledge the desire of Federal OSCs to retain, and perhaps even expand areas of dispersant preauthorization in Alaska, our responsibility to protect DOI trust resources compels us to take this action.

Please feel free to contact me at 907-271-5011, if you have any questions regarding this action.

Pamela Bergmann



DOI Alaska Regional Response Team
Representative
Regional Environmental Officer – Alaska

Attachments:

1. *RRT Oil Dispersant Guidelines for Alaska* (35 pages)
2. *NCP* Subpart J, Section 300.910 (2 pages)
3. Letter from Federal and State OSCs to ARRT Members Regarding Approval of ISB Guidelines March 2008 Version (2 pages)
4. *NCP* Section Subpart B, 300.135 (2 pages)

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