

# National Oil and Hazardous Substances Pollution Contingency Plan (NCP)

## Revisions to Subpart J: Use of Dispersants and Other Chemicals

*July 2021 and June 2023 Final Rules*



# Background

- Subpart J governs the use of dispersants, and any other chemical or biological agent to respond to oil discharges
- Last major revisions in 1994
- Deepwater Horizon oil spill occurred in April 2010
  - The blowout discharged oil from one mile below the sea surface.
  - Approximately three quarters of a million gallons of dispersants were, for the first time, injected directly into the discharging oil
  - Approximately 1 million gallons of dispersants over a 3-month period were deployed on surface slicks over thousands of square miles of the Gulf of Mexico
  - Reports from the DWH Oil Spill Commission and EPA Inspector General included recommendations relevant to Subpart J



# Objectives of Proposed Subpart J Amendments

- To encourage the development of safer and more effective spill mitigating products, and to better target the use of these products to reduce the risks to human health and the environment.
- To ensure that On-Scene Coordinators (OSCs), Regional Response Teams (RRTs), and Area Committees have sufficient information to support agent preauthorization or authorization of use decisions.
- To better inform an assessment of the overall ecological risks for the OSC to consider when authorizing the use of chemical agents



# Background

January 2015 Proposed Rule: Received over 81,000 comments

## Three Major Sections of the Proposed Rule

- **Listing** (amendments): How will the products be listed on the Schedule to ensure they have met **efficacy** and **toxicity** requirements
- **Authorization** (amendments): How will products be authorized for use, with focus on **environmental impacts** & considering **additional monitoring**
- **Monitoring** (**new requirements**): How will subsurface or prolonged use application of dispersants be monitored

Approach: Finalize the rule in steps, beginning with the ***Monitoring Section***

Litigation: EPA received lawsuit notification in January 2020

## Workgroup Engagement

- Commenced on March 12, 2020
- Final Rule Development for Monitoring Section



# Final Rule: Monitoring Requirements Applicability

These new monitoring requirements apply to the responsible party of an oil discharge

Amendments establish dispersant monitoring requirements when responding to oil discharges as follows:

- ***Subsurface*** – Any subsurface use of dispersants,
- ***Prolonged Surface*** – Any surface use of dispersant for more than 96 hours after initial application, and
- ***Major Oil Discharges*** – Any surface use of dispersant in response to oil discharges of more than 100,000 U.S. gallons occurring within a 24-hour period



# Key Areas of Monitoring Elements:

## Water Column Sampling

- Background, baseline, and dispersed oil plume water column in-situ sampling for oil droplet size distribution
- Fluorometry and fluorescence
- Total petroleum hydrocarbons
- Dissolved oxygen (subsurface only)
- Methane (subsurface only)
- Heavy metals
- Turbidity
- Water temperature
- pH, and
- Conductivity



# Key Areas of Monitoring Elements

## Oil Distribution Analysis:

- Characterization of dispersant effectiveness and oil distribution

## Ecological Characterization:

- Characterization of potential ecological receptors and habitats, and their associated exposure pathways



# Key Areas of Monitoring Elements: Immediate and Daily Reporting

## Immediately report to the OSC any:

- Deviation of more than 10 percent from the mean hourly dispersant use rate for **subsurface application**, based on the dispersant volume authorized for 24 hours use, and the reason for the deviation.
- Ecological receptors of environmental importance, and any other ecological receptors as identified by the OSC or the **Natural Resource Trustees, including any threatened or endangered species** that may be exposed based on dispersed plume trajectory modeling and level of concern information.





# Key Areas of Monitoring Elements: Immediate and Daily Reporting:

- Report daily to the OSC water sampling and data analyses collected, including:
  - For each application platform, the actual amount of dispersant used for each one-hour period and the total amount of dispersant used for the previous 24-hour reporting period.
  - All collected data and analyses of those data within a time frame necessary to make operational decisions (e.g., within 24 hours of collection), including documented observations, photographs, video, and any other information related to dispersant use, unless an alternate time frame is authorized by the OSC.
  - For analyses that take more than 24 hours due to analytical methods, provide such data and results as available but no later than five days, unless an alternate time frame is authorized by the OSC.
  - Estimates of the daily transport of dispersed oil, non-dispersed oil, the associated volatile petroleum hydrocarbons, and dispersants, using available technology as described in paragraph (c) of this section.
- ***Report all information provided to the OSC to the RRT(s).***



# Timeline of Activity

Began Weekly Workgroup Meetings: March 12, 2020

- Monitoring Requirements Options Selection Meeting: May 5, 2020
  - Final Agency Review Meeting: August 20, 2020
  - ***Change in Administration***
  - Federal Register Publication: July 27, 2021
  - Effective Date: January 24, 2022
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- Workgroup began addressing ***Listing and Authorization*** provisions following completion of Monitoring provisions



## “Part 2” Final Rule Provisions Seek to Ensure That:

- Chemical and Biological agents have met updated or new ***Efficacy*** and ***Toxicity*** requirements
- Product submitters provide important ***Use and Safety*** information
- The planning and response community is equipped with the proper procedures and information to authorize and use the products in a judicious and effective manner
- These requirements are also anticipated to better target the use of these products if utilized during a response

# Data & Information Requirements for **Listing Products** on the NCP Product Schedule or Sorbent Product List

The amendments help ensure only products that perform effectively in laboratory testing will be listed on the NCP Product Schedule.



# Manufacturers are required to provide:

- **Toxicity** and **efficacy** testing information *specified by agent product categories*, including for dispersants, surface washing agents, bioremediation agents, solidifiers, herding agents, and sorbents
- Summary testing data based on **updated product testing protocols**, including:
  - **new** dispersant baffled flask effectiveness and toxicity tests;
  - **new** standard acute toxicity tests for bioremediation agents, surface washing agents, herding agents, and solidifiers; and
  - **revised** bioremediation agent effectiveness test
- More detailed product application data and information, including component identities, ecological toxicity data, and shelf-life information based on recommended storage conditions
- Human health and safety information through Safety Data Sheets and more detailed instructions for product application in the field

- The amendments provide OSCs, RRTs, and ACs with important information when considering agent product preauthorization or authorization of use decisions.
- EPA anticipates that the requirements will encourage the development of safer technologies, and identify products that have been certified relative to the product's performance capabilities or environmental benefits.
- EPA is also requiring additional product performance, toxicity, appropriate use, and handling information to further inform OSC decisions on whether and which products to use to best mitigate hazards associated with discharges of oil.

# Sorbent Product List

Final Rule establishes a list of non-proprietary Sorbents, separate from the NCP Product Schedule

- For sorbent products that consist solely of the following materials, or any combination thereof, no technical data are required to be submitted for listing on the Sorbent Product List, and no further action is necessary for use as a sorbent:
  - Feathers, cork, peat moss, and cellulose fibers such as bagasse, corncobs, and straw;
  - Volcanic ash, perlite, vermiculite, zeolite, and clay; and
  - Polypropylene, polyethylene, polyurethane, and polyester.
- If a product consists of one or more natural organic substances, inorganic/mineral compounds, and/or synthetic compounds ***not specifically identified above***, but the manufacturer believes the product meets the definition of a sorbent, then additional data and information is required for listing.

# Contingency Planning and Authorization of Use

Under the NCP, no dispersant or chemical or biological agent may be used on an oil spill unless it is authorized for use by an OSC.

Where and in what quantities a dispersant or other chemical or biological agents may be safely used are to be determined in each case.





The amendments to the Authorization of Use Provisions strengthen the existing planning and authorization framework and:

- Clarify planning and authorization of use responsibilities
- Establish limitations and prohibitions on the use of certain agents
- Establish requirements for storage and agent use
- Clarify authorities for requiring supplemental agent testing, monitoring, and information
- Establish requirements for agent recovery from the environment
- Establish reporting requirements for agent use

These elements will assist OSCs, RRTs, and ACs in their advanced planning activities to better target the use of these products in a response, thereby minimizing the potential adverse environmental effects that may be associated with an oil spill.

# Proprietary Business Information and Public Notification of Agent Use

- When chemical and biological agents are used on oil discharges, it is critically important for the public and all other stakeholders to have information regarding the chemicals being added to the environment, along with information about their toxicity and fate.
- The amendments add further limitations to what information submitters may assert as PBI in an effort to balance public access to information with proprietary business interest.
- The final rule also requires the OSC to notify the public with certain information on the use of chemical and biological agents, including product name, product category, quantity and concentrations used, duration of use, and location(s) of use, and to provide updates during a response as appropriate.

# Part 2: Listing and Authorization Provisions

Workgroup began addressing Listing and Authorization provisions following completion of Monitoring provisions

More Technical and Time-Consuming Effort

- Listing & Authorization Options Selection Meeting: February 2, 2022
- Final Agency Review Meeting: January 26, 2023
- Final Rule submitted to OMB on February 27, 2023
- EPA was under a court order to sign the Final Rule by May 31, 2023
- Federal Register Notice: June 12, 2023
- Final Rule Effective Date: December 11, 2023

# For more information:

- National Contingency Plan Subpart J (including the new Final Rules):
  - <https://www.epa.gov/emergency-response/national-contingency-plan-subpart-j>
- NCP Product Schedule:
  - <https://www.epa.gov/emergency-response/ncp-product-schedule-products-available-use-oil-spills>

