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Government  
Advisory  
Committee**



**MAR 18 2015**

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The Honorable Gina McCarthy

Administrator

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue N.W.

Washington, D.C. 20460

Dear Administrator McCarthy:

On behalf of the Local Government Advisory Committee, we are writing to provide our comments on the U.S. EPA proposed action to amend the requirements in Subpart J of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) that govern the use of dispersants, other chemical and biological agents, and other spill mitigating substances when responding to oil discharges into waters of the United States (U.S.). Local government input on this proposed rule is absolutely critical as the potential for oil spills and other hazardous chemicals can pose significant threat and harm to communities and threaten our water supply.

From a local government perspective, rapid and efficacious response to oil spills and hazardous chemicals should move forward quickly and effectively-without a lot of 'red tape'. The LGAC believes that this rule offers such a streamlined approach by clarifying the safe use of dispersants to aid in local recovery efforts. Importantly, the EPA should also expand local official engagement in pre-planning and decision-making processes. Therefore, the LGAC offers our findings and recommendations on the proposed rule, especially in regard to engagement of local governments in the pre-planning process, response and recovery, along with notifications to the public.

#### **Background**

EPA is seeking to amend the Subpart J regulatory requirements for the *National Contingency Plan (NCP) Product Schedule* (Schedule) by adding new listing criteria, revising the efficacy and toxicity testing protocols, and clarifying the evaluation

criteria for removing products from the Schedule. These proposed changes are aimed to ensure that product manufacturers provide important use and safety information for their use—such as providing efficacy, toxicity, environmental monitoring of dispersants, and other chemical and biological agents, as well as addressing public, state, local, and federal officials' concerns regarding their use. The proposed revisions are intended to encourage the development of safer and more effective spill mitigating products, and if successful target products to reduce the risks to human health and the environment. Furthermore, the amendments are intended to ensure that On-Scene Coordinators (OSCs), Regional Response Teams (RRTs), and Area Committees have sufficient information to support agent preauthorization or authorization use decisions.

The Agency also proposes amended requirements for the authorities, notifications, monitoring, and data reporting when using chemical or biological agents in response to oil discharges to navigable waters of the United States and adjoining shorelines, the waters of the contiguous zone, and the high seas beyond the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act.

#### **LGAC and BP Deepwater Horizon Oil Spill Response-lessons learned**

After the BP Deepwater Horizon oil spill, the LGAC was charged to give advice and recommendations on clean up and recovery efforts of the Gulf Coast Ecosystem Recovery efforts. Specifically, this charge investigated and prioritized issues of local officials regarding clean up and restoration of the Gulf Coast – particularly as it impacted the environmental, public health and economies of communities along the Gulf and elsewhere. To do this, the LGAC conducted a series of meeting with local elected officials, meeting with well over 150 elected officials. The findings and recommendations were formulated in a Report [Title], which was forwarded and utilized by the Gulf Coast Restoration Taskforce (see enclosed). While the scope of this rule, does not address all of the issues we identified in this proposed rule-making, the LGAC strongly believes that it contains many of the viewpoints of local government which could help inform this rule-making process.

#### **LGAC Findings and Recommendations**

*Finding:* The LGAC believes this rule will assist with local emergency planning and response. In addition, the community will be better equipped with adequate information to make informed response decisions in order to protect human health and the environment. The list of potentially affected table of manufacturers and users of chemical and biological agents, and other oil spill mitigating devices and substances used as countermeasures against oil discharges can provide a guide for users to consider regarding entities that potentially could be affected by this action which will aid recovery efforts.

*Recommendation:* The LGAC recommends that the EPA include local elected officials within the decision framework when a dispersant is being authorized for use at the local level. Under the current 300.910(a) regulation, RRTs and the Area Committees (ACs) are required to address, as part of their planning activities, the desirability of using appropriate dispersants, and other chemical or biological agents. The RRTs and ACs generally develop “preauthorization plans” which address the specific context in which products can be used under OSC direction. Preauthorization plans are approved with concurrences from

EPA, Department of Interior (DOI) and Department of Commerce (DOC) natural resource trustees, and the state(s) with jurisdiction over the water to the area, which they apply. When a preauthorization plan approves in advance the use of certain products under specified circumstances, the OSC may authorize the use of the products without obtaining the specific concurrences described elsewhere in that section of the regulation. The LGAC recommends that notification be given to local officials when these dispersants will be used ahead of applications.

*Finding:* The use of chemical or biological agents is only one approach of many available, such as mechanical collection or *in-situ* burning, and decisions about their use should be weighed to achieve greater overall environmental protection- and local officials should be fully engaged in this decision-making.

*Finding:* The LGAC believes that to facilitate the best possible response, it is important that the regional-level and area-level contingency planning efforts of are coordinated closely with state and local officials. Section 300.910(a) authorizes the RRTs to review and either approve, disapprove, or approve with modification the preauthorization plans developed by Area Committees that addresses dispersants or other spill mitigating substances. This advanced planning has allowed the OSC to authorize the use of products without obtaining the specific concurrences, if the RRT representatives from EPA and the states with jurisdiction over waters to which a preauthorization plan applies, and DOC and DOI natural resource trustees approve their use in advance. The OSC primarily uses the Schedule to confirm if a product is listed, analyze toxicity and efficacy data, note worker health and safety precautions, understand proper product application, and compare one product to another in order to make the most informed decision on how to mitigate an oil discharge. Again, local officials should be informed of these precautions.

*Recommendation:* The LGAC recommends that local officials be informed and consulted at the regional and area level contingency planning when these dispersants and other spill mitigating substances will be used.

*Finding:* The LGAC acknowledges that the AC responsibilities include enhanced contingency planning; ensured preplanning of joint federal, state, and local response efforts; and expedited decisions on the use of dispersants and other spill mitigating devices and substances. The Area Contingency Plan (ACP) must list the equipment, dispersants or other spill mitigating substances, and personnel available to ensure effective and immediate removal of a discharge. ACPs must also ensure the mitigation or prevention of a substantial threat of a discharge; provide a description of the procedures to be followed for obtaining an expedited decision regarding the use of dispersants (which may be addressed in applicable preauthorization plans); and identify the means to monitor use of chemical countermeasures. Many coastal ACPs include some type of preauthorization zones for dispersants, while most Regional Contingency Plans (RCPs) address other product categories, such as bioremediation and surface washing agents. RRTs, in cooperation with the states and federal agencies, have addressed the requirements for the conduct of *in-situ* burns (ISB) of oil discharges in their RCPs. This planning has allowed consideration of chemical agent use on oil discharges as a viable response tool in combination with other mitigation measures.

*Recommendation:* As local officials, these decisions which impact our citizens' health, well-being and safety are our primary concern. The use of any dispersant or new technology for retrieval or proper disposal have immediate impacts to the community and the public health. Therefore, local officials should be engaged in this process of selection alternatives.

*Recommendation:* Oil spills threaten valuable water resources or potential food supply and economic well-being. These incidents have potential large scale impacts, especially to coastal communities. Low income, disadvantaged, minority and rural and small communities may have disproportionate impacts from exposure from the oil or hazardous material and the dispersants used to mitigate the environmental harm. For example, some communities are subsistence fishing communities, and their food source and economy could be dependent on a healthy and safe fishery. The use of chemical dispersant could directly impact their livelihood. Conversely, a decision to not use a dispersant could also negatively impact these communities. Likewise, the public health risks of EJ communities should be considered and long-term cumulative impacts of these chemicals and their toxicity along with risk factors should be considered.

*Recommendation:* The LGAC acknowledges that the proposed amendments are aimed toward ensuring that chemical and biological agents are effective and not toxic, and that product manufacturers provide important use and safety information. The LGAC recommends that adequate precautions and disclosure follow so that responders are equipped with the proper information to authorize and use the products in a safe and effective manner.

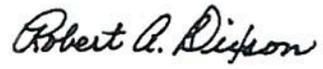
*Recommendation:* Therefore, the LGAC strongly recommends that an EJ Analysis be conducted to determine what the potential considerations might be for EJ communities and what issues should be balanced and weighed within considerations of a final rule.

### **In Summary**

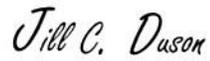
The LGAC believes that the EPA proposed Dispersant rule will provide a more streamlined upfront planning process to aid in clean up and recovery of oil spills and other hazardous chemicals. Local officials should be involved at all levels in the pre-planning process and selection for the best methodology- as the impacts will be directly effecting the community. In addition, local resources could also be potentially engaged and more closely coordinated. Local officials have the tools and methods of communicating with the public and issuing any necessary bulletins. Additionally, local governments are the first responders and need to be engaged to successfully manage contingency planning.

The LGAC believes that the EPA is looking at the best scientific information to minimize environmental harm and to guard public health. We look forward to working with the EPA on ways to work hand in hand at all levels of government to ensure that response decisions regarding dispersants do as they are intended-minimize the impact and harm to all our citizens and to the environment. The LGAC appreciates the opportunity to comment on this important rule.

Sincerely,



Mayor Robert Dixon  
Chair



Councilor Jill Duson  
Chairwoman, Cleaning Up Our Communities  
Workgroup



Susan Hann  
Chairwoman, Protecting America's  
Waters Workgroup

Enclosure

