Dear Director Jillings,

I am writing on behalf of The ALERT Project (ALERT), which is a project of Earth Island Institute, a nonprofit organization based in Berkeley, California. We are concerned that one of the exemptions to OSHA Part Number 1904 “Recording and Reporting Occupational Injuries and Illnesses,” Subpart C Record Keeping Forms and Recording Criteria,” Standard Number 1904.5 “Determination of Work-Relatedness” fails to adequately ensure that employers accurately record and report work-related illnesses associated with oil-chemical exposure [29 U.S.C. § 657(c)(2)].

Specifically, we request clarification of 1904.5(b)(2)(viii), an exemption to recording and reportability of an illness, which states an employer is “not required to record illnesses or injuries if… [t]he illness is the common cold or flu.” Based on our experience,¹ some illnesses caused by oil-chemical exposure are most likely being misclassified as the common cold or flu because the initial symptoms for oil-chemical exposure mimic colds and flu.

**Question 1:** How does OSHA define the common cold and flu in 1904.5(b)(2)(viii)?

**Question 2:** How should employers determine whether the common cold and flu is the source of an employee’s illness, and thus exempt from recording and reporting requirements?

**Question 3:** How should employers handle a work-place exposure that can cause illness that mimics the symptoms of the common cold and flu?

We look forward to your reply. If anyone wishes to discuss this further, please contact me.

Sincerely,

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¹ Please see Attachment A for a summary of the experience we have with symptoms associated with oil-chemical exposure.
Experience: In 1989, Exxon Valdez oil spill response (EVOS workers called the ubiquitous cold- and flu-like symptoms among frontline workers "the Valdez Crud." I personally witnessed this as I was commercial fishing in Prince William Sound and living in Cordova, Alaska, at the time. Exxon-run clinics logged 6,722 cases of respiratory illnesses among Exxon oil spill workers – roughly half of the workforce.2

The 1991 NIOSH Health Hazard Evaluation on the EVOS noted “the awareness of the dramatic increase in upper respiratory tract illnesses among workers and residents of Valdez led to intensified efforts by the Alaska Department of Health to ascertain the viral etiology of this illness and helped to calm fears that these respiratory conditions represented toxic effects of petroleum volatiles and the by-products of incinerated waste collected from the cleanup” (p. 23). However, the State of Alaska never found a bacterial or viral agent associated with the alleged cold and flu symptoms. NIOSH concluded, “Based on available data, there is no basis for recommending long term medical surveillance of the health of the workers involved in the cleanup of the oil spill” (emphasis added, NIOSH never subpoenaed Exxon’s medical records) (p. 24).3

In 2001, investigative reporters linked the EVOS cold/flu outbreak and symptoms with long-term illnesses and deaths and the story went worldwide.4

In 2002, I partnered with Alaska Community Action on Toxics to conduct an informal pilot survey to investigate long-term health impacts of EVOS contract workers. During one interview – I’ll never forget – one man mused after our interview, "I thought I had the Valdez Crud in 1989. I didn’t think I’d have it for 13 years.”

In 2003, our former summer intern conducted a formal survey for her master’s thesis at Yale University.5 She found, “EVOS workers who conducted jobs with high oil exposure or reported exposure to oil mists, aerosols, or fumes during cleanup work have a greater prevalence of symptoms of chronic airway disease than workers with less exposure. Nonsmokers with high oil exposure have significantly greater prevalence of symptoms of chronic bronchitis than nonsmokers with less oil exposure. High oil exposure was also associated with a greater prevalence of symptoms of neurological impairment, as well as with symptoms of multiple chemical sensitivity. Moderate chemical exposure was also

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associated with a greater reported prevalence of chronic airway disease and symptoms of multiple chemical sensitivity.”

In 2004, I published Exxon’s data and the relevant Alaska Dept. of Labor records in my book, Sound Truth and Corporate Myth$ (see Figure 2, p. 57, and Appendix A, p. 450–454). In 2010, the BP Deepwater Horizon oil spill (DWHOS) workers called the same ubiquitous cold- and flu-like symptoms “the BP Syndrome.” The same questions about worker health arose again because the government and industry had not followed up with research on long-term health problems among EVOS workers. But no cases of respiratory illness were reported, likely because employers relied on the common colds and flu exemption from occupational injury and illness recording and reporting requirements, which was published as a final rule on January 19, 2001. However, this time the early symptoms were noted by the public because coastal residents including children across four states in the oil-impacted region also experienced identical symptoms as the workers.

In the ensuing public uproar, BP was forced to list as compensable many of the illnesses linked with initial oil-chemical exposures in the 2012 BP-Plaintiffs Medical Benefits Settlement (Exhibit 8, Table 1). Acute specified physical conditions included acute rhinosinusitis, acute tracheobronchitis, acute exacerbation of pre-existing asthma and COPD, and acute pharyngitis (throat irritation), among other symptoms (Table 1). Description of these symptoms included nasal congestion, nasal discharge or post-nasal drip; headache, facial pain/pressure or sinus pain; decreased sense of smell; cough; sputum production; wheezing; or shortness of breath. Chronic specified physical conditions included chronic rhinosinusitis and reactive airways dysfunction syndrome (irritant-induced asthma) (Table 3).

In 2011, NIOSH published it Health Hazard Evaluation of the BP DWHOS. In many of the surveys that were conducted, the most frequently reported symptoms were headache, upper respiratory symptoms (i.e., “cold and flu” symptoms) and symptoms consistent with heat stress. Workers who reported exposures to oil and dispersant reported higher prevalences of all types of symptoms compared to workers who were not exposed.

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7 Wang M. Health effects after Exxon Valdez went unstudied. Propublica, June 30, 2010.


In the decade-plus since the BP DWHOS, a significant body of scientific literature now confirms acute and chronic harm from oil-chemical exposures during oil spills. Literature reviews identify a suite of common acute symptoms of oil spill exposure including cold and flu-like symptoms, eye irritation, headache, nausea, dizziness, tiredness or fatigue, and skin rashes and lesions.\textsuperscript{12} Field and lab studies identified inhalable oil mists (liquid droplets), chemically-dispersed oil aerosols (liquid droplets and small particles), and secondary organic aerosols,\textsuperscript{13} which can travel long distances and penetrate deeply into human lungs\textsuperscript{14} but are not accounted for with traditional analytical methods.\textsuperscript{15} Clinical and lab studies reveal mechanisms of action and disease pathogenesis, progressing from molecular and cellular effects to organ dysfunction and systemic effects – respiratory disorders, genotoxic effects, and endocrine abnormalities.\textsuperscript{16} Epidemiology studies confirm long-term
respiratory diseases and document long-term neurological and cardiovascular damage, blood disorders, and cancers. All of these harms have latency periods that extend well


McGowan CJ, Kwok RK, Engel LS, Stenzel MR, Stewart PA, Sandler DP. Respiratory, dermal, and eye irritation symptoms associated with Corexit™ EC9527A/EC9500A following the BP DHOS: Findings from the GuLF STUDY. *Environ Health Perspect*. **2017** Sep, 125(9): 097015. doi: 10.1289/EHP1677


beyond the 7- to 10-day lifecycle of the common cold and flu. A person simply does not have symptoms of a common cold for months, years, or decades.


