DATE, 2024

Washington Department of Ecology

Attn: Carlos Clements, Program Manager, Oil Spill Prevention and Response

EMAIL: [carlos.clements@ecy.wa.gov](mailto:carlos.clements@ecy.wa.gov)

Request adoption of three measures during the current revisions to the Area Contingency Plans (ACPs) to ensure oil spill response plans work as intended and do not cause more harm, specifically:

(1) Establish Worker Health Monitoring Units as part of ACPs, as recommended by the RRT 10/NWAC 2023 Health and Safety Task [Force;](https://alertproject.org/wp-content/uploads/2024/02/HSTF-report-20230214-1.pdf)

(2) Establish Public Health Assessment Units as part of ACPs, as recommended by the RRT 10/NWAC 2023 Health and Safety Task Force; and

(3) Create a Regional Citizens’ Advisory Council as an independent support function for Area Committees as allowed by the Oil Pollution Act of 1990 and recommended by the President’s Commission on the Deepwater Horizon.

Dear Mr. Clements,

We are writing regarding the current U.S. Coast Guard (USCG)-driven reorganization of the Northwest Area Plan into USCG sector Area Contingency Plans (ACPs). Our Washington-based organizations represent residents who depend on a healthy ocean for environmental, economic, and personal reasons. Under federal direction, the ongoing reorganization of ACPs is being treated as a simple rearrangement of existing plans into separate plans for each sector. This treatment replicates past practices and omissions into multiple new plans, and it ignores new scientific information and revised regulations that should be used to update plans during the reorganization process. All the pieces are in place to update plans to better protect first responder health, public health and welfare, and the environment. We are asking you to put them together as part of the ACP reorganization process.

As the lead agency for Washington on oil spill prevention, preparation, and response, you and your team are responsible for developing, implementing, and updating ACPs in collaboration with federal partners. We present each of our three requests as opportunities to update the plans.

The justification for establishing a worker health monitoring unit and a public health assessment unit is found in the final report of the 2023 Health and Safety Task Force, chartered by Regional Response Team (RRT) 10 and the Northwest Area Committee.[[1]](#footnote-1) The report found that health monitoring protocols do not adequately protect professional or citizen responders, as evidenced from the post-Deepwater Horizon disaster lab, clinical, and epidemiology studies, the latter involving USCG and citizen responder study populations, respectively. It also described actions by federal and state agencies to act on this new information to minimize harm to human health during oil spills and all-hazard disasters.

These units would build on the work of others as the foundation for establishing these health protection units already exists. The Health and Safety Task Force 2024 report provides the following examples.

* Concentration-based health monitoring (using Permissible Exposure Limits) is unreliable: The Occupational Health and Safety Administration (OSHA) revised its Hazard Communication standard (§ 1910.1200) in 2012 to recognize certain categories of health hazards as chemicals (or mixtures that include these chemicals) as exceptions to the rule of concentration-based health monitoring and to require the more reliable and critical symptom-based health monitoring in the presence of such chemicals or mixtures.
* Symptom-based health monitoring is reliable: In 2012, the National Institute of Occupational Health and Safety (NIOSH) developed, and described how to implement, a protocol for emergency responders, using symptom-based health monitoring in real-time and surveillance for long-term health monitoring. The National Response Team, comprised of 15 federal agencies, including the USCG and OSHA, recommended its use. There is even a NIOSH-sponsored training program to support use.
* There are validated surveys to support symptom-based monitoring: In 2021, teams of scientists found the immunology-based biomechanism that triggers symptoms at very low levels of exposure to health hazards, and they developed validated and nonintrusive symptom-based survey tools that provide rapid results critical for real-time health monitoring and long-term tracking.
* A Public Health Assessment Unit is already in place for oil spill response in California:

RRT 9 and California state and local officials developed and implemented a Public Health Assessment Unit in 2021 that retains state control of public health but integrates the unit into the disaster response framework to allow expenses to be reimbursed. The unit does not yet include symptom-based human health monitoring.

The Health and Safety Task Force also did the heavy lift of analyzing where and how to fit the health units and the symptom-based surveys into various sections of the Northwest Area Plan (see Appendix D, pp. 103–108). The recommendations are a direct fit into the USCG template for content of the revised plans. In short, *this is the perfect opportunity* to develop and implement worker and public health units now, as part of ACPs, during the reorganization process.

The justification for establishing a Regional Citizens’ Advisory Council is found in the Oil Pollution Act of 1990 (USC § 2732) and the 2011 report by the President’s Commission on the Deepwater Horizon. The Commission found that “each Coast Guard sector is an “Area” with an Area Contingency Plan created by relevant state and federal agencies,” and that the Coast Guard’s failure to actively engage state and local officials in the development of ACPs undercut the efficacy of the overall response during the BP disaster.[[2]](#footnote-2) The Commission recommended:

“[To close a] critical… gap in the government’s existing response capacity… EPA and the Coast Guard should bolster state and local involvement in spill planning and response similar to the Regional Citizens’ Advisory Councils mandated by the Oil Pollution Act of 1990.”[[3]](#footnote-3)

This recommendation is driving the USCG reorganization of ACPs into sectors. Why not also the formation of Regional Citizens’ Advisory Councils to serve the Area Committees that are tasked under law to develop ACPs?[[4]](#footnote-4) The Commission specifically discussed ACPs and Regional Citizens’ Advisory Councils, because both are needed.

Citizens’ councils serve a different function than ACPs.[[5]](#footnote-5) They provide science and technical support for the Area Committees. They conduct the research, environmental monitoring, and thorough contingency plan reviews needed to demonstrate safe environmental practices.[[6]](#footnote-6) They generate quality, area-specific information to make informed decisions in developing and updating ACPs, and they provide a critical feedback loop to determine if ACPs work as intended.

Congress established these citizens’ councils to counter government-industry complacency and to reduce controversy by involving local citizens in the process of preparing, adopting, and reviewing oil spill contingency plans. Congress was serious: It tied the annual funding for the Alaska programs to approval of contingency plans required of plan holders in the regions where the RCACs were established.[[7]](#footnote-7)

We are asking you to adapt and apply this model citizens’ council here in Washington. The next generation citizens’ council could conduct the supplemental testing for use of dispersants and other products to determine what products can be used safely in state and adjacent federal waters with species of concern. The council could also be tasked with conducting baseline and post-event surveys for public health monitoring to determine location and needs of vulnerable populations during and after an oil spill to support the Public Health Assessment Units, as recommended by the 2023 Health and Safety Task Force.[[8]](#footnote-8)

[ALERT’s report](https://alertproject.org/wp-content/uploads/2024/02/ALERT240212-Opportunity-FINALrev.pdf) and the [2024](https://alertproject.org/wp-content/uploads/2024/08/EPA-DELIST-petition-FINAL-1.pdf) final report of the Health and Safety Task Force are incorporated by reference as support for our requests of the Washington Department of Ecology Oil Spill Prevention and Response Program to adopt three measures—Worker Health Monitoring Units, Public Health Assessment Units, and a Regional Citizens’ Advisory Council—during the current revisions to the Northwest Area Plan to ensure oil spill response plans work as intended and do not cause more harm.

Sincerely,

The ALERT Project

Riki Ott

Director

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Others invited…

1. Regional Response Team 10/Northwest Area Committee (RRT 10/NWAC), 2024. Report of the 2023 Health & Safety Task Force. <https://www.rrt10nwac.com/> [↑](#footnote-ref-1)
2. National Commission, 2011, at 139 (each sector) and 268 (undercut the efficacy). [↑](#footnote-ref-2)
3. National Commission on BP *Deepwater Horizon* and Offshore Drilling. 2011. *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling. A Report to the President*. <https://nrt.org/sites/2/files/GPO-OILCOMMISSION.pdf>, at 265 (critical issues or gaps) and 268 (recommendation C:3). [↑](#footnote-ref-3)
4. 33 USC § 1321(j)(4)(B)(i). [↑](#footnote-ref-4)
5. For more information on the history and function of ACPs and Regional Citizens’ Advisory Councils, see ALERT, 2024, An Opportunity to Make It Right. Relating to the Policy and Science of Oil Spills, Dispersant Use, and Human Health. <https://alertproject.org/wp-content/uploads/2024/02/ALERT240212-Opportunity-FINALrev.pdf> [↑](#footnote-ref-5)
6. 33 USC § 2732(d)(6). [↑](#footnote-ref-6)
7. 33 USC §2732(k). OPA required funding for each RCAC to be provided by owners and operators of oil facilities and tankers: “Approval of the contingency plans required of owners and operators of the Cook Inlet and Prince William Sound terminal facilities and crude oil tankers while operating in Alaskan waters in commerce with those terminal facilities shall be effective only so long as the respective Association and Council for a facility are funded…”. [↑](#footnote-ref-7)
8. Regional Response Team 10/Northwest Area Committee (RRT 10/NWAC), 2024. Report of the 2023 Health & Safety Task Force. <https://www.rrt10nwac.com/> [↑](#footnote-ref-8)