DATE, 2024

Texas Commission on Environmental Quality

Attn: Kelly Keel, Executive Director

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Request adoption of three measures during the current revisions to the Area Contingency Plans (ACPs) and Regional Contingency Plans (RCPs) to update Plans, specifically:

1. Worker health monitoring units to minimize harm to emergency responders;
2. Public health assessment units to integrate public health into the National Contingency Plan (NCP); and
3. Regional Citizens’ Advisory Councils to strengthen local involvement.

Dear Executive Director Keel,

 We are writing you, as the lead agency for Texas on oil spill prevention, preparation and response, regarding the current U.S. Coast Guard (USCG)-driven reorganization of the Area Contingency Plans (ACPs) into USCG sector ACPs and the new Regional Contingency Plans (RCPs) that will result from this reorganization. You and your teams are responsible for developing, implementing, and updating ACPs in collaboration with federal partners in EPA Region VI, which includes the State of Texas.

 Our Texas-based organizations and/or members represent residents who depend on a healthy ocean for environmental, economic, and personal reasons. During a large oil spill, some of our members would serve—or have served—as citizen responders or volunteers to assist with spill response. We live with the toxic consequences of products used during oil spill response. We ask for accountability.

 Under federal direction, the ongoing reorganization of ACPs is being treated as a simple rearrangement of existing plans into separate ACPs for each sector and new RCPs for each region. 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 area and regional contingency plans (“Plans”) to better protect first responder health, public health and welfare, and the environment.

 We ask you—and lead agencies in other coastal states in Region VI and nationwide—to carefully review the entirety of Chapter 4: Area Contingency Planning Policy of the USCG Commandant Change Notice 16000 to understand the full implications *to states* of this USCG-driven reorganization.[[1]](#footnote-1) Further, we ask you to coordinate with the federal agencies to update the Plans to include the following three state-driven measures, as part of the ongoing reorganization process to be completed by October 2026.

*Symptom-Based Exposure Assessment and Health Monitoring Units*

 After the BP Deepwater Horizon disaster, it was widely recognized that people from professional responders to the exposed public were getting sick at levels of exposure to toxic chemicals that were previously thought to be “safe” (i.e., of a low health hazard risk). Consequently, federal agencies took steps to minimize harm to professional emergency responders in future all-hazard disasters.

However, to address worker and public health during a Spill of National Significance, as recommended by the National Commission on the Deepwater Horizon,[[2]](#footnote-2) ACPs and RCPs must also address human health impacts at the state/local and regional levels since spill preparation and response cascades outward from ACPs. The U.S. Occupational Safety and Health Administration (OSHA) and states with OSHA-approved plans have jurisdiction for worker health, while states have jurisdiction for the public health of their residents. Therefore, it falls to the state lead agencies, OSHA, and agencies within the Department of Health and Human Services (DHHS) to make sure human health protections are integrated into the current reorganization process as actionable health monitoring units.

These health monitoring units would build on existing health protection regulations and programs already recommended or established by federal or state agencies or academic institutions. For example:

* Concentration-based exposure assessment (using Permissible Exposure Limits) is unreliable: OSHA revised the 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 risk assessment and to require the more reliable and critical symptom-based exposure assessment and health monitoring when such chemicals or mixtures are known or anticipated to be present.
* Symptom-based exposure assessment is reliable: In 2012, the National Institute of Occupational Health and Safety (NIOSH) developed a detailed protocol for all emergency responders and post-emergency workers, using symptom-based exposure assessment for monitoring and surveillance.[[3]](#footnote-3) NIOSH maintains a training program to support use. The National Response Team (NRT), comprised of 15 federal agencies, including the USCG, OSHA, and DHHS recommends its use.
* Some States and RRTs have cooperatively developed or are developing worker and public health assessment units:
* RRT 10 and the Northwest Area Committee (Washington, Oregon, and Idaho) chartered a 2023 Health and Safety Task Force to determine what, if anything, could be done to improve health protection for emergency responders, post-emergency workers, and the public. In its final report,[[4]](#footnote-4) the Task Force recommended developing and implementing a Worker Health Monitoring Unit and a Public Health Assessment Unit within the NCP as part of the Incident Command System and, also, rewriting all the health and safety messaging for workers and the public regarding exposure to dispersants and oil spills to reflect known human health impacts.[[5]](#footnote-5) The Task Force also recommended where to fit the health monitoring units, symptom-based health surveys, and safety messaging into various sections of the Northwest ACP (Appendix D).[[6]](#footnote-6)
* RRT IX (9) and California state and local officials developed and piloted a Public Health Assessment Unit in 2015–2021 that retains state control of public health and is integrated into the disaster response framework to allow expenses to be reimbursed. The unit does not yet include symptom-based exposure assessment or health monitoring.[[7]](#footnote-7)
* There are validated surveys to support symptom-based health assessment and monitoring: In 2021, teams of scientists found the immunology-based biomechanism that triggers symptoms at very low levels of exposure to health hazards and can lead to respiratory and/or skin sensitization and/or neurological sensitivity to light, sound, touch, and chemical odors.[[8]](#footnote-8) They developed and validated nonintrusive symptom-based survey tools that provide rapid results critical for real-time health monitoring and long-term tracking.[[9]](#footnote-9)
* The need to update health and safety messaging for workers and the public is urgent: Post-BP Deepwater Horizon disaster studies found that the widely used Corexit dispersants are potent respiratory and skin sensitizers, carcinogens that trigger multiple cancer pathways, and teratogens that disrupt development of fetuses, and can cause specific target organ toxicity to the blood, respiratory, cardiovascular, and peripheral and central nervous systems.[[10]](#footnote-10) None of this is reflected in current government and industry safety messaging, which still claims (falsely) that these products are as safe as common household cleaning products and exposure risk is minimal.[[11]](#footnote-11)

As previously stated, the logistics for conducting human health assessment falls to states for public health and to federal OSHA for workers and states that have OSHA-approved plans. Therefore, it falls to the state lead agencies for oil spill response, OSHA, and DHHS to take the lead on human health issues during the current reorganization process.

*Regional Citizens’ Advisory Councils*

In its final report, the National Commission on the Deepwater Horizon found 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 disaster response.[[12]](#footnote-12) To close this critical gap in the government’s existing response capacity, the Commission recommended “C3: 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.”[[13]](#footnote-13)

ACPs are not Regional Citizens’ Advisory Councils (RCACs or “Citizens’ Councils”). The Oil Pollution Act specifically established ACPs and RCACs, because both are needed for efficient and effective ACPs that work as intended and do no more harm. The current reorganization of ACPs does not address the National Commission’s Recommendation C3, but it provides an opportunity to do so.

RCACs serve a different function than ACPs.[[14]](#footnote-14) 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.[[15]](#footnote-15) They generate quality, area-specific information for Area Committees and RRTs to make informed decisions in developing and updating ACPs and RCPs, and they provide a critical feedback loop to determine if the Plans work as intended.

 We are asking you and your teams to coordinate with other coastal states in EPA Region VI and nationwide to adapt and apply this model citizens’ council to serve the Region’s States, Area Committees, and RRT via its state representatives. The next generation RCACs should be tasked with, at a minimum:

* 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 [§ 300.910(g)];
* 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; and
* thorough reviews of industry and government contingency plans in the regions under their associated RRT’s jurisdiction.[[16]](#footnote-16)

 To perform these critical functions, the RCACs must be autonomous, able to act free of outside control. The Oil Pollution Act recognized this when it made the original RCACs self-governing,[[17]](#footnote-17) restricted federal and state agencies to nonvoting membership,[[18]](#footnote-18) and prohibited industry participation.[[19]](#footnote-19)

 In contrast and of grave concern to us, the USCG Commandant Instruction created a workaround of the Federal Advisory Committee Act, which prohibits industry representatives from holding Area Committee membership. The Commandant Instruction notes, “however, industry participation in Area Committee meetings is invaluable.”[[20]](#footnote-20) The workaround allows Area Committees to establish subcommittees that specifically include industry participation:

“Subcommittee participants include individuals such as facility and vessel owners/operators, spill cleanup contractors, emergency response officials, marine pilots, local chemical manufacturers, salvage and marine fire-fighting entities, and members of other qualified organizations from the local community, such as Non-Governmental Organizations (NGOs).[[21]](#footnote-21)

 To be clear, RCACs are not meant to be a function of subcommittees or special Task Forces that serve Area Committees. To close a critical gap in national preparedness and fulfill the National Commission’s Recommendation C3, the States must create RCACs as stand-alone, autonomous entities *accountable to states*. For example, the Oil Pollution Act required funding for each RCAC to be provided by owners and operators of oil facilities and tankers in the region of operation.[[22]](#footnote-22) The same opportunity should be afforded states, as part of their *required* oil spill response preparation and planning.

 Our requests are urgent. As concerned citizens who must live with the toxic consequences of oil spills and products used during a response, we ask our State to tap into the networks of non-governmental, non-industry affiliated organizations in coastal states, inviting us to be part of preparing effective, efficient oil spill response plans that work as intended and do no more harm. This is what community resiliency looks like. It is the missing core of national preparedness. Anything less will fall short of the mark.

Sincerely,

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1. 2018. U.S. Coast Guard Marine Environmental Response and Preparedness Manual. COMDTINST M16000.14A 26 Sept 2018. <https://media.defense.gov/2022/Nov/17/2003116850/-1/-1/0/CIM_16000_14A.PDF> [↑](#footnote-ref-1)
2. 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>. Recommendation E3, at 139. [↑](#footnote-ref-2)
3. National Response Team, 2012. Emergency Responder Health Monitoring and Surveillance (ERHMS) Technical Assistance Document, 1/26/2012. <https://www.nrt.org/sites/2/files/ERHMS_Final_060512.pdf> [↑](#footnote-ref-3)
4. Regional Response Team 10 and Northwest Area Committee, 2024. Final report of the 2023 Health and Safety Task Force. March. <https://www.rrt10nwac.com/> [↑](#footnote-ref-4)
5. The 2023 Health and Safety Task Force also recommended systemic revisions to the OSHA HAZWOPER regs and the Washington State Code for emergency responders to support symptom-based exposure assessment and health monitoring. Suggested language is in Appendices F and G, respectively. [↑](#footnote-ref-5)
6. If some of this material moves to RCPs during the reorganization process, the ACPs will need to reference the RCPs and have enough content into them to alert state lead agencies that the policy exists and where the agencies can get the tools and resources to implement these updates. [↑](#footnote-ref-6)
7. See note 4, Final report of the 2023 Health and Safety Task Force for more information. [↑](#footnote-ref-7)
8. Masri S, et al., 2021. Toxicant-induced loss of tolerance for chemicals, foods, and drugs: Assessing patterns of exposure behind a global phenomenon. *Environ Sci Eur* 33:65. <https://doi.org/10.1186/s12302-021-00504-z>

Miller CS, Palmer RF, Dempsey TT, *et al.* 2021. Mast cell activation may explain many cases of chemical intolerance. *Environ Sci Eur.* 33, 129. <https://doi.org/10.1186/s12302-021-00570-3> [↑](#footnote-ref-8)
9. Hoffman Program for Chemical Intolerance. Online. University of Texas Health–San Antonio. Chemical intolerance self-assessment. <https://tiltresearch.org/self-assessment/> [↑](#footnote-ref-9)
10. The ALERT Project and the Government Accountability Project, 2024. Petition requesting EPA to remove Corexit 9527A and Corexit 9500A from the NCP Product Schedule pursuant to 40 CFR § 300.970. <https://alertproject.org/wp-content/uploads/2024/08/EPA-DELIST-petition-FINAL.pdf> [↑](#footnote-ref-10)
11. Ibid. The manufacturer of Corexit products discontinued making and selling its dispersants in November 2022, likely to avoid truthfully reporting of known or anticipated human health impacts of its products under EPA’s new rule promulgated in June 2023. See Corexit Environmental Solutions. Announcement. January 20, 2023. <https://alertproject.org/wp-content/uploads/2024/04/corexitenviro.pdf> [↑](#footnote-ref-11)
12. See note 2, National Commission, 2011, at 265. [↑](#footnote-ref-12)
13. Ibid., at 268–269, citing authority in 33 USC § 1321. [↑](#footnote-ref-13)
14. 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, at 28–39. <https://alertproject.org/wp-content/uploads/2024/02/ALERT240212-Opportunity-FINALrev.pdf> [↑](#footnote-ref-14)
15. 33 USC § 2732(d)(6). [↑](#footnote-ref-15)
16. See note 2, National Commission, at 133. The Commission described BP’s response capacity as “underwhelming” and “embarrassing,” the latter in reference to the listing of Gulf walruses and seals as species of concern in its clearly unreviewed and rubber-stamped contingency plans. [↑](#footnote-ref-16)
17. 33 USC § 2732(d)(2)(B). Non-voting members. [↑](#footnote-ref-17)
18. 33 USC § 2732(d)(4). Self-governing. [↑](#footnote-ref-18)
19. 33 USC § 2732(d)(5). Dual membership and conflicts of interest prohibited. [↑](#footnote-ref-19)
20. See note 2, COMDTINST M16000.14A 26, Chapter 4, Area Contingency Planning Policy: B.4. Area Committee Composition and Membership, at 4-2 (prohibits industry representatives…). [↑](#footnote-ref-20)
21. Ibid. Chapter 4, B.6. Establishment of Subcommittees, at 4-3 (allows industry members), at 4-2, quote at (b). [↑](#footnote-ref-21)
22. 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-22)