

December 5, 2024

Washington Department of Ecology
Oil Spill Prevention and Response
Attn: Carlos Clements, Program Manager
EMAIL: carlos.clements@ecy.wa.gov

Oregon Dept. of Environmental Quality
Emergency Response
Attn: Wis Risher, Program Manager
EMAIL: wes.risher@deq.oregon.gov

Alaska Dept. of Environmental Conservation
Division of Spill Prevention and Response
Attn: Teresa Melville, Director
EMAIL: teresa.melville@alaska.gov

Idaho Military Division
Idaho Office of Emergency Management
Attn: Brad Richy, Director
EMAIL: brichy@imd.idaho.gov

Request adoption of three *state-driven* 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 Messrs. Clements, Risher, and Richy, and Ms. Melville,

We are writing you, as the lead agencies for Washington, Oregon, Idaho and Alaska, 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 10.

Our organizations represent Washington, Oregon, Idaho, and Alaska 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.

We request that you and your teams use the US Coast Guard-driven reorganization process as an opportunity to update the “Plans” (ACPs and RCPs) within the new structure. Since

this “is the first major overhaul of ACP structure in over 25 years,”¹ it seems appropriate to concurrently address two recommendations in the final report of the National Commission on the Deepwater Horizon (“National Commission”) that are relevant to *local* spill response preparation and planning and, therefore, also *national* preparedness, namely:

“Recommendation E3: EPA should develop distinct plans and procedures to address human health impacts during a Spill of National Significance.”

“Recommendation C3: EPA and the Coast Guard should bolster state and local involvement in oil spill contingency planning and training and create a mechanism for local involvement in spill planning and response similar to the Regional Citizens’ Advisory Councils mandated by the Oil Pollution Act of 1990.”²

Under US Coast Guard 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 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.³ Further, we ask you to coordinate with the federal agencies in Region 10 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

To address worker and public health during a Spill of National Significance, as recommended by the National Commission on the Deepwater Horizon, ACPs and RCPs must also

¹ 2023. US Coast Guard. Commandant. Release of new coastal zone area contingency plan architecture. Marine Safety Information Bulletin MER-MSIB: 12-23. October 10, 2023. https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/MSIB/2023/MSIB-12-23_New_Coastal_ACP_Architecture.pdf

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*, at 278 (E3) and 268 (C3). <https://nrt.org/sites/2/files/GPO-OILCOMMISSION.pdf>

³ 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

address human health impacts at the state/local and regional levels since *spill preparation and response cascades outward from ACPs*. States have jurisdiction for public health. The U.S. Occupational Safety and Health Administration (OSHA) and states with OSHA-approved plans have jurisdiction for worker health.

After the BP Deepwater Horizon disaster, federal agencies took steps to minimize harm to *professional* emergency responders in future all-hazard disasters. In 2012, OSHA recognized certain categories of health hazards—carcinogens, germ cell mutagens, and teratogens—have no “safe” levels, and it required *mandatory symptom-based health hazard criteria* to accurately assess the exposure hazard and health risk when such health hazards were known or anticipated to be present.⁴ Then the National Institute of Occupational Health and Safety (NIOSH) developed ground-breaking protocol with *symptom-based* exposure assessment for health monitoring and surveillance of emergency responders and other workers on-site.⁵ NIOSH maintains a training program to support use. The National Response Team (NRT), comprised of 15 federal agencies including the USCG and OSHA, recommends its use.

More recently, Regional Response Teams (RRTs) and states took steps to do the same for emergency responders *and the public*. A Health and Safety Task Force, chartered by RRT 10 and the Northwest Area Committee (Washington, Oregon, and Idaho) in 2023, recommended developing and implementing a Worker Health Monitoring Unit and a Public Health Assessment Unit within the NCP as part of the Incident Command System⁶ and, also, rewriting all the health

⁴ §1910.1200 Appendix A Health Hazard Criteria – Mandatory. <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1200>

Serendipitously in 2021, after over 30 years of work towards this end, teams of scientists found the immunology-based biomechanism that triggers health symptoms at very low levels of exposure and/or repeated of exposure to health hazards and that can lead to hypersensitivity (that is loss of tolerance) to light, sound, touch, and chemical odors. They also developed and validated nonintrusive symptom-based survey tools that provide rapid results critical for real-time health monitoring and long-term tracking.

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>

Hoffman Program for Chemical Intolerance. Online. University of Texas Health–San Antonio. Chemical intolerance self-assessment. <https://tiltresearch.org/self-assessment/>

⁵ 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

⁶ Regional Response Team 10 and Northwest Area Committee, 2024. Final report of the 2023 Health and Safety Task Force. March. <https://www.rrt10nwac.com/>

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.

and safety messaging for workers and the public regarding exposure to dispersants and oil spills to reflect known human health impacts.⁷ Also, 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 and integrates the unit into the disaster response framework to allow expenses to be reimbursed. The unit does not yet include symptom-based exposure assessment or health monitoring.

It falls to state lead agencies, OSHA, and agencies within the Department of Health and Human Services (DHHS) to use these resources to build out and integrate actionable health monitoring units for workers at emergency response sites and the exposed public. The bulk of the 2023 Health and Task Force recommendations would likely be in the RCPs, which are somewhere between policy and guidance. The ACPs will need to reference the RCP 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 the worker monitoring unit and the public health assessment unit. We are asking that this work be done during the current reorganization process as *state-driven initiatives*.

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.⁸ It specifically recommended creating a mechanism *similar to* the Regional Citizens' Advisory Councils in Alaska. The current Coast Guard-driven reorganization of ACPs does not address this recommendation (C3) but it provides an opportunity to do so.

ACPs are not Regional Citizens' Advisory Councils (RCACs or "Citizens' Councils").⁹ The Oil Pollution Act specifically established ACPs and RCACs,¹⁰ because both are needed for efficient and effective ACPs that work as intended and do no more harm. Citizens' councils serve a different function than ACPs. They provide science and technical support for the Area Committees by conducting the research, environmental monitoring, and thorough reviews of government and industry contingency plans needed to demonstrate safe environmental

⁷ Ibid. For a synopsis of human experience and health impacts by health hazard category and specific target organ toxicity, see ALERT and 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>

⁸ See note 2, National Commission, 2011, at 265.

⁹ For history of ACPs and RCACs, see ALERT report, The Opportunity to Make It Right (2024), at 28–39. <https://alertproject.org/wp-content/uploads/2024/02/ALERT240212-Opportunity-FINALrev.pdf>

¹⁰ 33 USC § 2732(d).

practices.¹¹ 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.

For example, these next generation Citizens' Councils could be tasked with: (1) 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; (2) 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; (3) review of government and industry contingency plans in the regions under their associated RRT's jurisdiction;¹² and (4) preparing the public for man-made disasters like oil spills as the NEROs (Neighborhood Emergency Response Organizations) do for natural disasters.

We are asking you and your teams to establish these next generation Citizens' Councils to serve the States, Area Committees, and RRTs via its state representatives. 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,¹³ restricted federal and state agencies to nonvoting membership,¹⁴ and prohibited industry participation.¹⁵

In contrast and of grave concern to us, the USCG Commandant Instruction created a workaround of the Federal Advisory Committee Act that prohibits industry representatives from holding Area Committee membership. Since the Coast Guard considers industry participation in Area Committee meetings "invaluable,"¹⁶ the Commandant Instruction directs 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).¹⁷

¹¹ 33 USC § 2732(d)(6).

¹² See also note 2, National Commission, 2011, at 133. The Commission described BP's response capacity as "underwhelming" and "embarrassing," the latter in reference to the listing of Gulf walrus and seals as species of concern in its clearly unreviewed and rubber-stamped contingency plans.

¹³ 33 USC § 2732(d)(2)(B). Non-voting members.

¹⁴ 33 USC § 2732(d)(4). Self-governing.

¹⁵ 33 USC § 2732(d)(5). Dual membership and conflicts of interest prohibited.

¹⁶ 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...).

¹⁷ *Ibid.* Chapter 4, B.6. Establishment of Subcommittees, at 4-3 (allows industry members), at 4-2, quote at (b).

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*, as part of their *required* oil spill response preparation and planning. Further, this should be done with the full cooperation and support of the Area Committees and RRTs. The RRTs should be providing resources and technical support for this purpose.¹⁸

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 lead agencies to tap into the networks of *non-governmental, non-industry affiliated* organizations, 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,

REGIONAL/NATIONAL

National Tribal Emergency Management Council

Northwest TEMC Chapter

Lynda Zambrano

Executive Director

lynda@nwtemc.org

Earthjustice

Patti Goldman

Senior Attorney

pgoldman@earthjustice.org

Friends of the Earth

Marcie Kever

Oceans & Vessels Program Director

MKeeper@foe.org

¹⁸ 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. 33 USC §2732(k): "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..." The same opportunity should be afforded states, as part of their *required* oil spill response preparation and planning.

WASHINGTON

The ALERT Project (a project of Earth Island Institute)

Riki Ott, Director
riki@alertproject.org

Backbone Campaign

Bill Moyer, Executive Director
bill@backbonecampaign.org

Friends of the San Juans

Lovel Pratt
Marine Protection and Policy Director
lovel@sanjuans.org

Puget Soundkeeper Alliance

Emily Gonzalez
Staff Attorney, Director of Law & Policy
emily@pugetsoundkeeper.org

Surfrider Foundation

Liz Schotman
Washington Regional Manager
lschotman@surfrider.org

Pete Steelquist
Washington Policy Manager
psteelquist@surfrider.org

Washington Conservation Action

Rein Attemann
Puget Sound Senior Campaign Manager
rein@waconservationaction.org

Washington State Chapter of Physicians for Social Responsibility

James Moschella
Climate and Health Program Manager
james@wpsr.org

Mark Vossler, MD
Climate and Health Task Force Co-Chair
mark@wpsr.org

OREGON

Columbia Riverkeeper

Teryn Yazdani
Staff Attorney
teryn@columbiariverkeeper.org

Tualatin Riverkeepers

Glenn Fee
Executive Director
glenn@tualatinriverkeepers.org

Eve Goldman
Staff Attorney
eve@tualatinriverkeepers.org

ALASKA

Alaska Community Action on Toxics

Pamela Miller
Executive Director ACAT
IPEN (International Pollutants Elimination Network) Co-Chair
pamela@akaction.org

Cook Inletkeeper

Bridget Maryott
Co-Executive Director
bridget@inletkeeper.org

Grandmothers Growing Goodness

Dr. Rosemary Ahtuanguak
Founder and Executive Director
grandmothersgrowinggoodness@gmail.com

Oasis Earth

Rick Steiner
Director
Professor, University of Alaska, ret.
Richard.g.steiner@gmail.com

Cc:

RRT 10 EPA Co-Chair
& AART Tri-Chair
Beth Sheldrake
sheldrake.beth@epa.gov

RRT 10 EPA Coordinator
Lori Muller
muller.lori@epa.gov

ARRT EPA Coordinator
Mary Goolie
Goolie.Mary@epa.gov

RRT 10 US Coast Guard Co-Chair
& AART Tri-Chair
Capt. Brian Meier
brian.a.meier@uscg.mil

RRT 10 US Coast Guard Coordinator
LT Jamie Waterman
jamie.n.waterman@uscg.mil

ARRT US Coast Guard Tri-Chair alternative
James McFerran
james.c.mcferran@uscg.mil