

National Oil and Hazardous Substances Pollution Contingency Plan

Subpart J - Use of Dispersants and Other Chemicals

US EPA - Office of Emergency Management
May 2016

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Disclaimer

- EPA participation in this workshop should not be interpreted to mean endorsement or agreement with its outcomes or recommendations, nor with specific planning, preparedness and response determinations
- Decisions for the use of dispersants or any other chemical agent are governed by provisions in the Clean Water Act and implemented through the NCP, including Subpart J
- In the event any material presented conflicts with the statute or regulations, the statute or regulations control

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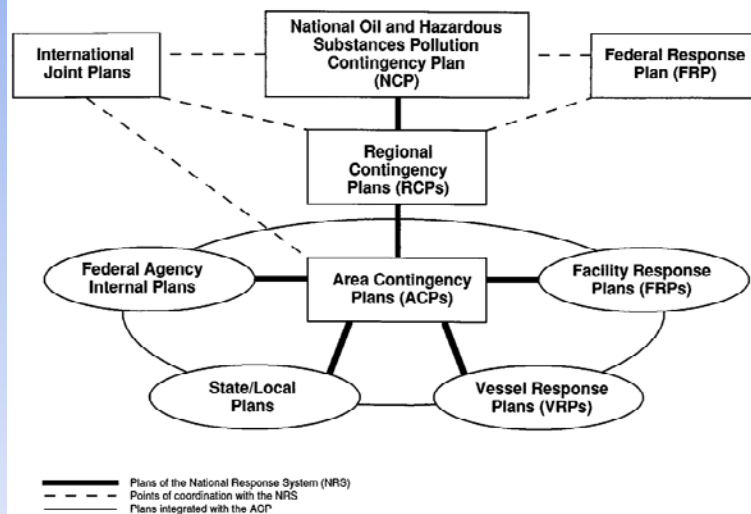
National Oil and Hazardous Substances Pollution Contingency Plan (NCP)

- Code of Federal Regulations (CFR), Title 40, part 300
- Divided into 11 subparts (Subpart K reserved for federal facilities)
 - Subpart A - Introduction
 - Subpart B – Responsibility and Organization for Response
 - Worker Health and Safety – 40 CFR 300.150
 - Subpart C – Planning and Preparedness
 - Area Contingency Planning (ACP) – 40 CFR 300.210
 - Subpart D – Operational Response Phases for Oil Removal
 - Subpart E – Hazardous Substance Response
 - Subpart F – State Involvement in Hazardous Substance Response
 - Subpart G – Trustees for Natural Resources
 - Subpart H – Participation by Other Persons
 - Subpart I – Administrative Record for Selection of Response Action
 - Subpart J – Use of Dispersants and Other Chemicals
- Covers both oil and hazardous substance removal
 - Certain subparts are tailored to respond to oil removal or to hazardous substance response

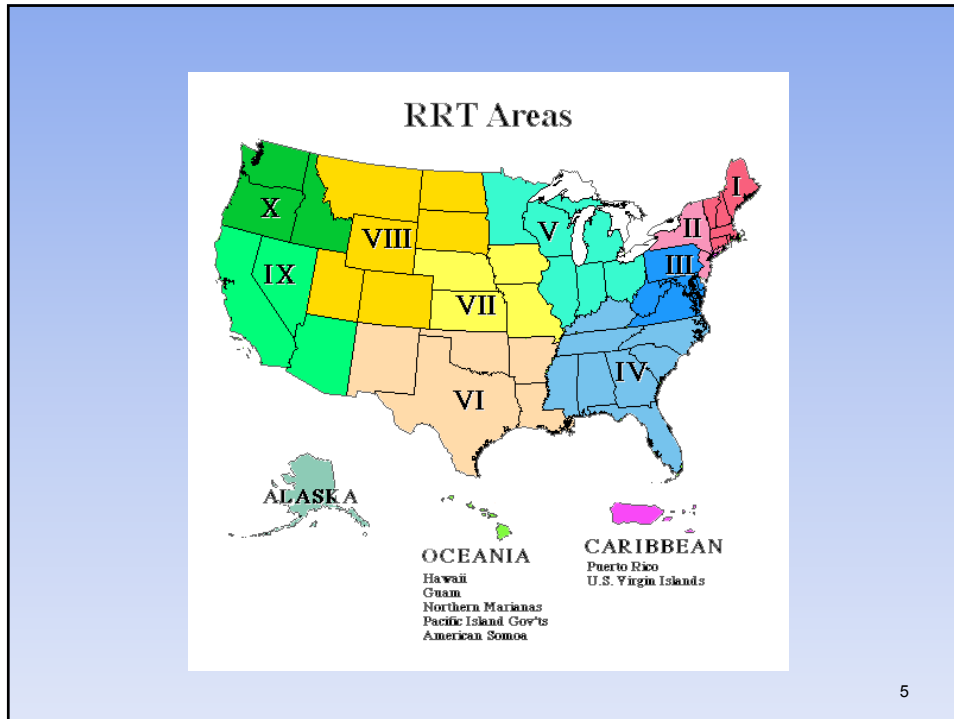
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Figure 4

Relationship of Plans



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Fish and Wildlife and Sensitive Environments Plan (FWSEP)

- All ACPs incorporate detailed annex containing FWSEP
 - Consistent with the RCP and NCP
 - Prepared in consultation with the USFWS and NOAA and other interested natural resource management agencies/parties.
 - Among other requirements, the annex is to:
 - identify and establish priorities for fish and wildlife resources and their habitats and other important sensitive areas requiring protection from any direct or indirect effects from discharges,
 - provide a mechanism to be used during a spill response for timely identification of protection priorities of those fish and wildlife resources and habitats and sensitive environmental areas that may be threatened or injured by a discharge, and
 - identify potential environmental effects on fish and wildlife, their habitat, and other sensitive environments resulting from removal actions or countermeasures, including the option of no removal
 - Based on the evaluation of potential environmental effects, the annex should establish priorities for application of countermeasure and removal actions to habitats within the geographic region of the ACP
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Authority for Subpart J under the Clean Water Act

- 33 USC 1321 (d)(2)(G) – Prepare a schedule, in cooperation with the States, identifying—
 - (i) dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the Plan,
 - (ii) the waters in which such dispersants, other chemicals, and other spill mitigating devices and substances may be used, and
 - (iii) the quantities of such dispersant, other chemicals, or other spill mitigating device or substance which can be used safely in such waters,

which schedule shall provide in the case of any dispersant, chemical, spill mitigating device or substance, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants, other chemicals, and other spill mitigating devices and substances which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters

- EO 12777 delegates 33 USC 1321(d)(2)(G) to the EPA Administrator
- Implemented under Subpart J of the NCP

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NCP Subpart J – Use of Dispersants and Other Chemicals

- Authorization of Use (40 CFR 300.910)
 - RRTs and ACs address the desirability of using appropriate dispersants, other products listed on the NCP Product Schedule, and burning agents
 - RCPs and ACPs shall, as appropriate, include applicable preauthorization plans and address the specific contexts in which such products should and should not be used
 - Pre-authorization plans require approval of:
 - EPA RRT representative
 - States with jurisdiction over the waters of the area to which a preauthorization plan applies and;
 - DOC and DOI natural resource trustees
 - Authorization of use for spill situations that are not addressed by the preauthorization plans requires:
 - Concurrence of the EPA representative to the RRT
 - As appropriate, concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge
 - Consultation with the DOC and DOI natural resource trustees

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NCP Subpart J – Use of Dispersants and Other Chemicals

- Authorization of Use
 - Exception only to prevent or substantially reduce threat to human life
 - Insufficient time to obtain the needed concurrences/consultations
 - OSC must inform the EPA RRT representative and, as appropriate, the RRT representatives from the affected states and, when practicable, the DOC/DOI natural resources trustees as soon as possible
 - Not intended to circumvent preauthorization or case-by-case use authorizations
 - NCP addresses worker health and safety under 40 CFR 300.150
 - The use of burning agents on a case-by-case basis
 - Concurrence of the EPA RRT representative
 - As appropriate, concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge
 - In consultation with the DOC and DOI natural resource trustees, when practicable
 - Sinking agents not authorized for application to oil discharges

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NCP Product Schedule Listing

- Includes data and information requirements for dispersants, surface washing agents, surface collecting agents, bioremediation agents, and miscellaneous oil spill control agents (MOSCAs)
- Specific to dispersants
 - Components and percentages (may be claimed CBI)
 - Effectiveness and acute toxicity testing
 - Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature and other application restrictions
- Listing does **NOT** mean that EPA approves, recommends, licenses, certifies, or authorizes the use of the product on an oil discharge
 - Only that product has met **minimum** requirements for listing
- 117 products (April 2016)
- <https://www.epa.gov/emergency-response/national-contingency-plan-subpart-j>

Subpart J Proposed Rulemaking

- Last major revision in 1994
- Proposed Rule - 80 FR 3380, January 22, 2015
- Public comment period closed on April 22, 2015
- Docket ID No. EPA-HQ-OPA-2006-0090
- Comments posted to the docket are publically available
 - <https://www.regulations.gov>
- 81,973 total comments including
 - 596 individual entries
 - 6 separate mass mailer campaigns
- Statues updates: <http://www.reginfo.gov/public/>

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