

Dear STC Tri-Chairs: CDR Rick Rodriguez (USCG), Mr. Bob Mattson (ADEC), Mr. Matt Carr (EPA);

I live in Cordova and am commenting as a concerned stakeholder, representing myself. I was a member of the original AART stakeholders' team during fall/winter of 1988–1989 when I represented CDFU and UFA. Back then, we completed the dispersant use guidelines for Prince William Sound just two weeks before the *Exxon Valdez* oil spill (EVOS). All stakeholders, including the oil industry, shippers, Coast Guard, state, fishermen, and others, agreed to the guidelines...

We have all learned a great deal since then. I have three main concerns.

1. Voluntary Guidelines Don't Work

When the *voluntary* dispersant use criteria were put to the test of a real spill, the long winter of discussion and compromise was pushed aside for expediency. I am specifically referring to use of dispersants – and other cleanup products that *act like dispersants whether called that or not* – by Exxon with approval of the U.S. Coast Guard in Zone 3, intertidal and nearshore areas, where dispersant use was banned by the 88/89 AART working group in principle.

Dispersants, by nature, are designed to work in open ocean where a large volume of water mixes the toxic chemicals with the toxic oil to minimize effects on creatures in the water column. In shallow nearshore and intertidal areas, the toxic effects of the chemicals are concentrated in these biologically productive zones. Not good. For this reason, the 88/89 AART working group banned dispersants in Zone 3.

Further, an unfortunate and unforeseen situation developed during the 1989 EVOS cleanup; i.e., promotion and use of “bioremediation” products by Exxon and the federal government (Coast Guard and EPA). In particular, one experimental product, Inipol EAP22, contained the *same solvent as several of the Corexit dispersants*. Predictably, there were substantiated reports from ADEC (cited in state's Final Report of the EVOS) of over-dousing with Inipol, resulting in Inipol acting more like a dispersant than a “bioremediation” product. The particular solvent of concern, 2-butoxyethanol, is a human health hazard and likely toxic to wildlife as well.

The lesson for me (and many others) was that “volunteer” guidelines are worthless in spill situations. If something is good enough to agree to in principle, then it's good enough to write down into law.

Recommendations:

- 1a. Dispersant use guidelines should not be voluntary; they should be mandatory. At a minimum, dispersants and products with strong solvents should be banned in shallow, nearshore, and intertidal areas of Alaska.

- 1b. Products that contain the *same solvents as dispersants* should be treated as dispersants by the AART, regardless of the product's listed category under the National Oil and Hazardous Substances Pollution Contingency Plan. Specifically, if a product contains the same solvents as dispersants, then AART and all stakeholders should agree to treat the product as a dispersant.

2. By Whose Authority?

During the 1989 cleanup, Exxon experimented with its cleanup products – often over strong and sustained objections from the public sector. Small wonder. Many of the products contained toxic or hazardous substances and came with warnings such as “prevent liquid from entering sewers, watercourses, or low areas. Contain spilled liquid...” (MSDS for Corexit 9527). Another (Corexit 9580M2) came in barrels labeled “toxic to fish.” *Prince William Sound is a watercourse; fish and other sealife were present on beaches!* Yet the Coast Guard allowed these and other toxic chemical products (like Inipol) to be used – *on beaches* – despite public outrage/objection.

Further, during the August 1998 spill drill of national significance, the Coast Guard gave BP blanket permission to use dispersants, including in Zone 3, *despite the voluntary dispersant use guidelines banning such application*. When people, myself included, protested this decision, the Unified Command (the Coast Guard, the State of Alaska, and the spiller) shut the PWS RCAC out of the top-level decision-making process.

This is and remains an intolerable situation.

Recommendations:

- 2a. The AART should ban use of any cleanup products that contain chemicals harmful to wildlife and people, especially in sensitive areas (Zone 3).
- 2b. The AART should recommend that the public, specifically the two citizen oversight groups authorized under the Oil Pollution Act of 1990 – the PWS and Cook Inlet RCACs – should have equal standing during the Incident Command meetings. This should be mandatory under the National Oil and Hazardous Substances Pollution Contingency Plan.

3. EPA's Product Listing Process is Flawed

The AART should examine EPA's listing process under the National Oil and Hazardous Substances Pollution Contingency (NOHSP) Plan as it currently allows products *that don't work and/or are inherently dangerous to human health* to be listed for oil spill cleanups. In other words, the current EPA process is essentially a rubber-stamp procedure for industry.

For example, there is *no dispersant* that currently meets the minimum NOHSP Plan requirements to disperse North Slope crude in a cold water environment. However, there is a loophole to allow dispersants *that don't work* to be listed. EPA requires dispersants to be 45 percent effective. Since most dispersants are only 10–15 percent effective on North Slope crude, EPA allows

results of effectiveness tests for North Slope crude and South Louisiana crude *to be averaged* so that some dispersants can pass the effectiveness test for use on North Slope crude.

Further, there are no de-listing procedures so products that are no longer manufactured can still be used on cleanups – or, as in the EVOS, a product (Inipol) that caused injury to workers was quietly discontinued without notice to the EPA – or any cleanup workers. In effect, this amounts to a product recall without telling anyone.

Also, there are no requirements under the NOHSP Plan for periodically testing stockpiled chemical cleanup products to determine if the product still meets the effectiveness test requirements over the years of storage.

In addition, EPA does not test chemical products for human health effects. A tragic situation developed during the EVOS cleanup. Thousands of workers who reported Upper Respiratory “Infections” (6,722 URIs in total) to Exxon were treated by Exxon medical doctors for colds and flu-like symptoms. The outdated OSHA requirements for reporting illnesses under the hazardous waste cleanup regulations do not recognize chemical-induced work-related illnesses and, in fact, specifically *exempt colds and flu from the reporting requirements* (29 CFR 1904.5(b)2). Environmental medical doctors know that chemical-induced illnesses can mimic cold and flu-like symptoms. Exxon did not report the 6,722 URIs to OSHA and therefore was not required to conduct long-term health monitoring. Thus, EVOS cleanup workers were very likely exempted (on paper) from precisely what they had – chemical-induced illness relating to their cleanup work – and were left to pay their own medical expenses.

Recommendations:

- 3a. The AART should recommend that the EPA remove the regulation that allows effectiveness tests to be averaged.
- 3b. At a minimum, the AART should screen all products listed under the NOHSP Plan and specifically *ban* any product that used the averaging loophole to be listed. In other words, the AART should develop an Alaska-specific list of products that might actually work in Alaska.
- 3c. The AART should ban products that contain human health hazards.
- 3d. The AART should establish de-listing procedures that include notification of the U.S. EPA, reason for de-listing, and product recall procedures.
- 3e. The AART should establish procedures to test stockpiled product for effectiveness.
- 3f. If products with hazardous chemicals are allowed for use during oil spill cleanup, then the AART should establish stockpiles of hazardous waste cleanup personal protective equipment to be stockpiled along with the other spill response equipment.

- 3g. If products with hazardous chemicals are allowed for use during oil spill cleanup, then the AART should require mandatory long-term (minimum 20 year) testing of cleanup worker health *with records open to the public*.

In summary, as it stands now, the oil industry is a giant on the stakeholder team: it is able to promote and use dispersants and other cleanup products that do not work and/or that sicken wildlife and people – often with the support of the federal agencies. Nothing is required of it and the industry is able to use loopholes to escape consequences and liability.

This situation begs for remedy. Much of the reference material that underscores my three main concerns is included in my first book on the oil spill, *Sound Truth and Corporate Myths*. If the above recommendations are acted upon, workers, wildlife, and sensitive coastlines of Alaska would be safer from accidental spills.

Sincerely,

Riki Ott

Cc: Alaska Community Action on Toxics
Alaska Marine Conservation Council
Alaska Sea Grant
Alaska Wilderness League
Cook Inlet Keepers
Cordova District Fishermen United
Earth Justice
Eyak Preservation Council
Native Village of Chenega
Native Village of Eyak
Native Village of Point Hope
Native Village of Tatitlek
Oceana
Pacific Environment
Prince William Sound Regional Citizens' Advisory Committee
President's Council on Environmental Quality
Resist Environmental Destruction on Environmental Land (REDOIL)
Sierra Club, Alaska Chapter
Union of Concerned Scientists
United Fishermen of Alaska
World Wildlife Fund