



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

JAN 12 2012

**MEMORANDUM**

**SUBJECT:** Response to Corrective Action Plan for OIG Report No. 11-P-0534,  
*Revisions Needed to National Contingency Plan Based on  
Deepwater Horizon Oil Spill, August 25, 2011*

**TO:** Mathy Stanislaus  
Assistant Administrator for Solid Waste and Emergency Response

Thank you for your December 22, 2011, response to our request for additional information on recommendations 5 and 7 from the subject report, and the actions taken by the Office of Solid Waste and Emergency Response (OSWER).

We accept OSWER's updated corrective action plan for recommendation 7. For recommendation 5, however, we need additional information on how and when OSWER will develop guidance and training for a Spill of National Significance that clarifies roles and responsibilities for high-level Agency officials. We request the additional information on the planned corrective actions for recommendation 5 by January 25, 2012.

The attachment provides the status and our evaluation of each of OSWER's corrective actions to address our recommendations. If you or your staff have any questions, please contact Patrick Gilbride, Director of Risk and Program Performance, at (303) 312-6969.

Arthur A. Elkins, Jr.

Attachment

cc: Dana Tulis, Office of Emergency Management, OSWER  
Johnsie Webster, Audit Liaison, OSWER

Attachment

OIG recommendation	Agency action(s) taken, ongoing, or planned	OIG analysis	Status
<p>1. Develop appropriate NCP Subpart J testing revisions, including proceeding with plans in place before the Deepwater Horizon oil spill, to incorporate the most appropriate efficacy testing protocol. Develop an action plan with milestones for these and any other necessary revisions and take steps to propose NCP Subpart J revisions.</p>	<p>OSWER Action Plan: Regulatory revisions to the NCP's Subpart J testing requirements are underway. The proposed rule incorporating NCP testing requirements is expected to appear in the Federal Register by August 30, 2012.</p>	<p>We accept OSWER's corrective action plan and milestone date.</p>	<p>Closed</p>
<p>2. Have the OEM Director work through the office's NRT capacity to establish a policy that calls for periodic reviews and updates to contingency plans, after considering lessons learned from major national and international oil spills, and/or based on area trends in oil drilling.</p>	<p>OSWER Action Plan: The OEM Deputy Director is currently working with the NRT to develop a framework in addressing dispersants and plan reviews and updates, in light of lessons learned in the Deepwater Horizon spill. We anticipate this task will be completed by December 31, 2012.</p>	<p>We accept OSWER's corrective action plan and milestone date.</p>	<p>Closed</p>
<p>3. Modify the NCP Product Schedule and contingency plans to include additional information (such as testing on crude oil, subsurface dispersants application, volume and duration limits, etc.) learned from the Deepwater Horizon oil spill response and use such information to revise and update Area and Regional Contingency Plans.</p>	<p>OSWER Action Plan: Regulatory revisions to the Subpart J requirements for the NCP Product Schedule and contingency planning elements are underway. These revisions will address chemical agent tests (such as dispersants) using crude oil, subsurface use of dispersants, and quantity, location, and duration of chemical agent use criteria. The proposed rule incorporating NCP testing requirements is expected to appear in the Federal Register by August 30, 2012.</p> <p>In the meantime, OEM is working with the Regional Response Team to conduct reviews and updates to Area and Regional Contingency Plans in light of lessons learned in the Deepwater Horizon spill. However, the United States Coast Guard is the lead on coastal Area Contingency Plans.</p>	<p>We accept OSWER's corrective action plan and milestone date.</p>	<p>Closed</p>



OIG recommendation	Agency action(s) taken, ongoing, or planned	OIG analysis	Status
<p>4. Develop policies/procedures for subsurface dispersant application and modify pre-authorization plans to address subsurface use.</p>	<p>OSWER Action Plan: On September 27, 2011, OEM sent the NRT its draft guidance report, entitled "Subsea Dispersant Monitoring and Assessment Interim Guidance (Draft)", which generally applies to subsurface dispersant application. This provides interim guidance in the following areas:</p> <ul style="list-style-type: none"> <li>• Subsea dispersant monitoring and application;</li> <li>• Monitoring of vessel activities;</li> <li>• Monitoring and sampling equipment resources;</li> <li>• Reporting recommendations; and</li> <li>• Evaluation criteria used to determine operational shut down of subsea dispersant applications.</li> <li>• Modification of Area Contingency Plans.</li> </ul>	<p>We accept OSWER's corrective action plan and milestone date.</p>	<p>Closed</p>
<p>5. Develop guidance and training for a Spill of National Significance (SONS) that clarifies roles and responsibilities for high-level Agency officials. Review this response and the NCP and work with federal partners to address lessons learned, and include detail on how to respond to a SONS.</p>	<p>OSWER Action Plan: EPA is currently working with the Federal Emergency Management Agency and the United States Coast Guard to identify the roles and responsibilities for senior officials for the National Response Framework as the United States Coast Guard is the lead for coastal SONS responses. We anticipate this task will be completed by March 30, 2013.</p> <p><i>OSWER Updated Action Plan: EPA will look at adding language to the National Response Framework Emergency Support Function (ESF) #10 annex that will outline EPA senior officials' likely role in a response. EPA will submit draft revisions to FEMA no later than December 2012.</i></p>	<p>We do not believe that OSWER's initial and updated action plans address our recommendation, specifically to develop guidance and training for a SONS. We commend EPA for working with other agencies to identify roles for senior officials, and for considering adding language to ESF #10. However, any discussion in the National Response Framework ESF #10 would be general enough to address a wide variety of events, whereas EPA guidance and training could provide case studies and specific examples for a clearer understanding. Both the Agency's initial and updated action plans are silent on how or when OSWER will develop guidance and training.</p>	<p>Recommendation unresolved pending additional information.</p>

OIG recommendation	Agency action(s) taken, ongoing, or planned	OIG analysis	Status
<p>6. Review and analyze NCP Subpart J toxicity testing protocols to ensure that emergency responders have the information necessary for appropriate subsurface dispersant use for future oil spills.</p>	<p>OSWER Action Plan: This issue is currently being addressed as part of the action to revise the requirements for Subpart J toxicity testing and criteria for listing dispersants on the NCP Product Schedule. When revisions to the Product Schedule requirements are complete, OEM will work on revisions to the Selection Guide and Technical Notebooks, which are made available to emergency responders, to ensure the necessary information is available for subsurface dispersant use on future oil spills.</p> <p>The proposed rule incorporating NCP testing requirements is expected to appear in the Federal Register by August 30, 2012.</p>	<p>We accept OSWER's corrective action plan and milestone date.</p>	<p>Closed</p>
<p>7. As part of the action to review NCP Subpart J requirements, address the need to capture and maintain dispersant and manufacturer production capacities, equipment requirements, and other necessary information to better prepare for future oil spills. Make this information widely available to the response community.</p>	<p>OSWER Action Plan: Under the Subpart J regulatory revisions process, OEM is currently investigating options for collecting these types of information, although this is contingent on manufacturers providing this information to EPA.</p> <p>The proposed rule incorporating NCP testing requirements is expected to appear in the Federal Register by August 30, 2012.</p> <p><i>OSWER Updated Action Plan: OEM is in the process of developing amendments to the requirements in Subpart J of the NCP, and one set of elements under development is proposed regulatory changes that would require product manufacturers to include information on their production capabilities and equipment requirements. OEM is also examining options on the frequency of updating this information and mechanisms for making it available to the response community. OEM will seek public comment on the approach and options, and the proposed rule is scheduled for August 2012.</i></p>	<p>We accept OSWER's corrective action plan and milestone date.</p>	<p>Closed</p>





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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DEC 22 2011

OFFICE OF  
SOLID WASTE AND  
EMERGENCY RESPONSE

**MEMORANDUM**

**SUBJECT:** Revised Corrective Action Plan for OIG Report No. 11-P-0534, *Revisions Needed to National Contingency Plan Based on Deepwater Oil Spill*, August 25, 2011

**FROM:** Mathy Stanislaus  
Assistant Administrator

A handwritten signature in black ink that reads 'Mathy Stanislaus'.

**TO:** Arthur A. Elkins, Jr.  
Inspector General

This is in response to your December 9<sup>th</sup> memorandum entitled Response to Corrective Action Plan for OIG Report No. 11-P-0534, *Revisions Needed to National Contingency Plan Based on Deepwater Oil Spill*, August 25, 2011. In this memorandum, you requested additional information regarding two of OSWER's Corrective Actions. Listed below are the two recommendations you have requested additional information on, including our revised Corrective Action Plan for each.

**Recommendation #5: Develop guidance and training for a Spill of National Significance (SONS) that clarifies roles and responsibilities for high-level Agency officials. Reviews this response and the NCP and work with federal partners to address lessons learned, and include detail on how to respond to a SONS.**

**Revised Corrective Action:** The NCP serves as the federal government's blueprint for responding to oil spills and hazardous substances. It is designed to be a broad and flexible plan that allows for regional and state-specific guidelines. The NCP specifically addresses the designation of a SONS and the role of senior officials in a SONS. The US Coast Guard's senior official is the National Incident Commander and the EPA's senior official is the senior Agency Official (SAO).

EPA will look at adding language to the National Response Framework's Emergency Support Function (ESF) #10 annex that will outline EPA's senior officials' likely role in a response. However, a milestone date for the ESF #10 revision is dependent on FEMA's plan for completing updates to the NRF and its annexes under PPD-8. Under PPD-8, the Agency expects FEMA to set the deadline for all ESF coordinating agencies to update their ESF annexes sometime during the 2012 calendar year. EPA will submit draft revisions for ESF #10 to FEMA no later than December 2012.

**Recommendation #7: As part of the action to review NCP Subpart J requirements, address the need to capture and maintain dispersant and manufacturer production capacities, equipment requirements, and other necessary information to better prepare for future oil spills. Make this information widely available to the response community.**

**Revised Corrective Action:** OEM is in the process of developing amendments to the requirements in Subpart J of the NCP associated with the testing, listing, and use of chemical agents, including dispersants, on oil spills on the waters of the US. The proposed rulemaking containing the amendments has cleared Options Selection and is in the workgroup package development state under the Agency's Action Develop Process, in compliance with the Administrative Procedures Act.

One set of elements under development in the package is proposed regulatory language that would require product manufacturers to include information on their production capabilities and equipment requirements, with their submittal to EPA to have their product listed on the Product Schedule under Subpart J of the NCP.

OEM is also examining options on the frequency of updating this information and mechanisms for making it readily available to the response community. The preferred regulatory approach and options for collection and dissemination of the information, as recommended by the OIG, will be clearly described in the proposed regulatory text and preamble. OEM will seek public comment on the approach and options and will welcome well-supported alternatives. The proposed rule is scheduled for August 2012.

We look forward to working to implementing the two recommendations outlined in this memo. If you have any questions, please contact Larry Stanton, Director of the Office of Emergency Management, at (202) 564-2092.