

The background of the slide is a light gray gradient with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance. The text is centered on the slide.

LEGAL FRAMEWORK GOVERNING THE USE OF DISPERSANTS

MELISSA DAIGLE

LOUISIANA SEA GRANT LAW & POLICY PROGRAM

DECEMBER 15, 2015

KEY FACTS: DEEPWATER HORIZON

- Deepwater Horizon Dispersant Usage
 - Unprecedented volume and duration
 - First subsea application
 - Everything was done in accordance with existing law
- Results
 - Exposed serious weakness in the regulatory framework
 - Outdated protocols
 - Lack of monitoring requirements

EXISTING LAW: NCP

- National Oil and Hazardous Substances Pollution Contingency Plan (NCP)
 - First published in 1970
 - Last revised in 1994
 - In response to the passage of the Oil Pollution Act in 1990
 - Purpose – provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substances, including containment, dispersal, and removal of oil and hazardous substances
 - U.S. Coast Guard is the lead when spills occur in or threaten coastal waters

NCP PRODUCT SCHEDULE

- Developed and maintained by EPA
- Identifies
 - Dispersants, other chemicals, and other spill mitigating devices and substances that may be used in carrying out the NCP
 - Waters in which the dispersants and other chemicals may be used, and
 - Quantities of the dispersants and other chemicals that may be used in those waters
- Current definition of dispersant
 - “Chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.”
- Dispersants must be listed on the schedule before they can be used
 - Exception – if the product is necessary to prevent or substantially reduce a hazard to human life
 - Corexit EC9527A – listed on March 10, 1978
 - Corexit EC9500A – listed on April 13, 1994

NCP PRODUCT SCHEDULE: TESTING PROTOCOLS

- What must be submitted to EPA
 - 12 data requirements Information on
 - Application
 - Storage
 - Effectiveness
 - Under current law – must disperse at least 45% of oil using a Swirling Flask Test
 - Toxicity testing results
 - Under current law - limited to studies on the immediate impact on one fish species and one shrimp species
- Dispersants must meet effectiveness threshold

NCP PRODUCT SCHEDULE: LISTING DETERMINATIONS

- Once the manufacturer submits a dispersant for consideration, EPA reviews the information and makes a decision
 - EPA does not perform independent testing
- Once on the list, this does not mean that EPA approves its use
 - Listing just allows the designated federal OSC to use
 - Use must be authorized by the Regional Response Teams
 - Manufacturer must notify EPA of any changes to the product
 - OSC may authorize use of products not on the schedule without obtaining concurrence of EPA if use is necessary to prevent or substantially reduce a hazard to human life

NCP PRODUCT SCHEDULE: REMOVAL

- There is only one reason stated for which a product would be removed
 - If the product is labeled or advertised as being on the NCP Product Schedule, it must include a copied statement from EPA or a copied disclaimer from EPA.
 - If the disclaimer is used, it must be conspicuous and fully reproduced
 - Failure to do this or other improper attempt to demonstrate approval is grounds for removal.

PROPOSED REVISIONS

- January 22, 2015
 - EPA issued a proposed rule to amend Subpart J of the NCP
 - More than 80,000 comments during the first comment period
 - Closed April 22, 2015
 - Final rule expected in 2016
 - You can track the rule by signing up for email alerts
 - www.regulations.gov
 - Search Docket ID EPA-HQ-OPA-2006-0090

PROPOSED REVISIONS

- Change definition of dispersant
 - Proposed definition: “Dispersants are typically mixtures of solvents, surfactants, and additives that promote the formation of small droplets of oil in the water column by reducing the oil-water interfacial tension.”
- Replace the Swirling Flask Test with the Baffled Flask Test (BFT)
 - Has undergone extensive scientific review
 - More reliable and reproducible results
- Increase effectiveness
 - Remove 55% - 75% of oil at two different temperatures (5°C and 25°C)
 - % required depends on temperature

PROPOSED REVISIONS

- Change toxicity species
 - Immediate impacts to two saltwater species
 - *Americamysis bahia* (Mysid)
 - *Menidia beryllina* (Inland Silverside)
 - Test three different things
 - Dispersant alone
 - Dispersant mixed with Alaska North Slope crude oil
 - Dispersant mixed with Intermediate Fuel Oil
- Add a test on sea urchin embryo development
- Add requirement for long term impacts of dispersal alone to two saltwater species

PROPOSED REVISIONS

- Allow for removal of a product from the schedule for various reasons, including, but not limited to:
 - Misleading, inaccurate, or incorrect statements within the product submission or on labels, advertisements, or technical literature
 - Alterations to the product without proper notification
 - Failure to include the required disclaimers on labels and advertisements
 - New information concerning potential impacts to human health or the environment
- New requirement that OCS provide the Regional Response Team certain information after the use of a chemical or biological agent
 - Name of products used
 - Quantity and concentration
 - Duration of use
 - Locations used
 - Any data collected on the effectiveness or environmental effects

PROPOSED REVISIONS

- Biggest policy change – Establishment of monitoring requirement for dispersant use
 - Monitoring of use would be required in three situations
 - Subsurface use of dispersants in response to an oil discharge
 - Surface use of dispersants in response to oil discharges of more than 100,000 gallons occurring within 24 hours
 - Surface use of dispersants for more than 96 hours in response to an oil discharge
 - Responsible party would be required to document
 - Characteristics of oil and flow rate
 - Dispersant product information, including why that product was chosen
 - Application method, procedures, and rates
 - Would also require daily collection of the water column from the dispersed oil plume

The background of the slide is a light gray gradient with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance.

FOR MORE INFORMATION CONTACT:

Stephanie Showalter Otts

Director, National Sea Grant Law Center

(662) 915-7714

sshowalt@olemiss.edu

Melissa Daigle

Louisiana Sea Grant

(225) 578-9968

mtrosc2@lsu.edu