

LETTER OF AGREEMENT

ON LIMITED USE OF DISPERSANTS AND CHEMICAL AGENTS  
DURING OIL DISCHARGES OCCURRING IN COASTAL WATERS  
AMONG U. S. COAST GUARD (USCG) - SEVENTH DISTRICT,  
U.S. ENVIRONMENTAL PROTECTION AGENCY (USEPA) REGION II,  
U.S. DEPARTMENT OF THE INTERIOR (USDO I),  
U.S. DEPARTMENT OF COMMERCE (USDOC)  
AND THE COMMONWEALTH OF PUERTO RICO

100. PURPOSE

101. This Letter of Agreement implements Subpart J of the National Oil and Hazardous Substances Contingency Plan (NCP) and provides pre-authorization for the limited use of dispersants and other chemical agents by the pre-designated USCG On Scene Coordinator (OSC) on oil discharges impacting the waters of the Commonwealth of Puerto Rico.

200. AUTHORITY

201. Subpart J of the National Oil and Hazardous Substances Contingency Plan (NCP) provides that the On Scene Coordinator (OSC), with the concurrence of the USEPA representative to the Regional Response Team and the States with jurisdiction over the navigable waters threatened by the oil discharge, and in consultation with the USDOC and USDO I natural resource trustees, may authorize the use of dispersants and other chemical agents on oil discharges; provided however, that such dispersants or chemical agents are listed on the USEPA NCP Product Schedule. Commander, Seventh Coast Guard District has pre-designated the USCG Captain of the Port (COTP) under his jurisdiction as the On Scene Coordinator (OSC) for oil discharges in the coastal zone, and has delegated him the authority and responsibility for compliance with the Oil Pollution Act of 1990 (OPA 90). The Governor of the Commonwealth of Puerto Rico, in turn, has designated the Secretary of Natural Resources to act on behalf of the public as trustee for natural resources under the Oil Pollution Act of 1990 (OPA 90). The Secretary of the Department of Natural Resources (PRDNR) is responsible for the protection and management of fish and wildlife resources, endangered species, forests, coastal reserves and bathing beaches under Commonwealth laws.

202. The USEPA has been delegated authority under Subpart J of the National Contingency Plan to authorize the use of dispersants or chemical agents for the control of oil discharges, and to list which dispersants or chemical agents are authorized to be used for this purpose. The U.S. Department of the Interior (USDO I) and the U.S. Department of Commerce (USDOC) are designated Federal trustees of certain natural resources under Subpart G of the NCP and are to be consulted regarding natural resources. In such cases, this Agreement constitutes pre-consultation and pre-concurrence for the use of dispersants or chemical agents.

#### 300. SCOPE

301. The USCG, USEPA, USDO I, USDOC, and PRDNR agree that the primary method of controlling discharged oil shall be the physical removal of the oil from the environment. These agencies recognize that in certain instances the physical containment, collection, and removal of the oil may not be possible, and the effective use of dispersants or other chemical agents must be considered to prevent substantial threat to public health or welfare, or minimize serious environmental damage. This Agreement establishes criteria under which USEPA listed dispersants or chemical agents can be used on or in the waters of the Commonwealth of Puerto Rico.

#### 400. PROTOCOLS

401. As attested by the signatures set forth below, the USCG, USEPA, USDOC, and the PRDNR agree that the pre-designated USCG On Scene Coordinator has pre-approval to order the use of dispersants or chemical agents on oil discharges, as defined in the National Contingency Plan, when in the judgement of the USCG On Scene Coordinator, the use of dispersants or chemical agents is necessary to prevent substantial threat to public health or welfare, or minimize serious environmental damage, subject to the conditions presented in this document.

402. The OSC shall arrive at his decision to use dispersants through the decision making process and information gathering scheme as detailed in Subpart J of the Region II Regional Contingency Plan (Part 2600 of the USCG Local Contingency Plan).

403. The USCG agrees with USEPA, USDO I, USDOC, and PRDNR that if a decision has been made to use dispersants under the provisions of this agreement, the OSC will immediately notify USEPA, USDO I, USDOC, and PRDNR of that decision. This initial notification will include, but is not limited to, the following information to the extent available:

- a. Date, time, and location of the incident;

- b. Type and amount of oil discharged;
- c. Area affected;
- d. The projected area of impact of the oil if not dispersed;
- e. Reasons why dispersants or chemical agents have been selected;
- f. Type of dispersant to be used;
- g. Application method, rate, and amount;
- h. On scene weather observations.

404. The Secretary of the PRDNR or his representative will immediately notify the Puerto Rico Scientific Advisory Committee. The Scientific Advisory Committee will evaluate the environmental impact of the use of the dispersant or chemical agent with respect to the minimization of impact on environmentally sensitive area, economically important areas, beaches, or other areas of interest.

405. The USCG, USEPA, USDOJ, USDOC, and PRDNR further agree the OSC had pre-approval to order the use of dispersants or chemical agents, subject to the following conditions:

- 405.1 The use of dispersants or chemical agents is authorized only after all methods of physical or mechanical removal are judged by the OSC to be infeasible.
- 405.2 The pre-designated authority to use dispersants or chemical agents on oil discharges in accordance with this Agreement is vested solely in the individual who is the pre-designated USCG OSC. This authority will not be delegated.
- 405.3 The decision to use dispersants or chemical agents shall be made only after consulting the Puerto Rico Coastal Atlas for Sensitivity of Coastal Environments and Wildlife to Spilled Oil and the decision guidelines for dispersants use detailed in Subpart J of the Region II Regional Contingency Plan (Part 2600 of the USCG Local Contingency Plan).
- 405.4 Dispersants or chemical agents will be used only when they are expected to prevent or minimize substantial threat to public health or welfare, or serious environmental damage.
- 405.5 Dispersants or chemical agents may be used only in open waters that are at least 0.5 nautical miles from any shoreline and where the water depth is greater than 60 feet deep.

405.6 Dispersants or chemical agents shall not be used in, on, or over waters containing reefs; waters designated as marine reserves; mangrove areas; or waters in coastal wetlands; except with the prior and express concurrence of the PRDNR and USEPA, in consultation with USDOC and USDOJ. Coastal wetlands include:

- 1) Submerged algae beds (rocky or unconsolidated bottom)
- 2) Submerged seagrass beds
- 3) Coral reefs

405.7 Dispersants or chemical agents shall not be used in fresh or brackish waters.

405.8 As a general rule, if a discharge is too small to be removed by alternative mechanical methods, it is too small to consider the application of dispersants or chemical agents.

405.9 Sinking agents are not dispersants and shall not be considered as authorized chemical agents. Use of sinking agents is expressly prohibited by this Agreement and the National Contingency Plan.

405.10 If an oil discharge poses an imminent threat to a sensitive area restricted by protocol 405.5, the USCG OSC must contact USEPA and PRDNR for concurrence, and consult with USDOC and USDOJ. If USEPA and PRDNR disagree, the opinion of PRDNR shall prevail. If PRDNR provides no answer within 4 hours, EPA's decision will prevail. In the event that neither PRDNR nor EPA can provide an answer within 4 hours, the USCG OSC may proceed with the dispersant or chemical agent application if the threat represents a substantial threat to public health or welfare, or serious environmental damage is imminent if dispersants or chemical agents are not used.

405.11 Any use of dispersants or chemical agents requires that a post incident debriefing take place within 45 days after the first application of dispersants or chemical agents. The debriefing will gather information concerning the effectiveness of the dispersant or chemical agent used, the effectiveness of the application program at preventing environmental damage, and whether any changes or modifications to this Agreement are necessary. The debriefing will be

chaired by the PRDNR and shall include the incident specific Regional Response Team (RRT). The results of the debrief will be included in the OSC Report.

406. The USCG OSC shall make every effort to continuously evaluate the decision to use dispersants or chemical agents by considering the advice of the USEPA, USDOJ, USDOC, PRDNR, the other members of the Caribbean Regional Response Team, and any other agencies, groups, or information sources which may be available.

500. AMENDMENTS

501. This Letter of Agreement may be amended in whole or in part as mutually agreeable to all parties thereto.

600. CANCELLATION

601. This Letter of Agreement may be canceled in whole or in part by any of the participating agencies. Cancellation will take place 30 days following delivery of written notification to each of the agencies participating in this Letter of Agreement.

/s/ \_\_\_\_\_  
Captain Zawadzki  
Chief, Marine Safety Division  
Seventh Coast Guard District

11/13/91 \_\_\_\_\_  
DATE

/s/ \_\_\_\_\_  
Mr. Richard Salkie  
Associate Director, Removal and  
Emergency Preparedness Programs  
U.S. Environmental Protection Agency  
Region II

11/13/91 \_\_\_\_\_  
DATE

/s/ \_\_\_\_\_  
Mr. Gregory Hogue  
U.S. Department of the Interior  
Caribbean RRT Representative

11/13/91 \_\_\_\_\_  
DATE

/s/ \_\_\_\_\_  
Mr. Waynon Johnson  
U.S. Department of Commerce  
Caribbean RRT Representative

11/13/91 \_\_\_\_\_  
DATE

/s/        
Santos Rohena-Betancourt  
Secretary, Department of  
Natural Resources  
Commonwealth of Puerto Rico

      11/13/91        
DATE

      /s/        
Genaro Torres  
Environmental Quality Board  
Commonwealth of Puerto Rico

      6/5/95        
DATE

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AMONG U.S. COAST GUARD (USCG) - SEVENTH DISTRICT,  
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U.S. DEPARTMENT OF COMMERCE (USDOC),  
AND THE TERRITORY OF THE UNITED STATES VIRGIN ISLANDS

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202. The USEPA has been delegated authority under Subpart J of the National Contingency Plan (NCP) to authorize the use of dispersants or chemical agents for the control of oil discharges, and to list which dispersants or chemical agents are authorized to be used for this purpose. The U.S. Department of the Interior (USDO I) and the U.S. Department of Commerce (USDOC) are designated Federal trustees of certain natural resources under Subpart G of the NCP and are to be consulted regarding natural resources. In such cases, this Agreement constitutes pre-consultation and pre-concurrence for the use of dispersants or chemical agents.

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- 404.2 The pre-designated authority to use dispersants or chemical agents on oil discharges in accordance with this Agreement is vested solely in the individual who is the pre-designated USCG OSC. This authority will not be delegated.
- 404.3 The decision to use dispersants or chemical agents shall be made only after consulting the Virgin Islands Oil Spill Sensitivity Atlas and the decision guidelines for dispersants use detailed in Subpart J of the Region II Regional Contingency Plan (Part 2600 of the USCG Local Contingency Plan).
- 404.4 Dispersants or chemical agents will be used only when they are expected to prevent or minimize substantial threat to public health or welfare, or serious environmental damage.
- 404.5 Dispersants or chemical agents may be used in open waters that are at least one mile from any shoreline or at least one mile from any reef which is less than 20 feet from the waters surface. In all cases where dispersants or chemical agents are used, the water depth in the application area must be greater than 60 feet deep.
- 404.6 Dispersants or chemical agents shall not be used in, on, or over waters containing reefs; waters designated as marine reserves; mangrove areas; or waters in coastal wetlands; except with the prior and express concurrence of DPNR and USEPA, in consultation with USDOC and USDOJ. Coastal wetlands include:
- 1) Submerged algal beds (rocky or unconsolidated bottom)
  - 2) Submerged seagrass beds
  - 3) Coral reefs
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disagree, the opinion of DPNR shall prevail. If DPNR provides no answer within 4 hours, USEPA's decision will prevail. In the event that neither DPNR nor USEPA can provide an answer within 4 hours, the USCG OSC may proceed with the dispersant or chemical agent application if the threat represents a substantial threat to public health or welfare, or serious environmental damage is imminent if dispersants or chemical agents are not used.

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/s/ \_\_\_\_\_  
Captain Zawadzki  
Chief, Marine Safety Division  
Seventh Coast Guard District

11/13/91 \_\_\_\_\_  
DATE

/s/ \_\_\_\_\_  
Mr. Richard Salkie  
Associate Director, Removal and  
Emergency Preparedness Programs  
U.S. Environmental Protection Agency  
Region II

11/13/91 \_\_\_\_\_  
DATE

\_\_\_\_\_/s/\_\_\_\_\_  
Mr. Gregory Hogue  
U.S. Department of the Interior  
Caribbean RRT Representative

\_\_\_\_11/13/91\_\_\_\_\_  
DATE

\_\_\_\_\_/s/\_\_\_\_\_  
Mr. Waynon Johnson  
U.S. Department of Commerce  
Caribbean RRT Representative

\_\_\_\_11/13/91\_\_\_\_\_  
DATE

\_\_\_\_\_/s/\_\_\_\_\_  
Mr. Roy Adams  
Commissioner  
Department of Planning and Natural Resources  
U.S. Virgin Islands

\_\_\_\_6/19/92\_\_\_\_\_  
DATE