U.S. House Energy & Commerce Committee March 13, 2019
Environment & Climate Change Subcommittee
2322 Rayburn House Office Building
Attn: Committee Contacts Jackie Cohen & Adam Fischer via email

Hearing on Mismanaging Chemical Risks: EPA's Failure to Protect Workers

Dear subcommittee members;

Thank you for looking into this matter of EPA's systemic mismanagement of chemical risks to workers. I am submitting for the record related worker health impacts from dispersant use in oil spill response, especially as it pertains to EPA's failure to maintain an updated, science-based National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

My name is Dr. Riki Ott and I have personally witnessed the tragic human health consequences of our shamefully outdated oil spill response activities on first responders and the general public in our nation's largest oil disasters: the *Exxon Valdez* oil spill (EVOS) in Prince William Sound, Alaska, in 1989 and the 2010 BP Deepwater Horizon (BP DWH) disaster in the Gulf of Mexico. I have testified before congressional committees multiple times following the EVOS disaster, authored two books about the health consequences to humans and marine life, and been one of the driving forces to update the NCP for the past quarter century.

My remarks will be brief, as I will incorporate by reference key testimony from past efforts to protect oil spill response workers and hold EPA accountable to its legally-mandated duty to update the NCP in a time fashion, consistent with best available science.

Chronology of Evidence of Harm to Oil Spill Responders

1989–2004

> *"I thought I had the Valdez Crud in 1989. I didn't think I'd have it for 13 years."*
> ~ Participant in 2001 health survey of *Exxon Valdez* oil spill workers conducted by Alaska Community Action on Toxics & Alaska Forum for Environmental Responsibility

In my book, *Sound Truth and Corporate Myths*, I used Exxon's own data and medical records (obtained before court records were sealed until 2024) and Alaska Dept. of Labor Occupational Injury and Illness data on *Exxon Valdez* workers to document short- and long-term human health effects of this disaster, along with two independent health surveys conducted 13 years after the event. I estimated about one-third of the workforce or between 2,000 to 3,500 workers likely suffered debilitating, chronic work-related chemical illnesses. These illnesses should have been preventable with proper training to recognize risks, prompt accurate diagnose and treatment, adequate Personal Protective

Gear for the risks encountered – all of which should be elements of a Worker Safety Program and training, authorized under the National Contingency Plan.

2002–
The weight-of-evidence amassed in *Sound Truth* subsequently triggered longitudinal studies on human health effects from the 2002 *Prestige* oil spill in Spain and from the 2007 *Hebei Spirit* oil spill in South Korea. These studies on oil spill response workers, including volunteers and children, and the affected populace, including mothers and their children, are an impressive collection of peer-reviewed papers that document long-term, generational harms on humans from oil exposure.

2010–

> *"**Learn to Recognize the Symptoms of Toxic Poisoning**: Be prepared to seek medical assistance if you have any of the following symptoms: difficulty breathing; irritation of the eyes, skin, throat, or respiratory tract; changes in skin color; headache or blurred vision; dizziness, clumsiness or lack of coordination; cramps or diarrhea." ~* Air Force Emergency Management, **2006** pocket guide for oil and hazardous substance disasters

I spent one year in Gulf Coast communities following the 2010 BP DWH oil disaster to coach local residents what to expect to inform their actions, based on what I had learned from the *Exxon Valdez* oil spill 21 years earlier. I returned for up to 4 months per year through 2017 to document human health effects and to increase scientific understanding of chemical illnesses to inform action. My efforts contributed to the inclusion of a number of work-related chemical illnesses being listed as compensable in the 2012 BP medical benefits class action settlement agreement (Table 8); this was the first time such illnesses were recognized and listed.

There really was no excuse for the still-ongoing human health tragedy in the wake of this disaster. Responders were not informed of the known risk of chemical exposure, the known symptoms of overexposure, the known diagnosis and treatments, and were not given Personal Protective Equipment commensurate with the risk. Instead, workers were consistently warned by BP trainers not to wear respirators or their jobs would be terminated.

Unprecedented aerial spraying and subsurface release of toxic Corexit dispersants over 2–3 months – use far beyond what was envisioned in the NCP, exacerbated the human tragedy by facilitating movement of oil across membranes and into bodies of humans and marine life. Three major, ongoing chronological studies on BP responders and/or coastal residents reported short- and long-term work-related chemical-illnesses; among these is in the Coast Guard cohort study. Once again, these illnesses should have been preventable with proper training to recognize risks, prompt accurate diagnose and treatment, adequate Personal Protective Equipment for the risks encountered, and strict controls on amount, duration, and use of toxic chemical dispersants.

Why are oil spill response workers put in harm's way? Why are known toxic chemicals that do more harm than good allowed to this day in oil spill response? Among the many reasons is EPA's failure to update the nation's emergency oil spill response plan in a timely and science-based fashion.

Chronology of evidence of EPA's chronic failure to update the NCP

In **1994**, the NCP was amended through an EPA rulemaking process to implement the Oil Pollution Act of 1990, the amended CWA, and Executive Order 12777. Specifically, EPA made Area Committees responsible for developing Area Contingency Plans (ACPs), including preauthorization plans for expedited decisions regarding use of products, namely dispersants. 40 CFR §300.105 Subpart B.

In **1995**, through Delegation No. 2-91 (Sept. 29, 1995), EPA "initially designated thirteen geographic areas already covered by Regional Response Teams and the Regional Response Teams as the initial Area Committees, thus circumventing the purpose of OPA90 to mandate local participation in developing local (area) oil spill prevention and response plans. In so-doing, EPA manufactured a need to create a fourth level of spill response organization to develop "sub-area" or "geographic" plans for local areas. However, this fourth level conveniently has no formal authority and is not part of the organizational structure of the NCP. So, EPA's creation actually disempowers and disengages local citizens from the planning process and allows state-level planners to usurp the authority, granted by statute, to local agencies and citizens.

Fast forward to the BP DWH disaster in **2010**.

In **2011**, U.S. EPA Office of the Inspector General issued its report "*Revisions Needed to National Contingency Plan Based on [BP] Deepwater Horizon Oil Spill*" (Report No. 11-P-0534). This in part revitalized the NCP rulemaking process that had languished since 2001.

In **2013**, EPA/OIG wrote a review of EPA's contingency planning efforts, entitled, "EPA could improve contingency planning for oil and hazardous substance response." In it, EPA/OIG criticized EPA for having created an additional level of planning beyond that required by OPA90: "EPA's contingency planning structure has exceeded the three levels of plans established by the OPA and outlined by the NCP." [1]

EPA/OIG notes that this fourth level creates confusion and, by effectively eliminating the Area Committees and their local knowledge, the Regional Contingency Plans fall short – leading like cascading dominos to a National C-Plan that is woefully inadequate to protect

[1] U.S. EPA, Office of the Inspector General, 2013, *EPA Could Improve Contingency Planning for Oil and Hazardous Substance Response*, Report No. 13-P-0152, Feb. 15, 2013. http://www.epa.gov/oig/reports/2013/20130215-13-P-0152.pdf

first responders, the public, and the environment. Local people (generally) understand the risks and want more protective measures and much less use of dispersants. EPA directly eliminated this voice and evaded statutory directives in creating this fourth level of planning.

In **2015**, EPA finally opened a rulemaking on Subpart J of the NCP, the part that deals with use of dispersants and other products during oil spill response. Over 600 unique comments were recorded, possibly a record in the NCP rulemaking history, and the local voices wanted more protection and less toxic chemicals. Unfortunately, the rulemaking was not finalized before the change in administrations.

Still in **2019**, this rulemaking remains in limbo, thus preserving outdated, dangerous regulations and essentially guaranteeing that oil spill workers and the public will be sickened en masse during the next major oil disaster.

Will you let this occur on your watch?

In sum, EPA has not kept oil spill disaster prevention and response planning current with either its statutory mandate or the emerging risks to people and the environment from conventional oil, unconventional oil and gas, and toxic chemical dispersants used in oil spill response. Planners who fail to account for the true hazardous nature of oil and dispersants will not adequately prepare to minimize harm from oil; they will fail to protect workers, public health and welfare, and the environment during spill response – as is currently the case.

I incorporate by reference ALERT's public comments on the 2015 EPA rulemaking and my 2018 testimony and photo insert for the Canadian hearing OH-001-2014 that summarize the findings of the ongoing human health impacts from the BP DWH disaster.

If I can be of any further assistance in this matter, please contact me.

Sincerely,

Riki Ott, PhD
Washington State
www.alertproject.org

Enclosures
– 2015 comments on EPA rulemaking
– 2018 testimony on human health effects of oil spills
– 2018 testimony photo insert