U.S. EPA Dispersant Regulations Update

Dispersant Listing and Use Authorization

American Petroleum Institute

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American
Petroleum
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The American Petroleum Institute

API was formed in 1919 as a standards-setting organization.

In our first 100 years, API has developed more than 700 standards to enhance operational and environmental safety, efficiency and sustainability.

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The National Petroleum War Service Committee

The American Petroleum Institute

API has nearly 600 member companies which represent all segments of America's natural gas and oil industry. API's mission is to promote safety across the industry globally and to influence public policy in support of a strong, viable U.S. oil and natural gas industry.

The National Oil and Hazardous Substances Pollution Contingency Plan (NCP)

The NCP is the federal government's regulatory framework for responding to both oil spills and hazardous substance releases. The NCP is the result of efforts to develop a national response capability and promote coordination among the hierarchy of responders and contingency plans.

Subpart J : 40 CFR 300.900 – 300.970

Establishes a list of products that may be used during a spill response and how to submit a listing request.
40 CFR 300.905; § 300.915; § 300.920

The authorization of use procedures that identify the waters and quantities in which such dispersants, other chemicals, or other spill mitigating devices and substances may be used safely.
40 CFR 300.910

Requires environmental monitoring during most dispersant applications.
40 CFR 300.913

Timeline of Rule Development

1994
Final Rule

Revisions to the NCP Subpart J

Revisions to the NCP Subpart J

Jan. 2015
Proposed Rule

2015
Open Docket

81,973 Public Comments and Interagency Review

NGOs Sue EPA to Publish the Final Rule

January 2020
Lawsuit

July 2021
Final Rule

Monitoring Requirements

NGOs Sue EPA to Publish the Complete Final Rule

April 2021
Lawsuit

May 2023
Final Rule

Product Listing and Authorization of Use

Subpart J : Product Listing and Authorization of Use Requirements

- Updated testing requirements
- More detailed product application data and information, including component identities, ecological toxicity data, and shelf-life information based on recommended storage conditions.
- Clarified and updated product use authorization processes.

Subpart J : Dispersant Testing Requirements

	Currently	December 11, 2023
Effectiveness Testing		
Test Type	Swirling Flask	Baffled Flask
Reference Oils	2 Oils of Different Viscosities	Single Oil at 2 Temperatures
Listing Threshold	45% Dispersant Effectiveness	70%/75% DE @ $5^{C}/25^{C}$
Toxicity Testing		
Dispersant Alone	Acute Toxicity	Acute, Sub-chronic, and Development Toxicity
Dispersant + Oil	Acute Toxicity	Acute Toxicity
Listing Use	Reported for Information Only	Thresholds must be met for dispersant only tests

Listing Information

Authorization Limitations

Intended Use

The Federal On-Scene Coordinator (OSC) can only authorize the use of products to be used as intended by the manufacturer.

Shelf Life

The OSC can only authorize the use of products which are within their expiration date – OR – have been retested for efficacy and toxicology within the past 12 months.

Storage Conditions

The OSC can only authorize the use of products which are documented and certified by the Responsible Party to have been stored within the manufacturer's recommended storage conditions.

Listing requirements also include information on product persistence (new), recommended procedure, and general manufacturer information.

Product Removal from the NCP Product Schedule

Inaccurate or Fraudulent Information

EPA may remove products whose listings are found to contain inaccurate or fraudulent information

A Responsible Agent Can No Longer Be Identified

On occasion, EPA may reach out to the responsible agents provided on the listing. If none can be contacted, EPA may remove the product.

Requests and Petitions

EPA may consider requests and petitions received to remove products if they demonstrate one of the cases above, or if requested by the listing's responsible agent.

Only the EPA may remove a currently listed product.

Concerns: Authorization for Use

The OSC can only authorize the use of products which are within their expiration date – OR – have been **retested for efficacy and toxicology within the past 12 months.**

The OSC can only authorize the use of products which are **documented** and **certified** **by the Responsible Party** to have been stored within the manufacturer's recommended storage conditions. **– OR –** ~~**have been retested for efficacy and toxicology within the past 12 months.**~~

- Storage conditions may not be a practical concern given the wide range of storage conditions provided in current product listings. However, no guidance has been provided on the type of documentation or data required for certification.
- Stockpile managers can start data collection and documentation protocols now, and may have some records looking backwards, but legacy documentation and data may not exist.
- Subpart J listing requirements are specific to U.S. and include more information that the material's SDS label. This could impact the availability of international stockpiles for use in the U.S.
- No retesting option to address storage condition concerns.

Concerns: Product Listing

On occasion, EPA may reach out to the responsible agents provided on the listing. **If none can be contacted, EPA may remove the product**

EPA may consider requests and petitions received to remove products if they demonstrate one of the cases above, **or if requested by the listing's responsible agent.**

- Stockpiling is a key aspect of the industry's oil spill preparedness and response strategies. However, EPA regulations create scenarios where the industry's investments may be eliminated or greatly diminished based on the business decisions of the product manufacturer.

- Only product manufacturers can apply to add products to list. The parties ultimately responsible for the success of a spill response are unable to provide direct influence for building the toolbox of available products.

Important Dates

December 11, 2023

The Rule's Effective Date.

- Authorization for Use Requirements
- Listing Information Requirements for New Applications
- Product Testing Requirements for New Applications

December 11, 2025

End of the Transition Period

- EPA has provided a 24-month transition period for products to get re-listed under the new testing and information requirements.
- Currently listed products will remain available during the transition period.

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Questions?

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