



Homeland  
Security

JUL 06 2010

The Honorable Ms. Nancy Sutley  
Chair, Council on Environmental Quality  
Executive Office of the President  
Washington, DC 20500

Dear Ms. Sutley:

This letter constitutes a request from the Department of Homeland Security/Coast Guard (DHS/CG), which is working closely with the Environmental Protection Agency (USEPA) to implement the subject interim joint rule, to establish alternative arrangements pursuant to Section 1506.11 of the Council on Environmental Quality Regulations for compliance with the National Environmental Policy Act (NEPA) (40 C.F.R. § 1500 et seq).

As I know you are well aware, the April 20, 2010, explosion and sinking of the Deepwater Horizon vessel while drilling a well in the Gulf of Mexico created a release of oil into the waters of the Gulf that is unprecedented in United States history. The release was declared a Spill of National Significance (SONS) by Homeland Security Secretary Napolitano. This SONS emergency has created the emergent need for unprecedented levels of spill response capability. Mobilization of the available response equipment has proven inadequate to protect human health and the natural resources of the Gulf environment, including wildlife and shorelines, as an adequate number of available U.S. oil spill response vessels capable of skimming oil cannot be employed in a timely manner to recover the oil released from the Deepwater Horizon oil spill. (Memorandum from Rear Admiral J. A. Watson, Federal On-Scene Coordinator (FOSC), BP Deepwater Horizon Oil Spill, to National Incident Command (NIC) of June 16, 2010). There are nearly 200 response vessels in the United States whose whole reason for being is to respond to releases of oil, but which are not available to the NIC or the FOSC.

One important impediment to the mobilization is the regulatory regime that requires much of the U.S. spill response capacity to remain where it is presently located to meet regulatory requirements established by the DHS/CG, the USEPA, or both. To meet the urgent need to respond to the real emergency that the Deepwater Horizon SONS presents to the Gulf, DHS/CG and USEPA are going to issue a temporary interim joint rule amending (for the duration of the emergency) the requirements that impede relocation of urgently needed response equipment.

By providing oil spill removal organizations (OSROs) and facilities and vessels with their own response resources, with the temporary opportunity to relocate response resources from current locations to the Gulf of Mexico, this rule directly assists in the urgently needed immediate relocation of nationwide oil spill response resources to the Gulf of Mexico to aid in the response to the Deepwater Horizon SONS. The rule also provides notice that the Federal On-Scene Coordinator for the Deepwater Horizon SONS has requested the Armed Forces to relocate Armed Forces oil spill response resources, in particular, those of the Navy, from their

current locations to the Gulf of Mexico to aid in the response to the Deepwater Horizon SONS. The result will be more resources being available to respond to the SONS emergency.

At the same time, it is undeniable that potentially longer response times to a large spill, if one were to occur in an area which has reduced the speed with which local or regional OSROs are required to respond, could result in an increase in adverse environmental impacts over those which would otherwise occur had the rule not changed. While the likelihood of such impacts being significant is small, especially in comparison to the existing adverse impacts which relocation of the equipment is intended to combat, DHS/CG cannot conscientiously find that no significant impacts could occur as a result of the publication of this temporary interim rule. As a result, DHS/CG, acting under the Oil Pollution Act of 1990, and working closely with USEPA, acting under the Federal Water Pollution Control Act, including section 511 thereof, is requesting emergency alternative arrangements for compliance with the NEPA.

The inability to make a finding of no significant impact normally requires an Environmental Impact Statement (EIS) before an agency can take action knowing it could result in significant environmental impacts. In the present emergency, DHS/CG and USEPA understand that taking the proposed action may create the potential for significant adverse impacts in some of those places from which vessels and equipment move to the Gulf. We would point out that safeguards have been included in the rule to minimize any potential risk.

We believe that potential to be a small increase in risk. The rule change we are implementing does not remove any specific spill response equipment from coastal areas outside the Gulf, nor does it allow the complete removal of equipment from any area. The rule change allows owners and operators of response equipment, including OSROs, to determine that they can meet the reduced response time requirements with less equipment close at hand than possible under the present rules. This should allow more of them to volunteer to make their equipment available to the NIC for response action in the Gulf.

We also recognize that the failure to take this action now, before being able to complete an EIS, with near certainty will result in a real increase in the currently ongoing significant adverse environmental impacts in the Gulf of Mexico area.

The CG is researching and collecting all NEPA documentation done in the past in support of the existing rule being amended by the Interim temporary rule and all NEPA analysis for other similar rules addressing vessel and facility response plans. DHS/CG is then re-examining the collected NEPA information to assist in establishing the current environmental baseline from the existing level of protection and any analysis that may exist on the effects of decreased response time so that we can determine as much as possible, the relative environmental risks to the places from which volunteered equipment can be accepted. Until the rule has been published, the Captains of the Port cannot adequately conduct any further analysis because the vessel and equipment owners and operators are awaiting the rule before making their own offers of equipment availability. Once the DHS/CG understands the delta between the baseline environmental conditions and the potential environmental risks posed by the temporary rule, the DHS/CG will continue to work with the Council on Environmental Quality to determine the appropriate alternative arrangements to address any potential environmental impacts from the rule that have not already been adequately analyzed in prior NEPA documents.

The decision to ask response resources to move to the Gulf will be made by the [NIC/FOSC] based on recommendations from the various Captains of the Port/Sector Commanders who understand the relative increase in risk created by movement of item A rather than item B to the Gulf. After the rule becomes effective, Captains of the Port will consult with Area Committees and Regional Response Teams to determine what assets may be made available to address the SONS. That determination will involve local and regional factors such as environmental risks, logistic limitations, and unique local or regional circumstances. This relative risk will be a function of a complex set of variables including the development of cascade plans which will expand the interlocking response back up of the various OSROs and will integrate military resources which have previously been kept independent of supporting the civilian OSROs. DHS/CG believes that this effort will greatly reduce the risk of significant adverse impacts occurring as a result of this emergency temporary interim rule. However, at this point, we are unable to conclude that the impacts of this action will not be significant in all cases. A more specific set of guidelines for the Captains of the Port are being prepared and will be issued shortly after the regulation.

Coordination with other federal agencies, State, Tribal and local governments; consultation with governmental entities, and interested private sector entities and NGOs

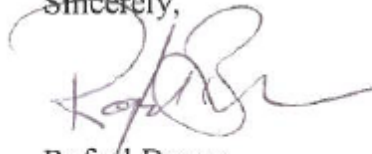
The Deepwater Horizon SONS is the first of its kind. An extensive network for coordination and consultation has been developed and continues to mature at the national incident command center, in the interagency solutions group, and at the unified area commands. In addition to the above described consultation process at the Area Committee level, DHS/CG will make full use of the broad list of interested parties, in industry, in the NGO community and in the general public it compiled in the initial regulatory environmental review in order to identify potential stake holders and interested parties. This list is being compiled based on public notice lists developed for NEPA analyses completed for similar rules in the past. As time passes in this effort, more information will be obtained, more coordination and consultation will occur and more informed decisions will be made.

The temporary interim rule expires December 31, 2010. Currently, DHS/CG and USEPA believe that the emergency will be significantly reduced by that date. While there may well be remedial activities ongoing at that time, we believe it likely that further release of oil into the Gulf will have ceased and that activities of response vessels on the water will be winding down. However, we recognize that this may prove overly optimistic. As we continue to monitor activities to stop the release, avoid damages to the waters of the Gulf and the species that inhabit them, and to repair damage that has occurred to the Gulf environment, the species that inhabit it, and the residents of the area who either rely on it for their livelihood, enjoy it, or both, we will determine whether an earlier termination is possible or a delay in that termination is necessary. We will continue our ongoing communications with you and the staff at CEQ, as these matters are under review.

The Commandant, having consulted with the Administrator, understands that there may be potentially significant impacts from this rule. However, the Commandant believes that those potential impacts as mitigated by the safeguards contained in the temporary joint rule should be balanced against the immediate need to mitigate or eliminate the significant impacts that are currently occurring as a result of the SONS. DHS/CG appreciates your assistance in creating the

alternative arrangements we require to be in compliance with NEPA as we move forward to promulgate this emergency regulatory action under the Oil Pollution Act of 1990 jointly with USEPA's emergency regulatory action pursuant to the Federal Water Pollution Control Act. We appreciate the assistance your staff, specifically Mr. Greczmiel, has been providing, especially given the numerous demands on CEQ's time that the Deepwater Horizon SONS has generated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rafael Borrás', with a stylized flourish extending to the right.

Rafael Borrás  
Under Secretary for Management  
Department of Homeland Security