Congress of the United States

Washington, DC 20515

June 29, 2012

The Honorable Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

We write to request information regarding progress made by the Environmental Protection Agency (EPA) to update its testing and protocols regarding the use of dispersants, in the wake of the questions raised about their use throughout the Deepwater Horizon oil spill. Specifically, we note that the Government Accountability Office (GAO) has just released a report[1] (enclosed) that reviews the current science available on the effects of chemical dispersants used to mitigate surface impacts of an oil spill. The report concludes that very little is known about the impacts of chemical dispersants when applied below the surface and in cold Arctic regions, as well as about the possible long-term chronic effects dispersants may have even when used normally on the surface of a spill in temperate climates. Since fiscal year 2000, six federal agencies have spent approximately $15.5 million on 106 dispersant related research projects, with more than half of the total funding occurring since the BP Deepwater Horizon disaster in the Gulf of Mexico. According to the GAO report, although many federal agencies have identified areas of needed research relating to dispersant use, limited budgets have prevented these agencies from actually funding these projects.

As Shell Oil Company prepares to open up vast areas in the Arctic Ocean for oil drilling and as offshore deep water drilling in the Gulf of Mexico expands, it is imperative that the EPA has a firm hold on the environmental consequences of dispersant use in both of these challenging and complex ecological environments.

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[1] GAO-12-585: Oil Dispersants: Additional Research Needed, Particularly on Subsurface and Arctic Applications. See: http://www.gao.gov/prerelease/3Fm7

More than two years have passed since the BP Macondo well was capped and the oil flow halted in the Gulf of Mexico. During the 87-day spill, an unprecedented amount of oil was released into the Gulf of Mexico, making it the worst environmental disaster in U.S. history. One of the primary mitigation strategies employed by BP involved the application of chemical dispersants to break the oil into tiny droplets that scatter in the ocean and are thought to biodegrade more quickly. During the spill, for the first time in U.S. history, the EPA along with the U.S. Coast Guard authorized the application of chemical dispersants at the source of the leak, thousands of feet below the sea's surface. Despite attempts by the EPA to eliminate or reduce dramatically the amount of dispersants being used during mitigation efforts, exemptions to these limits were routinely granted to BP by the U.S. Coast Guard.[2] As a result, millions of gallons of a chemical dispersant were added to Gulf waters, contributing to a toxic stew of chemicals, oil and gas with long term impacts that are still not fully understood. The use of these chemicals deep in the water column also contributed to the formation of large plumes of dispersed oil particles below the surface, whose biodegradation rates and ecological impacts are still being studied.

As a part of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) that delineates procedures for responding to oil spills, the EPA maintains the Product Schedule, which lists chemical dispersants that may be authorized for use on oil discharges. During the BP oil spill cleanup, the main dispersant chosen for use was a product known as COREXIT. As a result of its prominence in the oil spill cleanup, the majority of toxicity and efficacy studies immediately following the spill were conducted on this particular dispersant brand. Both the presidential commission that investigated the Deepwater Horizon[3] incident and the EPA Inspector General[4] have recommended that EPA update the Product Schedule's testing protocols and requirements for listing. In addition, the EPA Inspector General made recommendations for EPA to improve its response during spills of national significance, including reviewing and updating contingency plans with additional information learned from the Deepwater Horizon oil spill response and establishing a research plan on the long term health and environmental impacts of dispersants.

In addition, in response to several oversight letters[5] Rep. Markey sent to the EPA regarding the use of dispersants during the Deepwater Horizon disaster, the EPA stated that it "will undertake a review and evaluation of existing laws and regulations regarding dispersants for potential revision. Issues to address include toxicity, efficacy, and other

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[2] Rep. Markey conducted extensive oversight into the response of the oil spill including an investigation into the overuse of dispersants. See: http://markey.house.gov/rep-markeys-investigation-use-chemical-dispersants

[3] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling* (Washington, D.C. January 2011).
Se: http://www.gpo.gov/fdsys/pkg/GPO-OILCOMMISSION/content-detail.html

[4] EPA, Office of Inspector General, *Revisions Needed to National Contingency Plan Based on Deepwater Horizon Oil Spill*, Report No. 11-P-0534 (Washington, D.C. Aug. 25, 2011).
See: http://www.epa.gov/oig/reports/2011/20110825-11-P-0534.pdf

[5] See EPA's May 27th and August 5th response to Rep. Markey's letters: http://markey.house.gov/rep-markeys-investigation-use-chemical-dispersants

criteria associated with EPA's NCP Sup-part J regulation and the development of new tests and criteria." EPA also stated that it "plans to significantly increase our research on the potential human and environmental risks and impacts of the release of crude oil and the application of dispersants, surface washing agents, bio-remediation agents and other mitigation measures."

The GAO report states that since the Deepwater Horizon Incident the EPA has funded six dispersant research projects totaling $1.3 million, and has collaborated with the Canadian government on a wave tank that mimics ocean conditions to conduct some of its dispersant-related research. Furthermore, the EPA notes that the agency is working with other agencies of the National Response Team and Alaska Regional Response Team to understand the unique aspects of certain oil spill situations occurring in the Arctic to better inform the authorization and use of dispersants. The agency also notes, however, that more research is needed to understand the short and long term impacts dispersants have through direct and indirect exposures.

To date, the EPA has not updated the Product Schedule that lists dispersants and other mitigation agents that can be used in response to an oil spill. In light of the expansion of offshore drilling in both the Gulf and Arctic regions it is necessary that the EPA ensure that future spill mitigation agents, such as dispersants, have undergone appropriate testing for real response situations prior to their deployment in our waterways. Therefore, we ask that you respond to the following questions by close of business on August 3, 2012:

1. What types of revisions does EPA plan on making to the way in which dispersants are evaluated for addition to the National Contingency Plan (NCP) Product Schedule? Do these plans take into account long-term non-fatal impacts on marine life? Human exposure? Subsurface use at low temperatures and high pressure? Use in Arctic environments where cold temperatures and ice are prominent? Testing on crude oil? Any other lessons learned from the BP Deepwater Horizon oil spill response? Please provide a detailed timeline describing EPA's plan for collecting such information and making all such revisions.

2. How will the information and lessons gained from the BP Deepwater Horizon oil spill response be used to review and update area and regional contingency plans? Does EPA plan on developing a policy that would require for periodic reviews and updates to contingency plans? If so, what is the timeframe contemplated for the completion and implementation of such a policy? If not, why not?

3. In the plans to revise the NCP, does EPA intend to request and maintain information from the dispersant manufacturer in terms of specific chemical ingredient listings and production capacities and other information that would help the response community better prepare for future oil spills? If not, why not?

4. Does EPA plan on modifying policies and procedures for the duration and volume of dispersant used when applied on the surface of an oil spill? How will these plans take into account lessons learned from Deepwater Horizon and other major national and international oil spills? Please fully describe all such modifications.

5. Does EPA plan on developing policies and procedures for the duration and volume of dispersant used when applied subsurface? How will these plans take into account lessons learned from Deepwater Horizon and other major national and international oil spills? Please fully describe all such policies and procedures.

Thank you for your assistance and cooperation in responding to this request. Should you have any questions, please have your staff contact Dr. Avenel Joseph of Rep Markey's staff at 202-225-2836 or Dan Pearson of the Science Committee Democratic Staff at 202-225-4494.

Sincerely,

Edward J. Markey

Brad Miller