Congress of the United States
Washington, DC 20515

September 27, 2010

Gene L. Dodaro
Acting Comptroller General
Government Accountability Office
441 G Street., N.W.
Washington, D.C. 20548

Dear Mr. Dodaro,

On April 20, 2010, the Deepwater Horizon drilling rig, under contract to British Petroleum (BP) in the Gulf of Mexico, exploded, caught fire and subsequently sank, severely damaging the well head and triggering the largest oil spill in United States history. Almost immediately, BP began to apply chemical dispersants to break up the oil that rose to the surface in an attempt to alleviate the threat to the waters and coastlines of the Gulf. This initial use appears to have been pre-authorized under the Sector New Orleans Geographic Response Plan and with the specific approval of the U.S. Coast Guard (USCG).[1]

On May 10, the Environmental Protection Agency (EPA) and USCG authorized BP to begin a "proof of concept" operation to determine whether subsurface use of dispersants would be effective in reducing the amount of raw crude oil reaching the surface.[2] On May 15, 2010, the USCG and EPA authorized BP to use dispersants sub-surface at the wellhead. EPA Administrator Lisa Jackson stated that "We believe that the underwater use of dispersants could lessen the overall impact of the spill."[3]

However, five days later, EPA and the USCG issued a directive requiring BP to identify and then use a less toxic dispersant and to continue daily monitoring of the effectiveness of the dispersant.[4] According to EPA,

> Because of its use in unprecedented volumes and because much is unknown about the underwater use of dispersants, EPA wants to ensure BP is using the least toxic

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[1] Under the sector response plan, pre-approval for the surface use of dispersants is given only to the Federal On-Scene Coordinator (FOSC), not the responsible party. The FOSC is required to notify the Regional Response Team (RRT) of the approval for the responsible party to use dispersants and convene the RRT within three hours of the completion of the first dispersant spray drop. U.S. Coast Guard, "Sector New Orleans Geographic Response Plan, August 2009, Sec. 3310.2. However, the guidelines and check list for the same sector seems to eliminate this requirement and make other significant changes. "RRT-6 FOSC Dispersant Pre-Approval Guidelines and CheckList," Version 4.0, Jan 4, 2001, accessed at: http://wwwdb.glo.state.tx.us/oilspill/Atlas/atlas/misc_doc/rrt6.pdf

[2] EPA and USCG, "Dispersant Monitoring and Assessment Directive for Subsurface Dispersant Application, May 10, 2010, p. 1.

[3] "Coast Guard and EPA Approve Use of Dispersant Subsea in Further Effort to Prevent Oil from Reaching U.S. Shoreline," Press Release, Deepwater Horizon Incident Joint Information Center, May 15, 2010.

[4] EPA and USCG, "Dispersant Monitoring and Assessment Directive – Addendum, May 20, 2010.

product authorized for use. We reserve the right to discontinue the use of this dispersant method if any negative impacts on the environment outweigh the benefits.[5]

In a subsequent press conference, EPA Administrator Jackson described the use of dispersants as unprecedented in "both the amount applied – which is approaching a world record – and in the method of application." She stated, as a result, that EPA and the USCG required the implementation of a "rigorous monitoring system" for the underwater application, admitting that the long-term effects on aquatic life were unknown. However, because of the use of dispersants underwater, Administrator Jackson said there would be less oil reaching the surface which would result in less surface dispersant use.[6] This was followed up by a letter to BP in which Administrator Jackson said that she expected BP to reduce the amount of dispersant applied by "as much as 75 percent and possibly more." This was accompanied by a May 26 addendum to the May 10 Dispersant Monitoring and Assessment Directive which stated that BP "shall eliminate the surface application of dispersant" except in the "rare cases" where it would have to seek an exemption which would require the approval of the Federal On-Scene Coordinator (FOSC), and limit subsurface applications to 15,000 gallons per day.[7]

This, however, did not occur. Three days later, BP obtained permission from Coast Guard Rear Admiral Mary E. Landry to use 6,000 gallons per calendar day for "for health and safety purposes to minimize VOC [volatile organic chemical] emissions at the source control site." Additionally, if VOC monitoring dictated "further deployment of dispersant, bp [sic] requests authorization to exceed 6,000 gallons per day as required to manage safety of staff at Source Control site."[8] On the same day, BP asked and received permission from Landry to apply an additional 19,000 gallons of dispersant to a 150-square-mile oil slick because mechanical recovery or in-situ burning would not "provide sufficient means to recover or remove the oil in the target area."[9] On May 30, BP asked for and obtained retroactive approval of dispersants used on May 27 and May 28.[10] By June 2, BP asked for, and received, authorization for an entire week of spraying dispersants near the source control site.[11] By June 8, however, the Unified Incident Command office in Houma, Louisiana, began asking the FOSC for the exemptions because mechanical recovery and in-situ burning weren't sufficient to deal with the oil slicks. Identical requests were filed daily.[12]

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[5] "BP Must Use less Toxic Dispersant," Press Release, Deepwater Horizon Incident Joint Information Center May 20, 2010.

[6] "Statement by EPA Administrator Lisa P. Jackson from Press Conference on Dispersant Use in the Gulf of Mexico with US Coast Guard Rear Admiral Landry," EPA, May 24, 2010.

[7] Letter dated May 26, 2010, from Lisa Jackson to David Rainey, BP vice president of Gulf of Mexico Exploration, attaching Addendum 3 to the "Dispersant Monitoring and Assessment Directive."

[8] Letter dated May 29, 2010, from Douglas J. Suttles, BP, to Rear Admiral Mary Landry. Landry gave approval to the request on the same day. BP did, however, submit daily requests to deploy dispersants at the source control site. See, *e.g.*, letter dated May 31, 2010, from Douglas J. Suttles, BP, to Rear Admiral Mary Landry.

[9] Letter dated May 29, 2010, from Douglas J. Suttles, BP, to Rear Admiral Mary Landry. Landry approved the request on the same day.

[10] Letter dated May 30, 2010, from Douglas J. Suttles, BP, to Rear Admiral Mary Landry.

[11] Letter dated June 2, 2010, from Douglas J. Suttles, BP, to Rear Admiral Jim Watson.

[12] See, *e.g.*, letter dated June 8, 2010, from Houma Unified Command to Rear Admiral James A. Watson. BP continued to make weekly requests for exemptions to use dispersants at the source control site.

Based on reports available from the Deepwater Horizon HUC Web site, as of May 26, 2010, surface applications of dispersant totaled 700,000 gallons with subsurface applications totaling 140,000 gallons. By the time the spill was essentially shut off on July 15, surface applications totaled 1,070,000 gallons with subsurface applications totaling 771,000. Obviously, EPA and the USCG's directive to reduce surface dispersant use to zero except in "rare" cases had not been carried out.

This massive use of dispersants (mostly COREXIT 9500) in response to the Deepwater Horizon oil spill is a massive and unprecedented environmental experiment. As the scientists involved in the dispersant use meeting convened under the auspices of the National Oceanic and Atmospheric Administration (NOAA) agreed, the use of dispersants represents a "tradeoff decision." It trades "shoreline impacts for water column impacts. This increases the uncertainty of the fate of the oil, and potentially increases the oil sedimentation rate on the bottom." The scientists also pointed out many knowledge gaps about the impact of dispersants and dispersed oil byproducts on the subsea, coastal and surface environments and called for ongoing, extensive research to achieve greater understanding of the potential environment impacts of dispersant use.[13]

Therefore, we are requesting that the Government Accountability Office:

1. Examine the process used by the Unified Incident Command, BP and/or the Regional Response Team (RRT) to initiate and continue the surface and subsea use of dispersants and determine whether the procedures and processes established to approve the use of dispersants were followed. Was a "rigorous monitoring system" implemented? If so, what was the result of that system?

2. Review the role of the various federal agencies, with particular attention to EPA, the Coast Guard, and the RRT in approving the initial and continuing use of dispersants and in the development of the criteria established for surface use in the May 26, 2010, addendum to the May 10, 2010, "Dispersant Monitoring and Assessment Directive." What role does the potential environmental impact of the dispersants and dispersed oil play in approving use? Were dispersants used because there were not enough response boats or other equipment available to implement other forms of recovery?

3. How was the "trade-off" of using dispersants versus other forms of recovery or response evaluated initially? Were subsequent evaluations done before the well was capped? Was preventing visible oil from reaching shore a higher priority than preventing oil from being dispersed in large quantities within the water column?

4. Determine why BP and the Federal On-Site Coordinator ignored the May 26 addendum to eliminate the surface application of dispersants except in "rare" circumstances; why the Unified Incident Command, headed by the Coast Guard, replaced BP as the requestor for many of the exemptions; and which entity contracted for, controlled, and oversaw the parties

[13] "Deepwater Horizon Dispersant Use Meeting Report, May 26-27, 2010," issued by the Coastal Response Research Center, University of New Hampshire, June 4, 2010, Revision 3.

actually applying the surface and subsea dispersants. What role did EPA play in approving these exemptions? Did EPA concur with each exemption granted?

5. A frequent reason given for the exemptions was that the health and safety of workers at the source control site was being affected by exposure to volatile organic chemicals (VOC). Please evaluate this claim and its substantiation.

6. What is the expected effectiveness rate of dispersants? Was this rate achieved either in surface or subsea use? On days when surface dispersants were used, was the goal of a 75 percent reduction in the use of dispersants achieved? If not, why not? How accurate is the statement in the Oil Spill Budget Report that stated that 8 percent of the oil released from the wellhead was chemically dispersed?

7. Review the status and adequacies of EPA's studies of the toxicity of dispersants and their effects on exposed humans and marine life.

8. Examine the research initiatives recommended by the group that produced the "Deepwater Horizon Dispersant Use Meeting Report," and determine whether there has been any coordinated effort by federal agencies to set dispersant research priorities and implement them. There were also research gaps identified in the 2005 report entitled *Oil Dispersants: Efficacy and Effectiveness* from the National Academy of Science. Have any of those been addressed?

If you or your staff has any questions, please contact. Dr. Dan Pearson, Science and Technology Investigations and Oversight Subcommittee staff director, at (202) 225-4494; Edith Holleman, Investigations and Oversight Subcommittee counsel, at (202) 225-8459; or Dr. Michal Freedhoff, professional staff member, Energy and Commerce Committee at (202-225-2836).

Sincerely,

BRAD MILLER
Chairman
Investigations and Oversight Subcommittee
Science and Technology Committee

ED MARKEY
Chairman
Energy and Environment
Subcommittee
Energy and Commerce Committee

cc: Rep. Paul C. Broun
Ranking Member
Investigations and Oversight Subcommittee

The Honorable Fred Upton
Ranking Member
Subcommittee on Energy and Environment