

November 14, 2012

BY CERTIFIED MAIL

Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue NW
Washington, DC 20460

PETITION FOR RULEMAKING
Under the Clean Water Act, 33 U.S.C. § 1321(d)(2)(G) and
the Administrative Procedures Act Title 5. Sec. 553(e)
TO AMEND NATIONAL CONTINGENCY PLAN (NCP) PRODUCT SCHEDULE
to

(1) Require Mechanical Containment and Recovery as the Primary Line of Defense Against Oil Spills; (2) Strengthen the Efficacy Test Protocols; (3) Establish a Public Process to Remove Products; (4) Immediately Remove Certain Products; (5) Prohibit Use of Certain Products Within Certain Areas; (6) Require 72-hour Public Notification of Intentional Releases of Products; and (7) Require Participation of Regional Citizen Advisory Councils as Members of All Regional Response Teams (RRTs) and Require Concurrence of All RRT Members in the Authorization Process to Use Products

Dear Administrator Jackson:

The Clean Water Act requires the President to prepare a National Oil and Hazardous Substances Pollution Contingency Plan (NCP) that includes, among other things, a schedule identifying dispersants, chemicals, and other products that may be used under the NCP; the waters in which such dispersants, chemicals, and other products may be used; and the quantities of dispersants, chemicals, and other products that can be used safely in such waters. 33 U.S.C. § 1321(d)(2)(G). Responsibility for the Product Schedule was delegated to the U.S. Environmental Protection Agency (EPA).

EPA's stated intent for oil spill response is to use the most "advanced response mechanisms... available for controlling oil spills and minimizing their impacts on human health and the environment... Mechanical containment or recovery is the primary line of defense against oil spills in the United States... Chemical and biological methods can be used in conjunction with mechanical means for containing and cleaning up oil spills." (<http://www.epa.gov/osweroe1/content/learning/oiltech.htm>)

The undersigned coalition of concerned citizens hereby petition EPA, pursuant to the Clean Water Act, 33 U.S.C. § 1321(d)(2)(G), and the Administrative Procedure Act, 5 U.S.C. §

553(e) (2006) to promulgate regulations under the National Contingency Plan (NCP) Product Schedule that:

1. Require that mechanical containment and recovery be utilized as the primary line of defense in oil spill response; and that chemical and biological methods, which do not include known toxic and human health hazards, nor proprietary ingredients, and which meet the updated toxicity and efficacy testing protocols as referenced below, can be used only as a secondary line of defense and only in conjunction with mechanical containment and recovery;
2. Strengthen the efficacy test protocols for products;
3. Establish a public process whereby products may be removed from the Schedule;
4. Immediately delist or remove certain products from the Schedule;
5. Immediately and unconditionally prohibit use of any products that contain human health hazards and/or proprietary (CBI) chemicals within all special maritime and territorial waters of the United States, including and extending from the upper intertidal zone (18 USC §7);
6. Require notification 72 hours in advance of intentional releases of products on the Schedule to the public at the national, state, and local levels; and
7. Require participation of Regional Citizens Advisory Councils as members of all Regional Response Teams (RRTs) and require concurrence of all RRT members in the authorization to use products on the Schedule without exception.

In addition, the undersigned coalition also supports the petition filed on October 13, 2010, by Earthjustice on behalf of Alaska Community Action on Toxics, Cook Inletkeeper, Florida Wildlife Federation, Gulf Restoration Network, Louisiana Shrimp Association, Sierra Club, and Waterkeeper Alliance to promulgate regulations that:

8. Establish updated toxicity criteria for products listed on the NCP Product Schedule under controlled laboratory conditions, including realistic field scenarios and appropriate test species known to be sensitive to the substances being tested;
9. Require updated toxicity testing, under controlled laboratory conditions, including realistic field scenarios and appropriate test species known to be sensitive to the substances being tested, of products prior to listing, and as a condition of retention of products already listed, on the NCP Product Schedule; and
10. Require public disclosure of a product's ingredients as a condition of placement, or retention, on the NCP Product Schedule.

Of foremost concern are the NCP regulations and test protocols that allowed the

unprecedented and widespread application of at least 1.8 million gallons of two primary products—the dispersants Corexit 9500 and Corexit 9527A—during the 2010 BP Deepwater Horizon disaster. Massive releases of toxic products in the public commons, including the air people breathe and the oceans and coasts where people swim, recreate, and harvest seafood, must require definitive demonstration that all alternatives have more negative side effects. America's oceans and coasts support multi-billion dollar recreational and commercial fishing industries and tourism, as well as diverse cultures. These concerns have been illustrated by data collected both before and after the BP disaster, validated by science done *after* the BP disaster, and include the emerging evidence of widespread, adverse environmental and human health impacts in the impacted Gulf states.

We address each of the first six issues separately while acknowledging that all nine points being raised by the public must be addressed to comprehensively update the NCP Product Schedule to fully address these important concerns.

I. State of Science Prior to the BP Deepwater Horizon Disaster

Crude Oil Impacts to Human Health and Ecosystem Health

Adverse effects of crude oil exposure on health of response workers, fishermen, residents of oiled communities, and others are well known and established. The American Petroleum Institute published one of the earliest literature reviews in 1985.¹ After the *Exxon Valdez* oil spill in 1989, Dr. Robert Rigg, a former Alaska medical director for Standard Alaska (BP), warned,

*"It is a known fact that neurologic changes (brain damage), skin disorders (including cancer), liver and kidney damage, cancer of other organ systems, and medical complications—secondary to exposure to—working unprotected in (or inadequately protected) can and will occur to workers exposed to crude oil and other petrochemical by-products. While short-term complaints, i.e., skin irritation, nausea, dizziness, pulmonary symptoms, etc., may be the initial signs of exposure and toxicity, the more serious long-term effects must be prevented." He recommended pulling cleanup crews "off the beaches—and out of the Sound—[to] avoid further tragedy in the form of human suffering, illness and disease..."*²

In 1993, the industry Marine Spill Response Corporation, newly formed under the Oil Pollution Act of 1990, addressed the chemical aspects of occupational health and marine oil-spill response but significantly limited the review to exposures to crude oil only, not oil spill response products.³ The authors of the 1993 review then independently completed a second review in

¹ I. R. Politzer, I. R. DeLeon, J. L. Laseter, *Impact on Human Health of Petroleum in the Marine Environment*, American Petroleum Institute, Washington, DC, 1985.

² Robert Rigg, MD, Letter to Cordova District Fishermen United, May 13, 1989, Cordova, AK. Also in City of Cordova, AK, *Cordova Fact Sheet*:1989 1[29].

³ M. G. Holliday, J. M. Park, *Occupational Health Implications of Crude Oil Exposure: Literature Review and Research Needs*, Technical Report 93-007, Marine Spill Response Corporation, Washington, DC, 1993.

1999 to update their earlier report, eloquently stating, “Mists and aerosols containing polynuclear aromatic hydrocarbons (PAHs) are, in principle, a cancer risk...”⁴ The authors also noted, “Although there are frequent references to toxicity in connection with dispersants, these invariably seem to refer to ecotoxicity. Human hazard does not appear to be an issue.” The authors found few data on the latter subject and again limited their review to crude oil exposures.

In 2011, a literature review of seven previous oil spills categorizes key human health impacts and restates the well-established facts: “Acute effects have included: respiratory, eye, and skin symptoms; headache; nausea; dizziness; and tiredness or fatigue. Chronic effects have included: psychological disorders, respiratory disorders, genotoxic effects, and endocrine abnormalities.”⁵ Significantly, widespread application of dispersants was not conducted during any of the spills included in this review.⁶

Since the 1989 *Exxon Valdez* oil spill in Alaska, scientists have established that oil spills and even short-term exposure can cause long-term harm to wildlife and ecosystem function. Chronic impacts from exposure to particulate oil or polycyclic aromatic hydrocarbons (PAHs) in wildlife include: endocrine abnormalities and reproductive problems, immune system dysfunction, genotoxic effects, stunted or slowed growth and skeletal deformities, and disruption of behavioral and social functions critical for survival, among others.⁷

Crude Oil and Dispersant Impacts to Ecosystem Health and Human

Dispersants act by breaking up the oil slick into small droplets, increasing hydrocarbon exposure to sea life in the water column. Although the composition of dispersants has changed over the decades, dispersants that contain petroleum distillates and other toxic and hazardous chemicals are inherently toxic. *Since the 1970s, it has been known that the combination of dispersants and crude oil is more toxic to the ecosystem than oil alone.* In particular, the scientific community had widely accepted as fact that dispersants do more harm than good in shallow seas, near shore, and in the intertidal zone.⁸

⁴ Park, J. M. and M. G. Holliday, Occupational-health aspects of marine oil spill response, *Pure Applied Chemistry*, 1999, 71(1):113–133.

⁵ Barry Levy and William Nassetta, “The Adverse Health Effects of Oil Spills: A Review of the Literature and a Framework for Medically Evaluating Exposed Individuals,” *Int J Occup Environ Health* 2011; 17:121–167.

⁶ The *Exxon Valdez* oil spill (EVOS) was referenced but only for psychological disorders, which were not included as acute health effects. The Corexit dispersants 9500 and 9527A, and other products, were used during the EVOS disaster response; for a list of acute and chronic adverse health impacts among response workers, see: Annie O’Neill, *Self-Reported Exposures And Health Status Among Workers From The Exxon Valdez Oil Spill Cleanup*, MS Thesis, Yale University Dept. of Epidemiology and Public Health, 2003, available at http://www.rikiott.com/pdf/oneill_thesis.pdf.

⁷ Charles Peterson, Stanley Rice, Jeffrey Short, Daniel Esler, James Bodkin, Brenda Ballachey, and David Irons, “Long-term Ecosystem Responses to the *Exxon Valdez* Oil Spill,” 2003; 302:2082–2086. See also and in Riki Ott, *Sound Truth and Corporate Myths: The Legacy of the Exxon Valdez Oil Spill* (Dragonfly Sisters Press, Cordova, AK: 2004), available at: www.rikiott.com.

⁸ J. Boyd, D. Scholz, and A. Walker, “Effects of oil and chemically dispersed oil in the environment.” In *Proceedings of the International Oil Spill Conference*, American Petroleum

Arguments for or against dispersant use remained unchanged for nearly forty years and are focused almost exclusively on potential harm to wildlife. Notably, the arguments are mostly subjective. The so-called “environmental trade-offs” of dispersant use have been the subject of spirited scientific debates for four decades—and still are for good reason.⁹ The use of dispersants does not represent a science-based, quantifiable “tradeoff” but can amount to convenient political expedience. Further, the main pro-dispersant argument—that is, to break up the oil, making it more accessible to microbial bacteria and hence speeding remediation—remains an untested assumption in the field for a range of oils. It was well established that bacterial degradation is the main natural pathway for removing crude oil from the environment, especially the less complex hydrocarbons (alkanes and “light ends” or smaller aromatic compounds).¹⁰ However, the toxicity of dispersants on these oil-eating bacteria populations largely was unknown before the BP disaster. The oil industry has a strong and expedient bias towards dispersant use instead of mechanical oil recovery equipment, despite known health risks from dispersants—and the fact that the stated priorities of the federal government are to use mechanical containment or recovery as the primary line of defense against oil spills in the United States and to minimize oil spill impacts on human health and the environment.

The state of scientific knowledge on adverse impacts of oil and dispersants pre-dating the BP Deepwater Horizon blowout is best summarized in two documents released shortly after the disaster. ScienceCorps.org released a comprehensive report on the health hazards of crude oil and the known ingredients of the Corexit 9500 and Corexit 9527A.¹¹ The report stated that chemicals in these dispersants were known to be neurotoxins, mutagens, teratogens (able to disturb the growth and development of an embryo or fetus), and carcinogens. Further, Corexit 9527A contains 2-butoxyethanol, a toxic solvent and human health hazard that ruptures red blood cells, causing hemolysis (bleeding) and liver and kidney damage. The authors, a medical doctor and toxicologist, also warned that dispersants and crude oil contain many ingredients that target the same organs in the body and, further, that Corexit dispersants may act as an oil delivery system, facilitating the entry of oil into the body, into cells, which can damage every organ system in the body.

A scientific consensus statement elaborated upon the health risks of using the Corexit dispersants: "The properties that facilitate the movement of dispersants through oil also make it easier for them to move through cell walls, skin barriers, and membranes that protect vital organs, underlying layers of skin, the surfaces of eyes, mouths, and other structures." The consensus document concluded, "Corexit dispersants, in combination with crude oil, pose grave health risks to marine life and human health and threaten to deplete critical niches in the Gulf food web that may never recover."¹²

Institute, Washington, DC, 2001:1213–1216.

⁹ National Research Council, National Academy of Sciences, 2005. Oil Spill Dispersants: Efficacy and Effects. Available at: <http://www.hap.edu/catalog/11283.html>

¹⁰ R. Wilcock, G. Corban, G. Northcott, A. Wilkins and A. Langdon, “Persistence of polycyclic aromatic compounds of different molecular size and water solubility in surficial sediment of an intertidal sandflat,” *Environmental Toxicology and Chemistry*, 1996; 15:670-676.

¹¹ Burns, K. and Harbut, M.R., 2010. *Gulf Oil Spill Hazards*, Sciencecorps, Lexington, MA, June 14, 2010. Available at <http://www.sciencecorps.org/crudeoilhazards.htm>

¹² Consensus Statement: Scientists oppose the use of dispersant chemicals in the Gulf of Mexico, July

Based on science and driven by public concerns prior to the BP Deepwater Horizon disaster, the Regional Response Teams, authorized as part of the NCP under the Clean Water Act, adopted voluntary bans of dispersant use in shallow water equal to or less than ten meters deep and within three miles of the coast. However, the U.S. Coast Guard is given authority under the Clean Water Act §300.415(b) and §300.415(c) to “direct appropriate actions to mitigate or remove the release of hazardous substances”; in other words, to apply dispersants within these sensitive habitats and close to urban populations—without considerations for concerns for consequences to ecosystem or human health.

II. State of Science After the BP Deepwater Horizon Disaster

The widespread application of at least 1.8 million gallons of Corexit 9500 and Corexit 9527A in response to the BP disaster was an unprecedented experiment—with immediate unprecedented consequences. For example, instead of dispersing the oil, NOAA and other scientists confirmed in early June that undersea plumes of dispersed oil had formed.¹³ These plumes were relatively stable and moved with the currents, onshore and offshore: One concern is that subsea dispersant application may have played a role in the plume formation, yet the ecosystem damage from the deep plume remains largely unknown, as is much of the life of the deep sea.

Regarding onshore deposition, studies subsequently reported that tarry masses of BP crude oil and Corexit dispersants:

- Are remobilized by high energy storms and redistribute, collecting near shore in runnels accessible by beach-goers who are wading and swimming¹⁴;
- Have “PAH concentrations consistently in excess of the IDLH (Immediately Dangerous to Life or Health) limits (80 mg/m³),”¹⁵ as stated by NIOSH and OSHA¹⁶;
- Increase the penetration or downward migration of highly toxic PAHs into beach subsurface sediments, risking groundwater contamination¹⁷;

16, 2010. *Statement drafted by Dr. Susan D. Shaw, Marine Environmental Research Institute. Quotes on pp. 1–2.* <http://www.meriresearch.org/Portals/0/Documents/CONSENSUS%20STATEMENT%20ON%20DISPERSANTS%20IN%20THE%20GULF%20updated%20July%202017.pdf>

¹³ <http://www.pbs.org/newshour/rundown/2010/06/government-confirms-undersea-oil-in-gulf-of-mexico.html>

¹⁴ James “Rip” Kirby, III, “Findings of Persistency of Polycyclic Aromatic Hydrocarbons in Residual Tar Product Sourced from Crude Oil Released during the Deepwater Horizon MC252 Spill of National Significance,” supported by the Surfrider Foundation, April 14, 2012, http://surfrider.org/images/uploads/publications/Corexit_Connections.pdf

¹⁵ *Ibid.*, Kirby, Persistent PAHs.

¹⁶ NIOSH Pocket Guide To Chemical Hazards; DHHS (NIOSH) Publication No. 2005-149; Sept 2007.

¹⁷ *Ibid.* Kirby, Persistent PAHs.

- Create a discernible fluorescent signature when illuminated by 370 nm UV light,¹⁸ indicating presence of dispersed oil and dispersant even on beaches that appeared clean and safe under natural light conditions¹⁹;
- Behave as an absorption accelerant upon contact with *wet* human skin, facilitating far more efficient dermal absorption of oil; in these tests, presence of oil and dispersant on human skin was demonstrated with ultraviolet light, which was *not visible under natural light conditions*.²⁰
- Are toxic to the two main species of bacteria known to biodegrade crude oil *in situ*.²¹

Regarding offshore movement, fishermen, seafood processors, and scientists are reporting unprecedented findings—mutated shrimp with tumors and without eyes and even eye sockets; fish with oozing lesions, tumor masses, and lacking eyes and eye sockets; underdeveloped blue crabs lacking claws, complete shells, and eyes;²² and high numbers of dolphin deaths, including six times higher than the average number of perinatal (near birth) strandings in the region since 2003.²³ Dolphins have also washed ashore with no eyes and eye sockets. Crabs, shrimp, and fish have a black tarry substance in their gills and stomachs. Scientists are finding the deformed and dying sea life in the region is “spatially coordinated with oil from the [BP] (*sic*) Deepwater Horizon, both surface oil and subsurface oil,” according to Dr. Jim Cowan with Louisiana State University’s Department of Oceanography and Coastal Sciences.²⁴

Further, dispersant-coated oil droplets, can be aerosolized becoming part of the Gulf hydrologic cycle and appearing in sea breezes, clouds, and rain, as confirmed by NASA scientists²⁵—and consistent with samples taken by Gulf coast residents or media of oily sheen contaminating their airplane’s leading edges after flying over the Gulf,²⁶ puddles on door stoops

¹⁸ See Kirby, Persistent PAHs.

¹⁹ Photos at <http://www.tampabay.com/blogs/alleyes/2010/06/gulf-oil-disaster-pensacola-beach.html>. See also <http://news.nationalgeographic.com/news/2010/07/photogalleries/100708-environment-science-gulf-oil-spill-glowing-ultraviolet-pictures/>

²⁰ Ibid, Kirby, Persistent PAHs, see esp. Figures 6 and 7, p. 16.

²¹ Leila Hamdan and Preston Fulmer, “Effects of COREXIT® EC9500A on bacteria from a beach oiled by the Deepwater Horizon spill,” *Aquatic Microbial Ecology*, 2011; 63:101-109.

²² Dahr Jamail, “Gulf seafood deformities alarm scientists,” *Aljazeera English*, April 20, 2012. <http://www.aljazeera.com/indepth/features/2012/04/201241682318260912.html>

²³ Ruth Carmichael, William Graham, Allen Aven, Graham Worthy, and Stephan Howden, “Were Multiple Stressors a ‘Perfect Storm’ for Northern Gulf of Mexico Bottlenose Dolphins (*Tursiops truncatus*) in 2011?” *PLoS ONE* 2012; 7(7): e41155. <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0041155>

²⁴ Jamail, Gulf seafood deformities.

²⁵ “Oil Rain” Confirmed by NASA chief mission scientist: Clouds from Gulf did “rain oil” on land (video), Feb. 21, 2011. <http://www.floridaoilspilllaw.com/oil-rain-confirmed-nasa-chief-mission-scientist-clouds-gulf-rain-oil-land-video/>

²⁶ John Wathen, Hurricane Creekkeeper, July 22, 2010 VIDEO. <http://bpoilslick.blogspot.com/2010/07/breathing-toxic-oil-vapors.html>

after rain, outdoor swimming pools,²⁷ and shallow bayous, bays, and coastal seas.²⁸

People across the Gulf from Louisiana to Florida reported and documented that Corexit dispersants were sprayed in coastal seas and shallow bays, regardless of voluntary bans in regional and national contingency plans; that dispersant use continued long after the U.S. Coast Guard stated that dispersant spraying had stopped; and that dispersants were staged in neighborhoods and across from homes.²⁹ The documentation triggered an investigation by the U.S. Justice Department.

Coastal residents, BP spill response workers, film-makers, writers, media, and others also reported or documented adverse health impacts—the major symptoms characteristic of oil spills, noted earlier, *PLUS unprecedented illnesses* such as bleeding from nose and ears; blood in urine, stool, and vomit; blisters in the throat and reoccurring MRSA-like skin lesions; seizures; and more.³⁰ Unprecedented high levels of oil and oil metabolites have been reported in the blood of coastal residents.³¹ A health and economic survey conducted in south Louisiana after the BP well was capped in July 2010 reported “almost three-quarters of respondents who believed they were exposed to crude oil or dispersant also reported experiencing symptoms. Additionally, nearly half of all respondents reported an unusual increase in health symptoms—coughing; skin and eye irritation; headaches—consistent with chemical exposure.”³²

Evidence is emerging of the potential for adverse long-term health impacts, consistent with long term health impacts in previous spills. For example, in March 2012, after denying all health claims related to the disaster (except bodily injury) for nearly two years,³³ BP agreed to a

²⁷ Florida Oil Spill Law, “EXCLUSIVE: Tests find sickened family has 50.3 ppm of Corexit’s 2-butoxyethanol in swimming pool — JUST ONE HOUR NORTH OF TAMPA,” August 30, 2010. <http://www.floridaoilspilllaw.com/exclusive-tests-find-sickened-family-has-50-3-ppm-of-corexits-2-butoxyethanol-in-swimming-pool-just-one-hour-north-of-tampa-lab-report-included/>

²⁸ News 5 investigates: Testing the water, July 23, 2012.

http://www2.wkrg.com/special_section/2010/jul/17/news-5-investigates-testing-the-water-ar-2121731/

²⁹ Riki Ott, “An open letter to US EPA, Region 6,” August 27, 2010.

http://www.huffingtonpost.com/riki-ott/an-open-letter-to-us-epa_b_697376.html

³⁰ Shawn Griffith, executive producer, *Beyond Pollution*, 2012; Bryon Hopkins, producer, *Dirty Energy*, 2012; Dahr Jamail, BP blamed for ongoing health problems,” *Aljazeera English*, April 20, 2012, <http://www.aljazeera.com/indepth/features/2012/04/2012420725163795.html>; Riki Ott, “Bio-remediation or bio-hazard? Dispersants, bacteria, and illness in the Gulf,” Sept. 17, 2010, http://www.huffingtonpost.com/riki-ott/oil-spill-illness_b_873582.html; Antonia Juhasz, *Black Tide: the Devastating Impact of the Gulf Oil Spill* (Wiley, April 2011); Josh and Rebecca Tickell, producers, *The Big Fix*, 2011. List is not exhaustive.

³¹ Wilma Subra, “BP spill blood test results – Louisiana residents: Evaluation of the test results of whole blood volatile solvents testing,” Jan. 5, 2011. <http://leanweb.org/our-work/community/public-health/bp-spill-blood-test-results-louisiana-residents>

³² Louisiana Bucket Brigade, *Self-Reported Health and Economic Impact Survey: An Analysis of the Deepwater Horizon Oil Disaster in Seven Coastal Louisiana Communities*, March 3, 2011.

http://www.labucketbrigade.org/downloads/2010_HEStudy_SummaryFINAL_1.pdf

³³ Administrator of BP’s Gulf Coast Claims Facility (GCCF) Ken Feinberg said “the GCCF did not pay for respiratory illnesses, skin conditions or other spill-related ailments.” Quoted in Susan Buchanan, “Health claims to be considered in BP’s spill settlement,” *The Louisiana Weekly*,

Medical Benefits Class Action Settlement³⁴ that was uncapped, but earmarked millions of dollars for medical treatment, medical monitoring, and compensation as well as \$105 billion for five community health clinics, staffed with medical doctors trained in treating the chemical illnesses listed in the settlement.³⁵ The illnesses and symptoms listed in Exhibit 8 of the settlement are consistent with exposure to crude oil and dispersants, as identified above by the scientific and medical community.

III. Demonstrated Inadequacy of Current Regulations

A. Stated intent and purpose of oil spill response under the NCP

EPA clearly states, “Mechanical containment or recovery is the primary line of defense against oil spills in the United States.” Further, EPA also states, “Chemical and biological methods can be used in conjunction with mechanical means for containing and cleaning up oil spills” (emphasis added; <http://www.epa.gov/osweroe1/content/learning/oiltech.htm>).

Yet during the nation’s largest and longest maritime spill, the USCG authorized massive use of dispersants daily over nearly three months—creating the clear appearance that chemical warfare was the primary line of defense against oil spills. The March 2012 *Dispersant Use Initiative*, a document intended to guide and plan research needs and decision-making in future spills and a document produced by the Interagency Coordinating Committee for Oil Pollution Research authorized under the Oil Pollution Act of 1990, indicates plans to continue and expand dispersant use in future oil spills as a primary line of defense.³⁶

We find this plan simply unacceptable and contrary to the purpose of the NCP of “controlling oil spills and minimizing their impact on human health and the environment.” This purpose and the strategy of mechanical containment or recovery as the primary line of defense against oil spills must be codified into regulations and law to prevent the oil industry, with its extreme bias towards dispersant use, from subverting the federal government’s authority and the public interest.

B. Efficacy test protocol

Pursuant to its responsibility under the Clean Water Act, EPA promulgated regulations in

March 12, 2012. <http://www.louisianaweekly.com/health-claims-to-be-considered-in-bp’s-spill-settlement/>

³⁴ BP-Plaintiffs Medical Benefits Class Action Settlement Agreement, <http://louisiana-lawyer.com/bp-oil-spill-lawyer-blog/wp-content/uploads/2012/04/6273-1.pdf>

³⁵ BP-Plaintiffs Medical Benefits Class Action Settlement Agreement, Exhibit 8: Specified Physical Conditions Matrix, Table 1: Acute SPECIFIED PHYSICAL CONDITIONS, and Table 3: Chronic SPECIFIED PHYSICAL CONDITIONS. <http://louisiana-lawyer.com/bp-oil-spill-lawyer-blog/wp-content/uploads/2012/04/6273-10.pdf>

³⁶ Coastal Response Research Center, Research Planning Incorporated, and the National Oceanic and Atmospheric Administration, *The Future of Dispersant Use in Oil Spill Response Initiative*, March 2012.

Subpart J of the NCP. The regulations establish a standard of effectiveness that each dispersant must attain in very specific laboratory conditions in order to be listed on the schedule, but require only minimal toxicity testing, permit claims of proprietary trade secrets or “confidential business information” (CBI) that limit public disclosure of a product’s ingredients, and set no criteria for worker or public safety or health. *40 CFR §300.900-300.920 (2010)*.

The laboratory conditions represent quite unrealistic field scenarios: dispersant efficacy and toxicity tests are conducted with full-strength salinity (36 ppt), synthetic seawater prepared with distilled water. *40 CFR §300, App. C, 2.3.1 (2003)*. It is quite reasonable to expect that similar tests performed in the presence of particulate organic matter (POM) including bacteria, would yield different results. The micelles that form in the absence of POM, i.e., in the standard test conditions, are lipophilic, but readily bond to organic matter. When there is nothing to bond to, the micelles remain dispersed. However, in the presence of POM, micelles tend to clump together, which could explain the flocculent oily material that settled in near shore runnels and on the ocean bottom or that formed large subsurface plumes after dispersant application in the Gulf.

The requirement to use essentially full-strength seawater raises another problem. According to NOAA, the surface salinity at the blowout site was about half-brackish; i.e., far less saline than normal seawater.³⁷ The Corexit dispersants only work in full-strength seawater—and apparently only in lab conditions of sterile, synthetic seawater. The lower salinity could have also been a factor in the observed altered behavior of the dispersed oil into flocculent material and plumes, and brackish waters are common close to shorelines, estuaries, and intertidal wetlands.

Realistic field scenarios are an important consideration when testing dispersants and other products for listing in the NCP Product Schedule. Sinking agents are expressly forbidden under Subpart J of the NCP: “Sinking agents shall not be authorized for application to oil discharges.” *40 CFR §300.910(e)*. Dispersants that create dispersed micelles under controlled laboratory conditions, but act as sinking agents under realistic field scenarios, should not be listed on the Schedule.

Finally with regards to the efficacy test protocol, dispersants are not tested on a specific crude to be dispersed, but rather on two standard reference oils, Prudhoe Bay Crude and South Louisiana Crude. *40 CFR §300, App. C, 2.3.2*. The test results are averaged (*§300, App. C, 2.5.19*), and the minimum acceptable performance criterion is 45 percent (*§300.915.7*)—i.e., *more than half the oil remains undispersed, allowing both significant oil and significant dispersants to impact the environment and human health*.

We request that the minimum acceptable performance criterion be revised to at least 70 percent (70 percent \pm 5 percent), with dispersants of 90% efficacy directed to replace stocks of lesser performance dispersants. Further, **we request** that efficacy tests be conducted on a range of petroleum and refined products that might actually be spilled other than, and in addition to, the

³⁷ NOAA, PI Brooks McCall, 2010. Data posted at:

http://data.nodc.noaa.gov/DeepwaterHorizon/Ship/Brooks_McCall/ORR/Cruise_19/CTD/Data/BM186/. Master page at: <http://www.nodc.noaa.gov/General/DeepwaterHorizon/ships.html>

two standard test oils, and that they be conducted for a range of realistic field scenarios (i.e., brackish water, high algal load, etc.).

C. Public process for removing products

Despite the uncertainties involved with extrapolating test results from laboratory tests to field conditions, the regulations do not include a process to remove or delist products from the NCP Product Schedule that: (1) do not perform in the field as anticipated under controlled laboratory conditions; (2) prove to create, or are considered as likely to create given composition, unacceptable health risks for workers, the public, or the environment; or (3) were discontinued by the manufacturer but are still listed on the Schedule and stockpiled for disaster response.

Arguments for removing products under the first two scenarios have been presented earlier, however the third scenario also has merit. In the case of Inipol EAP 22 (“Inipol”), the product was widely field-tested during the *Exxon Valdez* spill response, despite inadequate laboratory toxicity and efficacy tests—and strong public opposition based on its chemical composition.³⁸ Inipol contains 2-butoxyethanol (as does the dispersant Corexit 9527A), an industrial solvent for oil and grease and a known human health hazard, and the surfactant laurel phosphate. Even though Inipol was listed as a “bioremediation” product and applied liberally on beaches (104,510 gallons³⁹), it was widely observed in the field to act as a dispersant. Meanwhile, BAT (Bioremediation Application Team) workers suffered symptoms characteristic of exposure to Inipol and 2-butoxyethanol, as listed in the MSDS filed by Exxon.⁴⁰ Former workers self-reported many of these same symptoms as chronic conditions in a pilot health survey of EVOS workers, conducted fourteen years after the spill.⁴¹ Exxon discontinued Inipol production in the mid 1990s. However, the product remains listed for spill response even though EPA states the product is no longer manufactured.⁴²

Listing products that are no longer manufactured leaves the public and environment to bear the risk and liability should the manufacturers, or others, choose to rid their stockpiles of this hazardous product—conveniently during spill response. Clearly, this is an unacceptable scenario from the public’s perspective.

Currently, only EPA may remove a product from the NCP Product Schedule, but not for any of the aforementioned reasons. Instead, EPA may remove products only if EPA cannot verify

³⁸ The history of Inipol use during the EVOS disaster response was documented by Riki Ott in *Sound Truth and Corporate Myth*, especially chapters 6 and 7.

³⁹ A. J. Mearns, Exxon Valdez shoreline treatment and operations: Implications for response, assessment, monitoring, and research, *American Fisheries Society Symposium* 18:309–328.

⁴⁰ Exxon Company, USA, MSDS for Inipol EAP22, July 28, 1989, Houston, TX. Listed and reported symptoms included dizziness, headaches, central nervous system depression, liver and kidney damage, and red discoloration of the urine.

⁴¹ Annie O’Neill, Self-reported exposures and health status among workers from the EVOS cleanup, Master’s thesis M. P. H. Yale University, Department of Epidemiology and Public Health, 2003.

⁴² U.S. EPA, Technical Product Bulletin #B-10, Inipol EAP 22, revised 1996, <http://www.epa.gov/oem/content/ncp/products/inipolea.htm>

test results [§300.920(a)(2)], or if the liability disclaimer statement or label is not “conspicuous” or “fully reproduced”, or if there is any “other improper attempt to demonstrate the approval of the product by any NRT or other U.S. Government agency” § 300.920(e).

We request EPA to establish a formal public process, and to give the Administrator more authority, to delist or remove products on the Schedule by establishing a new section as follows:

§300.925 Removal of products from Schedule

(a) Any person seeking to amend the NCP Product Schedule to delist (remove) currently listed products may petition for an amendment to the NCP Product Schedule.

(b) To be successful, the petitioner must demonstrate, to the satisfaction of the Administrator, one or more of the following:

(1) The product contains chemicals that are known human health hazards [as defined in 29 CFR §19.1200(c)], or known to cause an adverse human health effect. The term “adverse human health effect” shall include, but not be limited to, any effect that causes a physical manifestation of harm to the human body.

(2) Any of the ingredients in the product are proprietary or otherwise have not been released to the public for inspection and review.

(3) The product, as a whole, is more harmful to natural wildlife, as demonstrated in toxicity tests with young life forms of ecologically and economically important species relevant to the area where the product will be used, than it is useful as a product. The absence of such testing, independently verified by the Administrator, is sufficient grounds to delist the product. Of specific relevance is the existence of comparable products that exhibit a less harmful effect on the natural wildlife.

(4) The product or its ingredients have mutagenic capabilities or have not been tested for mutagenicity using current methods that evaluate all standard measures including, but not limited to DNA adduct formation, sister chromatid exchanges (SCE), and epigenetic genotoxicity.

(5) The product contains any ingredients, breakdown, or interaction products that are biologically active at concentrations or for exposure levels that may occur under ALL reasonable scenarios, including multimedia contamination, anticipated misuse or accidents, or concurrent exposures to other chemicals with the same target organs.

(6) The product and/or all of its ingredients have not been tested for biological impacts resulting from lifetime or near lifetime exposure periods, with comprehensive evaluation of impacts on all systems using clinical chemistry, hematology, and other standard measures of function and toxicity at the cellular, organ, organism, and population levels.

(7) The study results are not made available to the public in their entirety, including animal-specific results, laboratory notes, Quality Assurance/Quality Control reports and other standard scientific study data.

(c) Each petition must be submitted to the Administrator by certified mail and must include:

(1) The petitioner’s name and address;

(2) A statement of the Petitioner’s interest in the proposed amendment;

(3) A statement of the need and justification for the amendment, including any supporting tests, studies, or other information.

(d) The Administrator will make a tentative decision to grant, deny, or review for no more than 14 days a petition and will publish notice of such tentative decision in the Federal Register for written public comment within 10 days of receiving the petition. The public comment period will be open for 30 days.

(e) Upon written request by any interested person, the Administrator may, at his discretion, hold an informal public hearing to consider oral comments on the tentative decision within 30 days of receiving the petition. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views.

(f) After evaluating all public comments the Administrator will make a final decision publishing in the Federal Register a regulatory amendment or a denial of the petition within 60 days of receiving the initial petition.

(g) Notwithstanding the above, the Administrator has the power to issue an emergency decision to remove any product that:

(1) contains a human health hazard and/or any priority ingredients;

(2) does not have the toxicity tests described in 2(c);

(3) does not perform in the field as anticipated under controlled laboratory conditions, including under realistic field scenarios and with appropriate test species known to be sensitive to the substances being tested

(4) proves to create, or gives the perception of creating, unacceptable health risks for workers, the public, or the environment; or

(5) was discontinued by the manufacturer but is still listed on the Schedule and stockpiled for disaster response.

D. Immediate delisting of certain products

The March 2012 Dispersant Use Initiative, a document intended to guide and plan research needs and decision-making in future spills and a document produced by the Interagency Coordinating Committee for Oil Pollution Research authorized under the Oil Pollution Act of 1990, states that key needs include, among others, “understanding risk to workers and public safety, and communicating the risk successfully, and understanding the trade offs of using dispersants with respect to human health” (emphasis added).⁴³

Quite bluntly, we do not believe that human health should be considered a “tradeoff” for dispersant use—ever, but especially in light of the long history of cavalier and superficial treatment of ecological “tradeoffs.” The oil industry and federal government have used “tradeoffs” to continue using dangerous products without any scientific justification. In the case

⁴³ *Dispersant Initiative Report*, March 2012, quote on p. 36.

http://www.crrc.unh.edu/workshops/dispersant_future_11/Dispersant_Initiative_FINALREPORT.pdf

of human health “tradeoffs,” justification is impossible.

Yet the two main dispersants stockpiled in the United States for use on future spills are Corexit 9500 and Corexit 9527A—the very dispersants that were known to be harmful to ecosystems and humans *before* the BP disaster, and that proved to do so after the disaster. These two dispersants are stockpiled in coastal communities around the contiguous United States and in Alaska and Hawaii.⁴⁴ Most are owned either by the U.S. Coast Guard regional strike teams or the major national Oil Spill Response Organizations. But, ironically, the federal government shields itself from any liability for use of these, and other, dangerous oil spill response products.

We request that EPA immediately removes Corexit 9500 and Corexit 9527A from the NCP Product Schedule under the newly established Removal Section §300.925 (g)(1-4).

Such action is broadly supported and demanded by the public and, increasingly, Tribes, as demonstrated in Appendix 1: Petition to EPA to Amend the NCP and Delist Products of Concern (signed by over 1,500 people), and Appendix 2: Village of Bill Moore’s Slough Resolution 2012-22 Banning Use and Opposition to the Use of Chemical Dispersants in Oil Spill Response and Planning.

E. Immediate and unconditional prohibition of certain products in certain waters

As part of preauthorization planning authorized under the Clean Water Act [40 CFR §300.910 (a)], Regional Response Teams (RRT) have adopted voluntary restrictions on dispersant use in shallow water equal to or less than ten meters deep and within three miles of the coast (near shore environment), following recommendations by the National Research Council⁴⁵ and driven by public concern *before the BP disaster*.

Voluntary restrictions and even outright voluntary bans do not work because the U.S. Coast Guard, as On Scene Commander (OSC) during spill response, is given ultimate authority to preempt the EPA Administrator and all other federal agencies under the Clean Water Act to “direct appropriate actions to mitigate or remove the release of hazardous substances.” CFR 40 §300.415(b) and §300.415(c). Under the NCP, the OSC can use any product, listed or not, “when, in the judgment of the OSC, the use of the product is necessary to prevent or substantially reduce a hazard to human life” (emphasis added). §300.910 (e).

The BP disaster is the latest example of industry and the U.S. Coast Guard ignoring the EPA Administrator’s request to find less toxic alternatives and to use less of the Corexit products.

⁴⁴ Inventory & Assessment of Marine Oil Spill Response Resources in Massachusetts & New England States, For the COMMONWEALTH of MASSACHUSETTS, prepared for Massachusetts Dept. of Environmental Protection, prepared by Nuka Research and Planning Group, LLC, December 2009, pp. 37–38. <http://www.mass.gov/dep/cleanup/laws/osequip.pdf>. For example, see the inventory of dispersants controlled by Marine Spill Response Corporation: Master MSRC Controlled Dispersant Inventory (12-06-2011). <http://www.msrmc.org/download/12-06-11%20Dispersant%20Inventory.pdf>

⁴⁵ National Research Council, *Using Oil Spill Dispersants on the Sea*, Washington, DC: National Academies Press, 1989.

However, EPA's authority was undermined well before the disaster: All five of the impacted Gulf states have plans that allow dispersant use on a case-by-case basis within the near shore environment. Louisiana even has an expedited approval process for dispersant use in near shore environments—but exempts biologically rich and sensitive inland bays and estuaries from the expedited process.⁴⁶

Such carte blanche authority during a disaster is a disincentive for industry to develop non-toxic products before disasters, as well as a disincentive for the public participation in the pre-planning public process, and it ignores established science. It also undermines the entire national contingency *planning* process, which is best done before, not during, disaster response.

The Oil Pollution Act of 1990 established two Regional Citizens' Advisory Councils (RCACs) demonstration programs in Alaska after the *Exxon Valdez* oil spill with the understanding that, if successful, these councils could be expanded into other regions. 33 USC §2732. The councils, especially the Prince William Sound RCAC, have been highly successful in combating industry and government complacency and in increasing oil spill prevention and response measures. Such councils are already authorized under OPA90; they need to be established in practice in every region. 33 USC §2732(a)(1)(2)(J). One way of establishing such councils is to require their presence within the RRTs and to give them authority under the NCP.

There is overwhelming evidence from the BP disaster that dispersant use significantly enhanced the harm to people and the environment than the oil release alone; that the harm to the environment occurred in shallow near shore environments and open ocean environments from the littoral to the pelagic to the benthic zones; and that the harm to human populations occurred near the coast and some distance inland—i.e., significant distances from where dispersant use was officially reported, indicating transportation via interaction with hydrologic cycles, physical oceanography, and geomorphology.

Given this evidence, it is now abundantly clear to us that: 1) voluntary bans do not work; 2) restricting dispersant use in shallow waters is not sufficient to protect human health or the environment; and 3) citizen input in the planning process and during disaster response is necessary to ensure protection of people as well as the environment.

Therefore, we request that EPA establishes a new section §300.910 as follows:

§300.910 Authorization of use.

(a) RRTs, including Regional Citizens Advisory Councils (RCACs), and Area Committees shall address, as part of their planning activities, the desirability of using appropriate dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents listed on the NCP Product Schedule, and the desirability of using appropriate burning agents. RCPs and ACPs shall, as appropriate, include applicable preauthorization plans and address the specific contexts in which such

⁴⁶ RRT-6 Near Shore Environment Dispersant Expedited Approval Process and Checklists, January 25, 2005, http://www.losco.state.la.us/pdf_docs/RRT6_Nearshore_Dispersant_EAP_031605.pdf

products should and should not be used. In meeting the provisions of this paragraph, preauthorization plans may address factors such as: the potential sources and types of oil that might be spilled; the existence and location of environmentally sensitive resources that might be impacted by spilled oil and intentional (and unintentional) release of products; the existence and location of human populations and culturally sensitive resources that might be impacted by spilled oil and intentional (and unintentional) release of products; whether public notification requirements for intentional release of products allow ample evacuation time, especially in densely populated urban areas or remote areas; available product and storage locations; available Personal Protective Equipment, including HAZWOPER gear and respirators, for anticipated numbers of responders and storage locations; available equipment and adequately trained operators; and the available means to monitor product application and effectiveness. The RRT representatives from EPA and the states with jurisdiction over the waters of the area to which a preauthorization plan applies and the RCACs and the DOC and DOI natural resource trustees shall review and either approve, disapprove, or approve with modification the preauthorization plans developed by Area Committees, as appropriate. Approved preauthorization plans shall be included in the appropriate RCPs and ACPs. Only if the RRT representatives from EPA and the states with jurisdiction over the waters of the area to which a preauthorization plan applies and the RCACs and the DOC and DOI natural resource trustees approve in advance the use of certain products under specified circumstances as described in the preauthorization plan, the OSC may authorize the use of the products without obtaining the specific concurrences described in paragraphs (b) and (c) of this section.

(b) For spill situations that are not addressed by the preauthorization plans developed pursuant to paragraph (a) of this section, the OSC, with the concurrence of the EPA representative to the RRT and the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge and the RCACs, and in consultation with the DOC and DOI natural resource trustees may authorize the use of dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents on the oil discharge, provided that the products are listed on the NCP Product Schedule.

(c) The OSC, with the concurrence of the EPA representative to the RRT and the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge and the RCACs, and in consultation with the DOC and DOI natural resource trustees may authorize the use of burning agents on a case-by-case basis.

(d) Sinking agents shall not be authorized for application to oil discharges; this includes products that perform as sinking agents in laboratory tests using realistic field scenarios.

(e) Products containing industrial solvents for oil and grease, human health hazards, proprietary ingredients, and/or surfactants are expressly prohibited within all special maritime and territorial waters of the United States, including and extending from the upper intertidal (littoral) zone (18 USC §7). No exemptions are allowed.

(f) When developing preauthorization plans, RRTs and RCACs may require the performance of supplementary toxicity and effectiveness testing of products, in addition to the test methods specified in §300.915 and described in appendix C to part 300, due to existing site-specific or area-specific concerns.

F. Public Notice

During the BP disaster, coastal residents documented spraying of dispersants in near shore and inland waters from Florida to Louisiana, despite contrary claims by USCG and BP.⁴⁷ The civilian documentation became the basis for a Department of Justice investigation—and a lingering distrust of the accuracy of public reporting of intentional releases of products during oil spill response.

Using the same rationale for the Emergency Planning and Community Right-to-Know Act (EPCRA), the general public has a right-to-know when, where, and what chemicals are intentionally released during oil spill response. People need time to act to prevent harm to themselves and their families.

We request EPA to notify the public at the national, state, and local levels 72 hours in advance of intentional releases of products on the Schedule, similar to the reporting requirements for Federal, state and local governments, Indian Tribes, and industry, regarding accidental releases of hazardous and toxic chemicals under the EPCRA.

G. Toxicity Tests

As mentioned in the introduction, we extend our support to the Petition for Rulemaking filed by Earthjustice on October 25, 2010.

We reiterate the points that the limited toxicity tests required by EPA to list products on the NCP Product Schedule do not address: toxicity to ecologically or economically important species (“species of concern”); toxicity to young life forms of species of concern; food web interactions involving species of concern; short- or long-term ecological effects of dispersed oil and dispersant mixtures, including effects on beneficial, naturally-occurring, oil-eating bacteria; or effects on human health, including response workers and the public. Further, the 96-hour LC50 toxicity tests are outdated and must be supplemented with, at a minimum, tests for mutagenicity using current methods that evaluate all standard measures including, but not limited

⁴⁷ Riki Ott, An open letter to US EPA, Region 6, August 27, 2010, http://www.huffingtonpost.com/riki-ott/an-open-letter-to-us-epa_b_697376.html

to DNA adduct formation, sister chromatid exchanges (SCE), and epigenetic genotoxicity.

We also support and reiterate the point that the industry argument for preserving trade secrets is specious: food products and nutritional supplements list ingredients without jeopardizing competition.

We support the Earthjustice petitioners' request that EPA revise and update the toxicity testing protocol by including the tests mentioned above and require full public disclosure of product ingredients as a condition of listing, or retention, on the Product Schedule.

IV. Summary & Petitioners' Requests of EPA

The emerging science from the BP Gulf oil disaster demonstrates the gross inadequacy of current regulations. These inadequacies resulted in unexpected and unprecedented subsurface oily flocculent and plumes of dispersed oil and dispersant. Emerging science is confirming that products were used in the BP disaster response, especially unprecedented amounts of dispersants, created more harm to humans and the environment than the oil release alone—yet these same dispersant products are stockpiled for future oil spill response. The EPA has both the authority and the duty to ensure a greater level of preparedness.

Therefore, we the undersigned hereby petition the EPA, pursuant to the Clean Water Act, 33 U.S.C. § 1321(d)(2)(G), and the Administrative Procedure Act, 5 U.S.C. § 553(e) (2006) to exercise its authority and duty to enforce the Clean Water Act and prevent future scenarios such as occurred during the BP Deepwater Horizon disaster by promulgating regulations that:

1. Require that mechanical containment and recovery be utilized as the primary line of defense in oil spill response; and that chemical and biological methods, which do not include known toxic and human health hazards, nor proprietary ingredients, and which meet the updated toxicity and efficacy testing protocols as referenced below, can be used only as a secondary line of defense and only in conjunction with mechanical containment and recovery;
2. Strengthen the efficacy test protocols for products;
3. Establish a public process whereby products may be removed from the Schedule;
4. Immediately delist or remove certain products from the Schedule;
5. Immediately and unconditionally prohibit use of any products that contain human health hazards and/or proprietary (CBI) chemicals within all special maritime and territorial waters of the United States, including and extending from the upper intertidal zone (18 USC §7); and
6. Require notification 72 hours in advance of intentional releases of products on the Schedule to the public at the national, state, and local levels; and

7. Require participation of Regional Citizens Advisory Councils as members of all Regional Response Teams (RRTs) and require concurrence of all RRT members in the authorization to use products on the Schedule without exception.

Further, the undersigned coalition also supports the petition filed on October 13, 2010, by Earthjustice to promulgate regulations that:

8. Establish updated toxicity criteria for products listed on the NCP Product Schedule under controlled laboratory conditions, including realistic field scenarios and appropriate test species known to be sensitive to the substances being tested;

9. Require updated toxicity testing, under controlled laboratory conditions, including realistic field scenarios and appropriate test species known to be sensitive to the substances being tested, of products prior to listing, and as a condition of retention of products already listed, on the NCP Product Schedule; and

10. Require public disclosure of a product's ingredients as a condition of placement, or retention, on the NCP Product Schedule.

Submitted by,

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Appendix 1: Petition to EPA to Amend the NCP and Delist Products of Concern
Signed by over 1,500 people:

**Appendix 2: Village of Bill Moore's Slough Resolution 2012-22 Banning Use and
Opposition to the Use of Chemical Dispersants in Oil Spill Response and Planning**

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I am an angry as apparent in the preceding statemen as well as the actual size of the spill itself has given I
I am a grown v I am capable of making educated decisi and

Our forefather: ""Give me liberty or give me death."" T ""Give me the truth

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RESOLUTION 2012-22

**Title: Banning the Use and Opposition to the Use
Of Chemical Dispersants in Oil Spill Response and Planning**

WHEREAS, the Native Village of Council of Bill Moore's Slough is a federally recognized Native Tribe of Inupiat Eskimos/Yupik/Athabaskan/Unagan/Sugpiaq/Tlingit/Haida Nation, a Tribal government whose governing body is the Bill Moore's Slough and is obligated with a duty to protect and promote the interests of its tribal members and rights of self-governance; and

WHEREAS, our peoples have historically occupied, used and depend on the livelihood and resources from the Oceans, including the Arctic, Beaufort, Chukchi, Bering, Bristol Bay, Cook Inlet, Pacific Ocean, Prince William Sound, Seas of the Kodiak Archipelago, Aleutian and Southeast Alaska seas, and the adjacent coastal and inland areas for subsistence harvesting, commerce, navigation; our community well-being, cultural traditions, and identity derive and thrive from these Oceans where the Fish, Birds, Whales, Seals, and Walrus inhabit; and these Oceans are critical fish nurseries until it is time to return to/migrate to their native waters and inland areas across Alaska to continue their circle of life; and

WHEREAS, our peoples rely on the Oceans to be healthy ecosystems for all marine life, flora, migratory birds, fish and marine mammals, and for healthy peoples, healthy communities and vibrant economics; and

WHEREAS, the Oceans are being subjected to industrial mining leases, explorations and proposals for developing the resources of the Oceans for oil, gas and other mining activities; as well as increased risks of oil spills from the associated increase in industrial marine vessel traffic, and

WHEREAS, the Oceans are unique ecosystem that can be polluted by mining fluids, oil leaks and spills, and spill response products such as chemical dispersants, all of which carry risky and dangerous consequences for the marine life, biological diversity, Tribal economies, and other commercial economies that rely on healthy marine, coastal, and inland resources and habitats for food security for customary and traditional and modern subsistence cultural activities for present and future generations; and

WHEREAS, and the threat of oil spills, leaks, explosions and resulting response ("cleanup") and emergency contingency plans and policies that call upon using dispersants would cause irreparable and imminent damages and harm to the marine life-ocean life and would affect and damage our health, our

economic way of life, our lives and livelihoods and future generations of the indigenous peoples and tribal communities of Alaska; and

WHEREAS, there is little western science about many of the marine life ways in the Arctic, Chukchi, Beaufort, Bering Bristol Bay, Cook Inlet, Pacific Ocean, Prince William Sound, Kodiak Archipelago and Southeast Alaska seas and even less about adverse, cumulative and aggregate impacts of industrial extractive resources activities, including use of chemical dispersants listed in Oil Spill Contingency Plans; and

WHEREAS, adding man-made chemical dispersants with unknown and understudied individual, cumulative, and aggregate impacts to the health and welfare of the marine life in the Oceans of Alaska directly threatens and impacts the lives, health, and well-being of the peoples and tribal communities of Alaska that depend and rely on clean water and clean air—healthy ecosystems; and

WHEREAS, unprecedented amounts —over two million gallons over at least three months—of dispersants were used in the BP Deepwater Horizon disaster; workers were not adequately protected from exposed to these substances; as well as the health of residents has been subjugated to multiple toxic pathways by the application and use of chemical dispersants through the land, air, water and ecosystems bio-accumulation; finally, after denying any human health impacts for two years, in March 2012 British Petroleum agreed to pay at least \$7.8 billion for medical services, medical monitoring, and five community health clinics across the oiled Gulf coast, each clinic to be staffed with medical doctors trained to treat chemical illness such as from exposure to oil and dispersants; and

WHEREAS, the emerging science from the BP dispersant in the Gulf shows that dispersants acted as an oil delivery system and expedited transfer of oil and dispersants into bodies of humans, dolphins, fish, and other marine life, in effect making a toxic situation—the oil disaster---even more toxic; and based on this emerging science, the federal government has concluded in the 2012 Dispersant Initiative Report that human health is an acceptable trade off for dispersant use in future oil spills; and

WHEREAS, there exist a U.S. Federal Trust duty to Tribal Governments and peoples and to uphold and enforce equal protection under the Law; such as the Oil Pollution Act of 1990, for the full self-sufficiency and self-determination of Tribal Governments to defend, protect and enhance Tribal members health, cultural resources, subsistence resources and way of life for future generations; and

WHEREAS, Tribal Governments, Tribal Peoples, Tribal Communities, have not been included in substantive and meaningful consultation regarding authorization or pre-authorization of chemical dispersants and other products listed for use in spill response in the National Contingency Plan; nor have Tribal Governments of Alaska granted or ceded prior informed consent to use toxic chemical dispersants and other spill response products, and

WHEREAS, there exists adverse and cumulative human health and environmental health justice concerns of Tribal communities regarding the burden of chemical dispersants disproportionately affecting the human health and environmental health of Tribal communities; and

WHEREAS, over 160 Nations are signatory to the International Convent on Economic, Social and Cultural Rights and in Part 1, Article 1, Section 2.:

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence; and

WHEREAS, there is a body of international instruments recognizing and establishing human rights-related norms and both International Human Rights law and International Environment law recognize the need of Indigenous Peoples for special protection which further require the adoption of precautionary measures in order to protect our right of life and our right to a healthy environment; and

NOW THEREFORE IT BE RESOLVED, that the Native Village Council of Bill Moore's Slough bans the use of dispersants and opposes the use of dispersants in the Spill Response and Contingency Plans being developed by Federal and State Agencies and Industry personnel/representatives; and

NOW THEREFORE BE IT FURTHER RESOLVED, that this Resolution shall be the policy of the Native Village of Bill Moore's Slough until it is withdrawn or modified by a subsequent Resolution.

CERTIFICATION

I, the undersigned hereby certify that the Native Village Council of Bill Moore's Slough by a vote of 5 Members of whom are present at this meeting held on this 17 day of September 2012 was adopted by a vote of 3 voting for; _____ voting against and _____ abstaining.

ATTEST:

Cheryl Duke
Chairman

K. Moore
Secretary

Date

9/17/12
Date