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Judge: EPA Must Update 26-year-old Plan for Offshore Oil Spills

Lawsuit by Environmental Groups Sought Action on Use of Toxic Dispersant Chemicals

SAN FRANCISCO— A federal judge ruled late Tuesday that the Trump administration must update its outdated plans for responding to offshore oil spills. Current plans by the Environmental Protection Agency don't take into account studies raising health and environmental concerns about the frequent use of toxic chemical oil dispersants.

Tuesday's ruling comes after the University of California-Berkeley Environmental Law Clinic and the Center for Biological Diversity filed a lawsuit in federal court in January to compel the EPA to issue rules restricting the use of chemical agents such as Corexit to clean up oil spills. Instead of mitigating environmental harm, these chemical dispersants have proven to be more toxic to humans — and often to the environment — than the oil itself.

"The EPA is today operating pursuant to a 26-year-old plan for oil spill response that proved dangerous and ineffective a decade ago in the BP Deepwater Horizon disaster. EPA's ongoing failure to update its plan to reflect scientific knowledge about the dangers of dispersant use — despite our clients' years of urging — is irresponsible and unlawful," said Claudia Polsky, director of the UC Berkeley Environmental Law Clinic, whose students are part of the legal team. "Judge Orrick's ruling is a game-changer. This is the first time a court has addressed whether EPA has a duty to keep the cleanup plans current and effective. The court said: yes."

The groups [sued](#) on behalf of environmental-justice and conservation groups, and individuals who personally experienced Corexit's toxic effects in the 1989 Exxon Valdez tanker spill or 2010 BP Deepwater Horizon disaster in the Gulf of Mexico, many of whom have actively worked to ban these products in their waters. A fact sheet on dispersant harms is available [here](#).

In Tuesday's ruling U.S. District Court Judge William H. Orrick ruled that the Clean Water Act imposes a mandatory duty on the EPA to maintain an up-to-date oil-spill response plan that reflects current science. His decision was based on interpretation of the statute's language; examination of Congress' stated goal in the Act, which is to protect the integrity of the nation's waters; and case-law precedent under other laws

holding that the EPA cannot simply set environmental health standards on a one-time basis and then walk away, even when experience reveals their flaws.

“Chemical dispersants made the BP Deepwater Horizon disaster even worse. We need to learn from these catastrophic oil spills and do better in the future,” said Kristen Monsell, oceans program legal director at the Center for Biological Diversity. “The biggest lesson is that offshore drilling is inherently dirty and dangerous and should be phased out. But while it continues, we need smarter spill responses that don’t defer to the oil industry.”

The use of dispersants is an oil-spill response method outlined in a set of federal regulations called the National Contingency Plan, which governs U.S. oil and chemical pollution emergency responses. The Clean Water Act directs the EPA to periodically review the plan and update it to account for new scientific information and new technology. But the EPA has not updated the plan since 1994, and that plan didn’t incorporate lessons learned from the Exxon Valdez disaster that occurred more than 30 years ago.

“After waiting for more than 25 years for action from the EPA on the dangerously outdated NCP, we are more than ready to move forward,” said Dr. Riki Ott, a marine toxicologist and director of Earth Island Institute’s ALERT Project, the lead plaintiff in the lawsuit. “This is a prime example of government-industry complacency.”

In addition to Dr. Ott, individual and organizational plaintiffs in the case are:

- Kindra Arnesen, member of a commercial fishing family in Plaquemines Parish, Louisiana, whose family was sickened by BP’s oil and the EPA’s authorized use of Corexit dispersants during the 2010 BP Deepwater Horizon disaster.
- Rosemary Ahtuanguak, an Iñupiat living in the now oil-industrialized zone of the North Slope in Alaska who has worked with Tribal Councils to pass resolutions banning dispersant use in Arctic waters where Alaskan Natives hunt and fish.
- Alaska’s Cook Inletkeeper, which responded to the Exxon Valdez spill and spent two decades serving on a citizen oversight council created under the Oil Pollution Act.
- Alaska Community Action on Toxics, whose founder and executive director Pam Miller found long-term health harm among Exxon Valdez spill response workers.
- The Center for Biological Diversity, which advocates for the protection of threatened and endangered species and their habitats and works to protect coastal communities from threats related to air and water pollution.

- Earth Island Institute, a nonprofit environmental advocacy organization headquartered in Berkeley and acting as fiscal sponsor of the ALERT Project.

“Exposure to chemical dispersants after the spill changed my family and my community,” said Arnesen, who has become a leading community activist. “We are all still suffering the effects from use of dispersants following Deepwater Horizon and I have seen first-hand the health problems the use of these chemicals can cause. We’ve learned to live sickly.”

In the same ruling rejecting the EPA’s legal position on its NCP-update obligation, Judge Orrick denied a motion by the American Petroleum Institute to intervene in support of the agency. In its court filings, API had argued that the EPA might not sufficiently represent its members’ interests in “expeditious development of oil and gas resources on public land.”

The [UC Berkeley Environmental Law Clinic](#), which acts as lead counsel in this matter, trains law students to be effective advocates on issues of environmental health and environmental justice. The clinic’s director, [Claudia Polsky](#), is a former public interest and government environmental lawyer.

The [Center for Biological Diversity](#) is a national, nonprofit conservation organization with more than 1.7 million members and online activists dedicated to the protection of endangered species and wild places.

[Earth Island Institute](#) is a nonprofit environmental organization and fiscal sponsor to more than seventy-five projects working in the areas of conservation, energy and climate, women’s environmental leadership, international and indigenous communities, sustainability and community resilience, and more. The organization also includes a legal division, Earth Island Advocates, a youth leadership program, New Leaders Initiative, and an award-winning magazine, Earth Island Journal. Founded in 1982 by legendary environmentalist David Brower, Earth Island Institute is one of the leading environmental activist organizations in the United States.