

September 30, 2021

via email: dickerson.aaron@epa.gov

U.S. Environmental Protection Agency
EPA Administrator Michael S. Regan, Mail code 1101A
1200 Pennsylvania Ave. NW
Washington, DC 20460

Dear EPA Administrator Regan,

We the undersigned bring a matter in urgent need of your immediate attention and action. We live in the Gulf coast region directly impacted by the 2010 BP Deepwater Horizon oil disaster and use of toxic chemical dispersants during spill response. Hazardous dispersants were staged in our public marinas and neighborhoods; they were sprayed in coastal seas where we swim and fish; they were used long after the “official” end date in July 2010. Hazardous oil spill waste was disposed of in several of our municipal landfills. Now our families, friends, and neighbors suffer with long-term diseases, disabling chemical illnesses, cancers, and early deaths linked with toxic exposures from this oil spill, and childhood cancer rates have soared in our coastal communities. Many of us have participated in the long-term studies that found that dispersants make oil more toxic. Significantly, local wildlife is also experiencing long-term health harm from this oil disaster. Yet dispersant use continues even now. We pray for relief from these toxic chemicals.

You, as EPA Administrator, oversee the rules governing dispersant use under the National Oil and Hazardous Pollutant Contingency Plan (NCP). The “current” rules are outdated, based on last century’s science that used rudimentary lab tests with little effort to understand their actual impacts in the real world. Some of us originally filed a rulemaking petition with EPA on November 14, 2012, urging an NCP update to rules governing dispersant use. On January 22, 2015, EPA issued a Notice of Proposed Rulemaking to revise the NCP’s Subpart J, the rules governing dispersant use. EPA stated the proposed rule was “anticipated to encourage the development of safer and more effective spill mitigating products, and would better target the use of these products to reduce the risks to human health and the environment.” For years, EPA took no action to finalize its proposed rule.

On August 9, 2021, in a suit brought by environmental justice and tribal advocates and individuals, a federal district court ruled in favor of the public interest by ordering the U.S. Environmental Protection Agency (EPA) to finalize the update of its decades-old regulations on the use of toxic chemical dispersants in oil spill response. The court imposed a deadline of May 31, 2023. Just prior to the court decision, however, the EPA signaled its intent to continue dispersant use in future spills when it issued a final rule to require monitoring of dispersant use in certain situations. This puts us at grave risk of harm and is completely unacceptable.

To protect our health and wellbeing, we ask you, the EPA Administrator, to take four specific and immediate actions to protect our health and wellbeing in relation to this ongoing litigation and the associated EPA rulemaking.

1. Let the August 9, 2021, court decision stand – do not appeal it

In summary judgment, the court refused to reconsider its earlier decision (p. 5, fn 2) that the “EPA has a nondiscretionary duty to revise or amend the NCP when there is new information that shows that the current standards for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance pollution are insufficient to safely provide for mitigation of any pollution.” See Order at 8 (p. 6, lines 9–12), interpreting 33 U.S.C. §1321(d)(2).

The court opined that “EPA’s own documents . . . show that the NCP is ineffective and inefficient and therefore that EPA’s nondiscretionary duty to revise or amend the NCP is triggered.” (p. 9–10, lines 25–26, 1). *This order clarifies an important clause of the Clean Water Act that has not been previously litigated. We ask you to support, rather than relitigate, this interpretation.*

Further, in summary judgment, the court ruled that EPA violated the Administrative Procedures Act’s guarantee of timely action on petitions, finding that “the EPA’s delay [of eight years] is unreasonable and compelling agency action.” (p. 16, lines 12–13). The court opined that “importantly, the EPA issued the Proposed Rule [in 2015] as it told [lead plaintiff ALERT/] Earth Island it would but has not issued a final rule for more than six years.” (p. 14, lines 14–16). *We have waited an unreasonable time and through three federal administrations for a final rule. We ask EPA to submit to this order and proceed to issue a final rule on (or more quickly than) the deadline the court imposed.*

2. Withdraw the final rule issued July 27, 2021

The BP Deepwater Horizon disaster raised serious concerns about dispersant use that EPA had failed to consider. For example, should dispersants be used deep underwater, when oil spill response plans only contemplated and authorized surface use? How much dispersant can spill responders apply before toxic effects overwhelm local ecosystems and pose health hazards to first responders, contract workers, and the exposed public? EPA could not answer these questions, yet it allowed the federal response team and BP to proceed with unprecedented “atypical” dispersant use in large volumes through deep sea injection and surface spraying of long durations. This proved devastating for people living in coastal communities, oil spill responders, and wildlife.

The 2015 Proposed Rule addressed 1) the outdated testing protocols with updated authorization of use procedures and methods, 2) the need for less toxic products with new data and information requirements, and 3) the need for environmental monitoring of dispersant use in response to an oil discharge to waters of the United States.

Contrary to current science that clearly demonstrates that chemical dispersants pose a dire risk to both human health and the environment, the EPA rushed to finalize only one part of the 2015 Proposed Rule. On July 27, 2021, EPA issued a final rule relating to monitoring of only atypical dispersant use in the deep sea and for prolonged surface use. This rule suggests that such uses will be *authorized in the portions of the rule yet to be finalized*, despite overwhelming evidence weighing against these uses. And this rule avoids the

controversial issue of whether such use or any use should be allowed at all, given the current science.

This is unacceptable. We want one final comprehensive rule. We ask that you withdraw the July 27, 2021, final rule immediately or at least before it goes into effect on January 24, 2022.

3. *Immediately reopen the 2015 rulemaking with a 45-day public comment period to include relevant science from 2015 to 2021*

Finally, in summary judgment, the court granted EPA until May 31, 2023, to take final action on the 2015 Proposed Rule under court supervision and with status reports every 180 days.

The public comment period for the 2015 Proposed Rule ended on April 22, 2015. Given EPA's unreasonable delay in issuing a final rule, this will amount to eight years of new science that will be missing from the public record that should inform this Proposed Rule. The bulk of the new science includes findings of long-term harm to people and wildlife, unsurprising given that the pre-April 2015 science had documented bioindicators predictive of long-term harm in people and wildlife. These findings alone would trigger a rulemaking to update the NCP under the August 9, 2021, court order. It is therefore critical to include the most current science in the final rule for the 2015 rulemaking.

We ask you to immediately reopen a 45-day public comment period on the 2015 Proposed Rule to allow the public to update comments based on current science. If you surmise in advance that such science needs to be incorporated into the Proposed Rule, then we ask you to immediately revise the Proposed Rule accordingly and reissue it with a 45-day public comment period. Further, we ask that this all be done without altering the court-ordered deadline of issuing a final rule on or before May 31, 2023.

4. *Issue the final rule in its entirety by the court-ordered deadline of May 31, 2023*

We ask you to carefully supervise this rulemaking process to ensure that it is completed on or before May 2023.

Our nation's oil spill emergency response plan is currently operating under science and rules governing dispersant use that are twenty-seven years old. These rules will be nearly thirty years old before they are updated in 2023. Every time dispersants are used during oil spill response, we sacrifice the health and wellbeing of ourselves, our families, and our communities. It is time to externalize the full costs of human health from oil disasters onto the oil and gas industry. It is time to recognize that oil dispersants are a net environmental loss, not benefit. Please hear us.

Sincerely,
Gulf Coast Advocates and Allies

Eastern Shore Community Health Partners, Inc.
Lesley Pacey, Founder & Director
<http://easternshorechp.org/>

Healthy Gulf

Cynthia Sarthou, Executive Director
www.healthygulf.org

Gulf Coast Center for Law & Policy

Colette Pichon Battle Esq., Executive Director
<https://www.gcclp.org/>

Surfrider Foundation

Nicole de Venoge, Florida Policy Manager
<https://www.surfrider.org/>

Texas Environmental Justice Advocacy Services

Juan Parras, Executive Director
<https://www.tejasbarrios.org/>

350 New Orleans

Renate Heurich, Co-founder
<https://350neworleans.org/>

Kindra Arnesen (Plaintiff)

Plaquemines Parish, Louisiana

ALLIES**Rosemary Ahtuanguaruak (Plaintiff)**

Nuiqsit, Alaska

Alaska Community Action on Toxics (Plaintiff)

Pamela Miller, Executive Director
www.akaction.org

ALERT Project (Plaintiff)

Riki Ott, PhD, Founder & Executive Director
www.alertproject.org

Center for Biological Diversity (Plaintiff)

Miyoko Sakashita, Oceans Program Director
www.biologicaldiversity.org

Cook Inletkeeper (Plaintiff)

Sue Mauger, Executive Director
<https://inletkeeper.org/>

Friends of the Earth

Hallie Templeton, Legal Director & Senior Campaigner
<https://foe.org/>

ADDITIONAL AVOCATES & ALLIES (signed after 9/30/21)

Dr. Yolanda Whyte Pediatrics
Yolanda Whyte, MD, President
<https://www.yolandawhytemd.com/>

Gulf Coast Creation Care
Lella B. Lowe, Co-President
<https://gulfcoastcreationcare.org>

cc:

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Corey F. Solow
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Director, People Organized in Defense of Earth and Her Resources

Robert Bullard, PhD (SW)
Professor, Dept. of Urban Planning & Environmental Policy, Texas Southern University

Juan Parras (SW)
Founder & ED, Texas Environmental Justice Advocacy Services (TEJAS)

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Matthew Tejada, Office Director
Office of Environmental Justice, U.S. EPA

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U.S. DEPARTMENT OF INTERIOR

Secretary Deb Haaland
via Office of the Secretary