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April 18, 2024

The Honorable Michael S. Regan  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Regan,

During an oil spill response, the protection of the environment, workers, and public health is of paramount importance. That is why recent revisions the Environmental Protection Agency (EPA) made to regulations governing the use of chemical dispersants in oil spill responses demand further, urgent attention. The EPA's new final rule allows the continued use of toxic, known-carcinogen oil dispersants, placing the health and safety of oil spill responders and the public at risk. As the EPA interprets and implements its new rule, I urge it to take immediate proactive measures to ensure that, to the maximum extent possible, the regulations protect the environment and prioritize worker and public health.

On June 28, 2023, the EPA promulgated its final rule "amending the requirements in Subpart J of the National Oil and Hazardous Substances Pollution Contingency Plan"—often referred to as the National Contingency Plan (NCP)—"that govern the use of dispersants, other chemicals, and other spill mitigating substances when responding to oil discharges into jurisdictional waters and adjoining shorelines of the United States."<sup>1</sup> The NCP was developed in 1968 and has undergone multiple revisions to align with the federal statutes that authorize it: the Clean Water Act;<sup>2</sup> the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA);<sup>3</sup> and the Oil Pollution Act.<sup>4</sup>

The Subpart J revisions were prompted by the 2021 summary judgment ruling from the U.S. District Court for the Northern District of California in *Earth Island Institute v. Regan*.<sup>5</sup> There,

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<sup>1</sup> National Oil and Hazardous Substances Pollution Contingency Plan; Product Schedule Listing and Authorization of Use Requirements, 88 Fed. Reg. 38280, 38280 (June 28, 2023) (to be codified at 40 C.F.R. pts. 110, 300), <https://www.federalregister.gov/documents/2023/06/12/2023-11904/national-oil-and-hazardous-substances-pollution-contingency-plan-product-schedule-listing-and>.

<sup>2</sup> 33 U.S.C. § 1251 et seq.

<sup>3</sup> 42 U.S.C. § 9601 et seq.

<sup>4</sup> 33 U.S.C. § 2701 et seq.

<sup>5</sup> 553 F.Supp.3d 737, 746 (N.D. Cal. 2021).

the court found that the EPA “failed to fulfill its nondiscretionary duty to revise or amend the NCP” in light of “new information relevant to dispersant efficacy, toxicity, and terms of authorization.”<sup>6</sup> The rule’s finalization also followed a letter that Congresswoman Nanette Diaz Barragán, Congressman Ro Khanna, and I sent to the EPA in July 2022, in which we urged you to strengthen and complete the proposed rule in order to protect human health and the environment from toxic dispersants.

The new rule took effect on December 11, 2023. It requires improved testing of the efficacy and toxicity of dispersants and other materials before they can be listed on the NCP Product Schedule Plan as permissible for use in oil responses. Currently approved products, including toxic dispersants, remain conditionally listed until December 12, 2025.<sup>7</sup> Among the dispersants that will remain available for oil spill response until the end of 2025 are Corexit 9527A and 9500A. In response to the 2010 BP Deepwater Horizon disaster in the Gulf of Mexico, more than two million gallons of those dispersants were dumped into Gulf waters in an attempt to prevent the almost 170 million gallons of leaking oil from reaching shore and to disperse it more quickly. But a 2012 post-spill study from the journal *Environmental Pollution* found that “when oil and Corexit are combined, the mixture becomes up to 52 times more toxic than oil alone.”<sup>8</sup> Other studies have shown that the Corexit products include known carcinogens and pose grave health and environmental risks.<sup>9</sup>

The final rule’s failure to prohibit the continued availability of the toxic Corexit products is therefore very troubling. Indeed, the revised regulatory scheme does little to discourage their use. In fact, under 1994 amendments to the NCP, the use of Corexit products may be preauthorized, and many coastal states have availed themselves of this option.<sup>10</sup> Additionally, if an Area Committee—comprising local and state-level stakeholders—wishes to prevent the use of toxic dispersants in its community, the final rule is unclear as to whether a federal official serving as an On-Scene Coordinator can overrule it. All these factors combine to enable the continued use of Corexit products and could limit the ability of communities affected by oil spills to ensure that the response does not cause more harm than the initial spill.

To help me better understand how the how the EPA intends to implement the new rule, ensure that toxic chemicals such as Corexit are not be available for future use, and protect the

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<sup>6</sup> *Id.*

<sup>7</sup> 40 C.F.R. § 300.955(f).

<sup>8</sup> Douglas Main, *Dispersant makes oil from spills 52 times more toxic*, NBC News (Nov. 30, 2012), <https://www.nbcnews.com/id/wbna50032789>; Roberto Rico-Martínez et al., *Synergistic toxicity of Macondo crude oil and dispersant Corexit 9500A® to the Brachionus plicatilis species complex (Rotifera)*, 173 *Env’tl Pollution* 5 (Feb. 2013), <https://www.sciencedirect.com/science/article/abs/pii/S0269749112004344>.

<sup>9</sup> Yao-Zhong Liu et al., *Carcinogenic effects of oil dispersants: A KEGG pathway-based RNA-seq study of human airway epithelial cells*, 602 *Gene* 16-23 (Feb. 20, 2017), <https://www.sciencedirect.com/science/article/abs/pii/S0378111916309180?via%3Dihub>.

<sup>10</sup> Dr. Riki Ott, *About Dispersants, Persistent Myths and Hard Facts* at 6, Earth Island Inst. (Mar. 8, 2021), [https://www.earthisland.org/advocates/Corexit-myths-facts-revised\\_2021.pdf](https://www.earthisland.org/advocates/Corexit-myths-facts-revised_2021.pdf).

environment and worker and public health during oil spill responses, I ask that you please respond in writing to the following questions by May 8, 2024:

1. Why is the EPA allowing the use of toxic and known carcinogenic dispersants Corexit 9500A and Corexit 9527A until December 2025?
2. Is the EPA planning to initiate a delisting process for Corexit 9500A and Corexit 9527A? If so, when? If not, why not?
3. Has the EPA requested disposal plans for existing stockpiles of all toxic dispersants? If not, why not?
4. What authority do Area Committees have in relation to On-Site Coordinators to prevent the usage of toxic oil dispersants in local waters?
5. What immediate precautions can the EPA recommend to the National Response Team and Regional Response Teams to protect worker and public health during oil spills?

Failure to address concerns surrounding the potential continued use of toxic oil dispersants jeopardizes environmental integrity and poses significant risks to oil spill response workers and the public.

I thank you for your consideration of these important issues and look forward to your response.

Sincerely,



Edward J. Markey  
United States Senator