



May 28, 2010

*By e-mail to: [hq.foia@epa.gov](mailto:hq.foia@epa.gov)*

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW (2822T)  
Washington, DC 20460

Re: Freedom of Information Request

Dear Freedom of Information Officer,

This Freedom of Information Act ("FOIA") request is submitted on behalf of the Gulf Restoration Network and Florida Wildlife Federation to obtain greater public disclosure with respect to the toxicity and effects of chemical dispersants being used or available for use in the Deepwater Horizon oil spill disaster. While we applaud the Environmental Protection Agency ("EPA") for its transparency in making significant bodies of information about the dispersants available to the public on its website, British Petroleum ("BP") and Nalco, the manufacturer of COREXIT dispersants being used in the Gulf of Mexico have been less forthcoming, and a legacy of secrecy surrounding toxic chemicals and their health effects has impeded public access to much critical information. Chemical dispersants are being used in the Gulf in unprecedented amounts and have essentially turned the Gulf ecosystem into the testing laboratory for both the immediate and long-term effects of their massive use. This FOIA request seeks to make publicly available additional essential information that will be needed to understand the impacts of this experiment and protect Gulf resources from more devastating damage.

The Gulf Restoration Network and Florida Wildlife Federation request the following records pursuant to FOIA, 5 U.S.C. § 552. This request does not extend to information about production facilities or capabilities, such as the process for manufacturing or processing substances, or information on the portion of a mixture comprised by any chemical substance. Instead, our interest is in information on toxicity, efficacy, and human health and ecological risks.

We request the following records for COREXIT EC9500A, COREXIT EC9527A, DISPERSIT SPC 1000, MARE CLEAN 200, NEOS AB3000, NOKOMIS 3-AA, NOKOMIS 3-F4, SEA BRAT #4, and other dispersants suitable for use in the Gulf oil spill:

1. Any records submitted to EPA pursuant to the requirement to specify the chemical name of each component of a dispersant, 40 C.F.R. § 300.915(a)(10) or otherwise identifying or disclosing the chemical name of each component of the dispersant, the CAS number of each chemical ingredient, and any known or suspected contaminants and byproducts. Our goal is to have full public disclosure of all chemical ingredients of the dispersants (including their CAS number), as well as contaminants and byproducts. If this information is made fully available to the public in some form, we would no longer seek all of the records containing it unless they fall within some other part of this request.
2. All records submitted to EPA pursuant to the requirement to test a dispersant's toxicity, 40 C.F.R. § 300.915(a)(8), including all test results, supporting data, and certifications.
3. The application to place the dispersant on the NCP Product Schedule pursuant to 40 C.F.R. § 300.920, along with copies of any correspondence between the applicant and EPA concerning the application, any additional information requested by EPA, and records documenting and explaining EPA's decision to place the dispersant on the NCP Product Schedule.

For each chemical substance that is a constituent of COREXIT EC9500A, COREXIT EC9527A, DISPERSIT SPC 1000, MARE CLEAN 200, NEOS AB3000, NOKOMIS 3-AA, NOKOMIS 3-F4, SEA BRAT #4, or any other dispersant suitable for use in the Gulf oil spill, we request:

1. All records of adverse reactions, health and safety studies and data, and notices of potential risks to health or the environment (with attachments) submitted to EPA pursuant to the Toxic Substances Control Act ("TSCA"), §§ 4, 5, and 8 (c)-(e), 15 U.S.C. §§ 2603, 2604, 2607(c)-(e).

Additionally, we request:

2. Unredacted copies of communications made between April 20, 2010 and the date of this request between EPA and BP concerning the selection and use of dispersants in response to the Deepwater Horizon oil spill in the Gulf of Mexico.

## FEE WAIVER REQUEST

The Gulf Restoration Network and Florida Wildlife Federation meet the requirements for a fee waiver for this request. More particularly, "disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interests of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1). EPA considers six factors when determining whether to waive fees for a FOIA request. 40 C.F.R. § 2.107(l)(2). As demonstrated below, each of the factors weighs in favor of granting a fee waiver.

### ***Factor 1: The Requested Records Concern the Operations or Activities of the Federal Government.***

The records requested concern EPA's addition of dispersants to the NCP Product Schedule, information submitted to EPA under TSCA, communications between EPA and BP related to use of chemical dispersants in the Gulf pursuant to EPA's responsibilities under the National Contingency Plan, and the federal government's larger obligations to ensure effective cleanup of the spill and protection of the public and environmental resources. The requested records unquestionably "concern identifiable operations or activities of the Federal government." *Id.* § 2.107(l)(2)(i).

### ***Factor 2: Disclosure of the Requested Records Is Likely to Contribute to Public Understanding of Government Operations or Activities.***

The first part of this request seeks the identities of the chemical ingredients in the dispersants, their contaminants, and byproducts. Currently, information in the public domain does not include the chemical identity of all ingredients in dispersants on the NCP Product Schedule. For example, the information on EPA's website lists the surface active agents and additives of COREXIT EC9527A as "confidential," and lists the surface active agents and solvents for COREXIT EC9500A as "confidential." *See* <http://www.epa.gov/oem/content/ncp/products/corex952.htm>; <http://www.epa.gov/oem/content/ncp/products/corex950.htm>. The chemical identity of these ingredients is not available through any other publicly available source, such as the applicable MSDSs.

The request also seeks information submitted to EPA which convinced EPA to place the particular dispersants on the NCP Product Schedule. While EPA has shared summaries of test results submitted as part of applications to place a dispersant on the NCP Product Schedule, EPA has not made the tests and other related information publicly available. *See* [http://www.epa.gov/oem/content/ncp/tox\\_tables.htm](http://www.epa.gov/oem/content/ncp/tox_tables.htm). Likewise, EPA has not shared with the public any communications between EPA and the applicants, and EPA has not made public any records explaining the basis of its decisions to place dispersants on the NCP Product Schedule.

Additionally, the request seeks health and safety information submitted to EPA under TSCA for each chemical substance that is a constituent of certain dispersants. While some information submitted to EPA pursuant to TSCA is publicly available, submitters have frequently redacted significant information based on unsubstantiated assertions that it is confidential business information. Often the identity of a chemical subject to a health and safety study or adverse effect report is redacted, leaving the public in the dark as to which chemical poses the risks. With respect to the secret ingredients in the dispersants, the public is unable to link even the health and safety information that is revealed on EPA's website to the dispersants.

Lastly, this request seeks unredacted copies of communications between EPA and BP concerning use of dispersants. The publicly available copies of such communications omit critical information concerning dispersants' chemical constituents and toxicity. See <http://www.epa.gov/bpspill/dispersants/5-21bp-response.pdf>.

In sum, the requested information "is likely to contribute" to an understanding of EPA's regulation of dispersants because it will supply critically important information that is not currently available to the public. 40 C.F.R. § 2.107(l)(2)(ii). In keeping with EPA's mission to promote public understanding of the potential risks posed by chemical substances, the requested records will shed light on the potential risks posed by dispersants. The information will also enhance public understanding of the types of monitoring work that will need to be done by the federal government, academic researchers, and spill response and cleanup enterprises. For example, once the full suite of ingredients that have been used in the Gulf spill is disclosed, researchers can design sampling to detect the ingredients (even those that are not toxic but may be readily sampled as markers) to ascertain how far the dispersants have traveled and the extent to which they have remained present or accumulated in fish, birds, plants, soils, and the overall ecosystem.

***Factor 3: Disclosure of the Requested Records Will Contribute to the Understanding of a Broad Audience Interested in the Approval and Effects of Dispersants.***

Disclosure will "contribute to the understanding" of a broad audience interested in EPA's approval of dispersants and the potential health and environmental effects of their use. *Id.* § 2.107(l)(2)(iii). Both of the requesters have staff and members who are integrally involved in the cleanup and in monitoring the ecological effects of the dispersants on the Gulf ecosystem. See <http://www.healthygulf.org/blog/>; <http://www.fwfonline.org/Oil-Spill/Oil-Spill-Hub.aspx>. Both have the capacity and intention to disseminate the requested information to (1) their members and supporters, (2) policymakers at the local, state, and federal level interested in tracking and monitoring the impacts of the dispersants in the Gulf, and (3) members of the news media, who will in turn disseminate the information more broadly to the general public.

The Gulf Restoration Network is a network of local, regional, and national groups and individuals dedicated to protecting and restoring the natural resources of the Gulf of Mexico. See <http://www.healthygulf.org/who-we-are/about-us/about-us>. GRN can disseminate the requested information on its website, by e-mail to its members, and through its newsletter and blog. See <http://www.healthygulf.org/media/news/recent-news>; <http://www.healthygulf.org/blog>. GRN has been a key source of information about the Gulf spill that others have disseminated to their members and the public. See, e.g., <http://www.rivernetwork.org/aggregator/sources/1>. Additionally, over 40 organizations belong to the GRN. See <http://www.healthygulf.org/who-we-are/about-us/membership>. The organizations that comprise the GRN have members throughout the country and can publicize the information to their members through their own websites, blogs, e-mail lists, and newsletters.

The Florida Wildlife Federation (“FWF”) is a statewide organization committed to preserving, managing, and improving Florida’s outstanding natural resources. See <http://www.fwfonline.org/aboutfwf.htm>. The information sought in this request is directly relevant to FWF’s mission of educating citizens about Florida’s coastal resources and promoting habitat monitoring and restoration. FWF can publicize the requested information through its monthly e-mail alerts, newsletter, and website. See <http://www.fwfonline.org/documents/FWF2009AnnualReportWeb.pdf>.

In addition to sharing the information with their members, FWF and GRN and its member organizations intend to share the requested information with the media and with state and federal policymakers. Through all of these mechanisms, the requesters intend to convey the information to the public to improve public understanding of the massive use of dispersants in the Gulf.

***Factor 4: The Public’s Understanding of Government Operations Will Be Significantly Enhanced by Disclosure of the Requested Information.***

Disclosure of the requested records will “contribute significantly to public understanding” of EPA’s regulation of dispersants, its authorization and oversight of the use of particular dispersants in the Gulf oil spill, and the ongoing cleanup both in terms of the use of dispersants and monitoring and mitigating their impact on the Gulf ecosystem. 40 C.F.R. § 2.107(l)(2)(iv). To date, hundreds of thousands of gallons of dispersant have been poured into the Gulf of Mexico, yet the identity of certain chemical constituents of the dispersants has been kept secret. Disclosing the chemical identity of all substances in the dispersants will significantly improve the public’s understanding of the health and environmental effects of particular dispersants and their use in the Gulf at unprecedented levels. EPA itself has stated that “an important mission of the agency [is] to promote public understanding of the potential

risks posed by chemical substances.” By disclosing the identity of dispersants’ constituents, the requested records will play an important role in furthering EPA’s mission.

EPA’s website contains summaries of toxicity study results for dispersants on the NCP Product Schedule, but does not include the study documents themselves, the accompanying certifications, or records explaining decisions concerning applications. Disclosing the study documents as well as records relating to EPA’s decision to place products on the NCP Product Schedule will greatly increase the public’s understanding of the process and standards EPA has used to place products on the NCP Product Schedule. Moreover, the requested information on dispersants will greatly increase public understanding of EPA’s comparisons of dispersants when approving dispersants for use in response to oil spills generally and the Gulf spill in particular.

Public understanding of EPA’s regulation of dispersants and their impacts on the Gulf has been hampered by the failure to disclose the identities of dispersants’ chemical constituents, as well as available health and safety information for such constituents. Unless the public knows the full health and safety record of the chemicals contained in the dispersants, the public cannot fully assess the risks and benefits of their use in the Gulf spill.

In conducting and monitoring the response to the Deepwater Horizon oil spill, EPA has communicated with BP concerning the selection of dispersants. Parts of the communication have been redacted; for example, the May 20, 2010 letter from BP to EPA contains several redacted sections. *See* <http://www.epa.gov/bpspill/dispersants/5-21bp-response.pdf>. The redacted information appears to relate to the ingredients and toxicity of both dispersants that are being used and potential alternatives. The public needs access to the redacted information to understand the options and whether BP is using the least toxic, most effective alternatives, as EPA is insisting that BP do.

Overall, disclosing the requested information will significantly improve the public’s understanding of the use of dispersants in the Gulf spill. Serious questions are being raised about their sublethal effects, synergistic effects of the chemical ingredients when mixed with crude oil, and the efficacy of dispersants, particularly when compared to nonchemical control methods. Residents of the Gulf are deeply impacted by the spill and have a right to know the full body of information that EPA has about the dispersants being used in the Gulf and alternatives to them. This information is critical to the decisions being made each day of the response operations, but will continue to be essential to the monitoring, assessment, and mitigation of the long-term effects of the dispersants on the people and marine and coastal resources of the Gulf.

***Factor 5: The Requesters Have No Commercial Interest in the Requested Disclosure of Information.***

The Gulf Restoration Network and Florida Wildlife Federation are nonprofit organizations that have no “commercial interest that would be furthered by the requested disclosure.” 40 C.F.R. § 2.107(l)(3)(i).

***Factor 6: The Requesters' Sole Interest in Disclosure Is to Promote the Public Interest.***

The sole interest of Gulf Restoration Network and Florida Wildlife Federation is obtaining the requested records to inform the public of the health and environmental effects of dispersants and to ensure the use of dispersants is fully informed and limited where necessary to avoid harm. Since GRN and FWF have no commercial interest in the requested records, the request is not “primarily in the commercial interest of the requester.” *Id.* § 2.107(l)(3)(ii).

In sum, this request meets all of the six factors for a fee waiver. In the event that fees are not waived, please notify us of the basis for your decision.

**REQUEST FOR EXPEDITION**

While FOIA generally gives the agency 20 working days to respond to a FOIA request, we ask that EPA expedite its response to this request given the heightened public interest in this matter. Members of the Gulf Restoration Network and Florida Wildlife Federation are seeing devastation from the oil spill invade their world. They are deeply concerned about the effects of massive dispersant use in the Gulf on the health of the people of the Gulf, marine life, and the entire Gulf ecosystem. While EPA has regulations and procedures in place that typically slow down its release of information that is claimed to be confidential business information, EPA has recently and repeatedly recognized that many CBI claims are unfounded and that the agency’s past procedures need to be overhauled to comport with TSCA, FOIA, and the President’s executive order on transparency. EPA need not be shackled by unwarranted CBI claims and out-of-date procedures in this instance. Under TSCA, information that is claimed to be CBI “shall be disclosed if the Administrator determines it necessary to protect health or the environment against an unreasonable risk of injury to health or the environment.” 15 U.S.C. § 2613(a)(3). The unprecedented use of chemical dispersants in the Gulf presents such a situation. Public and ecosystem health are at risk of severe injuries from the massive use of dispersants, and a lack of information about the ingredients and nature of the risks puts people in harm’s way and impedes effective precautions to lessen the toll the oil spill will take on marine and coastal resources. Accordingly, we ask that you immediately disclose the chemical ingredients in the dispersants being used in the Gulf and expedite the release of the other requested information.

### INSTRUCTIONS FOR RECORD DELIVERY

Given the intense and sustained public interest in the use of dispersants in Gulf oil spill, this request falls within the provisions of 5 U.S.C. § 552(a)(2)(D), which directs agencies to make records available online if they have been released pursuant to a FOIA request and "have become or are likely to become the subject of subsequent requests for substantially the same records." Accordingly, EPA should post the response information on its website, wherever possible, and notify us that the information will be so posted. Where posting the responsive information on the web would be infeasible or delay its release, we would prefer to receive the documents electronically, either by e-mail or on a CD, if possible. Please send records to Patti Goldman at [pgoldman@earthjustice.org](mailto:pgoldman@earthjustice.org) or mail them to:

Patti Goldman  
Earthjustice  
705 Second Ave., Suite 203  
Seattle, WA 98104-1711

In the event that you have any questions concerning the type of materials we request, or have concerns regarding the scope of the request, please contact Ms. Goldman by e-mail or by telephone at (206) 343-7340 Ext. 32.

Thank you for your assistance in this matter.

Sincerely,



Patti Goldman  
Earthjustice  
705 Second Ave., Suite 203  
Seattle, WA 98104-1711

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111 S. Martin Luther King Jr. Blvd.  
Tallahassee, FL 32301-1451