

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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July 30, 2010

Admiral Thad W. Allen
National Incident Commander
United States Coast Guard
2100 Second Street SW Stop 7101
Washington, DC 20593-7101

Dear Admiral Allen:

I write to request additional information regarding your decisions to allow BP to continue to use large volumes of dispersants in the Gulf of Mexico, including application of these toxic chemicals on the surface of the ocean. In reviewing your response to my June 24, 2010 letter I have become aware of additional potential deficiencies regarding the U.S. Coast Guard's (USCG's) efforts to oversee BP's use of these chemicals. The May 26th directive from the USCG and the Environmental Protection Agency (EPA) told BP to eliminate the use of surface dispersants except in "rare cases when there may have to be an exemption."¹ However, a review of requests for such exemptions made by BP and the Houma Unified Command (which consists of U.S. Coast Guard and other personnel and reports to the Federal On Scene Coordinator) and the approvals from the Coast Guard Federal on Scene Coordinator (FOSC)² indicates that these exemptions are in no way a "rare" occurrence, and have allowed surface application of dispersant to occur virtually every day since the Directive was issued on May 26, 2010, until last month when the flow of oil from the hemorrhaging well was stopped by placement and closure of a new sealing cap.

As you know, according to the Deepwater Horizon Unified Command, more than 1.8 million gallons of dispersants have been used both above and below the surface of the Gulf waters, contributing to a toxic stew of chemicals, oil and gas with impacts that are not well understood. There has been recent confirmation that the use of dispersants has contributed to the formation of large plumes of oil that are suspended well below the ocean surface.³ Many experts have raised concerns that these plumes could cause significant harm to aquatic life in the Gulf of

¹ <http://www.epa.gov/bpspill/dispersants/directive-addendum3.pdf>

² <http://www.deepwaterhorizonresponse.com/go/doctype/2931/57851/>

³ <http://www.noaa.gov/sciencemissions/bpoilspill.html>

Mexico. This can occur via two mechanisms. First, the toxic constituents of oil and dispersants can poison the aquatic life exposed to them leading to death or non-lethal harm and contamination of the marine food chain. Second, as naturally-occurring bacteria consume the oil, they also use up oxygen that is critical to the survival of many marine organisms. This can in turn lead to localized depletions of oxygen levels that could cause marine life to die of asphyxiation.

On May 17, 2010 I wrote⁴ to EPA raising concerns about the risks and consequences of using unprecedented volumes of dispersants in the Gulf of Mexico. Three days later, on May 20, 2010,⁵ EPA and the USCG directed BP to identify and start using a dispersant that is less toxic than Corexit, the trademarked name for the current formulation used in the Gulf. After receiving BP's response, which defended the company's choice in selecting Corexit, EPA and the USCG announced that they were not satisfied with BP's evaluation of alternatives and while the EPA undertook its own independent scientific assessment, they directed BP to completely eliminate surface application of dispersants except in "rare cases" when an exemption might be needed. This May 26th Directive⁶ also included instruction for BP to reduce the overall volume of dispersant by 75% from the maximum daily amount used (70,000 gallons per day) and to limit subsurface application to no more than 15,000 gallons per day. If BP wished to deviate from these instructions, it had to make such a request in writing and obtain approval from the Federal On-Scene Coordinator (FOOSC, which is the USCG in this case).

An analysis of the exemption request letters submitted by both BP and Houma Unified Command,⁷ as well as other documents provided to me by the USCG, reveals that since the Directive was issued on May 26th, more than 74 exemption requests have been submitted and, usually within the same day, approved by the USCG. On 5 separate occasions BP submitted requests for pre-authorized exemptions to deviate from EPA and USCG instructions by applying 6,000 gallons of dispersant per day to the ocean surface for an entire week, amounting to 35 days of pre-approved continuous use. In every instance this weekly request was approved by the USCG, and on many of these days, BP still used more than double its new 6,000 gallon limit.

Additionally, in more than one of the letters BP submitted requesting a week's worth of pre-approvals for surface dispersant use, BP contradicted information it submitted elsewhere regarding such use. For example, on June 16, BP COO Doug Suttles sent a letter to Rear Admiral James A. Watson, the Federal On-Scene Commander, requesting that BP be pre-authorized to use 6,000 gallons of surface dispersant per day for June 17-23. He indicated that the maximum daily application of surface dispersant for the days preceding June 16 was 3,360 gallons on June 12. However, an examination of the dispersant totals BP provided to Congressional staff recipients in its daily "Gulf of Mexico Oil Spill Response Updates" (see Table 1) indicates that on June 11, BP stated that it had applied 14,305 gallons of dispersant on the surface, on June 13, it stated that it had applied 36,000 gallons, and on June 14, 10,706 gallons. Additional similar discrepancies occur on multiple occasions. It is unclear whether the USCG made any attempt to verify the information BP provided in support of its requests.

⁴ <http://globalwarming.house.gov/mediacenter/letters?id=0043>

⁵ <http://www.epa.gov/bpspill/dispersants/directive-addendum2.pdf>

⁶ <http://www.epa.gov/bpspill/dispersants/directive-addendum3.pdf>

⁷ <http://www.deepwaterhorizonresponse.com/go/doctype/2931/57851/>

Furthermore, the justification provided by BP in making the exemption requests typically related to either the presence of volatile organic compound (VOC) emissions or to the presence of dispersible oil slicks, issues that were inherently and always present as a result of the constant flow of massive quantities of oil from the Deepwater Horizon well-head. Additionally, EPA raised concerns to the USCG about the frequency and incompleteness of these exemption requests, calling the approval process “pro-forma, and not as rigorous as EPA desires.” EPA also warned that the exemption requests do not meet the requirements of the May 26th Directive and that the exemptions should not “be presumed to be approved at the point they are submitted.”

In reviewing your response to my letter and the accompanying documents, it appears to me that the May 26, 2010 Directive has become more of a meaningless paperwork exercise than an attempt to abide by the Directive to eliminate surface application of chemical dispersants. I therefore request that you respond to the following questions:

1. Almost all of the exemption requests submitted by BP cite the presence of VOC emissions and large surface oil slicks as being reason for applying for an exemption to the May 26 Directive. Yet the Directive clearly states that an exemption should only be granted in “rare” circumstances. Why does the USCG believe that the presence of oil and VOCs are rare circumstances during a leak that releases tens of thousands of barrels of oil per day?
2. The exemption requests often also discuss the inadequacy of skimming operations as a rationale for the use of dispersants. Wouldn't skimming always be inadequate to fully combat such a large oil leak? Why are the inadequacies associated with skimming considered to be “rare” by the USCG?
3. In addition to the requests submitted by BP, from June 8-July 9 almost daily requests for exemptions to the May 26th Directive were submitted by Houma Unified Command, which consists of USCG and other personnel and reports to the Federal On Scene Coordinator. In most of the letters submitted by Houma Unified Command, the volume of dispersant requested was 3-6 times higher than the volume requested by BP. In each instance the request was approved by the Federal On Scene Coordinator, though at times the amount requested was modified
 - a. What is the relationship between BP and Houma Unified Command?
 - b. What is the relationship between the Federal On Scene Coordinator (USCG) and Houma Unified Command?
 - c. Does the fact that Houma Unified Command (which consists of USCG and other personnel), repeatedly requested and received permission from other USCG personnel to deviate from the USCG's own May 26 directive mean that the USCG effectively decided to ignore or simply not enforce its own directive? Why or why not?
 - d. Does the USCG Federal On Scene Coordinator take into consideration the volume of dispersant approved to be used by Houma Unified Command when approving the volume of dispersant requested by BP, and vice versa? If so, how, and if not, why not?

4. In 48 days, 74 requests for exemptions to the May 26 Directive were made by either BP, Houma Unified Command, or both. In all but 10 cases, the USCG approved the exemption without modifying the daily maximum quantities of dispersant use requested. In one of the 10 modifications occurring on June 26, the USCG actually increased the maximum dispersant that was approved for use by Houma Unified Command from its request of 30,600 gallons to 43,000 gallons.
 - a. How does the USCG evaluate whether the quantities of dispersant proposed are justified?
 - b. What criteria does the USCG use to evaluate whether the justification provided in an exemption request is sufficient to warrant an exemption?
 - c. What communication does the USCG have with other federal agencies, such as the EPA, when evaluating these requests and approving the exemptions?

5. From June 10 –July 3, there were 8 days where the USCG substantially reduced the requested dispersant exemption volume. For example, on June 10, Houma Unified Command requested permission to apply up to 32,000 gallons, which was reduced to 21,000 gallons by the USCG. Similarly on June 12, the request to use 38,160 gallons was reduced to 7,000 gallons by the USCG. But the next day, on June 13, Houma Unified Command requested permission and was approved to apply up to 36,000 gallons of dispersant on the surface of the Gulf.
 - a. Why did the USCG reject the requests on June 10 and 12, and then approve essentially the same request on June 13?
 - b. How does the USCG determine the maximum amount of dispersant use that is justified to be used on any particular day?
 - c. Does the USCG take into consideration previous approvals when deciding whether a daily exemption is to be granted? How does the presence of inclement weather factor into the process when deciding if an exemption request should be approved?

6. In several instances BP submitted advance requests for permission to apply 6,000 gallons per day of dispersant to the ocean surface for seven days, with a caveat that this limit might also be exceeded as required. The USCG approved these requests, essentially allowing BP to use as much surface dispersant as it wanted to. In fact, on June 4 and again on June 11, 16, 17, 20 and July 1 BP roughly doubled the 6,000 gallon maximum 'limit' (for example, according to materials provided by BP to Congressional staff, on June 4th, BP applied 13,701 gallons, and on June 11th BP applied 14,305 gallons).
 - a. Why did the USCG approve a request that essentially gave BP permission to use as much dispersant as it wanted to for a 7 day period?
 - b. Did the USCG take into account the actual volume of dispersants that were used when deciding if subsequent exemptions would be approved? If so, how? If not, why not?
 - c. How were decisions about volume of dispersants in excess of the maximum exception made? Did BP inform the USCG in advance of exceeding the 6,000 gallon limit on any date on which it significantly exceeded the 6,000 gallon limit that it planned to do so, and how much it would likely apply on those days? If so,

did the USCG approve the use of such high volumes? Please provide all documents, including phone logs and emails, related to BP's surface application of dispersants on each day that BP significantly exceeded the 6,000 gallon limit (at minimum for its use of surface dispersants on June 1, 4, 11, 13, 14, 16, 17, 20, 21, and July 1).

- d. How did the USCG respond to information indicating that BP violated the already-exempted Directive by exceeding the recommended maximum daily volumes to be used?
7. BP has also contradicted information it submitted elsewhere regarding its use of surface dispersants. On June 16, BP COO Doug Suttles sent a letter to Rear Admiral James A. Watson, the Federal On-Scene Commander, requesting that BP be pre-authorized to use 6,000 gallons of surface dispersant per day for June 17-23. He indicated that the maximum daily application of surface dispersant in the days preceding June 16 was 3,360 gallons on June 12. However, an examination of the amounts BP provided to Congressional recipients in its daily "Gulf of Mexico Oil Spill Response Updates" (see Table 1) indicates that on June 11, BP stated that it had applied 14,305 gallons of dispersant on the surface, on June 13, it had applied 36,000 gallons and on June 14, 10,706 gallons. On June 22, BP COO Doug Suttles sent a letter to Rear Admiral James A. Watson requesting that BP be pre-authorized to use 6,000 gallons of surface dispersant per day for June 24-30. In the letter, Mr. Suttles claimed that from June 17-21, the average daily volume applied to the surface was about 2,200 gallons with a maximum of 5,776 gallons on June 19. However, an examination of the surface dispersant totals BP provided to Congressional recipients in its daily "Gulf of Mexico Oil Spill Response Updates" (see Table 1) indicates that on June 17, BP applied 12,423 gallons on the surface, on June 20, it applied 19,576 gallons, and on June 21, it applied 11,217 gallons. On July 5, 2010, Mr. Suttles claimed that the maximum surface dispersant applied from July 1-5 was 1,473 gallons, yet on July 1 BP provided an amount of 17,852 gallons to Congress.
- a. How did the USCG verify the information provided to it by BP, since that information is so clearly at odds with the volumes of surface dispersants that BP has informed Congress that it used?
 - b. Has the USCG ever attempted to verify the information provided to it by BP related to the amounts of dispersants that were actually applied? If so, please provide all such documentation. If not, why not?
 - c. Was BP providing inaccurate information to the USCG or to the Congress? If neither, then how do you account for these discrepancies?
8. Table 1 contains daily information related to the amount of surface dispersants requested to be applied by both BP and Houma Unified Command, how much was approved by the USCG, and available information provided by BP and the Deepwater Horizon National Incident Command as to how much was actually used. As you can see, the totals do not add up; for example, on June 13, BP states that it used 36,000 gallons on the surface, but the Deepwater Horizon total cites only 13,000 gallons. What totals do the Deepwater Horizon amounts refer to? Do they include the BP totals? How do you explain the discrepancies associated with the daily reported amounts?

9. On May 30, 2010 BP requested and received retroactive authorization for surface dispersant application that occurred on May 28 without prior USCG approval. On June 6, BP requested and received retroactive authorization for exceeding the maximum daily amount of subsurface dispersant (15,000 gallons) on two separate occasions.
 - a. Has the USCG determined why BP failed to obtain advance authorization for the use of dispersants on these occasions?
 - b. Why did the USCG decide to make these retroactive authorizations?
 - c. What is the point of issuing a Directive requiring advance authorization prior to the use of surface dispersants if the USCG just issues retroactive authorizations in instances in which BP has failed to obtain the requisite advance authorization?

10. On June 4, the USCG approved a BP exemption request to apply 23,000 gallons of dispersant subsurface at the site of the well head. This request was made because it was in excess of the May 26th Directive that set the maximum daily limit for subsurface application of dispersants at 15,000 gallons per day. The reason for this exemption approval was noted to be a result of placement of the containment cap, which disrupted dispersant flow. On June 19, another exemption request for subsurface application was submitted; this request was approved without an upper limit for application. BP's rationale for an increase in subsurface application was because of high VOC emissions at the surface.
 - a. Why did the USCG approve this June 19th request without an upper limit?
 - b. Why are VOC emissions considered to be an acceptable rationale for approval of both an increase in subsurface and surface use of dispersants?
 - c. How did the USCG calculate whether the proposed volume increase requested by BP for subsurface application was justified? For example, what flow rate assumptions did BP and the USCG use to determine these volumes and on what basis were those assumptions made?
 - d. On June 19, the USCG approved a surface exemption request made by BP and a separate request made by Houma Unified Command, totaling 22,400 gallons of surface dispersant. That same day, USCG also approved a subsurface exemption request with no upper limit on volume. Did the USCG take into consideration surface application of dispersants when approving requests for subsurface application? If so, please describe the process for such consideration, and if not, why not?

11. On June 22, 2010, in response to a letter received from the Houma Incident Commander, the USCG wrote to the Regional Response Team, which is comprised of representatives from sixteen federal departments, requesting that a new Directive on the dispersant approval process be developed to supersede the May 26th Directive. This new Directive was supposed to allow "real-time decisions" to be made regarding the volume of dispersants used and "should in no way condition the use of dispersants on precise data" regarding capability of other mitigating methods. In response to this request the EPA Region 6 proposed a new dispersant deployment procedure which included review and approval by EPA prior to dispersant deployment.

- a. Did the USCG request this new Directive because it was concerned that the old Directive to approve changes only in "rare" circumstances was consistently being violated? If not, why was the new Directive requested?
- b. On or around June 24, Houma Unified Command evidently requested pre-approval to apply 5,000 gallons of dispersant on the surface per day going forward. A memo from EPA's Samuel Coleman initially concurred with the request, but a second memo subsequently rescinded the concurrence and instead proposed an alternate process which required review and concurrence by EPA. What was the resolution of this matter? Please provide all documents, including phone logs and emails, related to the process by which approvals to use surface dispersants by Houma Unified Command occurred.
- c. Was the EPA procedure for dispersant approval proposed in lieu of the USCG proposal adopted? If yes, why wasn't this Addendum made public on the EPA and USCG's website as an Addendum to the May 26th Directive? If not, why not, and was the new Directive suggested by the USCG adopted instead?
- d. Did any other Regional Response Team members provide an alternate Addendum proposal? If so, please provide all documentation thereof.
- e. Please provide all documents, including phone logs and emails, related to the USCG request to develop a new Addendum to address the dispersant approval process.

Thank you for your assistance and cooperation in responding to this request. The Subcommittee requests that a full and complete response to this inquiry be provided within 15 working days, or no later than close of business, August 20, 2010. If the USCG is unable to comply with this deadline, I request that you submit an interim response by that date responding to the questions that you are able to answer and setting forth a firm deadline for the submission of a full and complete response to the Subcommittee's inquiry. Please contact Dr. Michal Freedhoff of the Energy and Environment Subcommittee staff or Dr. Avenel Joseph of my staff at 202-225-2836 if you should have any questions.

Sincerely,



Edward J. Markey
Chairman
Subcommittee on Energy and Environment

cc. The Honorable Henry A. Waxman
Chairman, House Energy and Commerce Committee

The Honorable Joe Barton
Ranking Member, House Energy and Commerce Committee

The Honorable Fred Upton
Ranking Member
Subcommittee on Energy and Environment

TABLE 1
REQUESTS FROM BP AND HOUMA UNIFIED COMMAND TO USE SURFACE
DISPERSANTS WERE ALMOST ALWAYS GRANTED BY THE UNITED STATES
COAST GUARD

This table does not include amounts requested to test different ways to apply dispersants

DATE	Volume Requested by BP (gallons)	Volume Approved by CG for BP (gallons)	Volume Requested by Houma Unified Command (gallons)	Volume Approved by CG for Houma Unified Command (gallons)	Total Volume Approved (gallons)	Total BP Volume Used (gallons)	Deepwater Horizon Reported Volume Used (gallons)
28-May	15,000	15,000	none	none	15,000	6,400	20,000
29-May	6000+ 19000	6000 + 19000	none	none	25,000	N/R	0
30-May	19000 + 6000	19000 + 6000	none	none	25,000	N/R	0
31-May	19000 + 6000	19000 +6000	none	none	25,000	N/R	20,000
1-Jun	6,000	6,000	none	none	6,000	11,686	15,000
2-Jun	6,000	6,000	none	none	6,000	3,000	0
3-Jun	6000 + 2000	6000 + 2000	none	none	8,000	3,000	4,000
4-Jun	6000 + 2000	6000 + 2000	none	none	8,000	13,701	6,000
5-Jun	6000 + 2000	6000 + 2000	none	none	8,000	N/R	14,000
6-Jun	6000 + 2000	6000 + 2000	none	none	8,000	N/R	0
7-Jun	6000+ 32000	6,000	none	none	6,000	4,000	0
8-Jun	6,000	6,000	32,000	32,000	38,000	N/R	11,000
9-Jun	6,000	6,000	none	none	6,000	2,100	0
10-Jun	6,000	6,000	32,000	21,000	27,000	1,366	10,000
11-Jun	6,000	6,000	15,300	15,300	21,300	14,305	0
12-Jun	6,000	6,000	38,160	7,000	13,000	N/R	20,000
13-Jun	6,000	6,000	36,000	36,000	42,000	36,000	13,000
14-Jun	6,000	6,000	38,880	17,800	23,800	10,706	37,000
15-Jun	6,000	6,000	23,000	23,000	29,000	N/R	12,000
16-Jun	6,000	6,000	27,700	27,700	33,700	13,593	3,000
17-Jun	6,000	6,000	25,800	18,700	24,700	12,423	18,000
18-Jun	6,000	6,000	21,000	19,200	25,200	N/R	12,000
19-Jun	6,000	6,000	16,400	16,400	22,400	5,776	16,000
20-Jun	6,000	6,000	15,500	15,500	21,500	19,576	8,000
21-Jun	6,000	6,000	22,600	22,600	28,600	11,217	20,000
22-Jun	6,000	6,000	none	none	6,000	2,008	11,000
23-Jun	6,000	6,000	10,000	10,000	16,000	5,099	2,000
24-Jun	6,000	6,000	22,400	22,400	28,400	N/R	5,000
25-Jun	6,000	6,000	28,200	14,400	20,400	N/R	21,000
26-Jun	6,000	6,000	30,600	43,000	49,000	N/R	2,000
27-Jun	6,000	6,000	50,600	10,880	16,880	N/R	0
28-Jun	6,000	6,000	bad weather	bad weather	6,000	0	30,000
29-Jun	6,000	6,000	no max	no max	6,000	0	0
30-Jun	6,000	6,000	10,000	10,000	16,000	0	0
1-Jul	6,000	6,000	no max	no max	6,000	17,852	0
2-Jul	6,000	6,000	20,000	20,000	26,000	1,473	20,000
3-Jul	6,000	6,000	60,000	20,000	26,000	N/R	12,737
4-Jul	6,000	6,000	10,000	10,000	16,000	N/R	0

5-Jul	6,000	6,000	none	none	6,000	803	10,000
6-Jul	6,000	6,000	none	none	6,000	473	0
7-Jul	6,000	6,000	none	none	6,000	1,245	0
8-Jul	6,000	6,000	10,000	10,000	16,000	0	0
9-Jul	6,000	6,000	10,000	10,000	16,000	N/R	0
10-Jul	6,000	6,000	none	none	6,000	N/R	0
11-Jul	6,000	6,000	none	none	6,000	0	0
12-Jul	6,000	6,000	none	none	6,000	N/R	0
13-Jul	6,000	6,000	none	none	6,000	999	0
14-Jul	6,000	6,000	none	none	6,000	0	0

SOURCES

Volumes Requested by BP and Houma Unified Command: Deepwater Horizon Website and Correspondence from the United States Coast Guard to Rep. Edward J. Markey

Volumes Approved by the United States Coast Guard: Deepwater Horizon Website and Correspondence from the United States Coast Guard to Rep. Edward J. Markey

Total BP Volume Used: BP Gulf of Mexico Updates sent by BP to Congressional staff, and Correspondence from the United States Coast Guard to Rep. Edward J. Markey. N/R = not reported

Total Deepwater Horizon Volume Used: Ongoing Administration-Wide Response to the Deepwater Horizon Oil-Spill