

111TH CONGRESS
2D SESSION

S. 3661

To amend the Federal Water Pollution Control Act to ensure the safe and proper use of dispersants in the event of an oil spill or release of hazardous substances, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 28, 2010

Mr. LAUTENBERG (for himself, Ms. MIKULSKI, Mr. KERRY, and Mr. CARDIN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Federal Water Pollution Control Act to ensure the safe and proper use of dispersants in the event of an oil spill or release of hazardous substances, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Safe Dispersants Act”.

1 **SEC. 2. USE OF DISPERSANTS UNDER NATIONAL CONTIN-**
2 **GENCY PLAN.**

3 Section 311(d) of the Federal Water Pollution Con-
4 trol Act (33 U.S.C. 1321(d)) is amended by adding at the
5 end the following:

6 “(5) DISPERSANTS USED IN ACCORDANCE WITH
7 NATIONAL CONTINGENCY PLAN.—

8 “(A) PLACEMENT OF DISPERSANTS ON
9 THE NATIONAL CONTINGENCY PLAN PRODUCT
10 SCHEDULE.—

11 “(i) IN GENERAL.—No dispersant
12 may be used in a response to a discharge
13 of oil or hazardous substances unless the
14 dispersant has been listed by the Adminis-
15 trator on the National Contingency Plan
16 Product Schedule in accordance with this
17 subparagraph.

18 “(ii) LISTING.—The Administrator
19 may list, or allow the continued listing of,
20 a dispersant on the National Contingency
21 Plan Product Schedule for determination
22 by the Federal On-Scene Coordinator, in
23 consultation with the Administrator and
24 Regional Response Team, and the National
25 Response Team, as appropriate, for use in
26 response to a discharge of oil or hazardous

1 substances only if the Administrator deter-
2 mines that—

3 “(I) the dispersant meets such
4 standards as shall be established by
5 the Administrator governing max-
6 imum allowable toxicity and minimum
7 acceptable effectiveness;

8 “(II) the adverse effect from use
9 of the dispersant is less than the ad-
10 verse effect from allowing the dis-
11 charged oil or hazardous substance—

12 “(aa) to be dispersed by nat-
13 ural or physical means;

14 “(bb) to degrade by natural
15 processes;

16 “(cc) to be removed by tech-
17 nologically feasible physical meth-
18 ods; or

19 “(dd) to undergo any com-
20 bination of the processes de-
21 scribed in items (aa) through
22 (cc); and

23 “(III) any such listing, or deci-
24 sion to continue listing, meets such
25 other conditions as the Administrator

1 determines are necessary to ensure
2 the dispersant meets the criteria de-
3 scribed in subclauses (I) and (II).

4 “(iii) DETERMINATION OF ADVERSE
5 EFFECT.—In determining the adverse ef-
6 fect from the use of a dispersant, the Ad-
7 ministrator shall consider—

8 “(I) acute, chronic, short- and
9 long-term health and environmental
10 effects of the dispersant or any indi-
11 vidual component of the dispersant
12 formulation;

13 “(II) additive or synergistic ef-
14 fects of the dispersant in combination
15 with oil or hazardous substances and
16 other environmental factors and com-
17 ponents; and

18 “(III) persistence, bioavailability,
19 and bioaccumulation potential.

20 “(B) MINIMUM DATA SET ON
21 DISPERSANTS.—

22 “(i) IN GENERAL.—The Administrator
23 shall promulgate regulations specifying the
24 minimum data set applicable to dispersants

1 listed on the National Contingency Plan
2 Product Schedule under subparagraph (A).

3 “(ii) REQUIREMENTS.—The data set
4 specified under clause (i) shall—

5 “(I) include information nec-
6 essary and sufficient to determine the
7 potential for dispersants, or their deg-
8 radation products, both by themselves
9 and in combination with oil or haz-
10 ardous substances and other environ-
11 mental factors and components, to
12 persist or accumulate in, or create or
13 contribute to short- and long-term ad-
14 verse effects on—

15 “(aa) marine, estuarine, and
16 freshwater environments and eco-
17 systems, including surface, sub-
18 surface, and benthic zones;

19 “(bb) representative forms
20 of marine, coastal estuarine, and
21 freshwater organisms, including
22 aquatic and terrestrial species,
23 including birds;

24 “(cc) workers, volunteers,
25 and other individuals involved in

1 handling, storing, transporting,
2 applying, treating, or disposing of
3 the dispersants or dispersant
4 wastes, or who may otherwise
5 come into direct contact with the
6 dispersants or dispersant wastes
7 before, during, or after the appli-
8 cation of the dispersants; and

9 “(dd) individuals in or near
10 areas in which dispersants are
11 being handled, stored, trans-
12 ported, applied, treated, or dis-
13 posed of, or who may otherwise
14 be reasonably expected to be ex-
15 posed to the dispersants;

16 “(II) include information on the
17 dispersants and their uses, including
18 on—

19 “(aa) individual ingredients
20 of the dispersants;

21 “(bb) the combination of the
22 dispersants with each type of oil
23 or hazardous substance with
24 which the dispersants may rea-
25 sonably be expected to be used;

1 “(cc) the efficacy of the dis-
2 persant under different condi-
3 tions of use (including the oil or
4 hazardous substance type, tem-
5 perature, salinity, and type of en-
6 vironmental media, such as open
7 sea, rocky shoreline, rocky or
8 sandy substrates, or marsh
9 grasses), and the optimal condi-
10 tion for use; and

11 “(dd) the efficacy of the dis-
12 persant at different use con-
13 centrations and the most effective
14 application rate; and

15 “(III) be sufficient to assist the
16 Administrator in determining—

17 “(aa) whether the combina-
18 tion of each dispersant and each
19 relevant type of oil or hazardous
20 substance can increase or de-
21 crease the persistence, bio-
22 accumulation potential, or tox-
23 icity relative to either the dis-
24 persant or oil or hazardous sub-
25 stance alone;

“(bb) the potential for dispersant components to persist or accumulate in the environment or biota, or create or contribute to, short- and long-term adverse effects under any scale or manner of application, including in worst-case situations; and

“(cc) whether and under what circumstances use of the dispersant would cause less harm to health and the environment than responding to a discharge of oil or hazardous substances without use of the dispersant.

“(C) DISCLOSURE OF DISPERSANT INGREDIENTS AND SAFETY INFORMATION.—

“(i) HEALTH AND SAFETY INFORMATION.—The Administrator shall consider health and safety information for a dispersant listed for use under the National Contingency Plan Product Schedule to mean information from any study of any effect of a dispersant (or any constituent), either alone or in combination with oil or

1 a hazardous substance, on health, the envi-
2 ronment, or both, including—

3 “(I) underlying data and epide-
4 miological studies;

5 “(II) studies of occupational ex-
6 posure to a chemical substance or
7 mixture;

8 “(III) toxicological, clinical, and
9 ecological studies of a chemical sub-
10 stance or mixture;

11 “(IV) the specific chemical iden-
12 tities of the dispersant and constitu-
13 ents of the dispersant; and

14 “(V) any test performed pursu-
15 ant to this title.

16 “(ii) AVAILABILITY OF INFORMA-
17 TION.—Notwithstanding any other provi-
18 sion of law, the Administrator shall make
19 available to the public—

20 “(I) all health and safety infor-
21 mation for the chemical dispersant;

22 “(II) the concentrations of all in-
23 gredients of the dispersant, if the Ad-
24 ministrator determines that the public
25 availability of that information is nec-

1 essary to prevent substantial
2 endangerment to human health or the
3 environment or is otherwise in the
4 public interest, taking into account
5 the needs of responders, local resi-
6 dents, medical personnel, and re-
7 searchers engaged in monitoring or
8 otherwise studying the effects of the
9 dispersant or of discharges of oil in
10 which the chemical dispersant is used;
11 and

12 “(III) information on listed
13 dispersants that the Administrator is
14 required to disclose under subclause
15 (II) or (III), unless the information is
16 protected from disclosure under sec-
17 tion 552(b)(4) of title 5, United
18 States Code.”.

19 **SEC. 3. DISPERSANT HEALTH AND ENVIRONMENTAL IM-**
20 **PACT STUDY.**

21 (a) STUDY.—Not later than 45 days after the date
22 of enactment of this Act, the Administrator of the Envi-
23 ronmental Protection Agency (referred to in this Act as
24 the “Administrator”) shall initiate a study evaluating the
25 adequacy of existing capabilities and legal authorities of

1 the Federal Government to make informed decisions re-
2 garding the health and environmental impacts of
3 dispersants placed on the National Contingency Product
4 Schedule under section 311 of the Federal Water Pollu-
5 tion Control Act (33 U.S.C. 1321).

6 (b) MINIMUM ELEMENTS OF THE STUDY.—

7 (1) IN GENERAL.—The study shall include an
8 assessment of the availability of information nec-
9 essary to evaluate the risks and impacts to human
10 health and the environment, including acute and
11 chronic risks, from the use of dispersants, other
12 chemicals, and other spill-mitigating substances, if
13 any, that may be used to carry out the National
14 Contingency Plan, including an assessment of such
15 risks and impacts.

16 (2) MINIMUM EVALUATION.—At a minimum,
17 the study shall evaluate—

18 (A) the availability of, and the advisability
19 of requiring additional information that is nec-
20 essary and sufficient to determine the potential
21 for, dispersants, or their degradation products,
22 both by themselves and in combination with oil
23 or hazardous substances and other environ-
24 mental factors and components, to persist or

1 accumulate in, or create or contribute to short-
2 and long-term adverse effects on—

3 (i) workers, volunteers, and other in-
4 dividuals involved in handling, storing,
5 transporting, applying, treating, or dis-
6 posing of the dispersants or dispersant
7 wastes, or who may otherwise come into di-
8 rect contact with dispersants or dispersant
9 wastes before, during, or after the applica-
10 tion of the dispersants;

11 (ii) individuals in or near areas in
12 which dispersants are being handled,
13 stored, transported, applied, treated, or
14 disposed of, or who may otherwise be rea-
15 sonably expected to be exposed to the
16 dispersants;

17 (iii) marine, estuarine, and freshwater
18 environments and ecosystems, including
19 surface, subsurface, and benthic zones; and

20 (iv) representative forms of marine,
21 coastal estuarine, and freshwater orga-
22 nisms, including aquatic, soil- and sedi-
23 ment-dwelling, and terrestrial species, in-
24 cluding birds;

1 (B) the availability of, and the advisability
2 of requiring additional information regarding,
3 the dispersants and their uses, including infor-
4 mation on—

5 (i) individual ingredients of the
6 dispersants;

7 (ii) the combination of the dispersants
8 with each type of oil or hazardous sub-
9 stance with which the dispersants may rea-
10 sonably be expected to be used;

11 (iii) the health and environmental im-
12 pacts and efficacy of the dispersant under
13 different conditions of use (including oil or
14 hazardous substance type, temperature,
15 pressure, salinity, and type of environ-
16 mental media (such as open sea, rocky
17 shoreline, rocky or sandy substrates, corals
18 or marsh grasses)), and the optimal condi-
19 tion for use;

20 (iv) the health and environmental im-
21 pacts and efficacy of the dispersant at dif-
22 ferent use concentrations and the most ef-
23 fective application rate and quantity;

24 (v) whether the combination of each
25 dispersant and each relevant type of oil or

1 hazardous substance can increase or de-
2 crease the persistence, bioaccumulation po-
3 tential, or toxicity relative to either the dis-
4 persant or oil or hazardous substance
5 alone;

6 (vi) the potential for dispersant com-
7 ponents to persist or accumulate in the en-
8 vironment or biota, or create or contribute
9 to short- and long-term adverse effects
10 under any scale or manner of application,
11 including in worst-case situations; and

12 (vii) whether and under what cir-
13 cumstances use of the dispersant would
14 cause less adverse effects to health and the
15 environment than responding to a dis-
16 charge of oil or hazardous substances with-
17 out use of the dispersant; and

18 (C) an assessment of the adequacy of ex-
19 isting Federal laws (including regulations) to
20 protect human health and the environment
21 from the potential risks and impacts from the
22 toxicity of dispersants placed on the National
23 Contingency Product Schedule.

24 (c) CONSULTATION.—The Administrator shall con-
25 duct the study under this section in consultation with such

1 other Federal departments and agencies as the Adminis-
 2 trator determines to be appropriate.

3 (d) NOTICE AND COMMENT.—The Administrator
 4 shall provide for public notice of, and not fewer than 30
 5 days of public comment on, the draft study.

6 (e) DEADLINE.—The Administrator shall complete
 7 the study under this section not later than 180 days after
 8 the date of enactment of this Act.

9 **SEC. 4. REPORT TO CONGRESS.**

10 (a) REPORT.—Not later than 90 days after the date
 11 of completion of the study under section 3, the Adminis-
 12 trator shall submit to Congress a report that—

13 (1) describes the results of the study; and

14 (2) makes specific recommendations concerning
 15 potential improvements to the existing capabilities
 16 and legal authorities of the Federal Government to
 17 make informed decisions regarding the health and
 18 environmental impacts of dispersants placed on the
 19 National Contingency Product Schedule.

20 (b) CONTENTS.—The report shall, at a minimum, in-
 21 clude—

22 (1) a description of the results of the study con-
 23 ducted under section 3;

24 (2) an identification of the gaps in available in-
 25 formation regarding the health and environmental

1 impacts of dispersants on, or being considered for
2 placement on, the National Contingency Product
3 Schedule;

4 (3) recommendations for addressing the gaps in
5 relevant information, which could include research,
6 technology development, and demonstration among
7 the Federal agencies, or in cooperation with indus-
8 try, institutions of higher education, research insti-
9 tutions, or State governments; and

10 (4) recommendations for any statutory or regu-
11 latory changes necessary to ensure the safety of
12 dispersants currently on the National Contingency
13 Product Schedule, or being considered for future
14 placement on the National Contingency Product
15 Schedule.

16 **SEC. 5. REVISION OF THE NATIONAL CONTINGENCY PLAN-**
17 **SUBPART J.**

18 (a) IN GENERAL.—Not later than 270 days after the
19 date of enactment of this Act, the Administrator shall de-
20 termine whether to propose revisions to subpart J of the
21 National Contingency Plan prepared under section 311(d)
22 of the Federal Water Pollution Control Act (33 U.S.C.
23 1321(d)) and, as necessary, the regulations required under
24 section 311(j) of that Act (33 U.S.C. 1321(j)).

1 (b) PROPOSED REVISIONS.—If the Administrator de-
2 termines that revisions described in subsection (a) are nec-
3 essary to ensure the effectiveness and safety of
4 dispersants, the Administrator shall propose the revisions
5 not later than 180 days after the date on which the Ad-
6 ministrator makes the determination under subsection (a).

7 (c) CONSIDERATION OF REPORT.—The revisions pro-
8 posed under subsection (b) shall take into account the rec-
9 ommendations in the report to Congress required under
10 section 4.

