

114TH CONGRESS
1ST SESSION

H. R. 1922

To amend the Federal Water Pollution Control Act with respect to the use of dispersants, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 21, 2015

Mr. NADLER introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Federal Water Pollution Control Act with respect to the use of dispersants, 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 “Ban Toxic Dispersants
5 Act of 2015”.

6 **SEC. 2. NATIONAL CONTINGENCY PLAN.**

7 (a) CONTENTS.—Section 311(d)(2)(G) of the Federal
8 Water Pollution Control Act (33 U.S.C. 1321(d)(2)(G))
9 is amended by striking the period at the end and inserting

1 the following: “, except that a dispersant, other chemical,
 2 or other spill mitigating device or substance that is not
 3 included on the schedule may be used in carrying out the
 4 Plan only if the dispersant, other chemical, or other spill
 5 mitigating device or substance is proposed to be included
 6 on the schedule.”.

7 (b) SCHEDULE FOR USE OF DISPERSANTS, OTHER
 8 CHEMICALS, AND OTHER SPILL MITIGATING DEVICES
 9 AND SUBSTANCES.—Section 311(d) of the Federal Water
 10 Pollution Control Act (33 U.S.C. 1321(d)) is amended by
 11 adding at the end the following:

12 “(5) SCHEDULE FOR USE OF DISPERSANTS,
 13 OTHER CHEMICALS, AND OTHER SPILL MITIGATING
 14 DEVICES AND SUBSTANCES.—

15 “(A) RULEMAKING.—Not later than 2
 16 years after the date of enactment of this para-
 17 graph, the President, acting through the Ad-
 18 ministrator, after providing notice and an op-
 19 portunity for public comment, shall issue a re-
 20 vised regulation for the development of the
 21 schedule for the use of dispersants, other
 22 chemicals, and other spill mitigating devices
 23 and substances developed under paragraph
 24 (2)(G) in a manner that is consistent with the
 25 requirements of this paragraph, and shall mod-

1 ify the existing schedule to take into account
2 the requirements of the revised regulation.

3 “(B) SCHEDULE LISTING REQUIRE-
4 MENTS.—In issuing the regulation under sub-
5 paragraph (A), the Administrator shall—

6 “(i) with respect to dispersants, other
7 chemicals, and other spill mitigating sub-
8 stances included or proposed to be included
9 on the schedule under paragraph (2)(G)—

10 “(I) establish minimum toxicity
11 and efficacy testing criteria, taking
12 into account the results of the study
13 carried out under subparagraph (E);

14 “(II) provide for testing or other
15 verification (independent from the in-
16 formation provided by an applicant
17 seeking the inclusion of such dispers-
18 ant, chemical, or substance on the
19 schedule) related to the toxicity and
20 effectiveness of such dispersant, chem-
21 ical, or substance;

22 “(III) establish protocols for the
23 application of any such dispersant,
24 chemical, or substance, including—

25 “(aa) application conditions;

1 “(bb) the quantity thresh-
2 olds for which approval by the
3 Administrator is required;

4 “(cc) the criteria to be used
5 to develop the appropriate max-
6 imum quantity of any such dis-
7 persant, chemical, or substance
8 that the Administrator deter-
9 mines may be used, both on a
10 daily and cumulative basis; and

11 “(dd) a ranking, by geo-
12 graphic area, of any such dis-
13 persant, chemical, or substance
14 based on a combination of its ef-
15 fectiveness for each type of oil
16 and its level of toxicity;

17 “(IV) establish a requirement
18 that the volume of oil or hazardous
19 substance discharged, and the volume
20 and location of any such dispersant,
21 chemical, or substance used, be meas-
22 ured and made publicly available on a
23 daily basis, including on the Internet;

24 “(V) require the public disclosure
25 of all ingredients, including the chem-

1 ical and common name of such ingre-
2 dients, contained in any such dispers-
3 ant, chemical, or substance prior to
4 the use of such dispersant, chemical,
5 or substance; and

6 “(VI) in addition to existing au-
7 thority, expressly provide a mecha-
8 nism for the delisting of any such dis-
9 persant, chemical, or substance that
10 the Administrator determines poses a
11 significant risk or impact to human
12 health, water quality, the environ-
13 ment, or any other factor the Admin-
14 istrator determines appropriate; and

15 “(ii) with respect to other spill miti-
16 gating devices included or proposed to be
17 included on the schedule under paragraph
18 (2)(G)—

19 “(I) require the manufacturer of
20 such device to carry out a study of the
21 risks and effectiveness of the device
22 according to guidelines developed and
23 published by the Administrator; and

24 “(II) in addition to existing au-
25 thority, expressly provide a mecha-

1 nism for the delisting of any such de-
2 vice based on any information made
3 available to the Administrator that
4 demonstrates that such device poses a
5 significant risk or impact to human
6 health, water quality, the environ-
7 ment, or any other factor the Admin-
8 istrator determines appropriate.

9 “(C) MINIMUM TOXICITY CRITERIA.—In
10 establishing minimum toxicity criteria under
11 subparagraph (B)(i)(I), the Administrator, as
12 appropriate, shall comply with the requirements
13 of section 121(d) of the Comprehensive Envi-
14 ronmental Response, Compensation, and Liabil-
15 ity Act of 1980 (42 U.S.C. 9621(d)).

16 “(D) DELISTING.—In carrying out sub-
17 paragraphs (B)(i)(VI) and (B)(ii)(II), the Ad-
18 ministrator, after posting a notice in the Fed-
19 eral Register and providing an opportunity for
20 public comment, shall initiate a formal review
21 of the potential risks and impacts associated
22 with a dispersant, chemical, substance, or de-
23 vice prior to delisting the dispersant, chemical,
24 substance, or device.

25 “(E) STUDY.—

1 “(i) IN GENERAL.—Not later than 3
2 months after the date of enactment of this
3 paragraph, the Administrator, in coordina-
4 tion with the Agency for Toxic Substances
5 and Disease Registry, shall initiate a study
6 of the potential risks and impacts to
7 human health, water quality, the environ-
8 ment, or any other factor the Adminis-
9 trator determines appropriate, including
10 acute and chronic risks, from the use of
11 dispersants, other chemicals, and other
12 spill mitigating substances, if any, that
13 may be used to carry out the National
14 Contingency Plan, including an assessment
15 of such risks and impacts—

16 “(I) on a representative sample
17 of biota and types of oil from loca-
18 tions where such dispersants, chemi-
19 cals, or substances may potentially be
20 used;

21 “(II) on human health, including
22 factors relating to—

23 “(aa) individuals most likely
24 to be exposed to such disper-

sants, chemicals, or substances;
and

“(bb) the pathways of exposure to such dispersants, chemicals, or substances, including direct contact, ingestion, and inhalation;

“(III) that result from any byproducts created from the use of such dispersants, chemicals, or substances.

“(ii) INFORMATION FROM MANUFACTURERS.—

“(I) IN GENERAL.—In conjunction with the study authorized by clause (i), the Administrator shall determine the requirements for manufacturers of dispersants, chemicals, or substances to evaluate the potential risks and impacts to human health, water quality, the environment, or any other factor the Administrator determines appropriate, including acute and chronic risks, associated with the use of the dispersants, chemicals, or substances and any byproducts gen-

1 erated by such use and to provide the
2 details of such evaluation as a condi-
3 tion for listing on the schedule, or ap-
4 proving for use under this section, ac-
5 cording to guidelines developed and
6 published by the Administrator.

7 “(II) MINIMUM REQUIREMENTS
8 FOR EVALUATION.—In carrying out
9 this clause, the Administrator shall re-
10 quire a manufacturer to include—

11 “(aa) information on the
12 types of oils for which and loca-
13 tions where such dispersants,
14 chemicals, or substances may po-
15 tentially be used; and

16 “(bb) if appropriate, an as-
17 sessment of the impacts from
18 subsea use of the dispersant,
19 chemical, or substance, including
20 the potential long term effects of
21 such use on water quality and
22 the environment.

23 “(F) PERIODIC REVISIONS.—

24 “(i) IN GENERAL.—Not later than 5
25 years after the date of the issuance of the

1 regulation under this paragraph, and on an
2 ongoing basis thereafter (and at least once
3 every 5 years), the Administrator shall re-
4 view the schedule for the use of disper-
5 sants, other chemicals, and other spill miti-
6 gating devices and substances that may be
7 used to carry out the National Contingency
8 Plan and update or revise the schedule, as
9 necessary, to ensure the protection of
10 human health, water quality, the environ-
11 ment, and any other factor the Adminis-
12 trator determines appropriate.

13 “(ii) EFFECTIVENESS.—The Adminis-
14 trator shall ensure, to the maximum extent
15 practicable, that each update or revision to
16 the schedule increases the minimum effec-
17 tiveness necessary for listing a dispersant,
18 other chemical, or other spill mitigating de-
19 vice or substance on the schedule.

20 “(G) APPROVAL OF USE AND APPLICATION
21 OF DISPERSANTS.—

22 “(i) IN GENERAL.—In issuing the reg-
23 ulation under subparagraph (A), the Ad-
24 ministrator shall require the approval of
25 the Federal On-Scene Coordinator, in co-

1 ordination with the Administrator, for all
2 uses of a dispersant, other chemical, or
3 other spill mitigating substance in any re-
4 moval action, including—

5 “(I) any such dispersant, chem-
6 ical, or substance that is included on
7 the schedule developed pursuant to
8 this subsection; and

9 “(II) any dispersant, chemical, or
10 other substance that is included as
11 part an approved area contingency
12 plan or response plan developed under
13 this section.

14 “(ii) REGULATIONS.—Any provision
15 of section 300.910 of title 40, Code of
16 Federal Regulations, that is inconsistent
17 with this paragraph shall have no force or
18 effect.

19 “(6) FEES.—

20 “(A) GENERAL AUTHORITY AND FEES.—
21 Subject to subparagraph (B), the Administrator
22 shall establish a schedule of fees to be collected
23 from the manufacturer of a dispersant, chem-
24 ical, or spill mitigating substance or device to
25 offset the costs of the Administrator associated

1 with evaluating the use of the dispersant, chem-
2 ical, substance, or device in accordance with
3 this subsection and listing the dispersant, chem-
4 ical, substance, or device on the schedule under
5 paragraph (2)(G).

6 “(B) LIMITATION ON COLLECTION.—No
7 fee may be collected under this subsection un-
8 less the expenditure of the fee to pay the costs
9 of activities and services for which the fee is im-
10 posed is provided for in advance in an appro-
11 priations Act.

12 “(C) FEES CREDITED AS OFFSETTING
13 COLLECTIONS.—

14 “(i) IN GENERAL.—Notwithstanding
15 section 3302 of title 31, United States
16 Code, any fee authorized to be collected
17 under this paragraph shall—

18 “(I) be credited as offsetting col-
19 lections to the account that finances
20 the activities and services for which
21 the fee is imposed;

22 “(II) be available for expenditure
23 only to pay the costs of activities and
24 services for which the fee is imposed,

1 including all costs associated with col-
2 lecting such fees; and

3 “(III) remain available until ex-
4 pended.

5 “(ii) CONTINUING APPROPRIATIONS.—
6 The Administrator may continue to assess,
7 collect, and spend fees established under
8 this section during any period in which the
9 funding for the Environmental Protection
10 Agency is provided under an Act providing
11 continuing appropriations in lieu of the
12 Administration’s regular appropriations.

13 “(iii) ADJUSTMENTS.—The Adminis-
14 trator shall adjust the fees established by
15 subparagraph (A) periodically to ensure
16 that each of the fees required by subpara-
17 graph (A) is reasonably related to the Ad-
18 ministrator’s costs, as determined by the
19 Administrator, of performing the activity
20 for which the fee is imposed.”.

21 **SEC. 3. TEMPORARY MORATORIUM ON APPROVAL OF USE**
22 **OF DISPERSANTS.**

23 (a) IN GENERAL.—Subject to subsection (b), the Ad-
24 ministrator of the Environmental Protection Agency may
25 not approve the use of a dispersant under section 311(d)

1 of the Federal Water Pollution Control Act of 1990 (33
2 U.S.C. 1321(d)), and shall withdraw any approval of such
3 use made before the date of enactment of this Act, until
4 the date on which the rulemaking and study required by
5 subparagraphs (A) and (E) of section 311(d)(5) of such
6 Act (as added by this Act) are complete.

7 (b) CONDITIONAL APPROVAL.—

8 (1) IN GENERAL.—The Administrator may ap-
9 prove the use of a dispersant under section 311(d)
10 of such Act (33 U.S.C. 1321(d)) that is included or
11 proposed to be included on the schedule under sec-
12 tion 311(d)(2)(G) of such Act (33 U.S.C.
13 1321(d)(2)(G)) for the period of time before the
14 date on which the rulemaking and study required by
15 subparagraphs (A) and (E) of section 311(d)(5) of
16 such Act (as added by this Act) are complete if the
17 Administrator determines that such use will not
18 have a negative impact on human health, water
19 quality, the environment, or any other factor the Ad-
20 ministrator determines appropriate.

21 (2) SUNSET.—An approval issued under para-
22 graph (1) shall cease to be effective after the last
23 day of the 2-year period beginning on the date of en-
24 actment of this Act.

1 (c) INFORMATION.—In approving the use of a dis-
2 persant under subsection (b), the Administrator may re-
3 quire the manufacturer of the dispersant to provide such
4 information as the Administrator determines necessary to
5 satisfy the requirements of that subsection.

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