

112TH CONGRESS  
1ST SESSION

# H. R. 3562

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

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 5, 2011

Mr. NADLER (for himself and Mr. BISHOP of New York) 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

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## 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 2011”.

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))

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

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

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

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

1 requirements of this paragraph, and shall mod-  
2 ify the existing schedule to take into account  
3 the requirements of the revised regulation.

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

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

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

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

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

1 “(aa) application conditions;

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

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

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

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

1           “(V) require the public disclosure  
2           of all ingredients, including the chem-  
3           ical and common name of such ingre-  
4           dients, contained in any such dispers-  
5           ant, chemical, or substance prior to  
6           the use of such dispersant, chemical,  
7           or substance; and

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

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

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

1                   “(II) in addition to existing au-  
2                   thority, expressly provide a mecha-  
3                   nism for the delisting of any such de-  
4                   vice based on any information made  
5                   available to the Administrator that  
6                   demonstrates that such device poses a  
7                   significant risk or impact to human  
8                   health, water quality, the environ-  
9                   ment, or any other factor the Admin-  
10                  istrator determines appropriate.

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

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

1 vice prior to delisting the dispersant, chemical,  
2 substance, or device.

3 “(E) STUDY.—

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

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

24 “(II) on human health, including  
25 factors relating to—

1                   “(aa) individuals most likely  
2                   to be exposed to such disper-  
3                   sants, chemicals, or substances;  
4                   and

5                   “(bb) the pathways of expo-  
6                   sure to such dispersants, chemi-  
7                   cals, or substances, including di-  
8                   rect contact, ingestion, and in-  
9                   halation;

10                   “(III) that result from any by-  
11                   products created from the use of such  
12                   dispersants, chemicals, or substances.

13                   “(ii) INFORMATION FROM MANUFAC-  
14                   TURERS.—

15                   “(I) IN GENERAL.—In conjunc-  
16                   tion with the study authorized by  
17                   clause (i), the Administrator shall de-  
18                   termine the requirements for manu-  
19                   facturers of dispersants, chemicals, or  
20                   substances to evaluate the potential  
21                   risks and impacts to human health,  
22                   water quality, the environment, or any  
23                   other factor the Administrator deter-  
24                   mines appropriate, including acute  
25                   and chronic risks, associated with the



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

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

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

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

25 “(F) PERIODIC REVISIONS.—

1           “(i) IN GENERAL.—Not later than 5  
2           years after the date of the issuance of the  
3           regulation under this paragraph, and on an  
4           ongoing basis thereafter (and at least once  
5           every 5 years), the Administrator shall re-  
6           view the schedule for the use of disper-  
7           sants, other chemicals, and other spill miti-  
8           gating devices and substances that may be  
9           used to carry out the National Contingency  
10          Plan and update or revise the schedule, as  
11          necessary, to ensure the protection of  
12          human health, water quality, the environ-  
13          ment, and any other factor the Adminis-  
14          trator determines appropriate.

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

22          “(G) APPROVAL OF USE AND APPLICATION  
23          OF DISPERSANTS.—

24          “(i) IN GENERAL.—In issuing the reg-  
25          ulation under subparagraph (A), the Ad-

1            administrator shall require the approval of  
2            the Federal On-Scene Coordinator, in co-  
3            ordination with the Administrator, for all  
4            uses of a dispersant, other chemical, or  
5            other spill mitigating substance in any re-  
6            moval action, including—

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

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

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

21                   “(6) FEES.—

22                   “(A) GENERAL AUTHORITY AND FEES.—  
23                   Subject to subparagraph (B), the Administrator  
24                   shall establish a schedule of fees to be collected  
25                   from the manufacturer of a dispersant, chem-

1 ical, or spill mitigating substance or device to  
2 offset the costs of the Administrator associated  
3 with evaluating the use of the dispersant, chem-  
4 ical, substance, or device in accordance with  
5 this subsection and listing the dispersant, chem-  
6 ical, substance, or device on the schedule under  
7 paragraph (2)(G).

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

14 “(C) FEES CREDITED AS OFFSETTING  
15 COLLECTIONS.—

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

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

24 “(II) be available for expenditure  
25 only to pay the costs of activities and

1 services for which the fee is imposed,  
2 including all costs associated with col-  
3 lecting such fees; and

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

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

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

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

24 (a) IN GENERAL.—Subject to subsection (b), the Ad-  
25 ministrators of the Environmental Protection Agency may

1 not approve the use of a dispersant under section 311(d)  
2 of the Federal Water Pollution Control Act of 1990 (33  
3 U.S.C. 1321(d)), and shall withdraw any approval of such  
4 use made before the date of enactment of this Act, until  
5 the date on which the rulemaking and study required by  
6 subparagraphs (A) and (E) of section 311(d)(5) of such  
7 Act (as added by this Act) are complete.

8 (b) CONDITIONAL APPROVAL.—

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

22 (2) SUNSET.—An approval issued under para-  
23 graph (1) shall cease to be effective after the last  
24 day of the 2-year period beginning on the date of en-  
25 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.

○