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Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
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October 5, 2010

The Honorable Bob Graham
The Honorable William K. Reilly
Co-Chairs
Bipartisan National Commission on the
BP Deepwater Horizon Oil Spill and Offshore Drilling
One Thomas Circle, N.W. 4th Floor
Washington, D.C. 20005

Dear Chairmen Graham and Reilly:

I write to provide you with some information on how the manner in which BP estimated flow rates of oil spewing from its Macondo well impacted the response to the spill. As you both are reported[1] to have pointed out during last week's Commission hearing, these estimates were consistently low-balled by BP, and earlier correspondence[2] I sent you demonstrates that at the same time that BP was providing these low estimates, its internal documents show that they knew all along what the likely flow rate was.

Last week, Admiral Thad Allen, in response to a question at the BP Commission hearing as to whether the response to the spill would have been different had an accurate flow rate been known, said "The answer is no. We assumed at the outset this would be a catastrophic event."[3] I am providing you with documentation that establishes that the Administration's early response to the oil spill was in fact shaped by these low flow rate estimates. I hope you will carefully examine it.

The Energy and Environment Subcommittee has engaged in an extensive investigation surrounding the use of dispersants in response to the BP spill, and I have released detailed correspondence and analysis related to their use. A brief timeline of relevant events follows:

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[1] http://thehill.com/blogs/e2-wire/677-e2-wire/121105-oil-spill-panel-chiefs-say-low-oil-flow-estimates-were-harmful
[2] http://globalwarming.house.gov/files/LTTR/2010-09-28_toBPCommissionflowratetimeline.pdf
[3] http://thehill.com/blogs/e2-wire/677-e2-wire/121073-thad-allen-low-balled-oil-spill-estimates-didnt-hamper-response

May 10: Environmental Protection Agency (EPA) and the U.S. Coast Guard (USCG) authorized BP to begin a trial to determine whether subsurface use of dispersants would be effective in reducing the amount of raw crude oil reaching the surface.[4]

May 15: USCG and EPA authorized BP to use dispersants sub-surface at the wellhead. EPA Administrator Lisa Jackson stated that "We believe that the underwater use of dispersants could lessen the overall impact of the spill."[5]

May 17: I sent a letter[6] to EPA raising concerns that BP had selected the least effective and most toxic dispersant available to be used.

May 20: USCG and EPA directed[7] BP to identify a less toxic dispersant and begin to use it within 72 hours.

May 22: EPA released BP's response to the May 20 directive which stated that there was no less toxic dispersant that was available in the quantities needed to respond to the spill.

May 26: USCG and EPA issued a new directive to BP, saying that it "shall eliminate the surface application of dispersant" except in the "rare cases" where it would have to seek an exemption which would require the approval of the Federal On-Scene Coordinator (FOSC), and limit subsurface applications to 15,000 gallons per day. [8]

June 24: I sent letters to EPA and the USCG asking why BP had been regularly exceeding the dispersant limits set in the May 26 directive.[9]

July 30: I sent a letter to Admiral Thad Allen[10] and released my analysis indicating that despite the USCG and EPA directive to use surface dispersants only on "rare" occasions, its use had been allowed on an almost daily basis.

Last week, I received Admiral Allen's full response to my July 30 letter. In my letter, I asked why (according to internal U.S. Coast Guard documents dated on or around June 22, 2010) the National Incident Command had proposed the establishment of a new dispersant directive to replace the May 26 version. The response from Admiral Allen stated:

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[4] EPA and USCG, "Dispersant Monitoring and Assessment Directive for Subsurface Dispersant Application, May 10, 2010, p. 1.

[5] "Coast Guard and EPA Approve Use of Dispersant Subsea in Further Effort to Prevent Oil from Reaching U.S. Shoreline," Press Release, Deepwater Horizon Incident Joint Information Center, May 15, 2010.

[6] http://markey.house.gov/docs/ejmdispersant51710.pdf and the response http://markey.house.gov/images/EPA-response-to-051710-dispersant.pdf

[7] http://www.epa.gov/bpspill/dispersants/directive-addendum2.pdf

[8] Letter dated May 26, 2010, from Lisa Jackson to David Rainey, BP vice president of Gulf of Mexico Exploration, attaching Addendum 3 to the "Dispersant Monitoring and Assessment Directive."

[9] http://markey.house.gov/docs/062410_ejm_dispersant_epa_attachment.pdf http://markey.house.gov/docs/062410_ejm_dispersant_coast_guard.pdf

[10] http://markey.house.gov/docs/07-30-10ejmtocgdispersants.pdf

"A new Directive was considered after realizing the amount of oil discharged from the well was significantly greater than initially thought. Responders encountered a new reality in a dynamic response requiring frequent dispersant use to mitigate the growing accumulation of oil. The May 26 Directive was predicated on the assumption that the flow of oil into the Gulf of Mexico was about 5,000 barrels per day. However, based on information from the Flow Rate Technical group, the actual flow of oil was several times larger than first estimated. This significant increase spurred responders to consider reassessing the strategy for the use of dispersants as well as other oil recovery methods."

This statement indicates that not only was the Administration's May 26 dispersant directive based on a gross underestimation of the BP Macondo well's flow rate, but so were the Administration's plans for other oil recovery methods such as the use of boom and skimmers. As I noted in previous correspondence, during our investigation we obtained numerous documents and other statements from BP that demonstrated its very early awareness of a much higher possible flow rate of the well that was ultimately shown to be close to the actual rate, even at the same time that it was asserting much lower flow rates publicly. Had this information been made available by BP at the time, and had federal responders been making decisions based on the higher (and more accurate) flow rates, it is conceivable that different response decisions would have been made.

Thank you for your attention to this important matter. My staff stands ready to assist your staff in any way possible.

Sincerely,

Edward J. Markey

Edward J. Markey
Chairman, Subcommittee on Energy
and Environment

Cc: The Honorable Henry A. Waxman
Chairman
House Energy and Commerce Committee