

Comparison of EPA authorities and requirements under - current TSCA,
 - S. 3209 (the Safe Chemicals Act of 2010) and House Discussion Draft (Toxic Chemicals Safety Act), and
 - additional provisions that [Safer Chemicals Healthy Families](#) urge be added to TSCA reform legislation

Prepared by Environmental Defense Fund, 6/10/10

Currently under TSCA	How TSCA reform would fix the problem (regular type = in current bills; SMALL CAPS = NEEDED ADDITIONS)
<p>Trade secrets: Dispersant manufacturer can claim identity of ingredients to be confidential business information (CBI); EPA must:</p> <ul style="list-style-type: none"> • prove “unreasonable risk” to force disclosure, and • provide at least 15 days notice, or • must prove “imminent, unreasonable risk” to force more rapid disclosure. 	<p>MANDATE THAT EPA:</p> <ul style="list-style-type: none"> • ESTABLISH CRITERIA UP-FRONT THAT SPECIFY TRIGGERS BASED ON THE SCALE AND MANNER OF DISPERSANT USE THAT, IF EXCEEDED, WOULD AUTOMATICALLY COMPEL DISCLOSURE OF INGREDIENT IDENTITIES • INCLUDE AUTHORITY TO COMPEL DISCLOSURE OF INGREDIENTS’ CONCENTRATIONS • IN ESTABLISHING SUCH CRITERIA, TAKE INTO ACCOUNT THE INTERESTS OF SPILL RESPONDERS, LOCAL RESIDENTS, MEDICAL PERSONNEL, AND RESEARCHERS
<p>Testing:</p> <ul style="list-style-type: none"> • no testing of dispersant ingredients is required • only very limited testing is required of dispersants under National Contingency Plan <ul style="list-style-type: none"> ○ acute only ○ limited to aquatic organisms 	<ul style="list-style-type: none"> • require a minimum data set (MDS) sufficient to determine safety for all known and reasonably anticipated uses of each ingredient • authorize EPA to require a MDS for each dispersant • MANDATE A MDS FOR EACH DISPERSANT • SPECIFY THE MDS MUST INCLUDE TESTING: <ul style="list-style-type: none"> ○ FOR LONG-TERM EFFECTS IN MARINE, COASTAL, ESTUARINE AND FRESHWATER ENVIRONMENTS ○ ON SURFACE, WATER COLUMN AND BENTHIC-DWELLING ORGANISMS ○ ON TERRESTRIAL AND AVIAN AS WELL AS AQUATIC SPECIES ○ FOR HUMAN HEALTH EFFECTS FOR POTENTIALLY EXPOSED WORKERS, VOLUNTEERS AND NEARBY RESIDENTS ○ ON MIXTURES OF DISPERSANTS WITH VARIOUS GRADES OF OIL • REQUIRE TESTING SUFFICIENT TO PREDICT EFFECTS UNDER WORST-CASE SCENARIOS
<p>Safety determination:</p> <ul style="list-style-type: none"> • no mandate for EPA to assess safety of dispersant ingredients • no mandate for EPA to assess safety of dispersants 	<ul style="list-style-type: none"> • require a safety determination for aggregate and cumulative exposure to each dispersant ingredient, including to vulnerable populations • authorize EPA to require a safety determination for each dispersant • MANDATE EPA TO REQUIRE A SAFETY DETERMINATION FOR EACH DISPERSANT
<p>Risk management:</p> <ul style="list-style-type: none"> • EPA must prove “unreasonable risk” in order to impose and risk management measures on an existing dispersant ingredient or dispersant – a burden it was unable to meet even for asbestos • upon judicial challenge, EPA must show its decision is supported by “substantial evidence” 	<ul style="list-style-type: none"> • authorize EPA to impose any of a broad range of available risk management controls, up to and including a phase-out, starting 1 year after any dispersant ingredient or dispersant fails the safety determination • upon judicial challenge, require only that EPA show its decision is not “arbitrary and capricious” (per the Administrative Procedures Act) • MANDATE IMMEDIATE REMOVAL OF ANY DISPERSANT THAT FAILS THE SAFETY DETERMINATION FROM THE PRODUCT SCHEDULE UNDER THE NATIONAL CONTINGENCY PLAN, AND PROHIBITS ITS MANUFACTURE AND USE • CLARIFY EPA AUTHORITY TO HALT OR ALTER DISPERSANT USE IN RESPONSE TO ON-THE-GROUND CONDITIONS OR DEVELOPMENTS