



Update on Implementation of the Oil Pollution Act of 1990

Office of Emergency and Remedial Response
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Purpose of the Update

Chances are that in the time it takes to read this new bulletin, another two oil spills in the U.S. will be reported to the Federal government. In all of 1990, nearly 20,000 oil discharges were reported, up more than 10 percent from the previous year. With the Oil Pollution Act of 1990, signed into law by President Bush on August 18th, the U.S. Environmental Protection Agency and the U.S. Coast Guard together have unprecedented ability to prevent oil spills from occurring and to combat the effects of spills that do occur.

In this series of bulletins, we intend to provide you with up-to-date information on EPA's implementation of the various provisions of this important new law. Specifically, the *Update* will highlight the activities of our Headquarters and field staff as they develop and enforce the regulations and policies that make up our high-priority oil pollution prevention program. Your comments on the *Update* are welcome; please contact the editor, Ms. Phyllis Anderson, at (202) 382-5614.

*Stephen Luftig, Director
Emergency Response Division, EPA*

REGIONAL WORKGROUP MEETS IN GALVESTON

The active participation of EPA field personnel involved in oil pollution prevention and abatement is an integral part of the Agency's implementation of the Oil Pollution Act of 1990 (OPA). As part of this effort, 50 Regional and Headquarters staff gathered in Galveston Island, Texas, from December 10-13, 1990. The purpose of the meeting was to discuss implementation issues and to develop Regional recommendations on the expanded role and responsibilities of EPA in preventing and responding to oil spills. The special meeting also provided an opportunity for Regional staff to exchange ideas and information with EPA Headquarters about current activities and measures addressing oil pollution.

On-Scene Coordinators (OSCs) from all 10 EPA Regions participated, as did Headquarters representatives from the Office of Solid Waste and Emergency Response, Office of Enforcement, Office of Research and Development, and Office of General Counsel. The responsibility for implementing many OPA requirements will be assumed by EPA's OSCs, who currently enforce the Oil Pollution Prevention regulation (also known as the Spill Prevention, Control, and Countermeasures, or SPCC, regulation) and who lead responses to oil spills in the inland zone. Representatives from the U.S. Coast Guard (USCG) also attended to indicate how the USCG is implementing its areas of responsibility and to provide recommendations regarding EPA efforts. Under a forthcoming Executive Order, the USCG and EPA are the primary Agencies charged with implementing this far-reaching new law.

Organization

The four-day meeting was organized into a series of general sessions and smaller working group discussions on specific implementation issues. The first

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REGIONAL WORKGROUP (Continued)...

day included presentations on the principal provisions of the OPA, the implementation schedule, and the current status of activities. The following two days were devoted to discussions of six separate working groups. Provisions of the new law were divided into the areas of prevention and response, with three working groups addressing each area. At the end of each day, the participants reconvened to summarize the day's progress and hear the suggestions of the other working groups. On the third day, Stephen Luftig, Director of EPA's Emergency Response Division, discussed the budgetary and resource implications of the OPA. The final day was devoted to developing a set of consensus recommendations reflecting the Regional perspective on prevention and response issues. Interspersed throughout the four days were presentations on the history of EPA's oil spill programs, new research and development initiatives in oil spill clean-up technology, and the implications of the enforcement provisions of the statute that expand on existing Federal authority.

Prevention

The OPA contains numerous new planning and preparedness provisions designed to prevent oil spills from happening in the first place. The two main provisions that EPA is responsible for implementing require the preparation of response plans by certain facilities that may discharge oil to navigable waters and the establishment of Area Committees to develop contingency plans for specific areas at risk of damage from an oil spill. Under the OPA, a facility that may discharge oil causing "substantial harm" to the environment must submit its response plan to EPA or the USCG. In addition, the Agency must review and approve the response plan of any facility whose oil discharge may cause "significant and substantial harm." Participants focused on developing appropriate definitions for these two phrases, and discussed what should be contained in a facility's response plan.

The OPA also requires the establishment of Area Committees under the direction of an OSC. These committees will develop Area Contingency Plans specifically addressing potential discharges in that locale. The plans must be approved by EPA or the USCG. Regarding the Area Committees, participants discussed factors to be considered in designating the Area Committees, including: past spill history in the area; presence of natural resources or special environmental areas; concentration of facilities, pipelines, and vessels; location of potable water supplies; and location of existing planning or response

entities. Participants also began the process of defining the composition and role of the Area Committee in relation to other existing planning and response organizations, such as the Regional Response Team created under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The NCP is the regulatory blueprint that guides the Federal response to oil spills and releases of hazardous substances.

Response

The OPA modifies the Federal role in responding to oil spills by establishing a new, consolidated trust fund to pay for response actions and by expanding the OSC's role in spills that pose a "substantial threat to public health and welfare." For these serious spills, the Federal OSC is required to direct the response. Participants addressed the mechanics of access to the new oil spill response fund including reimbursements for states that respond to oil spills. The OSCs also discussed the required revisions to the NCP.

Among the key NCP revisions will be new criteria and procedures for responding to discharges that result in a "substantial threat to the public health or welfare" and procedures and standards for removing a "worst case discharge" of oil. Participants discussed both the definitions of these terms and the regulatory changes required. In addition, participants debated the merits of dividing the NCP into separate documents covering oil and hazardous substances or emergency and remedial response to facilitate its usefulness during a response. The implications of changes in enforcement policies and penalties stemming from the OPA also received attention. Representatives from several Regions stated that enforcement activities in their Region may be reorganized as a result of the new law.

Next Steps

Among the key initiatives emerging from the meeting was the need to preserve flexibility at the Regional level to reflect local circumstances and conditions. Further, the participants expressed the desire to integrate the new statutory requirements into EPA's successful existing oil pollution prevention and abatement programs. A draft report of the consensus recommendations of the Workgroup will be prepared by mid-January, and a final report is expected by early February. The participants also expressed an interest in additional periodic meetings with the participation of the USCG to promote Federal coordination and to ensure a continued strong Regional perspective as implementation proceeds. ■

QUESTIONS AND ANSWERS

What is the Oil Pollution Act of 1990 (OPA)?

The OPA is a comprehensive statute designed to expand oil spill prevention activities, establish new Federal authority to direct responses to spills, improve preparedness and response capabilities, ensure that shippers and oil companies are responsible for damages from spills that do occur (subject to liability limits), and establish an expanded oil pollution research and development program. Primary Federal responsibility for implementing the OPA rests with the U.S. Coast Guard (USCG) and EPA. The OPA was signed into law by President Bush on August 18, 1990.

Congress approved the OPA primarily as a result of spill response efforts for the *Exxon Valdez* spill and other recent spills. Although seven similar proposals had been defeated over the past 15 years, recent spill events solidified a broad-based support for oil pollution legislation and led to unanimous passage of the OPA by both houses of Congress.

What is the nature and extent of the oil spill problem in this country?

Thousands of oil spills occur each year. Over the three-year period from 1987 through 1989, the Federal government received approximately 50,000 notifications of oil discharges -- an average of 16,700 per year, or 45 notifications every day. Fixed facilities accounted for about 45 percent of all reported releases; marine sources accounted for approximately 20 percent of the releases; pipeline and offshore facilities each represented about 10 to 15 percent of releases; and highway accidents accounted for less than 10 percent of the total number of releases reported. Two thirds of the releases primarily affected water; one third affected land. In 1989, there were 29 oil spills exceeding 100,000 gallons.

What are the OPA's main provisions?

The most significant provisions include:

Expanded Federal Role in Response. Federal authority for response to a discharge of oil is expanded: the Federal government is required to direct responses to discharges that pose a "substantial threat to the public health or welfare," and has the discretion to direct responses to other discharges. In addition, the USCG is to establish a National Response Unit and individual oil spill response groups in each of the ten USCG Districts to coordinate equipment used for spill response activities.

Oil Spill Liability Trust Fund. The OPA establishes an Oil Spill Liability Trust Fund administered by the USCG to pay for removal costs and damages not recovered from responsible parties. Fund monies are supplied by a five-cent-per-barrel fee on oil. The Fund provides up to \$1 billion per incident for cleanup costs and other damages.

Contingency Planning. The OPA requires EPA and the USCG to enhance the existing National Response System by designating Area Committees to develop Area Contingency Plans to help ensure the removal of a worst-case spill from a vessel or facility in or near the area covered by a plan. In addition, the OPA requires that owners or operators of individual vessels and facilities (except onshore facilities that are not expected to cause environmental harm) prepare response plans for worst-case oil and hazardous substance discharges.

Increased Liability for Spills. The OPA increases the liability of tanker owners and operators in the event of a spill from \$150 per gross ton to \$1,200 per gross ton of vessel weight. In addition, responsible parties at onshore facilities and deepwater ports are liable for up to \$350 million per spill; holders of leases or permits for offshore facilities are liable for up to \$75 million per spill, plus the removal costs for the spill. The OPA also broadens liability to cover not only removal costs and natural resource damages, but also the provision of spill-related health and safety services by State and local governments and losses of property, revenues, and profits.

Double Hulls. Under the OPA, most newly constructed tankers over certain size limits must have double hulls or other double containment systems. Existing tankers without double hulls are to be phased out by size, age, and design beginning in 1995; most tankers without double hulls are banned after 2015.

Research and Development. The OPA mandates the establishment of an interagency committee to coordinate efforts to improve oil spill response technology.

How does the OPA affect existing laws and regulations?

The OPA revises CWA section 311 to expand Federal response authority; increase penalties for spills; establish USCG response organizations; require vessel and facility response plans; and provide for interagency contingency plans. Many of the statutory changes will require corresponding revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). In addition, the OPA amends the Deepwater Port Act of 1974 and the Outer Continental Shelf

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QUESTIONS AND ANSWERS (Continued)...

Lands Act Amendments of 1978 to merge funds established under these laws with the new Trust Fund, and makes the Trust Fund available for actions under the Intervention on the High Seas Act.

How is the OPA being implemented?

A forthcoming Executive Order is expected to delegate authority to implement the OPA primarily to the USCG and EPA. The Agency is expected to receive lead responsibility or joint responsibility (with the USCG) for a number of provisions. A memorandum of understanding will address how the two organizations will interact in carrying out their responsibilities. (See the next page for the major EPA activities and deadlines associated with the OPA.)

How will EPA implementation of the OPA help oil spill planning and prevention efforts?

The OPA strengthens spill planning and prevention activities by providing for the establishment of interagency spill contingency plans for areas of the U.S., mandating the development of response plans for individual vessels and facilities, and requiring the inspection of spill removal equipment. These efforts are intended to result in more prompt and effective cleanup or containment of oil spills, thereby preventing spills from becoming larger and reducing the amount of damage caused by spills.

Area Committees, to be composed of qualified Federal, State, and local officials, will be created to develop Area Contingency Plans. These plans must be reviewed and approved by EPA and the USCG by August 18, 1992. In addition, owners and operators of onshore facilities that could cause significant and substantial harm by discharging oil to navigable waters, offshore facilities, and tank vessels are required to prepare and submit response plans. Response plans for onshore facilities that could cause significant and substantial harm by discharging oil to navigable waters must be reviewed and approved by EPA. If response plans are not developed and approved as required by the OPA, the vessel or facility may be prohibited from handling, storing, or transporting oil. Under the OPA, containment booms, skimmers, vessels, and other major spill removal equipment must be inspected periodically; bulk vessels must carry removal equipment that uses the best technology economically feasible and consistent with the safe operation of the vessel.

The higher limits on liability and the broader scope of damages for which dischargers may be liable under the OPA will serve as an added incentive for

facilities and vessels to prevent spills. In addition, EPA is expected to take the lead or participate in several studies and research and development efforts that will aid in oil spill prevention. (Other requirements of the OPA to be implemented by the USCG -- such as the establishment of a National Response Unit and District Response Groups and new standards for vessel construction, crew licensing, and manning -- also will help to prevent or mitigate spills.)

What will EPA do under the OPA to improve oil spill response efforts?

The OPA expands the Federal government's involvement in responding to the most significant spills. For discharges that pose a "substantial threat to the public health or welfare," the OPA requires that the Federal government direct response efforts. For other types of discharges, the OPA gives the Federal government the authority to direct all Federal, State, and private response actions. This authority is in addition to the existing discretion to conduct response activities and recover costs from responsible parties. In addition, the OPA requires the establishment of procedures and standards for the removal of "worst-case discharges" (defined in the OPA as discharges in adverse weather conditions of the entire cargo of a vessel or the largest foreseeable amount of oil from a facility).

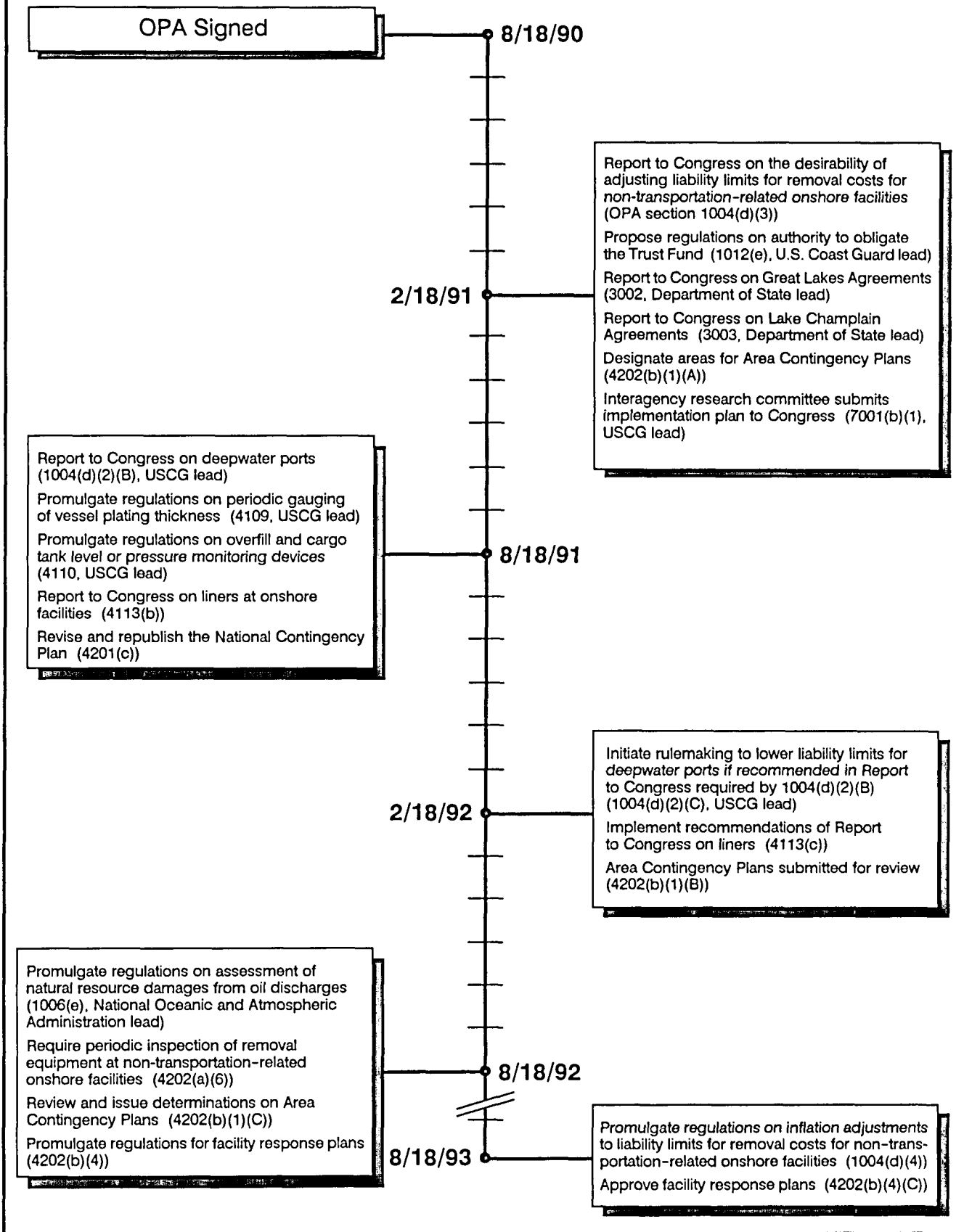
What EPA oil pollution research and development efforts are mandated by the OPA?

The OPA requires that an interagency committee be established to coordinate oil pollution research, technology development, and demonstration. Technologies that may be developed to address the problem of oil pollution include booms, skimmers, and containers for temporary storage of oil during recovery activities; chemical treatment methods, such as dispersants; biological oil treatment methods, such as the introduction of microorganisms and/or nutrients; and the use of aircraft and remote sensing in oil spill cleanup and monitoring activities. In addition, EPA is undertaking a study on whether liners or other means of secondary containment should be used to detect or prevent leaking from onshore bulk storage facilities.

How are the EPA program offices carrying out their responsibilities under the OPA?

To coordinate the numerous efforts required under the OPA, EPA's Emergency Response Division (ERD) has formed the OPA Implementation Workgroup. Within the overall workgroup, a number of other workgroups have been formed to implement specific OPA provisions (see the last page of this bulletin). ■

Major EPA Activities and Statutory Deadlines Associated with the Oil Pollution Act of 1990



EPA WORKGROUPS IMPLEMENTING THE OPA	CHAIR
<u>OPA Implementation Workgroup.</u> Coordinates the numerous efforts required under the OPA and oversees the activities of the other EPA workgroups.	Stephen Luftig, ERD (202) 475-8720
<u>Area Contingency Plans.</u> Considering issues associated with designating areas for which Area Committees are to be established and Area Contingency Plans are to be prepared.	Caroline Isber, CEPO (202) 382-5338
<u>Facility Response Plans.</u> Developing regulations for facility response plans as part of the Spill Prevention, Control, and Countermeasures Phase II Rulemaking Workgroup.	Bobbie Lively-Diebold, ERD (703) 356-8774
<u>Response Plan Guidance.</u> Developing interim and final guidance for reviewing facility response plans.	Bobbie Lively-Diebold, ERD (703) 356-8774
<u>NCP Revisions.</u> Developing revisions to the NCP required by the OPA.	Elizabeth Zeller, ERD (202) 382-7735
<u>NCP Subpart J Revisions.</u> Focusing on the development of Subpart J revisions to the NCP Product Schedule.	Karen Sahatjian, ERD (202) 382-2307
<u>Enforcement.</u> Determining EPA enforcement responsibilities in light of the new penalty provisions added by the OPA.	David Drellich, OE (202) 382-2949
<u>Liner Study.</u> Preparing a report to Congress on whether liners or secondary containment should be used to prevent leaking at onshore facilities.	Kurt Jakobson, ORD (202) 382-5747
<u>Research and Development.</u> Coordinating EPA's program of oil pollution research, technology development, and demonstration.	Fred Lindsey, ORD (202) 382-2600
<u>Regional OPA Workgroup.</u> Facilitating Regional involvement in the development of EPA programs, policies, and regulations required by the OPA.	Doug Kodama EPA Region 2 (908) 906-6905



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