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EPA OPA Update

Implementation of the Oil Pollution Act of 1990

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Emergency Response Division 5202 G

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Proposed Revisions to the NCP

On October 22, 1993, EPA proposed revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which serves as the blueprint to guide oil spill response and hazardous substance cleanups. The proposed revisions implement important, response-related OPA amendments to section 311 of the Clean Water Act (CWA). EPA plans to finalize the regulation in August of 1994.

EPA and the Coast Guard formed an NCP workgroup to revise the NCP to reflect the new entities and authorities mandated by the OPA and to make other improvements to the national response system. This article discusses these proposed revisions to the NCP.

New Entities

The proposed revisions to the NCP would expand the national response system. Some of the new entities proposed to be added to the system include Coast Guard District Response Groups, which will coordinate spill removal equipment and personnel and give technical assistance to On-Scene Coordinators (OSCs); the National

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EPA Assumes New Regulatory Responsibilities

On February 3, 1994, EPA, the Department of Transportation (DOT), and the Department of the Interior (DOI) signed a Memorandum of Understanding (MOU) that redefines the jurisdictional responsibility of regulating certain offshore facilities under the CWA. *(See full text of the MOU on page 5.)* Executive Order 12777 expanded the traditional DOI role of regulating facilities located on the Outer Continental Shelf to all offshore facilities, which by definition includes facilities located on inland lakes, rivers, streams, and other inland waters.

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NCP Revisions

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Strike Force Coordination Center (NSFCC), located in Elizabeth City, North Carolina, and administered by the Coast Guard; and a new Atlantic Strike Team to supplement the two existing strike teams, which provided trained personnel and specialized equipment to assist the OSC in training for spill response, stabilizing and containing the spill, and monitoring or directing the response actions of the responsible parties and/or contractors.

Area Committees and Area Contingency Plans

The proposed revisions would also expand local spill response planning by creating Area Committees. Area Committees are planning bodies, under the direction of an OSC, responsible for preparing Area Contingency Plans (ACPs) and working with state and local officials to enhance contingency planning. The ACPs complement existing NCP-required planning activities by providing a level of localized, site-specific detail not found in other plans. When implemented in conjunction with the NCP, the ACP must be adequate to address the removal of a worst-case discharge from a vessel or facility operating in or near the area covered by the plan.

The ACP must include descriptions of the areas it covers, how the ACP is integrated into other contingency planning activities, the procedures to be followed for obtaining an expedited decision regarding the use of dispersants, and lists of equipment, dispersants, and personnel available to ensure removal of a discharge.

New Spill Classifications

Another important provision of the proposed NCP is the creation of three new classifications for spills: substantial threats to the public health or welfare; worst-case discharges; and spills of national significance (SONS).

Although the NCP provides the OSC with a reliable framework to determine whether spills may present a "substantial threat," the OSC also has the discretion to decide, on a case-by-case basis, whether a specific discharge or a threat of discharge poses a substantial threat to the public health or welfare. If a discharge is identified as a substantial threat, the OSC is required under the OPA to direct the response and, under the proposed revisions, to assess opportunities for the use of various special teams and other assistance, and to request that the appropriate Regional Response Team be activated immediately. This new provision also authorizes OSCs to take whatever additional response actions are deemed appropriate.

A worst-case discharge at a facility is the largest foreseeable discharge in adverse weather conditions. In the event of a worst-case discharge, the OSC must notify the NSFCC, require implementation of the tank vessel and facility response plans, and take whatever additional actions are necessary to respond to the situation.

SONS are discharges defined as posing substantial threats to public health or welfare, and will only include those spills where the potential impacts are extremely severe. The key difference that would set SONS apart from other spills posing substantial threats is the need for extensive coordination and communication in order to respond adequately and in a timely manner. The NCP provision regarding responses to SONS includes a framework to assist the OSC in addressing resource administration, government and public relations, and communications.

Other Revisions

The proposed revisions provide information on the availability of the new Oil Spill Liability Trust Fund (OSLTF), which reimburses costs related to oil spill response and cleanup. The OSLTF is administered by the Coast Guard's National Pollution Funds Center. Also included in the revised NCP is a new oil spill response appendix, consolidating the NCP's oil spill response requirements. This appendix is intended to serve as a single source of direction and guidance to OSCs, as well as a consolidated source of information for other interested parties, regarding the requirements and procedures applicable to an oil spill response. ■

Coming Up...

- ✔ A detailed look at the changes to the NCP from the proposed rulemaking to the final regulation.
- ✔ A detailed look at the final Facility Response Plan regulations published on July 1, 1994.
- ✔ An update on PREP including recent workshops and the exercise scheduling process.

A Brief History of the NCP

1968 The first NCP is published in response to the *Torrey Canyon* tanker spill and establishes a basic framework for responding to oil spills, including on scene commanders (precursor to OSCs), national and regional contingency plans, and reaction teams.

1970 The NCP is revised to reflect the Water Quality Improvement Act of 1970 by adding the Coast Guard's National Strike Force and requiring that regional contingency plans designate local strike force teams.

1971 The NCP is revised by designating the newly-formed EPA as a co-chair of the National and Regional Response Teams and requiring that EPA be notified of releases.

1972 Procedures for reimbursing states for removing discharges and guidelines for private-party removals are added to the NCP.

1973 Provisions requiring EPA approval for using chemicals to respond to a discharge are added to the NCP.

1980 The scope of the NCP is expanded to cover potential discharges. States are represented on the Regional Response Teams, and local response plans are placed under the direction of OSCs.

1982 Major provisions are added to the NCP for hazardous substance responses to reflect the passage of CERCLA in 1980. In addition, OSCs are given authority to use dispersants on oil releases.

1985 The NCP is revised to ensure that responses to hazardous substances are consistent with applicable or relevant and appropriate requirements, and address community participation. In addition, natural resource trustees are designated.

1990 The NCP is revised to reflect the 1986 SARA amendments to CERCLA that address responses to releases of hazardous substances, pollutants, or contaminants.

1993 Major oil-related provisions are proposed in response to the 1990 OPA amendments to the CWA. These include new response organizations, the Oil Spill Liability Trust Fund, creation of Area Committees and ACPs, and designation of new spill classifications that trigger different response requirements (*see related article page 1*).

EPA's New Regulatory Responsibilities

(continued from page 1)

Under the newly-signed MOU, EPA assumes responsibility for non-transportation-related offshore facilities located landward of the coast line, and DOT assumes responsibility for transportation-related facilities in the same area. The term "coast line" is defined in the MOU as the line of ordinary low water along that portion of the coast that is in direct contact with the open sea and the line marking the seaward limit of inland waters. Therefore, EPA is now responsible for spill prevention and control, response planning, and equipment activities for non-transportation-related facilities in and along the Great Lakes, rivers, coastal wetlands, and the Gulf Coast barrier islands. EPA, DOT, and DOI agreed on the new jurisdictional relationship because EPA has the expertise for, and can bring continuity to, the oversight of offshore facilities located on inland waters. MMS has prepared detailed charts that reflect the position of the coast line. *(For more information, please contact Sharon Buffington of MMS at (703) 787-1600.)*

In response to this MOU, EPA is developing necessary rules to regulate offshore facilities that now fall under EPA's jurisdiction and regulations for preparing and submitting OPA facility response plans. As part of the rulemaking effort, EPA is conducting an economic analysis to determine the costs and benefits associated with regulating such facilities. Further details will be provided in future issues of the *OPA Update*. ■

Publications Update

Understanding Oil Spills and Oil Spill Response was published by EPA's Emergency Response Division and provides a basic overview of the issues and activities surrounding an oil spill, including preparedness, response, and cleanup. Publication number PB93-963409. To order, contact NTIS at (703) 487-4650.

Oil Pollution Research and Technology Plan details the findings of the Federal Interagency Coordinating Committee on Oil Pollution Research, which is developing the Regional Research (Grant) Program mandated by Title VII of the OPA. Publication number PB92 193283-AS. To order, contact NTIS at (703) 487-4650.

Preparation and Response for Oil Spills in Philadelphia and New York is a 22-page document, prepared by the U.S. General Accounting Office (GAO) that details preparation and response issues for oil spills in the Philadelphia and New York areas. Document number RCED 90-83. To order, contact the GAO Document Service at (202) 275-6241.

U.S. EPA Highlights on Forums on Aboveground Oil Storage Facilities, report on series of workshops held by EPA's internal aboveground tank workgroup. To order, contact ERD's SPCC/OPA Information Line at (202) 260-2342.

U.S. Rep. James Moran (D-VA) Aboveground Storage Tank Bill, H.R. 1360 (1993), with significant changes from Sen. Thomas Daschle's 1993 AST bill submission. For a copy, contact Kristin King, 430 Cannon, House Office Building, Washington, DC 20515; tel: (202) 225-4376.

Administrative and Technical Reference Manual for Installers and Inspectors of Aboveground Storage Tanks and **Administrative and Technical Reference Manual for Installers and Inspectors of Underground Storage Tanks**. For information, contact Kay Hawk, Pennsylvania Department of Environmental Resources, Division of Storage Tanks, P.O. Box 8762, Harrisburg, PA 17105-8762; tel: (800) 42-TANKS (within PA) or (717) 772-5556.

Memorandum of Understanding Among the Secretary of the Interior, Secretary of Transportation, and Administrator of the Environmental Protection Agency

Purpose

This Memorandum of Understanding (MOU) establishes the jurisdictional responsibilities for offshore facilities, including pipelines, pursuant to section 311 (j)(1)(C), (j)(5), and (j)(6)(A) of the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990 (Public Law 101-380). The Secretary of the Department of the Interior (DOI), Secretary of Department of Transportation (DOT), and the Administrator of the Environmental Protection Agency (EPA) agree to the division of responsibilities set forth below for spill prevention and control, response planning, and equipment inspection activities pursuant to those provisions.

Background

Executive Order (E.O.) 12777 (56 FR 54757) delegates to DOI, DOT, and EPA various responsibilities identified in section 311(j) of the CWA. Sections 2(b)(3), 2(d)(3), and 2(e)(3) of E.O. 12777 assigned to DOI spill prevention and control, contingency planning, and equipment inspection activities associated with offshore facilities. Section 311(a)(11) defines the term "offshore facility" to include facilities of any kind located in, on, or under navigable waters of the United States. By using this definition, the traditional DOI role of regulating facilities on the Outer Continental Shelf is expanded by E.O. 12777 to include inland lakes, rivers, streams, and any other inland waters.

Responsibilities

Pursuant to section 2(i) of E.O. 12777, DOI redelegates, and EPA and DOT agree to assume, the functions vested in DOI by sections 2(b)(3), 2(d)(3), and 2(e)(3) of E.O. 12777 as set forth below.

For purposes of this MOU, the term "coast line" shall be defined as in the Submerged Lands Act (43 U.S.C. 1301(c)) to mean "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters."

1. To EPA, DOI redelegates responsibility for non-transportation-related offshore facilities located landward of the coast line.

2. To DOT, DOI redelegates responsibility for transportation-related facilities, including pipelines, located landward of the coast line. The DOT retains jurisdiction for deepwater ports and their associated seaward pipelines, as delegated by E.O. 12777.

3. The DOI retains jurisdiction over facilities, including pipelines, located seaward of the coast line, except for deepwater ports and associated seaward pipelines delegated by E.O. 12777 to DOT.

Effective Date

This MOU is effective on the date of final execution by the indicated signatories.

Limitations

1. The DOI, DOT, and EPA may agree in writing to exceptions to this MOU on a facility-specific basis. Affected parties will receive notification of the exceptions.

2. Nothing in this MOU is intended to replace, supersede, or modify any existing agreements between or among DOI, DOT, or EPA.

Modification and Termination

Any party to this agreement may propose modifications by submitting them in writing to the heads of the other agency/department. No modification may be adopted except with the consent of all parties. All parties shall indicate their consent to or disagreement with any proposed modification within 60 days of receipt. Upon the request of any party, representatives of all parties shall meet for the purpose of considering exceptions or modifications to this agreement. This MOU may be terminated only with the mutual consent of all parties.

National Preparedness for Response Exercise Program Workshops:

Government and Industry Working Together

The OPA requires the development of facility and vessel response plans and Area Contingency Plans to ensure that industry and government can adequately respond to a worst-case discharge of oil. In order to ensure that the plans meet their intended goals, the OPA requires that exercises be performed to test the response plans. As a result, EPA, the Coast Guard, DOT's Research and Special Programs Administration, the MMS, and a number of states with OPA response plan regulations have coordinated the development of the National Preparedness for Response Exercise Program (PREP). A series of four workshops involving government and industry were held in April, May, July, and August of 1993, to establish an exercise program that meets the intent of the OPA and that is economically feasible for all participants to sustain. The workshops resulted in a series of guidelines that detail acceptable procedures to meet OPA drill requirements.

The PREP guidelines outline the applicability, type, frequency, and objectives of response exercises. The exercises are divided into two orientations -- internal and external. Internal exercises test the following: notification, mobilization, and deployment procedures, as well as the ability of the spill management team to function as an effective unit. These internal exercises may be announced or unannounced, and may or may not involve the active deployment of equipment. Internal exercises are evaluated by the facility itself. Although all components of the plan should be exercised every three years, the plan may be exercised in segments over this period. External or area exercises focus on the integration of the entire response community (Federal, State, and local governments and industry) within a particular response area. According to the PREP guidelines, the goal is to conduct 20 area exercises nationwide each year.

Six of the 20 annual exercises will be led by the government and 14 will be led by industry. A draft schedule of area exercises for 1995, 1996, and 1997 was developed at a PREP meeting and a notice was published in the Federal Register (see 59 FR 14254, March 25, 1994).

PREP is a landmark effort by the Federal and State governments and the regulated community to develop a creative solution to response exercises and preparedness in lieu of government regulations. It is an example of how industry and government can work together to produce a flexible, cost effective approach that is acceptable to all participants.

For more information on PREP, including copies of the PREP guidelines, please contact Coast Guard Petty Officer Daniel Caras at (202) 267-6570.■

Regulatory Update

(as of July, 1994)

Proposed Revisions to the National Oil and Hazardous Substances Pollution Contingency Plan. Proposed revisions to 40 CFR Part 300 were published on October 22, 1993, and the comment period ended January 14, 1994. The final rule is expected to be published in August.

Tank Liner Study. EPA is conducting an OPA-required study to determine whether liners or other means of secondary containment should be used to prevent oil leaks from onshore facilities. The study is nearing completion and EPA is expected to deliver the study to Congress in the summer of 1994.

Facility Response Plan Regulation. The Final Rule for Facility Response Plans (59 FR 34070) was published on July 1, 1994.

Phase I Revisions to 40 CFR Part 112. Proposed revisions were published on October 22, 1991, and the comment period ended December 23, 1991. EPA plans to finalize the rule in the fall of 1994.

Offshore Facilities. ERD is currently developing an Interim Final Rule for EPA's new jurisdiction over certain offshore facilities *(see article on page 1)*.

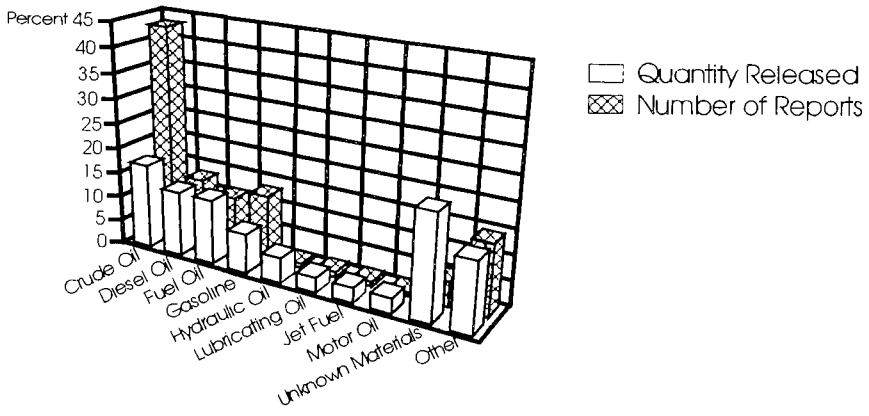
EPA to Co-Sponsor the 1995 International Oil Spill Conference

EPA, along with the Coast Guard, the American Petroleum Institute, the International Maritime Organization, and the International Petroleum Industry Environmental Conservation Association, will co-sponsor the 14th Biennial International Oil Spill Conference. The conference is scheduled for February 27 to March 2, 1995, in Long Beach, California. The conference theme will be "Achieving and Maintaining Preparedness." As usual, the conference will also focus on a wide variety of themes, including oil pollution prevention, preparedness, new or improved technologies for oil spill prevention and response, oil spill management, mitigation, and liability. For more information about the conference, contact: 1995 International Oil Spill Conference, 655 15th Street, NW, Suite 300, Washington, DC 20005; tel: (202) 639-4202, or fax: (202) 247-6109.

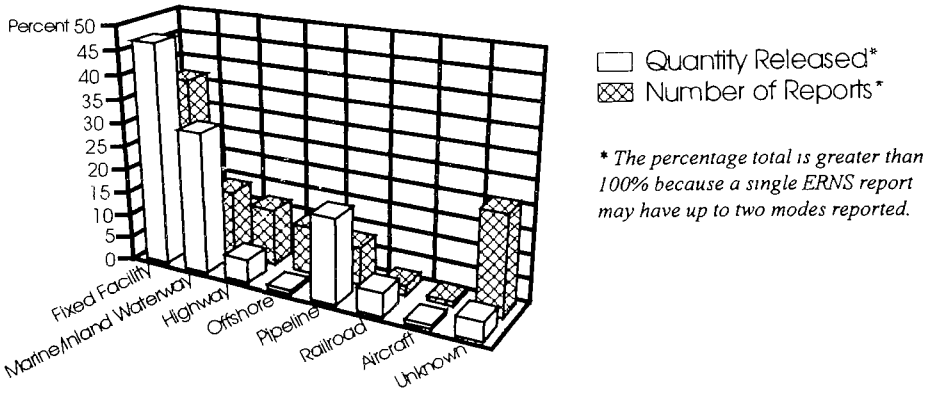
1993 ERNS Data: Releases of Oil by Material Type and by Mode

(expressed as a percentage of total releases)

Releases of Oil by Material Type



Releases of Oil by Mode



** The percentage total is greater than 100% because a single ERNS report may have up to two modes reported.*

Source: Emergency Response Notification System (ERNS)

Did You Know...

- That only 5.5 percent of the world's population live in the U.S., but the U.S. uses nearly 29 percent of the world's petroleum.
- That 20 percent of the world's oil comes from beneath the sea.
- That one North Sea oil rig can produce up to 150,000 gallons of oil a day - enough to fill the gas tanks of 5,800 cars.
- That many products we use every day are made from oil. Surprisingly, some of these products include:

✔	Paraffin wax	✔	Adhesives
✔	Pharmaceuticals	✔	Polishes
✔	Explosives	✔	Paints
✔	Pesticides	✔	Nylon
✔	Detergents	✔	Plastics
✔	Cosmetics		

Source: The Usborne Book of Earth Facts

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United States
Environmental Protection
Agency 5202 G
Washington, DC 20460

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