

## **Proposed Policy Revisions**

\* indicates new section

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## Policy Recommendations

Revised text underlined unless otherwise noted. References to other sections correspond with revised text in this supplement.

Format:

(a) (1) (i) (A)

### Subpart A—Introduction

#### §300.3 Scope.

(b) The NCP provides for efficient, coordinated, and effective response to discharges of oil and releases of hazardous substances, pollutants, and contaminants in accordance with the authorities of CERCLA and the CWA. It provides for:

(1) The national response organization that may be activated in response actions. It specifies responsibilities among the federal, state, and local governments, **Indian Tribes, and federally-recognized Citizens' Advisory Councils** and describes resources that are available for response.

#### NEW SECTION

(d) In implementing the NCP, consideration shall be given to security regulations and responsibilities based on national concerns, federal statutes, and executive orders. Actions taken pursuant to any Remote Area Operations conducted by the Department of Homeland Security **will** be consistent with the NCP, to the greatest extent possible.

(e) Additionally, the NCP applies to and is in effect when the Federal Response Plan and some or all of its Emergency Support Functions (ESFs) are activated.

#### §300.4 Abbreviations.

(b) *Operational abbreviations*

#### [ADDITIONS ONLY]

BAP	Best Available Practices
CAC	Citizens' Advisory Council
HAZWOPER	Hazardous Waste Operator
MSDS	Material Safety Data Sheet
OEM	Occupational and Environmental Medicine
ORS	OSHA Reportable Symptom
ORI	OSHA Recordable Illness
PAH	Polycyclic Aromatic Hydrocarbon
PCC	Permanent Co-Chair
PPE	Personal Protective Equipment
SDS	Safety Data Sheet
VOC	Volatile Organic Carbon

#### §300.5 Definitions. (Relating to containment & recovery of oil)

*Bioremediation agents* means microbiological cultures, enzyme additives, or nutrient additives **that will not cause harm to public health or welfare or to the environment and** that are deliberately introduced into an oil discharge and that **are likely to will** significantly increase the rate of biodegradation to mitigate the effects of the discharge.

*Burning agents* means those additives **that will not cause harm to public health or welfare or to the environment and** that, through physical or chemical means, **may** improve the combustibility of the materials to which they are applied.

*Chemical agents* means those elements, compounds, or mixtures **that will not cause harm to public health or welfare or to the environment and** that **are likely to** coagulate, ~~disperse, dissolve, emulsify,~~ foam, neutralize, ~~precipitate,~~ reduce, solubilize, oxidize, concentrate, congeal, entrap, fix, make the pollutant mass more rigid or viscous, or otherwise facilitate the mitigation of deleterious effects or the removal of the pollutant from the water. Chemical agents include biological additives, dispersants, sinking agents, miscellaneous oil spill control agents, ~~and burning agents, but do not include~~ **and** sorbents.

*Dispersants* means those chemical agents **that will not cause harm to public health or welfare or to the environment and** that **are likely to** emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column. **Dispersants are or act as sinking agents.**

*Miscellaneous oil spill control agent* is any product, other than a dispersant, sinking agent, surface washing agent, surface collecting agent, bioremediation agent, burning agent, or sorbent **that will not cause harm to public health or welfare or to the environment and** that can be used **if they are likely** to enhance oil spill cleanup, removal, treatment, or mitigation.

*Sinking agents* are defined as those additives, **irrespective of specific gravity,** applied to oil discharges to **physically** sink floating pollutants below the water surface **and into the water column, or are likely to emulsify, disperse or solubilize oil into the water column, or are likely to otherwise facilitate dispersal of oil into the water column, or to retain or facilitate retention of oil below the water surface in the case of subsea injection.**

*Sorbents* means essentially inert and insoluble materials **that will not cause harm to public health or welfare or to the environment and** that **are may be** used **if they are likely** to remove oil and hazardous substances from water through adsorption, in which the oil or hazardous substance is attracted to the sorbent surface and then adheres to it; absorption, in which the oil or hazardous substance penetrates the pores of the sorbent material; or a combination of the two. Sorbents are generally manufactured in particulate form for spreading over an oil slick or as sheets, rolls, pillows, or booms. The sorbent material may **not include nanoparticles, and may** consist of, but is not limited to, the following materials: [as listed].

*Surface collecting agents* means those chemical agents **that will not cause harm to public health or welfare or to the environment and** that **are likely to** form a surface film to control the layer thickness of oil.

*Surface washing agent* is any product **that will not cause harm to public health or welfare or to the environment and** that **is likely to** remove ~~removes~~ oil from solid

surfaces, such as beaches and rocks, through a detergency mechanism and does not involve dispersing, **emulsifying**, or solubilizing the oil into the water column.

**§300.5 Definitions. (Relating to oil and hazardous substances)**

**ASSUMING ultra-hazardous oils are considered hazardous substances, pollutants or contaminates...**

*Discharge* as defined by section 311(a)(2) of the CWA, includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil, but excludes discharges in compliance with a permit under section 402 of the CWA, discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the CWA, and subject to a condition in such permit, or continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the CWA, that are caused by events occurring within the scope of relevant operating or treatment systems. For purposes of the NCP, discharge also means substantial threat of discharge, **but excludes ultra-hazardous oils.**

*Hazardous substance* as defined by section 101(14) of CERCLA, means: Any substance designated pursuant to section 311(b)(2)(A) of the CWA; any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA; any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) has been suspended by Act of Congress); any toxic pollutant listed under section 307(a) of the CWA; any hazardous air pollutant listed under section 112 of the Clean Air Act (42 U.S.C. 7521 et seq.); and any imminently hazardous chemical substance or mixture with respect to which the EPA Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act (15 U.S.C. 2601 et seq.). The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance in the first sentence of this paragraph, **and however for purposes of the NCP, the term does include ultra-hazardous oils** ~~not include natural gas, natural gas liquids, liquified natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).~~

*Oil* as defined by section 311(a)(1) of the CWA, means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil, as defined by section 1001 of the OPA means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act. **For the purposes of the NCP, this term shall include, but not be limited to, oil of any kind or in any form (excepting ultra-hazardous oil), which after release into the environment and upon exposure to, ingestion by, inhalation by, or assimilation into humans (or any other organisms), either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated**

**to cause death, disease or infection, behavioral abnormalities, cancer, genetic mutation, endocrine disruption or other physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such humans or their children (or organisms or their offspring).**

*Pollutant or contaminates* defined by section 101(33) of CERCLA, shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under section 101(14) (A) through (F) of CERCLA, **nor does it include natural gas, liquified natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).**, however For purposes of the NCP, the term pollutant or contaminant means any pollutant or contaminant that may present an imminent and substantial danger to public health or welfare of the United States, **including ultra-hazardous oils and chemical agents that contain known or suspected toxic or hazardous ingredients.**

*Remove or removal* as defined by section 311(a)(8) of the CWA, refers to containment and removal of oil or hazardous substances from the **navigable** water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare of the United States (including, but not limited to, fish, shellfish, wildlife, public and private property, **culturally-significant resources**, and shorelines and beaches) or to the environment. For the purpose of the NCP, the term also includes, **without being limited to, actions to access, monitor, evaluate, design, or implement measures to protect worker and public safety and health during response activities; actions to monitor, assess, and evaluate the discharge or threat of discharge of oil; actions to properly dispose of removed material; security fencing or other measures to limit access; provision of alternative water supplies; temporary evacuation and housing of threatened individuals not otherwise provided for; post-removal site control, where appropriate; and any emergency assistance which may be provided under the Disaster Relief Act of 1974.** As defined by section 101(23) of CERCLA, remove or removal means the cleanup or removal of released hazardous substances from the environment; such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment; such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removed material; or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare of the United States or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of CERCLA, post-removal site control,

where appropriate, and any emergency assistance which may be provided under the Disaster Relief Act of 1974. For the purpose of the NCP, the term also includes enforcement activities related thereto.

*Size classes of discharges* refers to the following size classes of oil discharges which are provided as guidance to the OSC and serve as the criteria for the actions delineated in subpart D. They are not meant to imply associated degrees of hazard to public health or welfare of the United States, nor are they a measure of environmental injury. Any oil discharge that poses a substantial threat to public health or welfare of the United States or the environment or results in significant public concern shall be classified as a major discharge regardless of the following quantitative measures:

(1) Minor discharge means a discharge to the inland waters of less than 1,000 gallons of oil or a discharge to the coastal waters of less than 10,000 gallons of oil.

(2) Medium discharge means a discharge **to the inland waters** of 1,000 to 10,000 gallons of oil ~~to the inland waters~~ or a discharge to the coastal waters of 10,000 to 100,000 gallons of oil ~~to the coastal waters~~.

(3) Major discharge means ~~or a discharge to the inland waters~~ **to the inland waters** of more than 10,000 gallons of oil ~~to the inland waters or a discharge to the coastal waters~~ **of more than 100,000 gallons of oil to the coastal waters**

#### **NEW SECTION**

(4) Any discharge of ultra-hazardous oil.

#### **NEW SECTION**

*Ultra-hazardous oils* is defined to mean naturally-occurring oil that has a significantly different chemical composition than the standard reference oils described in appendix C to part 300, including but not limited to tar sands oil or bitumen, blended tar sands oil (diluted bitumen or dilbit), kerogen oil or shale oil, and the extremely volatile oil produced by hydraulic fracturing or similar technologies. This term also includes all petrochemical-derived substances used as diluents to blend tar sands oil such as natural gas condensate, including naphtha petroleum, refined naphtha, and synthetic crude oil, among others, and all petrochemical-derived substances used in hydraulic fracturing or similar technologies to extract oil and gas from its source substrate.

### **§300.5 Definitions. (Relating to public health and welfare)**

#### **NEW SECTION**

*Critical public resources* is defined to mean (for the purposes of the NCP) public property (such as air, fresh water, oceans, public land, biodiversity, climate) held in trust for the people of the United States to be protected and sustained by federal, state, and local governments for access, use, and enjoyment by present generation so as not to diminish the same for future generations.

#### **NEW SECTION**

*Human habitations* is defined to mean (for the purposes of the NCP) the build environment; human settlements and human build or modified structures including but not limited to public or private spaces, dwellings and furnishings, supporting infrastructure and facilities (such as water treatment and waste water treatment facilities, hospitals and health clinics, schools, etc.), and places where food or livestock

is grown or raised for human consumption or use; or any of the conditions in which people live.

*On-site* means the areal extent of contamination, **including air-borne and water-borne contamination**, and all suitable areas in very close proximity to the contamination necessary for implementation of the response action.

### **NEW SECTIONS**

*Public health and welfare of the United States* is defined to mean the health and wellbeing of the population as a whole, whether as small as a local neighborhood or as big as entire country or anything in between. It is a general state of physical, mental, emotional, and social wellbeing maintained by health care equity, quality, and accessibility and improved by education, lifestyle choices, good nutrition, minimizing exposure to contaminants and contaminated environments, and early detection and control of illnesses and infectious diseases.

*Significant public concern* is defined to mean concerns, within or outside of the impacted geographic area, that are present across different regions, demographic groups (such as socio-economic status), or organization; • that are evidenced by high participation rates (such as meeting attendance, letter writing, or rallies), high frequency of similar concerns (such as respiratory problems, sick children, sick livestock, or air or water quality), or high level of efforts (such as missed work opportunities, time or resources expended) to participate or share concerns; • that are linked to evidence of impacts within the impacted area or possible real impacts or observations from similar types of discharges or releases; • that are evidenced by a high frequency of media public relations events or ads about impacts (or lack of impacts) based on rates of ads prior to the discharge or release; • or that are based on proximity of the discharge or release to densely populated urban areas, critical municipal infrastructure (such as waste water treatment facilities or drinking water reservoirs), homes, hospitals, health clinics or spas, businesses, churches, schools, prisons, places where people congregate, areas where food is grown, harvested, processed or stored, ranches or livestock, communities or areas used for traditional harvesting, proximity to sensitive environments, or the severity of the worst case scenario. • Significant public concern may be limited in geographic scope to the impacted geographic area; nationwide anxiety need not be present to indicate significant public concern.

*Substantial threat* to public health or welfare of the United States is defined to mean (for the purposes of the NCP) an occurrence of a greater-than-expected number of illnesses or infectious cases or other indicators of chemical illnesses within a group of people or domesticated animals in the impacted geographic area after a discharge or release or during response operations when compared to the rates prior to the event in the same geographic area or a similar demographic area.

**§300.5 Definitions. (Relating to Organizational Structure & Responsibilities)**  
*Environment* as defined by section 101(8) of CERCLA, means the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.); and any other

surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States, **or, for the purposes of the NCP, under the jurisdiction of Indian Tribes.**

#### **NEW SECTION**

*Citizens' Advisory Council* or CAC means a body of citizens either created directly under the Oil Pollution Act of 1990 section 5002 or as part of the Area Contingency Plans required under Clean Water Act section 311(j) for the purpose of promoting environmentally safe oil operations (including protection of worker and public safety and health) in a specified geographic area or region.

*Spill of national significance* (SONS) means a spill that due to its severity, size, **type of oil,** location, actual or potential impact on the public health and welfare or the environment, or the necessary response effort, is so complex that it requires extraordinary coordination of federal, state, local, and responsible party resources to **protect public health and welfare or the environment and to** contain and clean up the discharge.

## Subpart B—Responsibility and Organization for Response

### §300.100 Duties of President delegated to federal agencies.

(a) In Executive Orders 12580 and 12777, the President delegated certain functions and responsibilities vested in him by the CWA, CERCLA, and the OPA.

#### NEW SECTION

(b) Executive Order 13175 and other legal doctrines, including the EPA Policy on Consultation and Coordination with Indian Tribes, the Public Trust Doctrine, and the Marine Mammal Protection Act Section 19, among others, require government-to-government consultation with, and concurrence of, Indian Tribes. These requirements are extended to include disaster planning and response.

### §300.105 General organization concepts.

(a) (3) Coordinate their planning, preparedness, and response activities with affected **Indian Tribes, federally-recognized citizens advisory councils**, states, local governments, and private entities; and

(b) (3) Response operations **including remediation and follow up** at the scene of a discharge or release.

(c) The organizational elements created to perform these activities are:

(1) The NRT, responsible for national response and preparedness planning, for coordinating regional planning, and for providing policy guidance and support to the Regional Response Teams (RRTs). NRT membership consists of representatives from the agencies specified in §300.175(b) **and the designated co-chairs and permanent co-chairs from the RRTs specified in §300.115.**

(2) RRTs, responsible for regional planning and preparedness activities before response actions, and for providing advice and support to the OSC or RPM when activated during a response. RRT membership consists of designated representatives from each federal agency participating in the NRT together with **Indian Tribes, federally-recognized CACs**, state and (as agreed upon by the states) local government representatives.

#### REPLACEMENT SECTIONS

~~(3) Leadership team consisting of The OSC and the RPM, primarily responsible for directing response efforts and coordinating all other efforts at the scene of a discharge or release. The other responsibilities of OSCs and RPMs are described in § 300.135.~~

(a) The OSC and the RPM, primarily responsible for directing response efforts and coordinating all other efforts at the scene of a discharge or release. The other responsibilities of OSCs and RPMs are described in §300.135.

(b) The OSHA and HHS permanent co-chairs, primarily responsible for protecting worker and public safety and health at the scene of a discharge or release. The other responsibilities of the PCCs are described in §§ 300.150 and 300.152.

(4) Area Committees, responsible for developing, under direction of the OSC **and in coordination and consultation with Indian Tribes and Citizens' Advisory Councils of the area**, ACPs for each area designated by the President.

Responsibilities of Area Committees are described in §300.205(c) **and Citizens' Advisory Councils in §300.206 Area Committee membership consists of qualified**

**local personnel of federal, state, and local agencies; Citizens’ Advisory Council membership consists of qualified local persons knowledgeable about the public health and welfare or the environment, economy or traditional subsistence cultures in the area.**

(d) The basic framework for the response management structure is a system (e.g., a unified command system) that brings together the functions of the ~~F~~federal ~~G~~government, ~~the state government and local governments, Indian Tribes, federally-recognized citizen advisory committees,~~ and the responsible party to achieve an effective and efficient response, where the OSC maintains authority **as described under the NCP.**

**REPLACEMENT GRAPHICS**

**Figure 1a**

Proposed revisions replace lower triangle graphic.

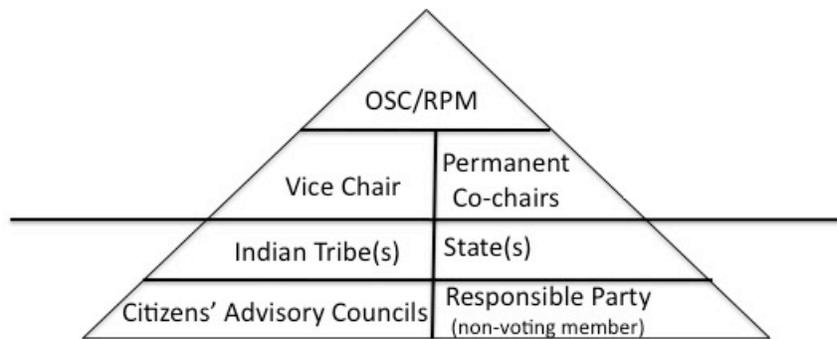


Figure 1a. National Response System Concepts: **RESPONSE**

**Figure 1b**

Proposed revisions replace top and middle ovals and lower rectangle graphics.

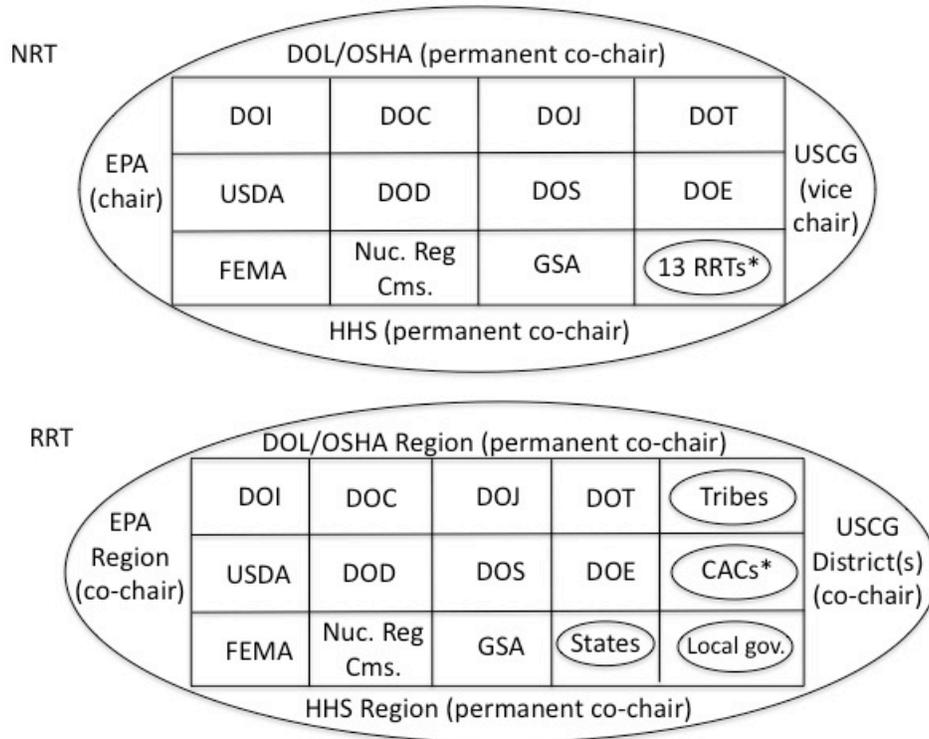


Figure 1b. National Response System Concepts: **PLANNING**

Sources of input and guidance to Area Committees	
Government Sec. 300.145	Non-Government 57 FR 15198
Indian Tribes Citizen Advisory Councils	Public health advocacy groups Environmental justice advocacy groups Worker safety & health advocacy groups Professional health care advocacy groups

Figure 1b. **PLANNING**, continued

**§300.110 National Response Team.**

**REPLACEMENT & NEW SECTIONS**

(b) ~~The NRT leadership shall be structured as follows. The chair of the NRT shall be the representative of EPA and the vice chair shall be the representative of the USCG, with the exception of periods of activation because of response action. During activation, the chair shall be the member agency providing the OSC/RPM. The EPA or USCG vice chair shall maintain records of NRT activities along with national, regional, and area plans for response actions.~~

(1) The chair of the NRT shall be the representative of EPA and the vice chair shall be the representative of the USCG, with the exception of periods of activation because of response action. During activation, the chair shall be the member agency providing the OSC/RPM. The EPA or USCG vice chair shall maintain records of NRT activities along with national, regional, and area plans for response actions **except for records maintained by the PCCs.**

(2) The permanent co-chairs (PCCs) of the NRT shall be the representatives of DOL/OSHA and HHS/CDC, including during periods of activation because of need to protect worker and public safety and health during and after response operations. During activation, the OSHA PCC shall collect and analyze records related to worker safety and health, including copies of clinical records and environmental monitoring data (such as air quality) collected by the responsible party or other agencies. The HHS PCC

shall collect and analyze records related to preventing and controlling chemical illnesses outbreaks and associated diseases, promote environmental health and health education, including mental health, and provide information to health care professionals and the public. Responsibilities of the PCCs are in §§ 300.150 and 300.152.

(c) While the NRT desires to achieve a consensus on all matters brought before it, certain matters may prove unresolvable by this means. In such cases, each agency serving as a participating agency on the NRT may be accorded one vote in NRT proceedings. **However either of the PCCs shall have veto power during periods of response activation because of the national priority to protect worker or public safety or health as described in §300.317.**

(e) The NRT shall **annually** evaluate methods of responding to discharges or releases **and protocols for protecting worker and public safety and health during response activation (including national and international best available practices) and prepare and distribute a summary its members including the RRTs; shall annually request meaningful participation from the RRTs, Area Committees, Indian Tribes, and federally-recognized CACs to review any recommended any** changes needed in the response organization **including drafts of regulatory language**; and shall **annually** recommend to the Administrator of EPA changes to the NCP designed to improve the effectiveness of the national response system, including drafting of regulatory language.

(f) The NRT shall provide policy and program direction to the RRTs **and will review and consider policy and program recommendations from the state and local governments, Indian Tribes, RRTs, Area Committees, federally-recognized CAC, and LEPCs.**

(g) The NRT ~~may~~ **shall research consider national and international BAPs (including practices to not use toxic products or sinking agents during response operations)** and make recommendations to appropriate agencies on the training, equipping, and protection of response teams **and the general public** and necessary research, development, demonstration, and evaluation to improve response capabilities **based on BAPs.**

(h) Direct planning and preparedness responsibilities of the NRT include:

(1) Maintaining national preparedness **based on national and international BAPs** to respond to a major discharge of oil or release of a hazardous substance, pollutant, or contaminant that is beyond regional capabilities;

(4) Coordinating a national program to assist member agencies **and the RRTs, Area Committees, federally-recognized CACs, and Indian Tribes** in preparedness planning and response **based on national and international BAPs**, and enhancing coordination of member agency preparedness programs;

(8) (i) Reviewing **annually** regional **and area** responses **(considering BAPs)** to oil discharges and hazardous substance, pollutant, or contaminant releases, including ~~an evaluation~~ **evaluations** of equipment readiness and coordination among

responsible public agencies and private organizations; **of equipment readiness and use for protection of worker and public safety and health; and of organizational structure and operations (including communications with impacted communities) among responsible public agencies, state and local governments, Area Committees, Indian Tribes, federally-recognized CACs, and private organizations.**

#### **NEW SECTION**

(ii) Reporting annually to Congress on statutory and regulatory recommendations for strengthening spill prevention and response measures.

(j) The NRT should be activated as an emergency response team:

- (1) When an oil discharge or hazardous substance release:
  - (i) Exceeds the response capability of the region in which it occurs;
  - (ii) Transects regional boundaries;
  - (iii) Involves a substantial threat to the public health or welfare of the United States, or the environment, substantial amounts of property (**including culturally-significant property or resources**), or substantial threats to natural resources; or

#### **NEW SECTION**

- (iv) Involves ultra-hazardous oil(s).
- (2) If requested by any NRT **or RRT** member, **an Indian Tribe directly or indirectly through the representative DOI member, Area Committee, or a federally-recognized CAC.**

(k) When activated for a response action, the NRT shall meet at the call of the chair and may:

- (1) Monitor and evaluate reports from the OSC/RPM and recommend to the OSC/RPM, through the RRT, actions to **protect worker or public safety or health during periods of response activation and combat to contain and remove** a discharge or release;
- (2) Request other federal, state, and local governments **or agencies, Indian Tribes, federally-recognized CACs,** or private **organizations** ~~agencies~~ to provide resources under their existing authorities **to protect worker or public safety or health during periods of response activation,** to ~~combat~~ **contain and remove** a discharge or release, or to monitor **or evaluate** response operations; and

#### **§300.115 Regional Response Teams.**

(a) Regional planning and coordination of preparedness and response actions ~~is~~ **are** accomplished through the RRT. In the case of a discharge of oil, preparedness activities will be carried out in conjunction with Area Committees, ~~as appropriate.~~ The RRT agency membership parallels that of the NRT, as described in §300.110, but also includes **Indian Tribes, federally-recognized CACs, and,** state and local representation. The RRT provides:

(1) The **Regional Contingency Plan as an** appropriate regional mechanism for development and coordination of preparedness activities before a response action is taken and for coordination of assistance and advice to the OSC/RPM during such response actions; and

(2) Guidance to Area Committees, as appropriate, to ensure inter-area consistency, **meaningful consultation and coordination with Indian Tribes and CACs**, and consistency of individual ACPs with the RCP and NCP.

(b) The two principal components of the RRT mechanism are a standing team, which consists of designated representatives from each participating federal agency, state governments, and local governments (as agreed upon by the states), **and Indian Tribes and federally-recognized CACs from the region**; and incident-specific teams formed from the standing team when the RRT is activated for a response, **consisting of federal agency, state governments, and local governments, and Indian Tribes and federally-recognized CACs from the impacted area(s)**. On incident-specific teams, participation by the RRT member agencies **and others** will relate to **the hazardous nature of the discharge and potential for harm to human safety and health**, the technical nature of the incident, and its geographic location.

(1) The standing team's jurisdiction corresponds to the standard federal regions, except for Alaska, Oceania in the Pacific, and the Caribbean area, each of which has a separate standing RRT. The role of the standing RRT includes communications systems and procedures, planning, coordination, training, evaluation, preparedness, and related matters on a region-wide basis. It also includes coordination of Area Committees **and with Indian Tribes and federally-recognized CACs** for these functions in areas within their respective regions, as appropriate.

(2) The role of the incident-specific team is determined by the operational requirements of the response to a specific discharge or release. The RRT shall notify state and local governments, Indian Tribes, and CACs of incidents within their region or area and shall coordinate with these entities to decide appropriate levels of activation and/or notification of the incident-specific RRT, ~~including participation by state and local governments, shall be determined by the designated RRT chair for the incident,~~ based on the RCP. The incident-specific RRT supports the designated OSC/RPM. The designated OSC/RPM directs response efforts and coordinates all other efforts at the scene of a discharge or release **consistent with the NCP, RCP, and ACP**.

(c) The representatives of EPA and the USCG shall act as co-chairs of RRTs except when the RRT is activated. When the RRT is activated for response actions, the chair shall be the member agency providing the OSC/RPM. **The permanent co-chairs of the RRT shall be the representatives of DOL/OSHA and HHS/CDC at all times.**

(d) Each participating agency **and federally-recognized CAC in the region** should designate one member and at least one alternate member to the RRT. Agencies whose regional subdivisions do not correspond to the standard federal regions may designate additional representatives to the standing RRT to ensure appropriate coverage of the standard federal region. Participating states may also designate one member and at least one alternate member to the RRT. Indian tribal governments may ~~arrange for representation with~~ **designate one member and at least one alternative member to**

the RRT appropriate to their geographical location. All agencies, **Tribes, CACs**, and states may also provide additional representatives as observers to meetings of the RRT.

(g) RRT members should nominate appropriately qualified representatives from their agencies to work with OSCs, **Area Committees, Indian Tribes, and federally-recognized CACs** in developing, **maintaining, and evaluating ACPs**.

(h) Affected states are encouraged to participate actively in all RRT activities. Each state governor is requested to assign an office or agency to represent the state on the appropriate RRT; to designate representatives, **including a representative from the State Emergency Response Commission (SERC) described in §300.205(d)**, to work with the RRT in developing, **maintaining, evaluating** RCPs; to plan for, make available, and coordinate state resources; and to serve as the contact point for coordination of response with local government agencies, whether or not represented on the RRT. The state's RRT representative should keep SERC apprised of RRT activities and coordinate RRT activities with the SERC. Local governments are invited to participate in activities on the appropriate RRT as provided by state law or as arranged by the state's representative. ~~Indian Tribes are also invited to participate in such activities.~~

(i) The standing RRT shall recommend changes in the regional response organization as needed **or based on requests from Area Committees and Indian Tribes or CACs within the region**; revise the RCP as needed **or based on requests from Area Committees and Indian Tribes or CACs within the region**; evaluate the **preparedness and coordination** of the participating agencies, **Indian Tribes, and CACs**, and the effectiveness of ACPs for the federal response to discharges and releases, and provide technical assistance for preparedness to the response community. The RRT should:

(1) Review and comment, ~~to the extent practicable~~, on local emergency response plans or other issues related to the preparation, implementation, or exercise of such plans upon request of a local emergency planning committee;

(2) Evaluate regional and local responses to discharges or releases on a continuing basis, considering available legal remedies, equipment readiness, **type of equipment based on BAPs**, and coordination among responsible **state and local** public agencies, **Indian Tribes and federally-recognized CACs**, and private organizations, and recommended improvements;

(3) Recommend revisions of the NCP to the NRT, based on observations of response operations **and comments from responsible state and local public agencies, Indian Tribes, and federally-recognized CACs**;

(4) Review OSC actions to ensure that **the NCP, RCPs, and ACPs** are effective **and to identify areas for revision and improvement**;

(6) In coordination with Area Committees and in accordance with any applicable laws, regulations, or requirements, conduct advance planning **for protection of worker and public safety and health during response activities consistent with §§ 300.150 and 300.152 and** for use of ~~dispersants, surface washing agents, surface collecting agents, burning agents, bioremediation agents, or other chemical agents~~ **approved products and burning agents** in accordance with subpart J of this part;

(8) Conduct or participate in training and exercises ~~as necessary~~ to encourage **maximum** preparedness activities of the response community within the region;

(j) (1) The RRT **will** be activated by the chair as an incident-specific response team when a discharge or release:

(i) Exceeds the response capability available to the OSC/RPM in the place where it occurs;

(ii) Transects state boundaries; or

(iii) May pose **or involves** a substantial threat to the public health or welfare of the United States, or the environment, or to regionally **or culturally-**significant amounts of property, **or substantial threats to natural resources**; or

(iv) Is a worst case discharge, as described in §300.324, **or involves ultra-hazardous oil(s)**. RCPs shall specify detailed criteria for activation of RRTs.

(2) The RRT will be activated during any discharge or release upon a request from the OSC/RPM, or from any RRT representative, **or by any Indian Tribe or Area Committee representative or CAC in the impacted area**, to the chair of the RRT. Requests for RRT activation shall later be confirmed in writing. Each representative, or an appropriate alternate, should be notified immediately when the RRT is activated.

(3) During prolonged removal or remedial action, the RRT ~~may not need to be activated or~~ may need to be activated only in a limited sense, or may need to have available only those member agencies of the RRT who are directly affected or who can provide direct response assistance. **Notification of the RRT members and Indian Tribes, Area Committees, and CACs in the impacted area is may be appropriate when full activation is not necessary, with systematic communication of pollution reports or other means to keep RRT members informed as to actions of potential concern to a particular agency, state or local government, Indian Tribe, Area Committee, or CAC, or to assist in later RRT evaluation of region wide response effectiveness.**

(4) When the RRT is activated for a discharge or release, agency representatives shall meet at the call of the chair and ~~may~~ **shall**:

(ii) Request other federal, state, or local governments **or agencies, Indian Tribes or federally-recognized CACs in the region**, or private agencies **organizations** to provide resources under their existing authorities to respond to a discharge or release or to monitor **or evaluate** response operations;

(v) Submit pollution **or incident** reports to the NRC as significant developments occur.

(6) When the RRT is activated, affected **Indian Tribes and federally-recognized CACs of the area and** states may participate in all RRT deliberations. **Representatives of Indian Tribes, federally-recognized CACs,** and State government representatives participating in the RRT have the same status as any federal member of the RRT.

(7) The RRT can be deactivated when the incident-specific RRT chair, **with the concurrence of the PCCs and the Indian Tribes of the impacted area and in consultation with the federally-recognized CAC of the impacted area,** determines that the OSC/RPM no longer requires RRT assistance.

~~————(8)—— Notification of the RRT members and Indian Tribes, Area Committees, and CACs in the impacted area is may be appropriate when full activation is not necessary, with systematic communication of pollution reports or other means to keep RRT members informed as to actions of potential concern to a particular agency, state or local government, Indian Tribe, Area Committee, or CAC, or to assist in later RRT evaluation of region wide response effectiveness.~~

**§300.120 On-scene coordinators and remedial project managers: General responsibilities.**

(a) The OSC/RPM directs response efforts and coordinates all other efforts at the scene of a discharge or release **in close coordination with the vice chair and PCCs.** As part of the planning and preparedness for response, OSCs **and PCCs** shall be pre-designated by the regional or district head of the **their lead agency agencies.** EPA and the USCG shall pre-designate OSCs **and the DOL/OSHA and HHS/CDC shall pre-designate PCCs** for all areas in each region, except as provided in paragraphs (c) and (d) of this section. RPMs shall be assigned by the lead agency to manage remedial or other response actions at NPL sites, except as provided in paragraphs (c) and (d) of this section.

(e) The OSC is responsible for over-seeing development of the ACP in the area of the OSC's responsibility. ACPs shall ~~as appropriate, be accomplished~~ **be developed by the Area Committee and the Indian Tribes and federally-recognized CACs in the area** in cooperation with the RRT and designated state and local representatives. In contingency planning, ~~and~~ **response activation and removal operations, and protection of worker and public safety and health during response operations,** the OSC coordinates, directs, and reviews the work of other agencies, **the PCCs, RRTs,** Area Committees, **CACs, and** responsible parties, ~~and~~ **contractors, and subcontractors** to assure compliance with the NCP, **RCP, and ACP** decision ~~documents~~ **document,** consent decree, administrative order, lead agency-approved plans applicable to the response.

(f) The RPM is the prime contact for remedial or other response actions being taken (or needed) at sites on the proposed or promulgated NPL, and for sites not on the NPL but under the jurisdiction, custody, or control of a federal agency. The RPM's responsibilities include:

(1) Fund-financed response: The RPM coordinates, directs, ~~and reviews,~~ **and evaluates** the work of EPA, states and local governments, the U.S. Army Corps of Engineers, and all other agencies and contractors, **in coordination with Indian Tribes and federally-recognized CACs in the area**, to assure compliance with the NCP, **RCP, and ACP**. Based upon the reports of these parties, the RPM recommends action for decisions by lead agency officials. The RPM's period of responsibility begins prior to initiation of the remedial investigation/ feasibility study (RI/FS), described in §300.430, and continues through design, remedial action, deletion of the site from the NPL, and the CERCLA cost recovery activity. When a removal and remedial action occur at the same site, the OSC and RPM should coordinate to ensure an orderly transition of responsibility.

(2) Federal-lead non-Fund-financed response: The RPM coordinates, directs, ~~and reviews,~~ **and evaluates** the work of other agencies, responsible parties, **contractors, and subcontractors, in coordination with Indian Tribes and federally-recognized CACs in the area**, to assure compliance with the NCP, Record of Decision (ROD), consent decree, administrative order, and lead agency-approved plans applicable to the response. Based upon the reports of these parties, the RPM shall recommend action for decisions by lead agency officials. The RPM's period of responsibility begins prior to initiation of the RI/FS, described in §300.430, and continues through design and remedial action and the CERCLA cost recovery activity. The OSC and RPM shall ensure orderly transition of responsibilities from one to the other.

(3) The RPM shall participate in all decision-making processes necessary to ensure compliance with the NCP, including, as appropriate, agreements between EPA or other federal agencies, and the state, and Indian Tribes in the area. The RPM may also review responses where EPA has preauthorized a person or **Indian Tribe** to file a claim for reimbursement to determine that the response was consistent with the terms of such preauthorization in cases where claims are filed for reimbursement.

(h) (1) The lead agency should provide appropriate training for its OSCs, RPMs, **PCCs**, and other response personnel to carry out their responsibilities under the NCP.

### **§300.125 Notice and communications.**

(a) The National Response Center (NRC), located at USCG Headquarters, is the national communications center, continuously manned for handling activities related to response actions. The NRC acts as the single point of contact for all pollution incident reporting, and as the NRT communications center. Notice of discharges and releases must be made telephonically through a toll free number or a special local number (Telecommunication Device for the Deaf (TDD) and collect calls accepted). (Notification details appear in §§300.300 and 300.405.) The NRC receives and immediately relays telephone notices of discharges or releases to the appropriate predesignated federal OSC. The telephone report is distributed to any interested NRT member agency, federal entity, **or Indian Tribe or federally-recognized CAC** that has established a written agreement or understanding with the NRC. The NRC evaluates incoming information and immediately advises FEMA of a potential major disaster situation.

(b) The Commandant, USCG, in conjunction with other NRT agencies, shall provide the necessary personnel, communications, plotting facilities, and equipment for the NRC. **Public hotlines for information or reporting will be maintained by federal or state agencies and not the responsible party or any contractors.**

**§300.130 Determinations to initiate response and special conditions.**

(a) In accordance with CWA and CERCLA, the Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to act for the United States to take response measures deemed necessary **and consistent with §§ 300.150 and 300.152, subpart J of this part, RCPs, and ACPs** to protect the public health or welfare or environment from discharges of oil **(or unintentional consequences of chemical agents)** or releases of hazardous substances, pollutants, or contaminants **(such as shutting down response activities or emergency evacuations of the general public)** except with respect to such releases on or from vessels or facilities under the jurisdiction, custody, or control of other federal agencies.

(b) The Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to initiate and, in the case of a discharge **of oil or chemical agents** posing a substantial threat to public health or welfare of the United States is required to initiate and direct, appropriate response activities **consistent with the NCP** when the Administrator or Secretary determines that any oil or CWA hazardous substance is discharged or there is a substantial threat of such discharge from any vessel or offshore or onshore facility into or on the navigable waters of the United States, on the adjoining shorelines to the navigable waters, into or on the waters of the exclusive economic zone, or that may affect natural resources belonging to, appertaining to, or under exclusive management authority of the United States; or

(d) In addition to any actions taken by a state or local government, the Administrator of EPA or the Secretary of the department in which the USCG is operating may request the U.S. Attorney General to secure the relief from any person **(including the owner or operator of the vessel or facility)** necessary to abate a threat or, after notice to the affected state, take any other action authorized by section 311 of the CWA or section 106 of CERCLA as appropriate **and consistent with §§ 300.150 and 300.152, subpart J of this part, RCPs, and ACPs**, including issuing administrative orders, that may be necessary to protect the public health or welfare, if the Administrator or Secretary determines:

(1) That there may be an imminent and substantial threat to the public health or welfare of the United States or the environment of the United States, including fish, shellfish, and wildlife, public and private property, **culturally-significant resources**, shorelines, beaches, habitats, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil or a CWA hazardous substance from any vessel or offshore or onshore facility into or upon the navigable waters of the United States **or because of unanticipated consequences of use of chemical agents**; or

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(3) That any of the following indicators are present although this list is not exhaustive:

(i) 20 percent or more of workers on any one task force or shift, including decontamination workers, have reported OSHA-reportable symptoms or the preventative care program of any applicable worker safety program has failed to alleviate the problem(s) contributing to the health symptoms as determined by the OSHA PCC under §300.150.

(ii) 10 percent or more of workers on any one task force or shift have reported OSHA-recordable illnesses.

(iii) Pharmacies in the impacted area(s) have ordered higher than normal (based on records from previous years) over-the-counter medications for:

(A) cold and flu-like symptoms or allergy symptoms (such as Tylenol, Benadryl, Zyrtec, Sudafed, nebulizers, anti-histamines and anti-histamine nasal sprays, nasal corticosteroids, OCD decongestant, allergy eye drops, etc.);

(B) neurological symptoms (such as Dramamine, Verticalm, Meclizine, Diphenhydramine HCl, ~~Asprin~~, Aspirin, etc.);

(C) skin rashes, hives, or scabies (such as Hydrocortisone crème, topical steroids, etc.); or

(D) oriface bleeding (such as Preparation H, etc.).

(iv) Health clinics, pharmacies (with physician's assistants on duty), or hospitals in or near the impacted area have experienced a higher than normal (based on records from previous years) incidence of any of the symptoms described under §300.152(b)(3).

### **§300.135 Response operations.**

(a) The OSC/RPM, consistent with §§ 300.120 and 300.125, shall direct response efforts and coordinate all other efforts at the scene of a discharge or release **in close coordination with the vice chair and PCCs**. As part of the planning and preparation for response, the OSCs/ RPMs **and PCCs** shall be predesignated by the regional or district head of the lead agencies ~~agency~~.

(c) The OSC/RPM shall, ~~to the extent practicable,~~ collect pertinent facts about the discharge or release, such as its source and cause; the identification of potentially responsible parties; the nature, **type**, amount, and location of discharged or released materials; **current Material Safety Data Sheets for the discharged or released materials**; the probable direction and time of travel of discharged or released materials **in the environment**; whether the discharge is a worst case discharge as discussed in §300.324 **or is ultra-hazardous oil**; the pathways to human and environmental exposure **such as aerial transportation and deposition**; the potential impact on human health, welfare, and safety and the environment; whether the discharge or release poses a substantial threat to the public health or welfare of the United States as discussed in §300.322; the potential impact on natural resources, **culturally-significant resources, or critical human habitations** and **other** property which may be affected; priorities for protecting human health and welfare and the environment (**such as situations where the use of chemical agents offshore could pose an additional threat to public health onshore**); and appropriate cost documentation.

(d) The OSC's/RPM's efforts shall be coordinated with other appropriate federal, state, **and local government agencies, Indian Tribes and federally-recognized CACs**, and private response **organizations** agencies. OSCs/RPMs may designate capable persons from federal, state, or local agencies to act as their on-scene representatives. State and local governments, **Indian Tribes, and CACs**, however, are not authorized to take actions under subparts D and E of the NCP that involve expenditures of the Oil Spill Liability Trust Fund or CERCLA funds unless an appropriate contract or cooperative agreement has been established. The basic framework for the response management structure is a system (e.g., a unified command system) that brings together the functions of the federal government, **the state government and local governments, Indian Tribes, federally-recognized CACs**, and the responsible party to achieve an effective and efficient response, where the OSC maintains authority **as described under the NCP**.

(e) The OSC/RPM ~~should~~**shall** consult regularly with the RRT and NSFCC, as appropriate, in carrying out the NCP and keep the RRT and NSFCC, as appropriate, informed of activities under the NCP.

#### **REPLACEMENT SECTION**

(h) ~~In those instances where a possible public health emergency exists, the OSC/RPM should notify the Department of Health and Human Services (HHS) representative to the RRT. Throughout response actions, the OSC/RPM may call upon the HHS representative for assistance in determining public health threats and call upon the Occupational Safety and Health Administration (OSHA) and HHS for assistance on worker health and safety issues. During activation and response operations, the OSC/RPM shall consult and coordinate daily with the Occupational Safety and Health Administration (OSHA) and Department of Health and Human Services (HHS) permanent co-chairs for guidance, assistance, and determinations on worker and public safety and health issues.~~

(1) In those instances where a possible public health emergency or substantial threat exists, the OSC/RPM shall coordinate efforts with the HHS PCC to reduce the threat or emergency, if possible, and take other actions necessary to protect public health consistent with §§ 300.152 and 300.130 and subpart J of this part.

(2) The Department of Labor/ OSHA is responsible for protecting worker safety and health. The OSC/RPM shall coordinate efforts with the OSHA PCC to reduce any threat or emergency, if possible, and take other actions necessary to protect worker safety and health consistent with §§ 300.150 and 300.130 and subpart J of this part.

#### **DELETE SECTION – moved to (h)**

~~(l) The OSC/RPM is responsible for addressing worker health and safety concerns at a response scene, in accordance with § 300.150.~~

~~(m)~~**(l)** The OSC shall submit pollution reports to the RRT and other appropriate agencies **and Indian Tribes and federally-recognized CACs in the impacted area** as significant developments occur during response actions, through communications networks or procedures agreed to by the RRT and covered in the RCP.

(n) — ~~(m)~~ OSCs/RPMs should ensure that all appropriate **Indian Tribes and** public and private interests are kept informed and that their concerns are considered throughout a response, ~~to the extent practicable~~, consistent with the requirements of §300.155 of this part.

### **300.140 Multi-regional responses.**

(a) If a discharge or release moves from the area covered by one ACP or RCP into another area, the authority for response actions should likewise shift. If a discharge or release affects areas covered by two or more ACPs or RCPs, the response mechanisms of each applicable plan ~~shall~~ **may** be activated. In this case, response actions of all regions concerned shall be fully coordinated as detailed in the RCPs and ACPs.

(b) There shall be only one OSC and/or RPM, **one vice-chair, and two permanent co-chairs** at any time during the course of a response operation. Should a discharge or release affect two or more areas, EPA, the USCG, DOD, DOE, or other lead agency, as appropriate, **and the PCCs** shall give prime consideration to the area vulnerable to the greatest threat **to public health, safety, or welfare or the environment**, in determining which agency should provide the OSC and/or RPM. **Protecting human safety and health will take priority over protecting the environment, (For example, in situations where use of chemical agents offshore could create an additional threat to human safety and health onshore, chemical agents would not be used.)** The RRT shall designate the OSC and/or RPM if the RRT member agencies who have response authority within the affected areas are unable to agree on the designation. The NRT shall designate the OSC and/or RPM if members of one RRT or two adjacent RRTs are unable to agree on the designation.

### **§300.145 Special teams and other assistance available to OSCs/RPMs.**

(b) (2) The ERT can provide access to special decontamination equipment for **oil discharges and** chemical releases and advice to the OSC/RPM in hazard evaluation; risk assessment; multimedia sampling and analysis program; on-site safety, including development and implementation plans; cleanup techniques and priorities; water supply decontamination and protection; **wind roses and contaminated air movement patterns relating to hydrologic cycles**; ~~application of dispersants~~ **use of chemical agents or other approved products**; environmental assessment; degree of cleanup required; and disposal of contaminated material.

(3) The ERT also provides both introductory and intermediate level training courses to prepare response personnel **for hazardous waste operations in compliance with 29 CFR 1910.120.**

(c) Scientific Support Coordinators (SSCs) ~~may~~ **shall** be designated by the OSC (and RPM in the case of EPA SSCs) **or by either of the PCCs** as the principal advisors for scientific issues, communication with the scientific community, and coordination of requests for assistance from state and federal agencies, **Indian Tribes, or federally-recognized CACs**, regarding scientific studies. **Indian Tribes from the impacted area may each designate at least two representatives who are fluent in the indigenous science of traditional environmental wisdom to each SSC; federally-recognized CACs shall assign at least two representatives to provide local knowledge to**

**each SSC.** SSCs strive for a consensus on scientific issues affecting the response, but ensure that differing opinions within the community are communicated to the OSC/RPM.

(1) Generally, SSCs are provided by NOAA in the coastal zones, by EPA in the inland zone, **and by OSHA and HHS PCCs in both zones.** OSC/RPM **or PCC** requests for SSC support can be made directly to the SSC assigned to the area or to the agency member of the RRT. NOAA SSCs can also be requested through NOAA's SSC program office in Seattle, WA. ~~NOAA SSCs are assigned to USCG Districts and are supported by a scientific support team that includes expertise in environmental chemistry, oil slick tracking, pollutant transport modeling, natural resources at risk, environmental tradeoffs of countermeasures and cleanup, and information management.~~

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(i) NOAA SSCs are assigned to USCG Districts and are supported by a scientific support team that includes expertise in environmental chemistry, oil slick tracking, pollutant transport modeling **including chemical agents, and combinations of oil and chemical agents**, natural resources at risk, environmental tradeoffs of **chemical agents**, ~~countermeasures and~~ **response cleanup operations**, and information management.

(ii) EPA SSCs are supported by the ERT in accordance with §300.145(b).

(iii) OSHA and HHS SSCs are supported by a scientific support team that includes expertise in occupational exposure, risk assessment, environmental medicine, environmental health and disease, pediatrics, epidemiology, biostatistics and study design, toxicology, pulmonary and neurological function, and mental health and behavior.

(2) During a response, the ~~SSC serves~~ **SSCs serve** on the federal OSC's/RPM's staff and **shall** lead the scientific teams and be responsible for providing scientific support for operational decisions and for coordinating on-scene scientific activity **in their area of expertise**. Depending on the nature and location of the incident, the ~~SSC integrates~~ **SSCs integrate** expertise from governmental agencies, **Indian Tribes, federally-recognized CACs**, universities, community representatives, and industry to assist the OSC/RPM in evaluating the hazards and potential effects of **discharges and** releases and in developing response strategies.

(3) ~~At the request of the OSC, The SSC may~~ **shall** facilitate the OSC's work with the lead administrative trustee for natural resources to ensure coordination between damage assessment data collection efforts and data collected in support of response operations.

(4) SSCs support the Regional Response Teams and the Area Committees **and CACs** in preparing regional and area contingency plans, in conducting spill training and exercises, **and in monitoring and evaluating response operations**. For area plans, the SSC provides leadership for the synthesis and integration of environmental information required for spill response decisions ~~in support of~~ **for** the OSC.

**§300.150 Worker safety and health.**

(a) Response actions under the NCP will comply with the provisions for response action worker safety and health and waste disposal in 29 CFR 1910.120. The NRS meets the requirements of 29 CFR 1910.120 concerning use of an incident command system. **In addition, the following requirements and conditions will be met during response operations:**

**NEW SECTION (a)**

(1) Training requirements: All on-site workers including federal and state employees, private employees, contractors, and subcontractors, volunteers, decontamination crews, and wildlife rescue crews, among others, will receive the full 40-hour OSHA HAZWOPER training by persons board-certified to provide Occupational and Environmental Medical (OEM) training. No exceptions or exemptions are allowed of training time or personnel.

(2) Extended shift requirements: Personal Exposure Limits (PELs) for Volatile Organic Carbons (VOCs) and Polycyclic Aromatic Hydrocarbons (PAHs) and other chemicals will be reduced by 90 percent to accommodate extended shift hours during response activities. An extended shift is defined to mean on-site activities that exceed five consecutive 8-hour days or more than twelve consecutive hours of work and rest.

(3) OSHA-reportable symptom (ORS): For the purposes of the NCP, symptoms of infections or illnesses that mimic the initial symptoms for work-related chemical illnesses are considered OSHA-reportable symptoms. An OSHA-reportable symptom must be reported within 24 hours to OSHA officials, notwithstanding 29 CFR 1904.5(b)(2)(viii). The OSHA-reportable symptoms include, but are not limited to:

- (i) Persistent cold and flu-like symptoms, including runny or stuffy nose, shortness of breath;
- (ii) Persistent cough or sore throat;
- (iii) Muscle or body aches, numbness, or tingling, or a stiff neck;
- (iv) Chest pain or rapid, irregular or slow heartbeat;
- (v) Persistent headaches;
- (vi) A change in vision or speech (blurry vision, slurred speech);
- (vii) Fatigue or tiredness;
- (viii) Dizziness, nausea, light-headedness, loss of consciousness;
- (ix) Convulsions, vomiting, or diarrhea;
- (x) Fever;
- (xi) Bleeding from body orifices or blood in urine, stool, vomit, or phlegm; or
- (xii) Persistent skin rashes or skin lesions.

(4) OSHA-recordable illnesses (ORI): An on-site worker reporting an OSHA-reportable illness may be relieved of on-site work and reassigned. The worker shall be monitored daily for two weeks by medical personnel with board-certified OEM training. If the worker's on-site job is terminated or reassigned during the monitoring period, or if symptoms persist longer than two weeks, the illness will be recorded as a work-related chemical illness, notwithstanding 29 CFR 1904.5(b)(2)(viii).

(5) Health care monitoring: A response worker with a diagnoses of chemical illnesses will be relieved of response work and will receive health care monitoring, diagnosis, and treatment by board-certified OEM health care providers for at least one year after being relieved of response work or for as long thereafter as symptoms persist.

(6) Waste disposal requirements: For the purposes of the NCP, oily waste

material and recovered oil will be designated as a hazardous substance under CERCLA 42 CFR 9601.101(14) and is subject to hazardous waste management regulations. Under no circumstances will hazardous waste or oil-contaminated waste, including recovered oil and/or wildlife carcasses or pieces of carcasses, be disposed of in municipal landfills.

#### **NEW SECTION (b)**

(b) For the purposes of the NCP, the OSHA PCC is the lead agency providing oversight of worker safety and health. To provide consistent oversight, OSHA jurisdiction will extend to all discharges of oil and releases of hazardous substances, pollutants or contaminants into the environment, coastal waters, coastal zone, and exclusive economic zone, including from all vessels and facilities, regardless of which federal agency is designated as the lead agency except for any facility or vessel under the jurisdiction, custody, or control of DOD or DOE as described in §300.175. OSHA will provide assistance, when requested by federal or state agencies or private entities, to design worker safety and health programs consistent with 29 CFR 1910.120, § 300.150, and the Human Safety and Health Plan in the ACPs.

#### **NEW SECTION (c)**

(c) For the purposes of the NCP, OSHA oversight will consist of a team of OSHA personnel board-certified in Occupational and Environmental Medicine (OEM), including one lead OEM physician director and one core team consisting of one OEM physician, two nurses, and one industrial hygienist for every 2,500 response workers (counting government personnel, private employees, private contractors and subcontractors, and volunteers). To gain a comprehensive understanding of health problems, the lead physician and core team will remain in residency for the duration of the response operations and will:

- (1) Conduct on-site monitoring and evaluation of worker safety and health programs including:
  - (i) worker pre- and post-screening programs, including pre- and post-Volatile Organic Solvent whole blood profiles to establish contaminant burdens;
  - (ii) trainer training programs and worker training programs consistent with 29 CFR 1910.120;
  - (iii) program implementation and execution during response activities, including ability to adjust program to address response realities and unanticipated needs;
  - (iv) workplace air quality and safety monitoring programs;
  - (v) workplace comprehensive industrial hygiene plan, including preventive care plan with feedback loop to minimize infection, illness, or disease outbreaks;
  - (vi) workplace quality assurance/quality control programs;
  - (vii) program effectiveness evaluation programs; and
  - (viii) worker health care programs, including long-term monitoring and treatment.
- (2) Conduct any environmental or health testing, or other testing, necessary to minimize threats to worker safety and health.

(3) Update and inform the OSC/RPM and RRT members in the impacted area on issues relating to worker safety and health on a regular basis during response operations.

(4) Establish and implement a process for record-keeping, data management, data analysis and synthesis of all health records (such as clinical records, medical test results, and data) obtained during response or remedial operations and health care programs related to response or remedial activities from federal and state government agencies and the responsible party and its contractors and subcontractors. Process will include at a minimum:

(i) obtaining copies of health records from all employers, contractors, and subcontractors of response workers on a daily basis during response activation and a monthly basis during long-term health care monitoring;

(ii) creating a public database of clinical records, medical test results, and data (with patient identifiers removed) and environmental quality and safety monitoring data;

(iii) releasing the database and interim reports to the public, Congress, the NRT and impacted RRT(s), the impacted or interested states, and the Worker Compensation Boards in the impacted states in a timely manner as follows: the first six months of response activities to be released within one year from ***commencement*** of response activation; the second six months of response activities within 1.5 years from commencement of response activation; and so on until response activities and long-term health care monitoring programs are completed; and

(iv) issuing a final public report with recommendations to improve worker safety and health measures during oil discharge or release of hazardous substances, pollutants or contaminants within six months of completion of response activities, not including long-term health care monitoring programs.

#### **NEW SECTION (d)**

(d) The OSHA PCC may authorize any action necessary, without obtaining the concurrence of the OSC and, as appropriate, the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge, when, in the judgment of the OSHA PCC, the action is necessary to prevent or substantially reduce a hazard or substantial threat to human safety or health.

(1) The OSHA PCC may authorize a temporary shut down of any or all response activities if:

(i) OSHA personnel are not granted unrestricted access to response activities;

(ii) OSHA personnel are not provided with transportation to and from response activities, when and as requested;

(iii) OSHA personnel are not provided with records and data in paragraph (c) of this section when and as requested;

(iv) 20 percent or more of workers on any one task force or shift, including decontamination workers, have reported OSHA-reportable symptoms and the preventative care program has failed to alleviate the problem(s) contributing to the health symptoms; or

(v) 10 percent or more of workers on any one task force or shift have reported OSHA-recordable illnesses; and

(vi) The responsible party has not taken immediate steps to address conditions described in the preceding paragraphs of this section.

(2) The OSHA PCC may authorize reopening of any or all response activities once the trigger for closure is determined and remedied.

~~(b)~~**(e)** In a response action taken by a responsible party, the responsible party must assure that design and implement an occupational safety and health program consistent with, **and to the extent required by, 29 CFR 1910.120 and the requirements and standards described in paragraphs (a) through (d) of this section** ~~is made available~~ for the protection of workers at the response site. **Contracts and subcontracts relating to a response action under the NCP must contain assurances that the contractor at the response site will comply with this program and with any applicable provisions of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) (OSH Act) and state laws with plans approved under section 18 of the OSH Act. In situations where the standards and requirements referenced in paragraphs (a) through (d) of this section conflict with existing requirements, standards, and regulations of the OSH Act of state OSH laws, the requirement, standards, and regulations affording the most protection for worker safety and health will apply during response activities conducted under the NCP. The responsible party, its contractors, and subcontractors may not take any actions to indemnify themselves against claims from workers with adverse health impacts from response activities conducted under the NCP.**

~~(e)~~**(f)** In a response taken under the NCP by a lead agency, an occupational safety and health program ~~should be made available~~ **must be designed and implemented** for the protection of workers at the response site, consistent with, and to the extent required by, 29 CFR 1910.120 and the requirements and standards described in paragraphs (a) through (d) of this section. Contracts relating to a response action under the NCP must contain assurances that the contractor at the response site will comply with this program and with any applicable provisions of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) (OSH Act) and state laws with plans approved under section 18 of the OSH Act. **In situations where the standards and requirements referenced in paragraphs (a) through (d) of this section conflict with existing requirements, standards, and regulations of the OSH Act of state OSH laws, the requirement, standards, and regulations affording the most protection for worker safety and health will apply during response activities conducted under the NCP.**

~~(d)~~**(g)** When a state, or political subdivision of a state, without an OSHA-approved state plan is the lead agency for response, the state or political subdivision must comply with standards in 40 CFR part 311, promulgated by EPA pursuant to section 126(f) of SARA, **and the standards and requirements referenced in paragraphs (a) through (d) of this section. In situations where the standards and requirements referenced in paragraphs (a) through (d) of this section conflict with existing requirements, standards, and regulations of section 126(f) of SARA, the requirement, standards, and regulations affording the most protection for worker safety and health will apply during response activities conducted under the NCP.**

~~(e)~~**(h)** Requirements, standards, and regulations of the OSH Act and of state OSH laws not directly referenced in paragraphs (a) **and (e)** through ~~(d)~~**(g)** of this section, must be complied with where applicable. **In situations where the standards and requirements referenced in paragraphs (a) and (e) through (g) of this section conflict with existing requirements, standards, and regulations of the OSH Act of state OSH laws, the requirement, standards, and regulations affording the most protection for worker safety and health will apply during response activities conducted under the NCP.** Federal OSH Act requirements include, among other things, Construction Standards (29 CFR part 1926), General Industry Standards (29 CFR part 1910), and the general duty requirement of section 5(a)(1) of the OSH Act (29 U.S.C. 654(a)(1)). No action by the lead agency with respect to response activities under the NCP constitutes an exercise of statutory authority within the meaning of section 4(b)(1) of the OSH Act. All governmental agencies and private employers are directly responsible for the safety and health of their own employees.

#### **NEW SECTION**

(i) Governmental agencies and the responsible party shall provide the OSHA PCC with the records and data in paragraph (c) of this section within the described timeframe to support comprehensive protection of worker safety and health during response activities.

#### **ENTIRELY NEW SECTION §300.152**

##### **§300.152 Public safety and health.**

(a) For the purposes of the NCP, the HHS PCC is the lead agency providing oversight of public safety and health, regardless of which federal agency is designated as the lead agency. HHS will provide assistance, when requested by federal or state agencies, local government, Area Committees, federally-recognized CACs or Indian Tribes, to design public safety and health programs consistent with the Human Safety and Health Plan in the ACPs. During response operations, the HHS PCC will update and inform the OSC/RPM and RRT members in the impacted area on issues relating to public safety and health on a regular basis during response operations.

(b) HHS oversight will consist of OEM-trained field teams of HHS personnel working in close coordination with the OSHA and HHS Scientific Support Coordinators or SSC. The field teams shall be coordinated by the HHS PCC and shall consist of six investigators and two field coordinators for every 100,000 or fewer people residing in or visiting the area impacted by the areal extent of contamination (including air-borne and water-borne contamination), and all suitable areas in very close proximity to the contamination necessary for implementation of the response action, and all areas from which response workers have been brought in or commuted from such as nearby communities outside of the contamination area or prison populations. To gain rapid assessments of public health after a discharge, the HHS PCC will:

(1) Perform rapid health assessments on populations most at-risk from exposure consistent with the Human Health and Safety Plan in ACPs. Where available, these health assessments may be used by the lead agency to assist in the assessment of potential human health effects associated with the oil discharge or release of chemical agents. In developing a health assessment, the HHS PCC shall provide a

process for obtaining data of sufficient quality and quantity to satisfy data needs and shall include a quality assurance project plan.

(2) Make the determination, based on the factors in paragraph (b)(1) or (3) of this section, whether there is a threat to public health or welfare of the United States at any time during response operations. In making the determination, the HHS PCC shall use a precautionary approach meaning that where there are present or a plausible risk of a substantial threat to public health or welfare, lack of full scientific certainty will not be a basis for postponing effective actions to reduce the threat or potential threat and to protect public health. There is no cost-benefit requirement in making such a determination. These protections may be relaxed only if further scientific findings emerge that provide sound evidence that no harm will result to the populations most at-risk from the threat or potential threat.

(3) The following factors shall be considered in making a determination pursuant to this section, although this is not an exhaustive list:

(i) Actual or potential exposure to nearby human populations (especially school children, outdoor life guards, volunteer turtle watch monitors, or other such sentinel groups) or secondary actual or potential exposure to human populations (such as populations near decontamination operations or people living with exposed workers), animals, or the food chain from oil, ultra-hazardous oil, or chemical agents used in response operations.

(ii) Presence of intermediate and chronic levels of VOCs or PAHs present near human habitations at any time during a 24/7 monitoring regime;

(iii) Occurrence of outbreaks or higher than normal incidences of:

- (A) Persistent cold and flu-like symptoms, including runny or stuffy nose, shortness of breath;
- (B) Persistent cough or sore throat;
- (C) Muscle or body aches, numbness, or tingling, or a stiff neck;
- (D) Chest pain or rapid, irregular or slow heartbeat;
- (E) Persistent headaches;
- (F) A change in vision or speech (blurry vision, slurred speech);
- (G) Fatigue or tiredness;
- (H) Dizziness, nausea, light-headedness, loss of consciousness;
- (I) Convulsions, vomiting, or diarrhea;
- (J) Fever;
- (K) Bleeding from body orifices or blood in urine, stool, vomit, or phlegm;
- (L) Persistent skin rashes or skin lesions; or
- (M) Unusual hair loss.

(iv) Evidence that health clinics, pharmacies with physician's assistants on duty, or hospitals in or near the impacted area have recorded a higher than normal (based on records from previous years) incidence of any of the symptoms described in paragraph (iii) of this section;

(v) Evidence that pharmacies in the impacted area(s) have ordered higher than normal (based on records from previous years) over-the-counter medications for:

- (A) cold and flu-like symptoms or allergy symptoms (such as Tylenol, Benadryl, Zyrtec, Sudafed, nebulizers, anti-histamines and anti-histamine nasal sprays, nasal corticosteroids, OCD decongestant, allergy eye drops, etc.);
- (B) neurological symptoms (such as Dramamine, Verticalm, Meclizine, Diphenhydramine HCl, Aspirin, etc.);
- (C) skin rashes, hives, or scabies (such as Hydrocortisone crème, topical steroids, etc.); or
- (D) orifice bleeding (such as Preparation H, etc.);
- (vi) Evidence from surveys or veterinary clinics or veterinarians that large or small animals in or near the impacted area have experienced a higher than normal (based on records from previous years) incidence of any of the symptoms described in paragraph (iii) of this section;
- (vii) Evidence from other areas that experienced a similar oil discharge or release of hazardous substances, pollutants, or contaminants that the discharge or release posed a substantial threat to public safety and health;
- (viii) Actual or potential contamination of drinking water supplies or sensitive ecosystems based on intermediate or chronic exposure levels;
- (ix) Chemical agents or oily waste in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;
- (x) High levels of oil, oily waste, or chemical agents in soils largely at or near the surface (such as improper disposal at municipal landfills), that may migrate;
- (xi) Weather conditions that may cause oil, oily waste, or chemical agents to migrate or be released;
- (xii) Threat of fire or explosion; and
- (xiii) Other situations or factors that may pose threats to public health or welfare of the United States.

(4) At any discharge where the HHS PCC agency makes the determination, based on the factors in paragraphs (b) of this section, that there is a substantial threat to public health or welfare of the United States, the lead agency shall begin as soon as possible to abate, prevent, minimize, stabilize, mitigate, or eliminate the threat to public health or welfare of the United States or the environment.

(5) The following removal actions are, as a general rule, appropriate in the types of situations shown; however, this list is not exhaustive and is not intended to prevent the lead agency from taking any other actions deemed necessary under CERCLA, CWA section 311, or other appropriate federal or state enforcement or response authorities, however, the list does create a duty on the lead agency to take action specific to protecting public health and welfare:

- (i) Fences, warning signs, or other security or site control precautions—where humans or animals have access to the impacted area;
- (ii) Drainage controls, for example, run-off or run-on diversion—where needed to reduce migration of oil, oily waste material, or chemical agents off-site (including decontamination areas) or near human habitations (such as water treatment facilities or schools);
- (iii) Stabilization of berms, dikes, impoundments, or landfills or drainage or closing of lagoons—where needed to maintain the integrity of the structures;
- (iv) Capping of contaminated soils or sludges—where needed to

reduce migration of oil, oily waste material, or chemical agents into soil, ground or surface water, or air;

(v) Using chemicals and other materials authorized in subpart J to retard the spread of the discharge or to mitigate its effects—where the use of such chemicals will reduce the spread of the discharge;

(vi) Excavation, consolidation, or removal of highly contaminated soils from drainage or other areas—where such actions will reduce the spread of, or direct contact with, the contamination;

(vii) Removal of drums, barrels, tanks, or other bulk containers that contain or may contain oil, oily waste material, or chemical agents—where it will reduce the likelihood of spillage; leakage; exposure to humans, animals, or food chain; or fire or explosion;

(viii) Containment, treatment, disposal, or incineration of oily materials—where needed to reduce the likelihood of human, animal, or food chain exposure; or

(ix) Provision of alternative water supply—where necessary immediately to reduce exposure to contaminated household or irrigation water and continuing until such time as local authorities can satisfy the need for a permanent remedy.

(c) Where necessary to protect public health or welfare, the HHS PCC shall request the lead agency to have FEMA conduct a temporary relocation or the state/local officials conduct an evacuation, and the lead agency shall follow through with the request.

(1) Evacuations are necessary:

(i) when the HHS PCC makes a determination of a substantial threat to public health and welfare; or

(i) for human habitations within 1,000 feet of a discharge of ultra-hazardous oil.

(2) The HHS PCC may authorize ending the evacuation once the trigger for evacuation is determined and remedied, including remediation if necessary.

(3) Once an area has been evacuated and repopulated, the HHS PCC will continue to monitor the population with annual assessments, using indicators in paragraph (b) of this section, for at least five years.

(d) The HHS PCC shall establish and implement a process for record-keeping, data management, data analysis and synthesis of all records obtained during response and remedial operations and follow up monitoring programs after an evacuation. The process will include at a minimum:

(i) organizing the records;

(ii) creating a public database of the records;

(iii) releasing the database and interim reports to the public, Congress, the NRT and impacted RRT(s), and the impacted or interested states, in a timely manner as follows: the first six months of response activities to be released within one year from **commencement** of response activation; the second six months of response activities within 1.5 years from commencement of response activation; and so on until response activities and follow up monitoring programs are completed; and

(iv) issuing a final public report with recommendations to improve public safety and health measures during oil discharge or release of hazardous substances,

pollutants or contaminants within six months of completion of response activities, not including follow up monitoring programs.

**§300.155 Public information and communication.**

(a) When an incident occurs, it is imperative to give the public prompt, accurate information on the nature of the incident and the actions underway to mitigate the damage. OSCs/RPMs and community relations personnel should ensure that all appropriate **Indian Tribes and** public and private interests are kept informed and that their concerns are considered throughout a response. They should coordinate with available public affairs/community relations resources to carry out this responsibility by establishing ~~as appropriate, a Joint~~ a **Spill** Information Center bringing together resources from federal and state **agencies and, as appropriate, local government and federally-recognized CACs** ~~and the responsible party.~~

(b) An on-scene news office may be established to coordinate media relations and to issue official federal information on an incident. Whenever possible, it will be headed by a representative of the lead agency. The OSC/RPM determines the location of the on-scene news office, but every effort should be made to locate it near the scene of the incident. If a participating agency believes public interest warrants the issuance of statements and an on-scene news office has not been established, the affected agency should recommend its establishment. All federal news releases or statements by participating agencies should be cleared through the OSC/RPM.

**REORGANIZED SECTION**

**(1)** Information dissemination relating to natural resource damage assessment activities shall be coordinated through the lead administrative trustee. The designated lead administrative trustee may assist the OSC/RPM by disseminating information on issues relating to damage assessment activities. Following termination of removal activity, information dissemination on damage assessment activities shall be through the lead administrative trustee.

**NEW SECTION**

**(2)** Information dissemination relating to human safety and health shall be coordinated through the PCCs. The OSHA PCC shall assist the OSC/RPM by disseminating information on issues relating to worker safety and health, and the HHS PCC on issues relating to public safety and health. Following termination of removal activity, information dissemination on worker and public safety and health related to response activities shall be through the respective PCCs.

(c) The community relations requirements specified in §§ 300.415, 300.430, and 300.435 apply to removal, remedial, and enforcement actions and are intended to promote active communication between **Indian Tribes and** communities affected by discharges or releases and the lead agency responsible for response actions. Community Relations Plans (CRPs) are required by EPA for ~~certain~~ response actions **for oil discharges and releases of hazardous substances, pollutants, and contaminants, including intentional releases of chemical agents.** The OSC/RPM **shall** ~~should~~ ensure coordination with such plans which may be in effect at the scene of a discharge or release or which may need to be developed during follow-up activities.

**§300.165 OSC reports.**

(a) ~~As requested by the NRT or RRT,~~ The OSC/RPM shall submit to the NRT or RRT a ~~complete~~ report on removal operations and actions **taken within 90 days of completion of the removal operation and a report on remedial activities and actions taken within 90 days of termination of remedial activities. Both reports shall include independent reports from the OSHA PCC and the HHS PCC.** The RRT shall review the OSC report and send to the NRT a copy of the OSC report with its comments or recommendations within ~~30~~ **60** days after the RRT has received the OSC report.

(b) The OSC report shall record the situation as it developed, the actions taken, the resources committed, and the problems encountered **for each of the stated priorities of the NCP consistent with §300.317.**

**§300.170 Federal agency participation.**

Federal agencies listed in §300.175 have duties established by statute, executive order, or Presidential directive which may apply to federal response actions following, or in prevention of, the discharge of oil or release of a hazardous substance, pollutant, or contaminant. Some of these agencies also have duties relating to the restoration, rehabilitation, replacement, or acquisition of equivalent natural resources injured or lost as a result of such discharge or release as described in subpart G of this part. The NRT, RRT, ~~and Area Committee,~~ **and Citizens' Advisory Council** organizational structure, and the NCP, RCPs and ACPs, described in §300.210, provide for agencies to coordinate with each other **and to integrate area-specific knowledge** in carrying out these duties.

(a) Federal agencies may be called upon by an OSC/RPM during response planning and implementation to provide assistance in their respective areas of expertise, as described in §300.175, consistent with the agencies' capabilities and authorities. **The DOL/OSHA and HHS/CDC permanent co-chairs shall coordinate with the OSC/RPM to provide additional assistance during response operations for protection of worker and public safety and health, as described in §§ 300.150 and 300.152.**

(b) In addition to their general responsibilities, federal agencies should:

- (1) Make necessary information available to the Secretary of the NRT, RRTs, Area Committees, ~~and OSCs/RPMs,~~ **and PCCs.**
- (2) Provide representatives to the NRT and RRTs and otherwise assist RRTs, ~~and OSCs and PCCs,~~ as necessary, in formulating, **implementing, monitoring, and evaluating** RCPs and ACPs.
- (3) Inform the NRT, RRTs, **federally-recognized CACs,** and Area Committees, consistent with national security considerations, of changes in the availability of resources that would affect the operations implemented under the NCP.

**§300.175 Federal agencies: additional responsibilities and assistance**

(a) Federal agencies may be called upon by an OSC/RPM during response planning, ~~and implementation,~~ **monitoring, and evaluation** to provide assistance in their respective areas of expertise, as described in §300.175, consistent with the

agencies' capabilities and authorities. **For the purposes of the NCP, agencies with expertise in releases of hazardous, pollutants, and contaminants will also make that expertise available in discharges of ultra-hazardous oils and other oils.**

(b) (6) The Department of Agriculture (USDA) has scientific and technical capability to measure, evaluate, and monitor, either on the ground or by use of aircraft, situations where natural resources including soil, water, wildlife, and vegetation have been impacted by fire, insects and diseases, floods, hazardous substances, **oil discharges**, and other natural or man-caused emergencies. The USDA may be contacted through Forest Service emergency staff officers who are the designated members of the RRT. Agencies within USDA have relevant capabilities and expertise as follows:

(8) HHS assists with the assessment, preservation, and protection of human health and helps ensure the availability of essential human services. HHS provides technical and nontechnical assistance in the form of advice, guidance, and resources to other federal agencies, **Indian Tribes, and federally-recognized CACs** as well as state and local governments.

(i) The principal HHS response comes from the U.S. Public Health Service and is coordinated from the Office of the Assistant Secretary for Health, and various Public Health Service regional offices. Within the Public Health Service, the primary response to a hazardous materials emergency comes from Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control (CDC). **For the purpose of the NCP, both agencies will also provide assistance to a discharge that is or poses a substantial threat to public health and welfare including a discharge of ultra-hazardous oil, or a release of chemical agents under the CWA, as described in §300.152.** Both ATSDR and CDC have a 24-hour emergency response capability wherein scientific and technical personnel are available to provide technical assistance to the lead federal agency, **the PCCs**, and state and local response agencies on human health threat assessment and analysis, and exposure prevention and mitigation. Such assistance is used for situations requiring evacuation of affected areas, human exposure to hazardous materials, **oil, and chemical agents**, and technical advice on mitigation and prevention. CDC takes the lead during petroleum releases **and discharges that are or pose a substantial threat to public health and welfare, including of ultra-hazardous oil** while ATSDR takes the lead during chemical releases under CERCLA **and releases of chemical agents under the CWA.** Both agencies are mutually supportive.

(ii) Other Public Health Service agencies involved in support during **oil discharges and releases of hazardous** materials incidents either directly or through ATSDR/CDC include the Food and Drug Administration, the Health Resources and Services Administration, the Indian Health Service, and the National Institutes of Health.

(iii) Statutory authority for HHS/National Institutes for Environmental Health Sciences (NIEHS) involvement in hazardous materials accident prevention is non-regulatory in nature and focused on two primary areas for preventing community and worker exposure to hazardous materials releases: Worker safety training and basic research activities. **For the purposes of the NCP, this authority is extended to include oil discharges in the paragraphs under this section.**

**NEW SECTIONS**

**(A)** Under section 126 of SARA, NIEHS is given statutory authority for supporting development of curricula and model training programs for waste workers and chemical emergency responders.

**(B)** Under section 118(b) of the Hazardous Materials Transportation and Uniform Safety Act (HMTUSA) (49 U.S.C. 1802 et seq.), NIEHS also administers the Hazmat Employee Training Program to prepare curricula and training for hazardous materials transportation workers. In the basic research arena, NIEHS is authorized under section 311 of SARA to conduct a hazardous substance basic research and training program to evaluate toxic effects and assess human health risks from accidental releases of hazardous materials. Under Title IX, section 901(h) of the Clean Air Act Amendments, NIEHS also is authorized to conduct basic research on air pollutants, as well as train physicians in environmental health. Federal research and training in hazardous materials release prevention represents an important non-regulatory activity and supplements ongoing private sector programs.

(9) DOI may be contacted through Regional Environmental Officers (REOs), who are the designated members of RRTs. Department land managers have jurisdiction over the national park system, national wildlife refuges and fish hatcheries, the public lands, and certain water projects in western states. In addition, bureaus and offices have relevant expertise as follows:

(v) ~~Minerals Management Service: Oversight of offshore oil and gas exploration and production facilities and associated pipelines and pipeline facilities under the Outer Continental Shelf Lands Act and the CWA; oil spill response technology research; and establishing oil discharge contingency planning requirements for offshore facilities.~~ **Bureau of Ocean Energy Management (BOEM): Oversight of offshore oil and gas exploration and production facilities and associated pipelines and pipeline facilities under the Outer Continental Shelf Lands Act and the CWA.**

**NEW SECTION**

(vi) Bureau of Safety and Environmental Enforcement (BSEE): Oil spill response technology research; and establishing oil discharge contingency planning requirements for offshore facilities.

**RENUMBER PARAGRAPHS (vii through xi)**

(xi) Bureau of Indian Affairs: Coordination of activities affecting Indian lands; assistance in identifying Indian tribal government officials; **assistance in coordinating and implementing 33 USC 1321(b) §706.**

(11) The Department of Labor (DOL), through OSHA and the states operating plans approved under section 18 of the OSH Act, has authority to **and shall** conduct safety and health inspections of hazardous waste sites **including on-site activities during response operations to oil discharges as described in §300.150** to assure that employees **and volunteers** are being protected and to determine if the site is in compliance with:

(i) Safety and health standards and regulations promulgated by OSHA (or the states) in accordance with section 126 of SARA and all other applicable standards; and

(ii) Regulations promulgated under the OSH Act and its general duty clause. OSHA inspections may be self-generated, consistent with its program operations and objectives, or may be conducted in response to requests from EPA or another lead agency, or in response to accidents or ~~worker employee~~ complaints. OSHA may also conduct inspections at hazardous waste sites in those states with approved plans that choose not to exercise their jurisdiction to inspect such sites. ~~On request,~~ OSHA will provide advice and consultation to EPA and other NRT/RRT agencies as well as to the OSC/RPM regarding hazards to persons engaged in response activities **and actions necessary to reduce hazards or threat of hazards and protect worker safety and health**. OSHA ~~may~~ **shall** also take any other action necessary to assure that employees **and volunteers** are properly protected at such response activities consistent with §300.150. Any questions about occupational safety and health at these sites may be referred to the OSHA Regional Office **or the OSHA PCC**.

**§300.180 State and local participation in response.**

(a) Each state governor is requested to designate one state office/representative to represent the state on the appropriate RRT. The state's office/representative may participate fully in all activities of the appropriate RRT. Each state governor is also requested to designate a lead state agency that will direct state-lead response operations. This agency is responsible for designating the lead state response official and the OSHA and HHS PCCs for federal and/or state-lead response actions, and coordinating/communicating with any other state agencies, as appropriate. Local governments are invited to participate in activities on the appropriate RRT as may be provided by state law or arranged by the state's representative. Indian tribes ~~wishing to participate~~ should assign one person or office to represent the tribal government on the appropriate RRT **and Area Committee**.

(b) Appropriate local and state officials **and federally-recognized** ~~(including Indian Tribes tribes)~~ will participate as part of the response structure as provided in the **RCP and ACP**.

(c) In addition to meeting the requirements for local emergency plans under SARA section 303, state and local government agencies **and Indian Tribes** are encouraged to include contingency planning for responses, consistent with the NCP, RCP, and ACP in all emergency and disaster planning.

(d) For facilities not addressed under CERCLA or the CWA, states **and Indian Tribes** are encouraged to undertake response actions themselves or to use their authorities to compel potentially responsible parties to undertake response actions.

(f) Because state and local public safety organizations **including ones with Indian Tribes** would normally be the first government representatives at the scene of a discharge or release, they are expected to initiate public safety measures that are necessary to protect public health and welfare and that are consistent with containment and cleanup requirements in the NCP, and are responsible for directing evacuations pursuant to existing state or local procedures.

**§300.185 Nongovernmental participation.**

(b) The technical and scientific information (**including traditional environmental wisdom**) generated by the local community **and Indian Tribes**, along with information from federal, state, and local governments, should be used to assist the OSC/RPM in devising response strategies **and should be integrated with information generated by standard techniques where available.** ~~where effective standard techniques are unavailable.~~ Such information and strategies will be incorporated into the ACP, ~~as appropriate.~~ The SSC may act as liaison between the OSC/RPM and such interested organizations.

(c) ACPs shall establish **a plan with** procedures to allow for well organized, worthwhile, and safe use of volunteers, including compliance with §300.150 regarding worker safety and health. ACPs should provide for the direction of volunteers by the OSC/RPM or by other federal, state, or local officials knowledgeable in contingency operations and capable of providing leadership. ACPs also should identify specific areas in which volunteers can be used, such as beach surveillance, logistical support, and bird and wildlife treatment. ~~Unless specifically requested by the OSC/RPM,~~ Volunteers ~~generally~~ should not be used for physical removal or remedial activities **unless they have agreed in writing to operate in compliance §300.150 and the ACP volunteer plan.** If, in the judgment of the OSC/RPM **or the OSHA PCC,** **unanticipated** dangerous conditions exist (**beyond the innately hazardous conditions of discharges and releases**) **and volunteers cannot be adequately protected from such unanticipated conditions while conducting response activities under the provisions in §300.150 and the ACP volunteer plan,** volunteers shall be restricted from on-scene operations.

## Subpart C—Planning and Preparedness

### §300.205 Planning and coordination structure

(c) Area. As required by section 311(j) of the CWA, under the direction of the federal OSC for its area, Area Committees comprising qualified personnel of federal, state, and local agencies shall be responsible for:

#### NEW SECTION

(1) Creating a Citizens Advisory Council (CAC) for each ACP or RCP as authorized by section 5002(a)(2)(j) of the OPA and as described in §300.206;

#### REPLACEMENT SECTION

~~\_\_\_\_\_ (1) Preparing an ACP for their areas (as described in § 300.210(c));~~

~~\_\_\_\_\_ (2) Working with appropriate federal, state, and local officials to enhance the contingency planning of these officials and to assure pre-planning of joint response efforts, including appropriate procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife; and~~

~~\_\_\_\_\_ (3) Working with appropriate federal, state, and local officials to expedite decisions for the use of dispersants and other mitigating substances and devices.~~ (2)

Working with appropriate federal, state, and local officials, **Indian Tribes and federally-recognized CACs** to:

(i) prepare an ACP for their areas (as described in §300.210(c));

(ii) enhance the contingency planning of ~~among these~~ **representatives** these officials and to assure pre-planning of joint response efforts, including procedures **for protection of worker and public safety and health, mechanical containment and recovery, dispersal use and emergency stop use of chemical agents consistent with NCP priorities under §300.317 and Subpart J, oil and product removal and** shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife; and

(iii) expedite decisions for the use **and emergency stop use of dispersants and other mitigating substances and devices chemical agents or products that are listed on the NCP Product Schedule at the time of the oil discharge and are consistent with the ACP and Subpart J.**

### §300.206 Citizens' Advisory Councils or CACs.

(a) Effective citizen engagement and oversight of energy operations has been found to be critical to the proper function of industry, government, and civil society. Area Committees shall involve local citizens in the process of preparing, adopting, monitoring, evaluating, and revising oil spill contingency plans by establishing Citizens' Advisory Councils (CAC) as authorized under the OPA Section 5002(a)(2)(J). Citizens' Advisory CACs shall operate as a separate advisory body to the Area Committee, as a mechanism to bring local knowledge into ACPs and RCPs; increase trust and communication between citizens, the oil industry, and government; combat complacency; strengthen oil spill prevention and response measures within their scope of responsibility; and oversee compliance with worker and public safety and health and environmental protections in areas for which ACPs are required by §300.210(c) and under relevant tank vessel, facility, pipeline, and rolling stock response plans.

(b) Membership. The CAC shall be composed of voting members, as follows:

(1) Geographic scope and composition. Voting members must reside from within the geographic area covered by the ACP and strive to represent the demographic diversity of the area. Where possible, no more than 20 percent of the members may reside within any single political subdivision within this area. A political subdivision means a geographic region accepted to be in the jurisdiction of a particular governmental entity such as a county, parish, incorporated town, or Native village. For the purposes of the NCP, a political subdivision may also mean a neighborhood or other community existing outside of an incorporated municipal government.

(2) Voting Members. Voting members shall be appointed by, and serve exclusively at the pleasure of, the following stakeholder groups:

- (i) Locally-owned and community-based commercial fishing representative, if appropriate, meaning a person who makes at least 50 percent of their annual income from harvesting or processing fish or shellfish within the area;
- (ii) Locally-owned and community-based charter fishing representatives, if appropriate, meaning a person who makes at least 50 percent of their annual income from transporting paying clients to a site to catch fish or shellfish within the area;
- (iii) Locally-owned and community-based commercial ranching representative, if appropriate, meaning a person who owns or runs a ranch in the area and which sells at least 50 percent of its harvest for local consumption within the area;
- (iv) Locally-owned and community-based commercial farming representative, if appropriate, meaning a person who owns or runs a farm in the area and which sells at least 50 percent of its harvest for local consumption within the area;
- (v) Local Chamber of Commerce representatives or other local business representatives such as Rotary Club;
- (vi) Community-based environmental representatives, meaning a person who is recognized among the community or area for effectively advocating protection of the environment;
- (vii) Community-based environmental justice representatives, meaning a person who is recognized among the community or area for recognizing the needs of and effectively advocating on behalf of vulnerable populations including low income, Low English Proficiency, minority and residents with disabilities;
- (viii) Indigenous representatives from each Indian Tribe in the area, if interested and willing.
- (ix) Community-based public health advocacy representatives, meaning a person who is recognized among the community or area for recognizing the needs of and effectively advocating on behalf of direct health care service to the individual or family as well as activities that promote and build capacity to improve health and access to health care in communities and the larger public;
- (x) Community-based worker safety and health advocacy representatives, meaning a person who is recognized among the community or area for recognizing the needs of and effectively

- advocating improved safety and health conditions and measures on behalf of workers or laborers;
- (xi) Community-based professional health care representatives, meaning a person who is recognized among the community or area for providing effective health care for area residents, who has a license for health care (such as a medical doctor, nurse, physician's assistant, naturopathic doctor, or other complementary medicine professional), and who earns at least 50 percent of their annual income in the service of providing health care to residents in the area;
  - (xii) Community-based first responder representative, meaning a person (as a fireman or an EMT) who is among those responsible for going immediately to the scene of an accident or emergency to provide assistance; and
  - (xiii) LEPC representative, meaning a person from the Local Emergency Planning Committee as described in §300.205(e).

(3) Non-voting members. During periods of activation for spill response and remedial operations, if a discharge or release moves from the area covered by one ACP or RCP into another area and if that area is not covered by an ACP or RCP, then the CAC may invite participation in CAC activities by non-voting members who represent the demographic diversity of this additional area for the duration of the response and remedial operations.

(c) Terms.

(1) Duration of CAC. The term of the CAC shall continue throughout the lifetime of energy development and transportation activities in the area.

(2) Term of Appointment. The voting members of the CAC shall be appointed by, and serve at the sole discretion of, their respective interest group, for a term of three years;

(i) Certification: Stakeholders interested in selecting representatives must submit a letter of inquiry with at least five letters of recommendation including three from persons outside of their stakeholder group to the Environmental Protection Agency no later than 60 days after revisions to the NCP. The Administrator will certify stakeholders based on definitions of stakeholder groups in paragraph (2)(b)(2) of this section.

(ii) Initial voting: The Administrator will contact all certified stakeholders 45 days after revisions to the NCP to a public meeting convening certified stakeholders to participate in a vote to determine their CAC representatives.

(iii) Subsequent internal appointments: After first appointments, the members of the CAC shall determine practices and processes for future appointments.

(iv) Initial Appointments: A drawing of lots among the voting members shall determine that one-third of that group serves for 3 years, one-third serves for 2 years, and the remainder serves for 1 year.

(v) Self-governance of future appointment procedure: After the initial appointments CAC members will determine protocol and procedure for new appointments.

(d) **Self-Governing.** The CAC shall elect its own officers, select its own staff, and make policies with regard to internal operating procedures. After the initial organizational meeting hosted by the Secretary of Interior, the CAC shall be self-governing.

(e) **Conflicts of Interest.** No individual selected as a voting member of the CAC shall be engaged in any activity, which may conflict with such individual carrying out his/her function as a member thereof. Such activities shall include, but may not be limited to, employment by the oil industry or its contractors or service providers, employment by a municipality or local government, or an elected official of a municipality or local government.

(f) **Duties.** The CAC shall provide duties as specified in this section, covering all energy development and transportation activities in the area covered under the ACP. In fulfilling its responsibilities, the Committees shall incorporate all duties granted to the Committees created in Prince William Sound and Cook Inlet under OPA 90 Sec. 5002 (e) and Sec. 5002 (f), as relevant to their area, or shall provide equivalent duties appropriate to their area. The CACs shall:

(1) Provide advice and recommendations on all aspects of energy exploration, development, and transportation (including protection of worker and public safety and health) in the geographic area covered under the ACP, including health and environmental assessments, permitting, exploration, development, production, and transportation to minimize the impact of energy development to public health and welfare and the environment.

(2) Monitor impacts to human health and the environment and recommend mitigation efforts to minimize impacts of energy development to public health and welfare and the environment.

(3) Monitor oil spill prevention and contingency plans for the area, onshore and offshore.

(4) Recommend standards and stipulations for area deferrals and other site-specific regulations intended to minimize the impact of energy development to public health and welfare and the environment.

(5) Recommend protocols for expediting use of products or chemical agents authorized under Subpart J and for expediting stopping or discontinuing use of products that have unanticipated or harmful consequences to public health or welfare or the environment.

(6) Monitor occupational health, worker safety, public health, and mental health impacts of energy development, oil discharges and response and remedial activities, and recommend appropriate oil industry, federal, state, and local governmental and responsible party action.

(7) Monitor the conduct of responsible party economic damages claims process pursuant to OPA 90, including any independent claims facility, and federal, state and local individual and business assistance programs related any oil discharge and recommend appropriate action to the independent claims facility, federal, state, and local government agencies and/or responsible party.

(8) Monitor the economic, social and cultural impacts of energy development and oil spills on socially vulnerable communities including low income, Low English Proficiency, indigenous, minority and residents with disabilities;

(9) Monitor the development and implementation of plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under section 1002(b)(2)(A) of the federal, state, local and tribal trustees.

(10) Serve on the Unified Incident Command in the event of a spill of national significance. CAC members will be provided a rotating seat to serve in each established area command outpost as appropriate and monitor, evaluate, and make recommendations for removal and remedial plans.

(11) Conduct other activities within the authority and scope of the CAC that the CAC deems appropriate.

(12) Meet quarterly, and convene an annual meeting that rotates among communities or political subdivisions within the area covered under the ACP.

(13) Conduct outreach including but not limited to field hearings and meetings, and a quarterly newsletter for stakeholders. Additional stakeholders, including schools, faith-based organizations and other interests, should be consulted to the maximum extent possible to address the broadest set of concerns during periods of pre-spill planning and response activation.

(g) Committees. The CAC is authorized to create committees as necessary to carry out its duties.

(1) Committees may include but are not limited to the following:

- (i) scientific / technical committee;
- (ii) environmental monitoring committee;
- (iii) oil spill prevention / response committee;
- (iv) offshore committee (outside of 100 m depth contour);
- (v) near shore committee (inside of 100 m depth contour);
- (vi) claims committee; and
- (vii) human safety and health (including workers and the public and mental health) committee.

(2) The membership of the Committees shall be made up of members of the CAC, citizens, representatives of community-based nonprofits, and recognized scientific experts selected by the CAC.

(3) Each committee shall provide periodic reports on activities to the CAC and public.

(h) No Estoppel. The CAC shall not be held liable under Local, State or Federal Law for costs or damages as a result of rendering advice under this section. Nor shall any advice given by a voting member of the CAC or program representative or agent be grounds for estopping the interests represented by the voting CAC members from seeking damages or other appropriate relief.

(i) Research. In carrying out its duties, the CAC is authorized to conduct its own scientific research, and shall review the scientific work undertaken by or on behalf of the energy industry or government.

(j) Agency Cooperation. Each Federal or State department, agency, or other instrumentality shall, with respect to all permits, site-specific regulations, and other matters governing the activities and actions of the Committees, consult with the CAC prior to taking substantive action with respect to the permit, site-specific regulation, or

other matters. This consultation shall be carried out with a view to enabling the CAC to review the permit, site-specific regulation, or other matters and make appropriate recommendations regarding operations, policy or agency actions. Prior consultation shall not be required if an authorized Federal agency representative reasonably believes that an emergency exists requiring action without delay.

(k) Subpoenas.

(1) Issuance. A subpoena may be issued under this subsection only by an agreement based on its predetermined internal procedures as described in paragraph (d) of this section.

(2) Enforcement. In the case of contumacy or failure to obey a subpoena issued under paragraph (1) of this section, the United States district court for the district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring the person to appear at any designated place to testify or to produce documentary or other evidence.

(i) Judicial action for noncompliance. Any failure to obey the order of the court may be punished by the court as contempt of that court.

(ii) Additional enforcement. In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the CAC may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes (2 U.S.C. 21 192 through 194).

(3) Information from federal agencies.

(i) The CAC may secure directly from any Executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Federal Government, information, suggestions, estimates, and statistics for the purposes of this title.

(ii) Cooperation. Each Federal department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish information, suggestions, estimates, and statistics directly to the CAC, upon request made by the Chairperson, the Chairperson of any subcommittee created by a majority of the CAC, or any member designated by a majority of the CAC.

(l) Recommendations of the CAC. All advice and recommendations of the CAC shall be non-binding. In the event that government or industry do not accept, or significantly modifies before adoption, the advice of the CAC, the respective entity shall provide to the CAC in writing, within 5 days of its decision, notice of its decision and a statement of reasons for its rejection or modification of the recommendation.

(m) Location and compensation.

(1) Location. The CAC shall be located within the largest political subdivision in the area covered by the ACP, with offices in locations chosen by the CAC.

(2) Members of the CAC shall not be compensated for their services to the CAC, but shall be allowed travel expenses, including per diem, at a rate established by

the CAC not to exceed the rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code.

(n) Funding.

(1) Requirement. Permits and Contingency Plans for all energy development activities shall be effective only so long as the CAC is funded pursuant to paragraph (2) of this section.

(2) Funding. The owners or operators of all energy development and transpiration facilities, activities, or operations in the area shall collectively provide, on an annual basis, a minimum of \$5 million or 0.001 percent of the taxable revenue, whichever is larger, to the CAC to conduct its duties. A contract shall be developed between energy industry operators and the CAC. Such amount:

(A) shall be adjusted annually by the U.S. Consumer Price Index; and

(B) may be adjusted periodically upon the mutual consent of the Area Committee and the CAC.

(o) Reports. Prior to 36 months after the establishment of the CAC, the Government Accountability Office (GAO) shall report to the President and the Congress its assessment of the effectiveness of the CAC in meeting its mandate as outline herein, and recommendations for improvement.

**§300.210 Federal contingency plans.**

(b) Regional Contingency Plans. The RRTs, working with the states, shall develop federal RCPs for each standard federal region, Alaska, Oceania in the Pacific, and the Caribbean to coordinate timely, effective response by various federal agencies and other organizations to discharges of oil or releases of hazardous substances, pollutants, or contaminants. RCPs shall, as appropriate, include information on all useful facilities and resources in the region, from government, commercial, academic, and other sources. To the greatest extent possible, RCPs shall follow the format of the NCP and be coordinated with state emergency response plans, ACPs, which are described in §300.210(c), and Title III local emergency response plans, which are described in §300.215. Such coordination should be accomplished by working with the SERCs in the region covered by the RCP. **RRTs shall coordinate and consult with Indian Tribes as required under 33 USC 1321(c) section 711(a)(2).** RCPs shall contain lines of demarcation between the inland and coastal zones, as mutually agreed upon by USCG and EPA.

(c) Area Contingency Plans.

(1) Under the direction of an OSC and subject to approval by the lead agency, each Area Committee **and appropriate Indian Tribes and CAC**, in consultation with the appropriate RRTs, Coast Guard DRGs, the NSFCC, SSCs, LEPCs, and SERCs, shall develop an ACP for its designated area. This plan, when implemented in conjunction with **the priorities and** other provisions of the NCP, shall be adequate to remove a worst case discharge under §300.324, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area.

(2) The areas of responsibility ~~shall~~ may include several Title III local planning districts, or parts of such districts. In developing the ACP, the OSC shall coordinate with affected SERCs and LEPCs. The ACP shall provide for a well coordinated response that is integrated and compatible, to the greatest extent possible, with all appropriate response plans of state, local, and non-federal entities, and especially with Title III local emergency response plans.

(3) The ACP shall include the following:

(i) A description of the area covered by the plan, including the areas of special economic, **cultural**, or environmental importance **and areas of critical human habitations and public resources** that might be damaged by a discharge **or response operations (such as use of chemical agents)**;

(ii) A description in detail of the responsibilities of an owner or operator and of federal, state, and local agencies in **protecting worker and public health and safety while** removing a discharge, and in mitigating or preventing a substantial threat of a discharge;

(iii) A list of equipment including firefighting equipment; ~~dispersants or other mitigating substances and devices~~; **PPE such as respirators and replacement filters sufficient for the number of workers, duration of activities, and exposure levels anticipated for a worst case discharge under §300.324; chemical agents or other mitigating substances consistent with §300.317, Subpart J, and the ACP**; and personnel available to an owner or operator and federal, state, and local agencies, to ensure **protection and mitigation of risks to worker and public safety and health**, an effective and immediate removal of a discharge, and ~~to ensure~~ mitigation or prevention of a substantial threat of a discharge (this may be provided in an appendix or by reference to other relevant emergency plans (e.g., state or LEPC plans), which may include such equipment lists);

(iv) A description of procedures to be followed for obtaining ~~an expedited decision~~ regarding the use **and emergency stop use of products consistent with §300.317, Subpart J, and the ACPs**;

(v) A detailed description of how the plan is integrated into other ACPs and tank vessel, offshore facility, and on-shore facility response plans approved by the President, **and Indian tribal plans under 33 USC 1321**, and into operating procedures of the NSFCC; and

#### **NEW SECTION**

(vi) A detailed description of how the plan will provide:

(A) oil spill removal organizations at appropriate locations in maritime regions with active oil activities and inland along conventional and ultra-hazardous crude-carrying pipeline and rail car corridors in the area;

(B) trained personnel in sufficient numbers to immediately remove a worst case discharge;

(C) training in oil removal techniques (including HAZWOPER training by OEM-trained personnel consistent with §300.152 for local residents and individuals through the Local Emergency Planning Committees or Community Emergency Response Teams; and

(D) practice exercises not less than 2 times per year

which test the capacity of the equipment and personnel required under this paragraph; and

(E) periodic testing and certification of equipment required under this paragraph.

(4) (i) In order to provide for coordinated, immediate and effective protection, rescue, and rehabilitation of, and minimization of risk of injury to, fish and wildlife resources and habitat, Area Committees **in coordination with Indian Tribes in the area and CACs** shall incorporate into each ACP a detailed annex containing a Fish and Wildlife and Sensitive Environments Plan that is consistent with the RCP and NCP. The annex shall be prepared in consultation with the USFWS and NOAA and other interested natural resource management agencies and parties. It shall address fish and wildlife resources and their habitat, and shall include other areas considered sensitive environments in a separate section of the annex, based upon **recommendations agreed upon by the Area Committee recommendations, Indian Tribes and the CAC**. The annex will provide the necessary information and procedures to immediately and effectively respond to discharges that may adversely affect fish and wildlife and their habitat and sensitive environments, including provisions for a response to a worst-case discharge. Such information shall include the identification of appropriate agencies and their responsibilities, procedures to notify these agencies following a discharge or threat of a discharge, protocols for obtaining required fish and wildlife permits and other necessary permits, and provisions to ensure compatibility of annex-related activities with removal operations.

(ii) The annex shall:

(A) Identify and establish priorities for fish and wildlife resources and their habitats and other important sensitive areas requiring protection from any direct or indirect effects from discharges, **chemical agents, mitigating devices, or removal or remedial activities** that may occur. These effects include, but are not limited to, any seasonal or historical use, as well as all critical, special, significant, or otherwise designated protected areas, **and impacts from exposure to, ingestion by, inhalation by, or assimilation into organisms, either directly from the environment or indirectly by ingestion through food chains, that will or may reasonably be anticipated to cause death, disease or infection, behavioral abnormalities, cancer, genetic mutation, endocrine disruption or other physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.**

(B) Provide a mechanism to be used during a spill response for timely identification of protection priorities of those fish and wildlife resources and habitats and sensitive environmental areas that may be threatened or injured by a discharge, **chemical agents, mitigating devices, or removal or remedial activities**. These include as appropriate, not only marine and freshwater species, habitats, and their food sources, but also terrestrial wildlife and their habitats that may be affected directly by onshore oil, **chemical agents, or mitigating devices** or indirectly by oil-related factors, such as loss or contamination of **habitat and** forage. The mechanism shall also provide for expeditious evaluation and appropriate consultations on the effects to fish and wildlife, their habitat, and other sensitive environments ~~from the prior to~~ application of chemical countermeasures or other countermeasures not addressed

under paragraph (e)(4)(iii). **agents consistent with the NCP priorities under §300.317, Subpart J, and the ACP.**

(C) Identify potential **short- and long-term** environmental effects on fish and wildlife, their habitat, and other sensitive environments resulting from removal actions. ~~or including use of **approved chemical agents**, products or mitigating devices and countermeasures, including the options of no removal~~ **or only mechanical containment and removal. countermeasures.** Based on this evaluation of potential environmental effects, the annex should establish priorities for ~~use application of~~ **approved chemical agents** ~~countermeasure and removal actions to habitats within the geographic region of the ACP. The annex should establish methods to minimize the identified effects on fish and wildlife because of response activities, including, but not limited to:~~ **Contamination and** disturbance of sensitive areas and habitats; illegal or inadvertent taking or disturbance of fish and wildlife or specimens by response personnel; and fish and wildlife, their habitat, and environmentally sensitive areas coming in contact with various ~~cleaning or bioremediation agents.~~ **chemical agents** ~~and chemical agents~~ may pose a risk to resident, transient, or migratory fish and wildlife, and other sensitive environments and should discuss measures to be considered for removing such oiled debris **and chemical agents** in a timely fashion to reduce such risk. **Annex must include method to inventory and document fish and wildlife carcasses before they are removed or destroyed and records must be kept for documentation of damages.**

(D) Provide for pre-approval of, if necessary, ~~of application of specific countermeasures or removal actions that, if expeditiously applied will~~ **and emergency stop use plans for, products authorized under Subpart J and allowed under the ACP that are likely to** minimize adverse spill-induced **overall impacts of oil, product, oil-product combined, and response activities** to fish and wildlife resources, their habitat, and other sensitive environments. Such pre-approval **authorization and emergency stop use plans** must be consistent with paragraphs (c)(4)(ii)(B) and (C), **(c)(5)(ii)(B) and (C) of this section, §300.205(c)**, and subpart J requirements, and must have the concurrence of the natural resource trustees, **Indian Tribes, federally-recognized CACs, and state and local governments.**

(E) Provide monitoring plan(s) to evaluate the effectiveness of different **products and mitigating devices authorized under Subpart J,** ~~countermeasures or removal actions in protecting the environment. Monitoring should include “set-aside” or “control” areas, where no mitigative actions are taken,~~ **protocol for making determinations if a product has unanticipated and harmful consequences on fish and wildlife resources, their habitat, and other sensitive environments, and protocol for expeditiously ceasing use of products that have unanticipated and harmful consequences.**

(F) Identify and plan for the acquisition and utilization of necessary response capabilities for protection, rescue, and rehabilitation of fish and wildlife resources and habitat. This may include appropriately permitted private organizations and individuals with appropriate expertise and experience, **but it may not include entities or individuals funded or affiliated in any way with the petrochemical industry or its service providers, including the responsible party and its contractors, or subcontractors due to conflicts of interest.** The suitable organizations should be identified in cooperation with natural resource law enforcement

agencies. Such capabilities shall include, but not be limited to, identification of facilities and equipment necessary for **effectively** deterring sensitive fish and wildlife from entering oiled **or treated** areas, and for capturing, holding, cleaning, and releasing injured wildlife. Plans for the provision of such capabilities shall ensure that there is no interference with other OSC removal operations **or from the responsible party, directly or indirectly.**

(G) Identify appropriate federal and state agency contacts and alternates responsible for coordination of fish and wildlife rescue and rehabilitation and protection of sensitive environments; identify and provide for required fish and wildlife handling and rehabilitation permits necessary under federal and state laws; and provide guidance on the implementation of law enforcement requirements included under current federal and state laws and corresponding regulations. Requirements include, but are not limited to procedures regarding the capture, transport, rehabilitation, and release of wildlife exposed to or threatened by oil, **chemical agents, mitigating measures, or response activities**, and disposal of contaminated carcasses of wildlife **consistent with paragraph (C) of this section.**

(H) Identify and secure the means for providing if needed, the ~~minimum~~ required OSHA and EPA training **consistent with §300.150 and paragraph (5)(ii)(H) of this section** for volunteers, including those who assist with injured wildlife.

(I) Define the requirements for evaluating the compatibility between this annex and non-federal response plans (including those of vessels, facilities, and pipelines) on issues affecting fish and wildlife, their habitat, and sensitive environments.

**NEW SECTION: 300.210(c)(5)**

(5) (i) In order to provide for coordinated, immediate, and effective protection of, and minimizing risk of injury and work-related illness to, workers, volunteers, and the general public, Area **Committees in coordination with Indian Tribes in the area and CACs** shall incorporate into each ACP a detailed annex containing a Human Health & Safety Plan consistent with §§ 300.150 and 300.152. The annex shall be prepared in consultation with the DOL/OSHA, DHHS, and EPA and other interested human safety and health agencies and parties. It shall address training requirements for local residents and individuals (including volunteers) in safety (HAZWOPER) and oil removal techniques in coordination with the LEPC, and protection of the general public, human habitations, and critical public resources including air, drinking water, food, and soil in a separate section of the annex, based upon recommendations agreed upon by the Area Committee, Indian Tribes and the CAC. The annex will provide the necessary information and procedures to immediately and effectively respond to discharges that may adversely affect workers and the general public and their at-risk environments, including provisions for a response to a worst-case discharge. Such information shall include the identification of appropriate agencies and their responsibilities, procedures to notify these agencies following a discharge or threat of a discharge, protocols for timely public notification of potential threats to human safety and health, public record-keeping, and provisions to ensure compatibility of annex-related activities with removal and remedial operations.

(ii) The annex shall:

(A) Identify and establish priorities for human safety and health, human habitation including essential human services, and other critical public resources

requiring protection from any direct or indirect effects from discharges, chemical agents, mitigating devices, or removal or remedial activities that may occur. These effects include, but are not limited to: evacuation or temporary relocation; temporary or long-term interruption of drinking or irrigation water, water treatment systems, food growing or harvest areas or food supplies, or other essential human services or critical public resources; temporary or long-term interruption of lodging, work, school, or medical care; impacts from exposure to, ingestion by, inhalation by, or assimilation into humans, either directly from the environment or indirectly by ingestion through food chains, that will or may reasonably be anticipated to cause death, disease or infection, behavioral abnormalities, cancer, genetic mutation, endocrine disruption or other physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such humans or their children; replacement of personal belongings such as homes, clothes, and furniture.

(B) Provide mechanisms such as wind roses, census and demographic data including socio-economic status, lists of emergency care services, and detailed evacuation or temporary relocation plans to be used during a spill response for timely identification of protection priorities of at-risk populations and human habitations and essential human services that may be threatened or injured by a discharge, chemical agents, mitigating devices, or removal or remedial activities such as those describe in paragraphs (5)(i) and (ii)(A) of this section. The mechanisms shall also provide for expeditious evaluation and appropriate communication with the general public on the effects to humans, human habitations, and other critical public resources of oil and chemical agents prior to their use and consistent with the NCP priorities under §300.317, Subpart J, and the ACP.

(C) Identify potential short- and long-term safety and health effects on humans, their habitations, and critical public resources resulting from exposure to oil, chemical agents, products, and removal or remedial actions, including the option of no removal or only mechanical containment and removal. Based on this evaluation of potential safety and health effects, the annex should establish priorities for use of chemical agents and mitigating devices to minimize exposure of at-risk populations to oil, chemical agents, and removal activities in the geographic region of the ACP, including the watersheds (mountaintops to aquifers), air movement patterns, and hydrologic cycles that connect ocean and land masses. The annex should establish protocols consistent with §§ 300.150 and 300.152 to minimize the identified effects on humans from exposure to oil, chemical agents, and other response activities, including, but not limited to contamination and chemical illnesses, changes to mental health and social behavior, disturbance from noise, disruption or contamination of culturally-sensitive areas or subsistence activities, and disruption of local economies. The annex should identify areas where the movement, storage, or disposal of oiled debris including chemical agents may pose the least risk to humans and their habitats and should discuss measures to reduce such risk.

(D) Provide for pre-approval of, if necessary, and emergency stop use plans for products that have demonstrated capacity to minimize adverse overall impacts of oil, product, oil-product combined, and response activities to humans, their habitations, and critical public resources in the area covered by the ACP. Such pre-approval **authorization and emergency stop use** plans must be consistent with paragraphs (c)(4)(ii)(B) and (C), (c)(5)(ii)(B) and (C) of this section, §300.205(c), and Subpart J requirements, and must have the concurrence of the natural resource

trustees, Indian Tribes, federally-recognized CACs, state and local governments, and LEPCs.

(E) In coordination and consultation with OEM physicians or health care providers with OEM training and the OSHA and HHS Scientific Support Coordinator team, provide monitoring plans to evaluate the effectiveness of the ACP Human Safety and Health Plan to protect human safety and health during response and remedial activities. Monitoring should include pre-spill health assessments of “control” areas within the geographic area under the ACP and any area in close proximity that can be reasonably anticipated to be impacted by a discharge or response or remedial activities within the area covered by the ACP. Monitoring should include pre-spill and post-spill sampling of water and air quality and baseline levels of VOCs and other chemicals within human bodies, collected from a representative population based on census, demographic data, and socio-economic status data. Monitoring plans must include protocol for making determinations if a chemical agent allowed under Subpart J may have unanticipated consequences that increase the risk or threat of risk on public health and welfare, human habitations, and critical public resources, and protocol for expeditiously ceasing use of products that have such unanticipated and harmful consequences.

(F) In coordination and consultation with OEM physicians or health care providers with OEM training and the OSHA and HHS Scientific Support Coordinator team, identify and plan for the acquisition and utilization of necessary response capabilities for protection, diagnosis, and treatment options including detoxification of humans, human habitations, and critical public resources. This may include private organizations and individuals with expertise and experience in occupational and environmental medicine, but it may not include entities or individuals funded or affiliated in any way with the petrochemical industry or its service providers, including the responsible party or its contractors or subcontractors due to conflicts of interest. Such capabilities shall include, but not be limited to, identification of facilities and equipment necessary for protection, diagnosis, and treatment of injured or ill humans such as detox clinics staffed by OEM trained personnel, safe areas for minimizing contact with oil and chemical agents, and evacuation or temporary relocation plans. Plans for the provision of such capabilities shall ensure that there is no interference with other OSC removal operations or from the responsible party, directly or indirectly.

(G) In coordination and consultation with OEM physicians or health care providers with OEM training and the OSHA and HHS Scientific Support Coordinator team, identify appropriate federal and state agency contacts and alternates responsible for coordination of protection of human safety and health, human habitations, and critical public resources; identify and plan for monitoring, diagnosis, and treatment; evaluation of the effectiveness of procedures and protocols in the plan; and establish a process for public record-keeping of all monitoring data (excluding identifiers for individual humans).

(H) Identify and secure the means for providing the full 40-hour EPA or OSHA training for worker safety and health and waste disposal in 29 CFR 1910.120 for volunteers who assist with injured or ill humans, and for monitoring and evaluating the Human Safety and Health Plan. Part of this training shall include training about environmental health, chemical illnesses including recognition of potential

symptoms, and detox treatment. This training must be provided by individuals or organizations qualified under (5)(ii)(F) and consistent with §300.150.

(l) Define the requirements for evaluating the compatibility between this annex and non-federal response programs such as HHS/NIEHS programs and trainings for preventing worker and public exposure to oil discharges and hazardous materials releases, including preparing curricula and training for oil and hazardous materials' transportation workers, conducting worker safety training, training physicians in environmental health, and basic research activities on air pollutants including aerial transportation and deposition.

**§300.211 OPA facility and vessel response plans.**

This section describes and cross-references the regulations that implement section 311(j)(5) of the CWA. A tank vessel, as defined under section 2101 of title 46, U.S. Code, an offshore facility, and an onshore facility that, because of its location, could reasonably expect to cause substantial harm to **public health or welfare or the environment** by discharging into or on the navigable waters, adjoining shorelines, or exclusive economic zone must prepare and submit a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil, **chemical agents**, or a hazardous substance. **For the purpose of the NCP**, these response plans are required to be consistent with applicable Area Contingency Plans, **RCPs, and the NCP**. These regulations are codified as follows:

**§300.212 Area response drills**

The OSC periodically shall conduct drills of removal capability (including fish and wildlife response capability **and public evacuation or temporary relocation capability**), **protocols for preauthorization and emergency stop use of products that have unanticipated consequences to human safety or health or the environment, and public notice of the oil discharge**, without prior notice, in areas for which ACPs are required by §300.210(c) and under relevant tank vessel, ~~and facility~~, **pipeline, and rolling stock** response plans.

## Subpart D—Operational Response and Phases for Oil Removal

### §300.300 Phase I—Discovery or notification

(b) (i) Any person in charge of a vessel or a facility shall, as soon as he or she has knowledge of any discharge from such vessel or facility in violation of section 311(b)(3) of the CWA, immediately notify the NRC. If direct reporting to the NRC is not practicable, reports may be made to the USCG or EPA predesignated OSC for the geographic area where the discharge occurs. The EPA predesignated OSC may also be contacted through the regional 24-hour emergency response telephone number. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or predesignated OSC immediately, reports may be made immediately to the nearest Coast Guard unit. In any event such person in charge of the vessel or facility shall notify the NRC as soon as possible, **but no later than one hour after knowledge of any discharge.**

#### NEW SECTIONS (ii) to (iii)

(ii) The responsible party will notify the NRC or other entities in paragraph (i) as soon as possible, but no later than one-hour after knowledge of any discharge, of the type of oil discharged and provide current Material Safety Data Sheets and a complete chemical analysis of the oil discharged from the library catalogue on file.

(iii) Failure to comply with paragraphs (i) or (ii) will result in penalties of \$250,000 for every hour, or fraction thereof, of delay.

(d) Upon receipt of a notification of discharge the NRC shall promptly (**within the hour**) notify the OSC. The OSC shall ensure notification of the appropriate state agency of any state which is, or may reasonably be expected to be, affected by the discharge. The OSC shall then proceed with the following phases as outlined in the RCP and ACP.

### §300.305 Phase II—Preliminary assessment and initiation of action

(c) Where practicable, the framework for the response management structure is a system (e.g., a unified command system), that brings together the functions of the federal government, ~~the state~~ **and local** governments, **Indian Tribes, federally-recognized CACs**, and the responsible party to achieve an effective and efficient response, where the OSC maintains authority **as described under the NCP.**

#### NEW SECTION

(d) Based on the preliminary assessment, the OSC will decide if the discharge may or is likely to pose a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States). If there is not enough information initially to make this determination, the OSC will direct response activities for the worst-case scenario (substantial threat to public health or welfare or the environment) until such time as the responsible party provides sufficient information to make a determination or until the OSC can make a determination. If the responsible party is unknown or there is no Regional or Area Contingency Plan for the geographic area in which the discharge occurred, the OCS will assume control of response operations.

## REPLACEMENT SECTIONS

~~(d) Except in a case when the OSC is required to direct the response to a discharge that may pose a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the OSC may allow the responsible party to voluntarily and promptly perform removal actions, provided the OSC determines such actions will ensure an effective and immediate removal of the discharge or mitigation or prevention of a substantial threat of a discharge. If the responsible party does conduct the removal, the OSC shall ensure adequate surveillance over whatever actions are initiated. If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC should, to the extent practicable under the circumstances, so advise the responsible party. If the responsible party does not respond properly the OSC shall take appropriate response actions and should notify the responsible party of the potential liability for federal response costs incurred by the OSC pursuant to the OPA and CWA. Where practicable, continuing efforts should be made to encourage response by responsible parties.~~

- ~~(1) In carrying out a response under this section, the OSC may:~~
- ~~(i) Remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;~~
  - ~~(ii) Direct or monitor all federal, state, and private actions to remove a discharge; and~~
  - ~~(iii) Remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.~~

(1) Except in a case when the OSC is required to direct the response to a discharge that may pose a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), **or the environment or when the responsible party is unknown**, the OSC may allow the responsible party to voluntarily and promptly perform removal **and mitigating** actions, provided **that**:

- (i) the OSC determines such actions ~~will ensure an effective and immediate removal of the discharge or mitigation or prevention of a substantial threat of a discharge~~ are allowed and consistent with the appropriate RCP or ACP to protect public health and welfare and the environment while effectively containing and removing the discharge or mitigation or prevention of a substantial threat of a discharge;
- (ii) if the responsible party does conduct the removal, ~~the OSC shall ensure adequate surveillance over whatever actions are initiated~~ the response will be conducted in accordance with the appropriate RCP or ACP; the OSC and PCCs will monitor and evaluate response activities consistent with the NCP; and the OSC will direct wildlife rescue and rehabilitation through the CACs as part of the ACPs;
- (iii) if actions are not being taken to ~~eliminate the threat or if the removal is not being properly done~~, the OSC should, to the extent practicable under the circumstances, protect human safety and health, public welfare, or the environment, and **eliminate or mitigate** the threat in accordance with the appropriate contingency plans, the OSC shall so advise the responsible party;
- (iv) if the responsible party does not respond properly or act in accordance with the appropriate contingency plans, the OSC shall take appropriate response actions and ~~should~~ shall notify the responsible party of the potential liability for

federal response costs incurred by the OSC pursuant to the OPA and CWA. The OSC shall retain control of the response actions until such time as the responsible party demonstrates the capacity and intent to resume response actions that are in accordance with the appropriate contingency plans; and

(v) ~~where practicable~~ Continuing efforts should be made to encourage response by responsible parties.

(2) If the discharge results or is likely to result in a substantial threat to the public health or welfare of the United States (~~including, but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States~~) or the environment or if the responsible party is unknown, the OSC must direct all response efforts, as provided in §300.322(b) of this part **and consistent with Subpart J and the RCP and ACP**. The OSC ~~should declare as expeditiously as practicable to~~ **shall promptly notify** spill response participants that the federal government will direct the response. The OSC may act without regard to any other provision of the law governing contracting procedures or employment of personnel by the federal government in removing or arranging for the removal of such a discharge **while protecting worker and public safety and health consistent with the appropriate RCP or ACPs or, in the case where there is no RCP or ACP, with the NCP §§ 300.317, 300.150, 300.152 and Subpart J**.

#### **NEW SECTION**

(3) In carrying out a response under this section, the OSC must:

(i) protect human safety and health and public welfare;  
 (ii) remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge consistent with §§ 300.317, 300.150, 300.152, and Subpart J;

(iii) Direct ~~or monitor~~ **and evaluate** all federal, state, and private actions **to protect public health and welfare and** to remove **or mitigate** a discharge; and

(iv) Remove and, if necessary, destroy a vessel, **well, pipeline, rolling stock, or other facility** discharging **oil**, or threatening to discharge **oil**, by whatever means are available.

(e) The OSC shall ensure that the natural resource trustees are promptly notified in the event of any discharge of oil, ~~to the maximum extent practicable as provided in the Fish and Wildlife and Sensitive Environments Plan annex to the ACP for the area in which the discharge occurs~~. The OSC and the trustees shall coordinate assessments, **carcass collection and record-keeping**, evaluations, investigations, and planning with respect to appropriate removal actions **to contain and remove oil while or to mitigate damage from oil, chemical agents approved under Subpart J and appropriate RCPs and ACPs, and other response activities**. The OSC shall consult with the affected trustees on the appropriate ~~removal~~ **response actions** to be taken. The trustees will provide timely advice concerning recommended actions with regard to trustee resources potentially affected. The trustees also will assure that the OSC is informed of their activities in natural resource damage assessment that may affect response operations. The trustees shall assure, through the lead administrative trustee,

that all data from the natural resource damage assessment activities that may support more effective operational decisions are provided in a timely manner to the OSC. ~~When circumstances permit, the~~ **The** OSC shall share the use of non-monetary response resources (i.e., personnel and equipment) with the trustees **as part of and in coordination with other response activities** provided trustee activities do not interfere with response actions **to protect or minimize threat to human safety and health**. The lead administrative trustee facilitates effective and efficient communication between the OSC and the other trustees during response operations and is responsible ~~for applying to the OSC for~~ **requesting** non-monetary federal response resources **from the OSC** on behalf of all trustees. The lead administrative trustee is also responsible for applying to the NPFC for funding for initiation of damage assessment for injuries to natural resources.

#### **NEW SECTION (f)**

(f) The OSC shall ensure that the OSHA and HHS permanent co-chairs or PCCs are promptly notified in the event of any discharge of oil. The OSC and PCCs or their on-scene representatives in the areas impacted by the spill shall coordinate response, monitoring, evaluation, data collection, and record-keeping, and planning with respect to appropriate actions to protect worker and public safety and health during response activities including (if necessary) expediting deactivation or discontinuing use of certain chemical agents or response activities that may have unanticipated harmful consequences to worker or public safety or health, as described in the Human Safety and Health Plan of the ACP for the area in which the discharge occurs.

(1) In meeting the requirements of this section, the OSC shall:

(i) consult with the permanent co-chairs or their on-site representatives on the appropriate response actions to be taken to protect worker and public safety and health consistent with the appropriate RCP and ACP and §§ 300.150 and 300.152;

(ii) in the event of a stop work order, coordinate with PCCs on necessary actions to be taken to address and remedy the situation, if possible, that triggered the order;

(ii) share the use of non-monetary response resources (i.e., personnel and equipment) with the PCCs as part of and in coordination with other response activities.

(2) In meeting the requirements of this section, the OSHA and HHS on-site PCCs shall:

(i) provide timely advice concerning recommended actions to protect or mitigate potential risks to worker and public safety and health consistent with §§ 300.150 and 300.152;

(ii) assure that the OSC is informed of PCC activities to monitor and evaluate safety and health programs and trainings that may affect response operations;

(iii) assure that data and information collected under the Human Safety and Health Plan which may support more effective operational decisions are provided in a timely manner to the OSC;

(iv) issue stop work orders and restart orders when necessary and consistent with §§ 300.150 and 300.152 and the ACPs;

- (v) in the event of a stop work order, coordinate with the OSC, state and local government, Indian Tribes, federally-recognized CACs, and the responsible party, to address and resolve the problem, if possible;
- (vi) facilitate effective and efficient communication between the OSC and the NRT or RRT members, Indian Tribes, Area Committees, federally-recognized CACs, and the responsible party during response operations;
- (vii) be responsible for requesting non-monetary federal response resources from the OSC on behalf of all OSHA or HHS programs; and
- (viii) also be responsible for applying to the NPFC for funding for all monitoring, evaluation, follow up, record-keeping programs, reports, and other activities to protect worker and public safety and health consistent with §§ 300.150 and 300.152 and the ACP Human Safety and Health Plan.

### **§300.310 Phase III—Containment, countermeasures, cleanup, and disposal.**

(a) Defensive actions shall begin as soon as possible **to protect public health and welfare of the United States or the environment and** to prevent, minimize, or mitigate threat(s) ~~to the public health and welfare of the United States or the environment.~~ Actions may include but are not limited to: Analyzing water **and air** samples to determine the source and spread of the oil; controlling the source of discharge; measuring and sampling; source and spread control or salvage operations; placement of physical barriers to deter the spread of the oil and to protect **culturally-important resources**, natural resources, **human habitations, critical public resources**, and sensitive ecosystems; control of the water discharged from upstream impoundment; and the use of ~~chemicals~~ **chemical agents, products**, and other materials in accordance with Subpart J of this part to restrain the spread of the oil and mitigate its effects. The ACP prepared under §300.210(c) should be consulted for procedures to be followed for obtaining ~~an expedited decisions~~ regarding the use **and emergency stop use** of ~~dispersants and other~~ **chemical agents or other** products listed on the NCP Product Schedule.

### **REPLACEMENT SECTION**

(b) ~~As appropriate, actions shall be taken to recover the oil or mitigate its effects. Of the numerous chemical or physical methods that may be used, the chosen methods shall be the most consistent with protecting public health and welfare and the environment. Sinking agents shall not be used.~~ To ensure the likelihood that response or remedial actions taken to recover oil or mitigate its effects shall be the most consistent with protecting public health and welfare and the environment:

- (1) only those products listed on the Product Schedule at the time of the discharge and consistent with Subpart J and ACPs will be considered for use;
- (2) in cases where ACPs are not available, products will be considered for use only if they are listed on the NCP Product Schedule, are consistent with Subpart J, and have demonstrated that they do not act as sinking or spreading agents or otherwise impede or impair containment and removal of oil, or threaten or harm safety and health of workers and the public; and
- (3) sinking agents shall not be used.

(c) Oil and contaminated materials recovered in cleanup operations shall be disposed of in accordance with the RCP, ACP, and any applicable laws, regulations, or

requirements. RRT and Area Committee guidelines shall identify the disposal options available during an oil spill response and shall describe what disposal requirements are mandatory or may not be waived by the OSC. **For the purposes of the NCP, recovered oil and oiled debris will be considered hazardous waste. This classification supercedes all prior state disposal approvals and permits that may not have designated such material as hazardous waste. Based on priorities for protecting worker and public safety and health and the environment,** ACP guidelines shall address: the sampling, testing, and classifying of recovered oil and oiled debris **as hazardous waste**; the segregation, temporary storage, and stockpiling of recovered oil and oiled debris **as hazardous waste**; prior state disposal approvals and permits; and the routes; methods (e.g. recycle/reuse, on-site burning, incineration, landfilling **at hazardous waste sites**, etc.); and **hazardous waste** sites for the disposal of collected oil, oiled debris, and animal carcasses; and the procedures for obtaining ~~waivers, exemptions, or~~ authorizations for handling or transporting **hazardous** waste materials. **Waivers and exemptions for classification of recovered oil and oiled debris as hazardous waste are not permitted. Under no circumstances will recovered oil and oiled debris be disposed of in or near municipal landfills or be recycled or reprocessed.**

**§300.315 Phase IV—Documentation and cost recovery.**

(a) All OSLTF users need to collect and maintain documentation to support all actions taken under the CWA. In general, documentation shall be sufficient to support full cost recovery for resources utilized and shall identify the source and circumstances of the incident, the responsible party or parties, and impacts and potential impacts to public health and welfare, **worker safety and health**, and the environment. Documentation procedures are contained in 33 CFR part 136.

(d) OSCs shall ensure the necessary collection and safeguarding of information, samples, and reports. Samples and information shall be gathered expeditiously during the response to ensure an accurate record of the impacts incurred. Documentation materials shall be made available to the trustees of affected natural resources **and the OSHA and HHS permanent co-chairs**. The OSC shall make available to trustees of the affected natural resources **and the PCCs** information and documentation in the OSC's possession that can assist the trustees **and the PCCS** in the determination of actual or potential natural resource injuries **and actual or potential injuries to worker and public safety and health**.

**§300.317 National response priorities.**

(a) Safety of **Human life, safety and health** must be given the top priority during every response action. This includes any search and rescue efforts in the general proximity of the discharge and the insurance of safety **and health** of response personnel **and the public**.

(b) Stabilizing the situation to preclude the event from worsening is the next priority. All efforts must be focused on saving a vessel that has been involved in a grounding, collision, fire, or explosion, so that it does not compound the problem. Comparable measures should be taken to stabilize a situation involving a facility, pipeline, or other source of pollution. Stabilizing the situation includes securing the source of the spill

and/or removing the remaining oil from the container (vessel, tank, or pipeline) to prevent additional oil spillage, to reduce the need for follow-up response action, and to minimize adverse impact to the environment **and to public health or welfare.**

(c) The response must use ~~all necessary~~ containment and removal tactics in a coordinated manner to ensure **the likelihood of** a timely, effective response that **protects worker and public safety and health and** minimizes adverse impact to the environment **from the discharge and response activities including unanticipated and harmful consequences of chemical agents and other mitigating devices.**

(d) All parts of this national response strategy should be addressed concurrently, but safety **and health** and stabilization are the highest priorities. The OSC should not delay containment and removal decisions unnecessarily and should take actions to **protect worker and public safety and health and** minimize adverse impact to the environment that begins as soon as a discharge occurs, as well as actions to minimize further adverse **harm to worker and public safety and health and the** environmental impact from additional discharges **and response activities including unanticipated and harmful consequences of chemical agents or other mitigating devices.**

(e) The priorities set forth in this section are broad in nature, and should not be interpreted to preclude the consideration of other priorities that may arise on a site-specific basis.

### **§300.320 General pattern of response.**

(a) When the OSC receives a report of a discharge, actions normally should be taken in the following sequence:

(1) Investigate the report to determine pertinent information such as the threat posed to public health or welfare of the United States or the environment, the type and quantity of polluting material (**including the type of oil**), and the source of the discharge.

(2) Officially classify the size (i.e., minor, medium, major); ~~and type (i.e.,~~ **determine if the discharge is a** substantial threat to the public health or welfare of the United States **or a worst case discharge**) ~~of the discharge;~~ and determine the course of action to be followed to ensure effective and immediate **protection of public health or welfare or the environment and** removal, mitigation, or prevention of the discharge. Some discharges that are classified as a substantial threat to the public health or welfare of the United States may be further classified as a spill of national significance by the Administrator of EPA or the Commandant of the USCG. The appropriate course of action may be prescribed in §§300.322, 300.323, and 300.324.

(i) When the reported discharge is an actual or potential major discharge **or is ultra-hazardous oil(s) or poses a substantial threat to public health or welfare of the United States or the environment or results in significant public concern,** the OSC shall immediately notify the RRT and the NRC.

(ii) When the investigation shows that an actual or potential medium discharge exists, the OSC shall recommend activation of the RRT, ~~if appropriate.~~

(iii) When the investigation shows that an actual or potential minor discharge exists, the OSC **and PCCs** shall monitor the situation to ensure that **proper protection of worker and public safety and health and** removal action ~~is are~~ being taken **consistent with §§ 300.150 and 300.152, Subpart J and the ACPs.**

(3) If the OSC determines that effective and immediate removal, mitigation, or prevention of a minor discharge can be achieved by **Indian Tribes** or private party

efforts, and where the discharge does not pose a substantial threat to the public health or welfare of the United States **and is not ultra-hazardous oil(s)**, determine whether the responsible party or other person is **protecting public health and welfare and the environment while** properly carrying out removal. Removal is being done properly when:

- (i) The responsible party is applying the resources called for in its response plan **to protect worker safety and health and** to effectively and immediately remove, minimize, or mitigate threat(s) **including from response activities** to public health and welfare, **culturally-significant resources**, and the environment; ~~and~~
- (ii) The removal efforts are in accordance with applicable regulations, including the NCP. Even if the OSC supplements responsible party resources with government resources, the spill response will not be considered improper, unless specifically determined by the OSC; **and**

#### **NEW SECTION**

(iii) The PCCs have not received any calls, petitions, reports, or information about any of the symptoms listed in §§300.150(a) or 300.152(b) from the public, response workers, health care professionals, health clinics, or hospitals in the geographic area impacted by the discharge.

#### **REPLACEMENT SECTION**

(4) ~~Where appropriate, determine whether a state or political subdivision thereof has the capability to carry out any or all removal actions. If so, the OSC may arrange funding to support these actions. If the OSC determines that effective and immediate removal, mitigation, or prevention of a medium discharge can be achieved by a state or political subdivision thereof, and where the discharge does not pose a substantial threat to the public health or welfare of the United States or is not ultra-hazardous oil(s), determine whether the state or political subdivision is protecting public health and welfare and the environment while properly carrying out removal consistent with section (3)(i) through (iii).~~

(5) Ensure prompt notification of the trustees **and Indian Tribes with jurisdiction** of affected natural resources in accordance with the applicable RCP and ACP.

(b) Removal shall be considered complete when so determined by the OSC in consultation with Governor or Governors of the affected states **and the CAC(s) from the impacted geographic area and with concurrence of the Indian Tribes of the area**. When the OSC ~~and other entities agree that~~ considers removal is complete, OSLTF removal funding shall end. This determination shall not preclude additional removal actions under applicable state law.

### **§300.322 Response to substantial threats to public health or welfare of the United States**

(a) As part of the investigation described in §300.320, the OSC shall determine whether a discharge results in a substantial threat to public health or welfare of the

United States ~~(including, but not limited to, fish, shellfish, wildlife, other natural resources, the public and private beaches and shorelines of the United States,~~ **culturally-important resources, and the environment.** Factors to be considered by the OSC in making this determination include, but are not limited to, the size of the discharge, the character of the discharge, **the type of oil discharged,** and the nature of the threat to public health or welfare of the United States. Upon obtaining such information, the OSC shall conduct an evaluation of the threat posed, based on the OSC's experience in assessing other discharges and consultation with senior lead agency officials, **the Governor(s) of the affected state(s), the Indian Tribes and CACs of the area impacted by the discharge,** and readily available **authorities who are not associated in any manner with the petrochemical industry or the responsible party or its contractors or subcontractors,** on issues outside the OSC's technical expertise **including all matters relating to Indian Tribes.**

(b) If the investigation by the OSC shows that the discharge poses or may present a substantial threat to public health or welfare of the United States **or the environment,** the OSC shall direct all federal, state, or private actions to **protect public health and welfare and response workers' safety and health and to** remove the discharge or to mitigate or prevent the threat of such a discharge, as appropriate. ~~In directing the response in such cases, the OSC may act without regard to any other provision of law governing contracting procedures or employment of personnel by the federal government to:~~

#### **REPLACEMENT & NEW SECTIONS (1) and (2)**

(1) In directing the response in such cases, the OSC may act without regard to any other provision of law governing contracting procedures or employment of personnel by the federal government\* to:

**(i) Protect worker and public safety and health;**

**(ii) Protect public welfare and the environment;**

(iii) Remove or arrange for the removal of the discharge;

(iv) Mitigate or prevent the substantial threat of the discharge; and

(v) Remove and, if necessary, destroy a vessel, **well, facility,**

**pipeline, or rolling stock** discharging, or threatening to discharge, by whatever means are available.

(2) All expenditures in this section are subject to post-incident audit by the member agency providing the OSC/RPM and the IRS. Expenditures deemed excessive by either entity will not be reimbursable by tax-payer dollars.

(c) In the case of a substantial threat to public health or welfare of the United States **or the environment,** the OSC shall:

(1) Assess opportunities for the use of various special teams and other assistance described in §300.145, including the use of the services of the NSFCC, as appropriate;

(2) Request immediate activation of the RRT **and implementation of the RCP or ACP as required by section 311(j)(4) of the CWA or relevant tank vessel, well, facility, pipeline, or rolling stock response plan required by section 311(j)(5) of the CWA;** and

(3) Take whatever additional response actions are deemed appropriate ~~including, but not limited to, implementation of the ACP as required by section 311(j)(4) of the CWA or relevant tank vessel or facility response plan required by section 311(j)(5) of the CWA. When requested by the OSC, the lead agency or RRT shall~~ **and consistent with the NCP and appropriate RCP and ACPs. The OSC shall request the lead agency or RRT to** dispatch appropriate personnel to the scene of the discharge to assist the OSC. This assistance shall include technical support in the agency's areas of expertise and disseminating information to the public. The lead agency shall ensure that a contracting officer is available on scene, at the request of the OSC.

### **§300.323 Spills of national significance.**

(b) For a SONS in the inland zone, the EPA Administrator shall name a senior Agency official to assist the OSC in communicating with affected parties and the public, and coordinating federal, **tribal**, state, local, and international resources at the national level. **If affected parties include Indian Tribes, then the EPA Administrator shall name a senior Agency official who is also a member of an Indian Tribe, although not necessarily the affected Indian Tribe(s).** This strategic coordination will involve ~~;~~ **as appropriate, the NRT, RRT(s), Indian Tribes and CACs in the affected geographic area,** the Governor(s) of affected state(s), and the mayor(s) or other chief executive(s) of local government(s).

(c) For a SONS in the coastal zone, the USCG Commandant may name a National Incident Commander (NIC) who will assume the role of the OSC in communicating with affected parties and the public, and coordinating federal, **tribal**, state, local, and international resources at the national level. **If affected parties includes Indian Tribes, then the USCG Commandant must name a senior Agency official who is also a member of an Indian Tribe, although not necessarily the affected Indian Tribe(s).** This strategic coordination will involve ~~;~~ **as appropriate, the NRT, RRT(s), Indian Tribes and federally-recognized CACs in the affected geographic area,** the Governor(s) of affected state(s), and the mayor(s) or other chief executive(s) of local government(s).

### **§300.324 Response to worst case discharges.**

(a) If the investigation by the OSC shows that a discharge is a worst-case discharge as defined in the ACP, or there is a substantial threat of such a discharge, the OSC shall:

(2) Require, where applicable, implementation of the worst-case portion of an approved tank vessel, ~~or facility,~~ **well, pipeline, or rolling stock** response plan required by section 311(j)(5) of the CWA;

(4) Take whatever additional response actions are deemed appropriate **including to:**

### **NEW SECTIONS**

(i) protect worker and public safety and health consistent with §§ 300.150 and 300.152 and ACPs;

(ii) protect the environment consistent with the NCP, RCP, or ACP;

(iii) remove or arrange for the removal of the discharge consistent with the NCP, RCP, or ACP;

(iv) mitigate or prevent the substantial threat of the discharge; and  
(v) remove and, if necessary, destroy a vessel, **well, facility, pipeline, or rolling stock** discharging, or threatening to discharge.

(ii) Inappropriate actions are ones that are inconsistent with the NCP, RCP, or ACP or that increase the risk or potential risk of harm to worker or public safety or health or the environment such as use of sinking agents or chemical agents that include any criteria to de-list or remove products from the NCP Product Schedule, as described in §300.925(1) through (9).

(b) Under the direction of the OSC **and the PCCs and in consultation with Indian Tribes in the area**, the NSFCC shall coordinate use of private and public personnel and equipment, including strike teams, to **protect worker and public safety and health and the environment from the discharge and response activities and to** remove a worst case discharge and mitigate or prevent a substantial threat of such a discharge.

### **§300.335 Funding.**

(a) The OSLTF is available under certain circumstances to fund removal of oil performed under section 311 of the CWA. Those circumstances and the procedures for accessing the OSLTF are described in 33 CFR part 136. **The OSLTF will also be made available for DOL/OSHA and HHS to protect worker and public safety and health, consistent with §§300.150 and 300.152 and ACPs.** The responsible party is liable for costs of federal removal and damages, **and federal oversight of worker and public safety and health programs, including long-term health care and monitoring,** in accordance with section 311(f) of the CWA, section 1002 of the OPA, and other federal laws.\*

(b) Where the OSC requests assistance from a federal agency, that agency may be reimbursed in accordance with the provisions of 33 CFR part 136. **The PCC agencies must be reimbursed in accordance with the provisions of 33 CFR part 136 for expenses incurred while conducting duties described under §§ 300.150 and 300.152.** Specific interagency reimbursement agreements may be used when necessary to ensure that the federal resources will be available for a timely response to a discharge of oil.

(c) Procedures for funding the initiation of natural resource damage assessment are covered in 33 CFR part 136. **Procedures for funding the Human Safety and Health Care Plans in the ACPs are described in §300.206(n).**

(f) The following **entities** have funds available for certain discharge removal actions:

(2) Pursuant to Title I of the OPA, the state or states affected by a discharge of oil may act where necessary to remove such discharge. Pursuant to 33 CFR part 136 states may be reimbursed from the OSLTF for the reasonable costs incurred in such a removal, **including costs for state OSHA programs to protect worker safety and health consistent with §300.150 and federal or state programs necessary to protect public safety and health consistent with §300.152.**

**NEW SECTION**

**(3) Pursuant to Title I of the OPA or pursuant to the NCP, Indian Tribes affected by a discharge of oil may act where necessary to remove such discharge. Pursuant to 33 CFR part 136 Indian Tribes may be reimbursed from the OSLTF for the reasonable costs incurred in such a removal.**

## **Subpart E—Hazardous Substance Response**

### **§300.400 General.**

(a) This subpart establishes methods and criteria for determining the appropriate extent of response authorized by CERCLA and CWA section 311(c):

- (1) When there is a release of a hazardous substance into the environment;
- or
- (2) When there is a release into the environment of any pollutant or contaminant, **including chemical agents**, that may present an imminent and substantial danger to the public health or welfare of the United States.

## Subpart G—Trustees for Natural Resources

### **§300.600 Designation of federal trustees.**

(b) The following individuals shall be the designated trustee(s) for general categories of natural resources, including their supporting ecosystems. They are authorized to act pursuant to section 107(f) of CERCLA, section 311(f)(5) of the CWA, or section 1006 of the OPA when there is injury to, destruction of, loss of, or threat to natural resources, including their supporting ecosystems, as a result of a release of a hazardous substance or a discharge of oil. Notwithstanding the other designations in this section, the Secretaries of Commerce and the Interior shall act as trustees of those resources subject to their respective management or control.

(2) Secretary of the Interior. The Secretary of the Interior shall act as trustee for natural resources managed or controlled by the DOI. Examples of the Secretary's trusteeship include the following natural resources and their supporting ecosystems: migratory birds; anadromous fish; endangered species and marine mammals; federally owned minerals; and certain federally managed water resources. The Secretary of the Interior shall also be trustee for those natural resources for which an Indian tribe would otherwise act as trustee in those cases where the United States acts on behalf of the Indian tribe. **The Secretary must appoint one trustee from each Indian Tribe affected by the discharge or release in those cases where the Indian Tribe is authorized to act as a trustee, consistent with §300.610.**

## **Subpart J—Use of Chemical Agents and Other Products~~Dispersants and Other Chemicals~~**

### **§300.900 General.**

(a) Section 311(d)(2)(G) of the CWA requires that EPA prepare a schedule of **chemical agents** ~~dispersants, other chemicals,~~ and other spill mitigating devices and substances, if any, that may be used in carrying out the NCP. This subpart makes provisions for such a schedule.

(b) This subpart applies to the navigable waters of the United States and adjoining shorelines, the waters of the contiguous zone, and the high seas beyond the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act, activities under the Deepwater Port Act of 1974, or activities that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States, including resources under the Magnuson Fishery Conservation and Management Act of 1976.

(c) This subpart applies to the use of any chemical agents or other additives as defined in subpart A of this part that may be used to remove or control oil discharges.

### **§300.905 NCP Product Schedule.**

(a) Oil Discharges.

(1) EPA shall maintain a schedule of ~~dispersants and other~~ **chemical agents** or ~~bioremediation~~ **other** products that may be authorized for use on oil discharges in accordance with the procedures set forth in §300.910. This schedule, called the NCP Product Schedule, may be obtained from the Emergency Response Division (5202–G), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The telephone number is 703–603–8760.

(2) Products may be added to the NCP Product Schedule by the process specified in §300.920. **Products may be removed from the NCP Product Schedule by the process specified in §300.925.**

### **NEW SECTION (3)**

(3) Products selected for use shall reflect the scope and purpose of the actions being undertaken and how the action relates to long-term, comprehensive response at the site and shall meet the following three general criteria for use in addition to the authorization protocols, described in §300.910, and the data requirements described in §§ 300.915 to 300.917.

(i) Threshold criteria. Overall protection of human health and the environment and compliance with RCPs and ACPs are threshold requirements that each product must meet in order to be eligible for selection.

(ii) Primary balancing criteria. The five primary balancing criteria are long-term effectiveness and permanence; reduction of toxicity, mobility, or volume through treatment; short-term effectiveness; implementability; and cost.

(iii) Modifying criteria. State and community acceptance are modifying criteria that shall be considered in product selection.

### **§300.910 Authorization of use.**

**REPLACEMENT SECTIONS (a) through (d)**

~~(a) RRTs and Area Committees shall address, as part of their planning activities, the desirability of using appropriate dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents listed on the NCP Product Schedule, and the desirability of using appropriate burning agents. RCPs and ACPs shall, as appropriate, include applicable preauthorization plans and address the specific contexts in which such products should and should not be used. In meeting the provisions of this paragraph, preauthorization plans may address factors such as the potential sources and types of oil that might be spilled, the existence and location of environmentally sensitive resources that might be impacted by spilled oil, available product and storage locations, available equipment and adequately trained operators, and the available means to monitor product application and effectiveness. The RRT representatives from EPA and the states with jurisdiction over the waters of the area to which a preauthorization plan applies and the DOC and DOI natural resource trustees shall review and either approve, disapprove, or approve with modification the preauthorization plans developed by Area Committees, as appropriate. Approved preauthorization plans shall be included in the appropriate RCPs and ACPs. If the RRT representatives from EPA and the states with jurisdiction over the waters of the area to which a preauthorization plan applies and the DOC and DOI natural resource trustees approve in advance the use of certain products under specified circumstances as described in the preauthorization plan, the OSC may authorize the use of the products without obtaining the specific concurrences described in paragraphs (b) and (c) of this section.~~

(1) RRTs, and Area Committees, **Indian Tribes, and federally-recognized CACs** shall address, as part of their planning activities, the desirability of using ~~appropriate dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents~~ **chemical agents** listed on the Product Schedule, and the desirability of using ~~appropriate burning agents~~ listed on the Product Schedule. RCPs and ACPs shall include applicable preauthorization plans and **emergency stop use plans during response operations and** address the specific contexts in which such products should and should not be used **or should be removed altogether from the NCP Product Schedule, as described in §300.925.**

(i) In meeting the provisions of this section, preauthorization plans may shall address factors such as:

- (A) the potential sources and types of oil that might be spilled;
- (B) the risk of increasing threat or creating a threat to human safety and health; the risk of making the situation worse by sinking or spreading the oil into the environment; the risk of impeding or impairing containment and recovery of oil;
- (C) the range of physical conditions, including seasonal variability, necessary to meet the required minimum acceptable ~~toxicity and efficacy~~ performance criterion **described in §§ 300.915 to 300.917;**
- (D) the existence and location of human populations, human habitations, critical public resources, and culturally-sensitive resources that might be impacted by spilled oil, chemical agents or product, or oil-product combinations;
- (E) the existence and location of environmentally-sensitive resources that might be impacted by spilled oil, chemical agents or product, or oil-product combinations;
- (F) the threshold criteria, especially community acceptance; public notification requirements;

(G) available product and storage locations;

(H) available equipment including PPE (such as HAZWOPER gear and respirators) a worst-case scenario, equipment storage locations, and adequately trained operators; and

(I) the available plans and means to monitor product application and effectiveness, worker safety and health programs, and public health and welfare, consistent with §§ 300.150 and 300.152 and the Human Safety and Health Plan in the ACPs.

(ii) As part of the preauthorization plans **and emergency stop use plans**, RRTs may require the performance of supplementary ~~toxicity and effectiveness~~ testing of products, in addition to the test methods specified in **§§ 300.915 to 300.917** and described in appendix C to part 300, due to existing site- or area-specific concerns.

(iii) In meeting the provisions of this section, protocols shall be developed for expeditiously stopping product use during response operations if:

(A) there is sufficient evidence to suggest that product use is or is likely to pose a substantial threat to worker safety or health, public safety or health, public welfare, or the environment, as described in §§ 300.150 and 300.152 and the ACP; or

(B) the product meets any of the criteria to de-list or remove products from the NCP Product Schedule, as described in §300.925(1) through (9).

(2) The RRT representatives from EPA, **OSHA, and HHS**, the states with jurisdiction over the waters of the area to which ~~a preauthorization or plan~~ **a RCP or ACP** applies, ~~and~~ the DOC and DOI natural resource trustees, and the Indian Tribes of the region shall review and either approve, disapprove, or approve with modification the preauthorization plans **and emergency stop use plans** developed by Area Committees **and federally-recognized CACs**. Approved preauthorization **and emergency stop use plans** shall be included in the RCPs and ACPs, ~~as appropriate~~.

(3) If the RRT representatives from EPA, OSHA, and HHS, the states with jurisdiction over the waters of the area to which ~~a preauthorization or plan~~ **a RCP or ACP** applies, ~~and~~ the DOC and DOI natural resource trustees, and the Indian Tribes of the region:

(i) approve in advance the use of certain products under specified circumstances as described in the preauthorization plan, the OSC may authorize the use of the such products without obtaining the specific concurrences described in paragraphs (b) and (c) of this section;

(ii) disapprove in advance the use of certain products under specified circumstances as described in the preauthorization plan, the OSC may not authorize the use of the such products; and

(iii) approve in advance an emergency stop use plan and if any of the conditions of that plan are met or the threshold criteria are triggered during response operations, the OSC, the EPA on-scene NRT or RRT representative if other than the OSC, or the OSHA or HHS on-scene Permanent Co-Chair to the NRT or RRT may authorize that product use is stopped without obtaining the specific concurrences described in paragraphs (b) and (c) of this section.

~~(b) For spill situations that are not addressed by the preauthorization plans developed pursuant to paragraph (a) of this section, the OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents on the oil discharge, provided that the products are listed on the NCP Product Schedule. For spill situations that are not addressed by the preauthorization plans and emergency stop use plans developed pursuant to paragraph (a) of this section, the OSC, with the concurrence of the EPA, OSHA, and HHS representatives to the RRT, the DOC and DOI natural resource trustees, Indian Tribes, federally-recognized CACs, Area Committees, and RRT representatives from the states with jurisdiction over the waters of the area to which a RCP or ACP applies, may authorize the use of **chemical agents** on the oil discharge, provided that:~~

- ~~(1) the products are listed on the NCP Product Schedule at the time of the discharge;~~
- ~~(2) the product does not meet any of the criteria to de-list or remove products from the NCP Product Schedule, as described in §300.925(1) through (9); and~~
- ~~(3) an emergency stop use plan is simultaneously approved and authorized by these same entities.~~

~~(c) The OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of burning agents on a case-by-case basis. The OSC, with the concurrence of the EPA, OSHA, and HHS representatives to the RRT, the DOC and DOI natural resource trustees, Indian Tribes, federally-recognized CACs, Area Committees, and RRT representatives from the states with jurisdiction over the waters of the area to which a preauthorization plan applies, may authorize the use of burning agents on a case-by-case basis, provided that:~~

- ~~(1) the products are listed on the NCP Product Schedule at the time of the discharge;~~
- ~~(2) product use is consistent with threshold criteria;~~
- ~~(3) the product does not meet any of the criteria to de-list or remove products from the NCP Product Schedule, as described in §300.925(1) through (9); and~~
- ~~(4) an emergency stop use plan is simultaneously approved and authorized by these same entities.~~

~~(d) The OSC may authorize the use of any dispersant, surface washing agent, surface collecting agent, other chemical agent, burning agent, bioremediation agent, or miscellaneous oil spill control agent, including products not listed on the NCP Product Schedule, without obtaining the concurrence of the EPA representative to the RRT and, as appropriate, the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge, when, in the judgment of the OSC, the use of the product is necessary to prevent or substantially reduce a hazard to human life. Whenever the OSC authorizes the use of a product pursuant to this~~

~~paragraph, the OSC is to inform the EPA RRT representative and, as appropriate, the RRT representatives from the affected states and, when practicable, the DOC/DOI natural resources trustees of the use of a product, including products not on the Schedule, as soon as possible. Once the threat to human life has subsided, the continued use of a product shall be in accordance with paragraphs (a), (b), and (c) of this section. Notwithstanding 33 USC 1321(c)(3)(B), under no circumstances may the OSC act with or without the concurrence of the EPA, OSHA, and HHS representatives to the RRT, the DOC and DOI natural resource trustees, Indian Tribes, federally-recognized CACs, Area Committees, and RRT representatives from the states with jurisdiction over the navigable waters or environment threatened by the release or discharge, to authorize use of chemical agents or burning agents that are not listed on NCP Product Schedule.~~

(e) In all circumstances pursuant to paragraphs (a) through (d) of this section, product use during oil spill response must be contingent upon a demonstration that the range of *in-situ* physical conditions is optimal to meet the minimum acceptable performance criterion.

(f) In all circumstances pursuant to paragraphs (a) through (e) of this section, the EPA and U.S. Coast Guard must consult with the National Marine Fisheries Service and U.S. Fish and Wildlife Service regarding any product use or activities that might affect endangered species, as required by the Endangered Species Act Section 7, ***prior to product use or commencing the activities.***

(g) Sinking agents shall not be authorized for application to oil discharges.

**REPLACED IN ENTIRETY BY SECTIONS §300.915 to §300.917**

**§300.915 General prohibitions.**

For the purposes of the NCP, the following prohibitions apply. Potential products that meet any of the following criteria may not be listed on the NCP Product Schedule.

(a) Ingredients.

(1) Products containing industrial solvents for oil and grease such as petroleum distillates, known or suspected human health hazards, proprietary ingredients, or any undisclosed ingredients.

(2) Product containing ingredients that are trade secrets or confidential business information.

(b) Warnings. Products that list on their MSDS or SDS warnings of potential health impacts or warnings against accidental release such as “Do not contaminate surface water,” or “Keep product out of sewers and watercourses by diking or impounding”; cleanup instructions for soaking up product with absorbent material or by diking, impounding, or otherwise containing spilled material for proper disposal; or other similar precautions that indicate potential harm to humans or the environment.

(c) Regulations. Products that are regulated under, or include ingredients that are regulated under, or that have been exempted from, the following federal, state and international laws:

(1) OSHA Hazard Communication Rule, 29 CFR 1910.1200;

- (2) CERCLA/Superfund, 40 CFR 117, 302;
- (3) SARA/Superfund Amendments And Reauthorization Act of 1986 (Title III):
  - (i) Section 302 – Extremely Hazardous Substances (40 CFR 355);
  - (ii) Sections 311 and 312 – Material Safety Data Sheet Requirements (40 CFR 370);
  - (iii) Section 313 – List Of Toxic Chemicals (40 CFR 372);
- (4) Toxic Substances Control Act (TSCA);
- (5) Federal Water Pollution Control Act, Clean Water Act, 40 CFR 401.15 / Formerly Sec. 307, 40 CFR 116.4 / Formerly Sec. 311;
- (6) Clean Air Act, Sec. 112 (40 CFR 61, Hazardous Air Pollutants), Sec. 602 (40 CFR 82, Class I And II Ozone Depleting Substances);
- (7) California Proposition 65;
- (8) State Right-To-Know Laws;
- (9) Canada:
  - (i) Workplace Hazardous Materials Information System (WHMIS) – Controlled Products Regulations (CPR);
  - (ii) WHMIS Classification: D2B – Materials Causing Other Toxic Effects – Toxic Material;
  - (iii) Canadian Environmental Protection Act (CEPA): Domestic Substances List (DSL);
- (10) Australia: The National Industrial Chemicals Notification and Assessment Scheme (NICNAS);
- (11) China: The Chemical Control Law and the Inventory of Existing Chemical Substances China (IECSC);
- (12) Europe: The EINECS Or ELINCS Inventories;
- (13) Japan: Law Regulating the Manufacture and Importation of Chemical Substances or Listed on the Ministry of International Trade and Industry List (MITI);
- (14) Korea: Toxic Chemical Control Law (TCCL) or the Existing Chemicals List (ECL); and
- (15) Philippines: The Republic Act 6969 (RA 6969) or the Philippines Inventory of Chemicals and Chemical Substances (PICCS).

**§300.916 General data requirements.**

(a) Data description. The following data description requirements apply to any product listed on the NCP Product Schedule. Exceptions for natural sorbents are described in §300.917(h).

- (1) Name, brand, or trademark, if any, under which the product is sold.
- (2) Name, address, and telephone number of the manufacturer, importer, or vendor.
- (3) Name, address, and telephone number of primary distributors or sales outlets.
- (4) A current Material Safety Data Sheet (MSDS) or Safety Data Sheet (SDS). Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures, to include optimum ranges as well as temperatures that will cause phase separations, chemical changes, or other alterations to the effectiveness of the product.
- (5) Shelf life.

(6) Optimal recommended application procedures, concentrations, and conditions to achieve minimum required efficacy standard, depending upon water salinity, water temperature, types and ages of the oil tested, and any other application restrictions necessary to meet the minimum acceptable performance criterion.

(b) Testing. The following general testing conditions or standards apply to any product listed on the NCP Product Schedule. Exceptions for natural sorbents are described in §300.917(h).

(1) Conditions.

(i) Products must be tested, at a minimum, under realistic field scenarios, using a range of oils commonly found in areas where the product may be used.

(ii) Testing must be conducted on individual oils.

(iii) Test results for individual oils must not be averaged with other test results or otherwise manipulated to achieve minimum performance criteria.

(iv) Manufacturers shall submit test results and supporting data, along with a certification signed by responsible corporate officials of the manufacturer and laboratory stating that the test was conducted on a representative product sample, the testing was conducted using generally accepted laboratory practices, and they believe the results to be accurate.

(2) Sinking tests. Use the Swirling Flask test methods described in appendix C to part 300, as modified by the requirements in paragraph (6) of this section. Manufacturers shall submit test results and supporting data, along with a certification signed by responsible corporate officials of the manufacturer and laboratory stating that the test was conducted on a representative product sample, the testing was conducted using generally accepted laboratory practices, and they believe the results to be accurate. A product must attain a sinking value of 10 percent  $\pm$  5 percent *or less* to be listed on the NCP Product Schedule. Manufacturers are required to provide data on product performance using the Swirling Flask test under **Realistic Field Scenario test methods** described in appendix C to part 300.

(3) Effectiveness. Use the effectiveness test methods described in appendix C to part 300. A product must attain an effectiveness value of 80 percent  $\pm$  5 percent *or more*, based on the ability of the product to enhance contain or remove oil from the environment, to be listed on the NCP Product Schedule.

(4) Toxicity testing. Toxicity testing must convey information about a product's ingredients, potential toxic effects, and criteria for safe use, including quantities that can be used safely under realistic field scenarios using a range of oils commonly found in the areas where the product may be used. At a minimum, toxicity protocol will test toxicity of products:

(i) to the most sensitive life stages (young life forms) of ecologically or economically important species ("species of concern") known to be sensitive to the substances being tested;

(ii) for food web interactions involving species of concern;

(iii) for short- or long-term ecological effects of oil and oil-product mixtures, including effects on beneficial, naturally-occurring, oil-eating bacteria;

(iv) for mutagenicity using current methods that evaluate all standard measures including, but not limited to DNA adduct formation, sister chromatid exchanges (SCE), and epigenetic genotoxicity;

(v) for any ingredients, breakdown, or interaction products that are biologically active at concentrations or for exposure levels that may occur under all reasonable scenarios, including multimedia contamination, anticipated misuse or accidents, or concurrent exposures to other chemicals with the same target organs;

(vi) for any biological impacts resulting from lifetime or near lifetime exposure periods, with comprehensive evaluation of impacts on all systems using clinical chemistry, hematology, and other standard measures of function and toxicity at the cellular, organ, organism, and population levels; and

(vii) on a range of oils, to be listed appendix C to part 300 and covered by the NCP plan.

(c) For products that meet the minimum standards for the sinking tests and efficacy tests, the following general requirements may also apply to certain products for listing on the NCP Product Schedule as described in §§ 300.915 to 300.917.

(1) Data Requirement Specifications. The following data requirements incorporate by reference standards from the 1991 or 1992 Annual Books of ASTM Standards. American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(i) Flash Point—Select appropriate method from the following:

(A) ASTM—D 56–87, “Standard Test Method for Flash Point by Tag Closed Tester;”

(B) ASTM—D 92–90, “Standard Test Method for Flash and Fire Points by Cleveland Open Cup;”

(C) ASTM—D 93–90, “Standard Test Methods for Flash Point by PenskyMartens Closed Tester;”

(D) ASTM—D 1310–86, “Standard Test Method for Flash Point and Fire Point of Liquids by Tag Open-Cup Apparatus;” or

(E) ASTM—D 3278–89, “Standard Test Methods for Flash Point of Liquids by Setaflash Closed-Cup Apparatus.”

(ii) Pour Point—Use ASTM—D 97–87, “Standard Test Method for Pour Point of Petroleum Oils.”

(iii) Viscosity—Use ASTM—D 445–88, “Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity).”

(iv) Specific Gravity—Use ASTM—D 1298–85(90), “Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.”

(v) pH—Use ASTM—D 1293–84(90), “Standard Test Methods for pH of Water.”

(2) Heavy Metals, Cyanide, and Chlorinated Hydrocarbons. Using standard test procedures, state the concentrations or upper limits of the following materials:

(i) Arsenic, cadmium, chromium, copper, lead, mercury, nickel, zinc, plus any other metals that may be reasonably expected to be in the sample. Atomic absorption methods should be used and the detailed analytical methods and sample preparation shall be fully described.

(ii) Cyanide. Standard calorimetric procedures should be used.

(iii) Chlorinated hydrocarbons. Gas chromatography should be used and the detailed analytical methods and sample preparation shall be fully described. At a minimum, the following test methods shall be used for chlorinated hydrocarbon analyses: EPA Method 601—Purgeable halocarbons (Standard Method 6230 B) and EPA Method 608—Organochlorine pesticides and PCBs (Standard Method 6630 C).

(3) Analytical Laboratory Requirements for Technical Product Data. The technical product data submission shall include the identity of the laboratory that performed the required tests, the qualifications of the laboratory staff, including professional biographical information for individuals responsible for any tests, and laboratory experience with similar tests. Laboratories performing toxicity tests for dispersant-product toxicity must demonstrate previous toxicity test experience in order for their results to be accepted. It is the responsibility of the submitter to select competent analytical laboratories based on the guidelines contained herein. EPA reserves the right to refuse to accept a submission of technical product data because of lack of qualification of the analytical laboratory, significant variance between submitted data and any laboratory confirmation performed by EPA, or other circumstances that would result in inadequate or inaccurate information on the dispersing-chemical agent.

#### **§300.917 Specific data requirements.**

(a) Dispersants.

- (1) General prohibitions in §300.915 apply.
- (2) General data requirements in §300.916 apply.
- (3) Product Effectiveness. Use dispersant effectiveness test methods described in appendix C to part 300.
- (4) Product Toxicity. For those dispersants that meet the criteria in (1) to (3) above, use the standard toxicity tests and methods described in appendix C to part 300.
- (5) Dispersing Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages will include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: surface active agents, solvents, and additives.

(b) Surface washing agents.

- (1) General prohibitions in §300.915 apply.
- (2) General data requirements in §300.916 apply.
- (3) Product Effectiveness. Use surface washing agent effectiveness test methods described in appendix C to part 300.
- (4) Product Toxicity. For those surface washing agents that meet the criteria in (1) to (3) above, use the standard toxicity tests and methods described in appendix C to part 300. Manufacturers shall submit test results and supporting data, along with a certification signed by responsible corporate officials of the manufacturer and laboratory stating that the test was conducted on a representative product sample, the testing was conducted using generally accepted laboratory practices, and they believe the results to be accurate.

(5) Surface Washing Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages will include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: surface active agents, solvents, and additives.

(c) Surface collecting agents.

(1) General prohibitions in §300.915 apply.

(2) General data requirements in §300.916 apply.

(3) Product Effectiveness. Use surface collecting agent effectiveness test methods described in appendix C to part 300.

(4) Product Toxicity. For those surface collecting agents that meet the criteria in (1) to (3) above, use the standard toxicity tests and methods described in appendix C to part 300.

(5) Surface Collecting Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages will include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: surface active agents, solvents, and additives.

(6) Test to Distinguish Between Surface Collecting Agents and Other Chemical Agents.

(i) Method Summary—Five milliliters of the chemical under test are mixed with 95 milliliters of distilled water and allowed to stand undisturbed for one hour. Then the volume of the upper phase is determined to the nearest one milliliter.

(ii) Apparatus.

(A) Mixing Cylinder: 100 milliliter subdivisions and fitted with a glass stopper.

(B) Pipettes: Volumetric pipette, 5.0 milliliter.

(C) Timers.

(iii) Procedure—Add 95 milliliters of distilled water at 22 °C, plus or minus 3 °C, to a 100 milliliter mixing cylinder. To the surface of the water in the mixing cylinder, add 5.0 milliliters of the chemical under test. Insert the stopper and invert the cylinder five times in ten seconds. Set upright for one hour at 22 °C, plus or minus 3 °C, and then measure the chemical layer at the surface of the water. If the major portion of the chemical added (**90** percent) is at the water surface as a separate and easily distinguished layer, the product is a surface collecting agent **and not a surface washing agent or a sinking agent.**

(d) Bioremediation agents.

(1) General prohibitions in §300.915 apply.

(2) General data requirements in §300.916 apply.

(3) Product Effectiveness. Use bioremediation agent effectiveness test methods described in appendix C to part 300.

(4) Product Toxicity. For those bioremediation agents that meet the criteria in (1) to (3) above, use the standard toxicity tests and methods described in appendix C to part 300.

- (5) Biological additives.
- (i) For microbiological cultures, furnish the following information:
- (A) Listing of each component of the total formulation, other than microorganisms, by chemical name and percentage by weight.
- (B) Listing of all microorganisms by species.
- (C) Percentage of each species in the composition of the additive.
- (D) Optimum pH, temperature, and salinity ranges for use of the additive, and maximum and minimum pH, temperature, and salinity levels above or below which the effectiveness of the additive is reduced to half its optimum capacity.
- (E) Special nutrient requirements, if any.
- (F) Separate listing of the following, and test methods for such determinations: *Salmonella*, fecal *coli* form, *Shigella*, *Staphylococcus coagulase*
- (ii) For enzyme additives, furnish the following information:
- (A) Listing of each component of the total formulation, other than enzymes, by chemical name and percentage by weight.
- (B) Enzyme name(s).
- (C) International Union of Biochemistry (I.U.B.) number(s).
- (D) Source of the enzyme.
- (E) Units.
- (F) Specific Activity.
- (G) Optimum pH, temperature, and salinity ranges for use of the additive, and maximum and minimum pH, temperature, and salinity levels above or below which the effectiveness of the additive is reduced to half its optimum capacity.
- (H) Enzyme shelf life.
- (I) Enzyme optimum storage conditions.
- (6) For nutrient additives, furnish the following information:
- (i) Listing of each component of the total formulation by chemical name and percentage by weight.
- (ii) Nutrient additive optimum storage conditions.
- (e) Burning agents.
- (1) General prohibitions in §300.915 apply.
- (2) General data requirements in §300.916 apply.
- (3) Product Effectiveness. Use surface washing agent effectiveness test methods described in appendix C to part 300.
- (4) Product Toxicity. For those burning agents that meet the criteria in (1) to (3) above, use the standard toxicity tests and methods described in appendix C to part 300.
- (5) Burning Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages will include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: surface active agents, solvents, and additives.
- (f) Miscellaneous Oil Spill Control Agents.
- (1) General prohibitions in §300.915 apply.

- (2) General data requirements in §300.916 apply.
  - (3) Product Effectiveness. Use surface washing agent effectiveness test methods described in appendix C to part 300.
  - (4) Product Toxicity. For those miscellaneous oil spill control agents that meet the criteria in (1) to (3) above, use the standard toxicity tests and methods described in appendix C to part 300.
  - (5) Miscellaneous Oil Spill Control Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages will include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: surface active agents, solvents, and additives.
  - (6) For any miscellaneous oil spill control agent that contains microbiological cultures, enzyme additives, or nutrient additives, furnish the information specified in paragraphs (d)(5) and (d)(6) of this section, as appropriate.
- (g) Sorbents. EPA requires the following technical product data submissions for sorbents to be listed on the NCP Product Schedule.
- (1) Synthetic sorbents. Synthetic sorbent material may consist of, but is not limited to, the following materials: Polypropylene, Polyethylene, Polyurethane, and Polyester.
    - (i) General prohibitions in §300.915 apply.
    - (ii) General data requirements in §300.916 apply.
    - (iii) Product Effectiveness. Use synthetic sorbent effectiveness test methods described in appendix C to part 300.
    - (iv) Product Toxicity. For those synthetic sorbents that meet the criteria in (1) to (3) above, use the standard toxicity tests and methods described in appendix C to part 300.
  - (2) Mineral compounds. Mineral compounds may consist of, but is not limited to, volcanic ash or perlite, and vermiculite or zeolite.
    - (i) General data requirements in §300.916 apply.
    - (ii) Product Effectiveness. Use synthetic sorbent effectiveness test methods described in appendix C to part 300.
    - (iii) Product Toxicity. For those mineral sorbents that meet the criteria in (1) to (3) above, use the standard toxicity tests and methods described in appendix C to part 300.
  - (3) Organic sorbents. Natural sorbent material may consist of, but is not limited to, organic products such as peat moss or straw, cellulose fibers or cork, corn cobs, and chicken, duck, or other bird feathers.
    - (i) General data requirements in §300.916(b)(2) and (3) apply.
    - (ii) Product Toxicity. Organic sorbents that meet the criteria in (1) to (3) above are exempted from the standard toxicity tests and methods described in appendix C to part 300.
  - (4) Other sorbents. Sorbents consisting of materials other than those listed in paragraph (g)(1) to (3) of this section.
    - (i) General prohibitions in §300.915 apply.
    - (ii) General data requirements in §300.916 apply.

(iii) Product Effectiveness. Use synthetic sorbent effectiveness test methods described in appendix C to part 300.

(iv) Product Toxicity. For those sorbents that meet the criteria in (1) to (3) above, use the standard toxicity tests and methods described in appendix C to part 300.

~~(g) (2) EPA does not require technical product data submissions for sorbents and does not include sorbents on the NCP Product Schedule.~~

~~(3) Manufacturers that produce sorbent materials that consist of materials other than those listed in paragraph (g)(1) of this section shall submit to EPA the technical product data specified for miscellaneous oil spill shall submit to EPA the technical product data specified for miscellaneous oil spill control agents in paragraph (f) of this section and EPA will consider listing these products on the NCP Product Schedule under the miscellaneous oil spill control agent category. EPA will inform the submitter in writing, within 60 days of the receipt of technical product data, of its decision on adding the product to the Schedule.~~

~~(5)-(4) Certification.~~ OSCs may request a written certification from manufacturers that produce sorbent materials that consist solely of the materials listed in paragraphs (g)(1) **to (g)(3)** of this section prior to making a decision on the use of a particular sorbent material. The certification at a minimum shall state that the sorbent consists solely of the materials listed in §300.917(g)(1) **to (g)(3)** of the NCP. The following statement, when completed, dated, and signed by a sorbent manufacturer, is sufficient to meet the written certification requirement:

[SORBENT NAME] is a sorbent material and consists solely of the materials listed in §300.917(g)(1) **to (g)(3)** of the NCP.

(h) Mixed products. Manufacturers of products that consist of materials that meet the definitions of two or more of the product categories contained on the NCP Product Schedule shall submit to EPA the technical product data specified in this section for each of those product categories. After review of the submitted technical product data, and the performance of required **sinking**, dispersant effectiveness, and toxicity tests, if appropriate, EPA will make a determination on whether and under which category the mixed product should be listed on the Schedule.

### **§300.920 Addition of products to Schedule.**

(a) (1) To add a **product dispersant** to the NCP Product Schedule, submit the technical product data specified in §§ 300.915 to 300.917 to the Emergency Response Division (5202-G), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. ~~A dispersant must attain an effectiveness value of 45 percent or greater in order to be added to the Schedule.~~

(2) EPA reserves the right to request further documentation of the manufacturers' test results. EPA also reserves the right to verify test results and consider the results of EPA's verification testing in determining whether the **product dispersant** meets listing criteria. EPA will, within 60 days of receiving a complete application as specified in §§ 300.915 to 300.917 of this part, notify the manufacturer of its decision to list the product on the Schedule, or request additional information and/or

a sample of the product in order to review and/or conduct validation sampling. If EPA requests additional information and/or a product sample, within 60 days of receiving such additional information or sample, EPA will then notify the manufacturer in writing of its decision to list or not list the product.

(3) Request for review of decision.

(i) A manufacturer whose product was determined to be ineligible for listing on the NCP Product Schedule may request EPA's Administrator to review the determination. The request must be made in writing within 30 days of receiving notification of EPA's decision to not list the ~~product dispersant~~ on the Schedule. The request shall contain a clear and concise statement with supporting facts and technical analysis demonstrating that EPA's decision was incorrect.

(ii) The Administrator or his designee may request additional information from the manufacturer, or from any other person, and may provide for a conference between EPA and the manufacturer, if appropriate. The Administrator or his designee shall render a decision within 60 days of receiving the request, or within 60 days of receiving requested additional information, if appropriate, and shall notify the manufacturer of his decision in writing.

~~(b) Surface washing agents, surface collecting agents, bioremediation agents, and miscellaneous oil spill control agents.~~

~~(1) To add a surface washing agent, surface collecting agent, bioremediation agent, or miscellaneous oil spill control agent to the NCP Product Schedule, the technical product data specified in §300.915 must be submitted to the Emergency Response Division (5202-G), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. If EPA determines that the required data were submitted, EPA will add the product to the Schedule.~~

~~(2) EPA will inform the submitter in writing, within 60 days of the receipt of technical product data, of its decision on adding the product to the Schedule.~~

~~(be) The submitter may assert that certain information in the technical product data submissions, including technical product data submissions for sorbents pursuant to §300.917(g)(43), is confidential business information. For the purposes of the NCP, such claims will be grounds for the EPA to notify the manufacturer in writing of its decision to not list the product consistent with §300.917(a). EPA will handle such claims pursuant to the provisions in 40 CFR part 2, subpart B. Such information must be submitted separately from non-confidential information, clearly identified, and clearly marked "Confidential Business Information." If the submitter fails to make such a claim at the time of submittal, EPA may make the information available to the public without further notice.~~

~~(cd) The submitter must notify EPA of any changes in the composition, formulation, or application of the dispersant, surface washing agent, surface collecting agent, bioremediation agent, or miscellaneous oil spill control **any chemical agent or sorbent listed on the NCP Product Schedule.** On the basis of this data, EPA shall may require retesting of the product if the change is likely to affect the effectiveness or toxicity of the product.~~

(d) Changes to the Product Schedule.

(i) EPA must notify the submitter of any changes to the Schedule that require the submitter to retest the product within 30 days of such changes. The submitter has 60 days upon receipt of notification to submit to EPA the technical data information as specified in §§ 300.915 to 300.917.

(ii) In cases where EPA receives updated technical data information for products listed prior to revisions to the Schedule, EPA has 60 days to review the information and make a decision to relist or not relist the product on the Schedule, as described under paragraph (a) of this section.

(iii) In cases where EPA has not received updated technical data information for products listed prior to revisions to the Schedule, EPA will immediately remove the product from the Schedule and inform the manufacturer in writing of this action.

(e) The listing of a product on the NCP Product Schedule does not constitute approval of the product. To avoid possible misinterpretation or misrepresentation, any label, advertisement, or technical literature that refers to the placement of the product on the NCP Product Schedule must either reproduce in its entirety EPA's written statement that it will add the product to the NCP Product Schedule under §300.920(a)(2) ~~or (b)(2)~~, or include the disclaimer shown below. If the disclaimer is used, it must be conspicuous and must be fully reproduced. Failure to comply with these restrictions or any other improper attempt to demonstrate the approval of the product by any NRT or other U.S. Government agency shall constitute grounds for removing the product from the NCP Product Schedule.

DISCLAIMER. [PRODUCT NAME] is on the U.S. Environmental Protection Agency's NCP Product Schedule. This listing does NOT mean that EPA approves, recommends, licenses, certifies, or authorizes the use of [PRODUCT NAME] on an oil discharge. This listing means only that data have been submitted to EPA as required by subpart J of the National Contingency Plan, §§ 300.915 to 300.917.

### **§300.925 Removal of products from Schedule**

(a) Any person seeking to amend the NCP Product Schedule to delist (remove) currently listed products may petition for an amendment to the NCP Product Schedule.

(b) To be successful, the petitioner must demonstrate, to the satisfaction of the Administrator, one or more of the following:

(1) The product physically sinks oil or acts as a sinking agent.

(2) The product impairs the ability to contain and remove oil from the environment.

(3) The product contains chemicals that are known human health hazards [as defined in *29 CFR §19.1200(c)*], or known to cause an adverse human health effect. The term "adverse human health effect" shall include, but not be limited to, any effect that causes a physical manifestation of harm to the human body.

(4) Any of the ingredients in the product are proprietary or otherwise have not been released to the public for inspection and review.

(5) The product, as a whole, is more harmful to natural wildlife, as demonstrated in toxicity tests with young life forms of ecologically and economically important species relevant to the area where the product will be used, than it is useful as a product. The absence of such testing, independently verified by the Administrator,

is sufficient grounds to delist the product. Of specific relevance is the existence of comparable products that exhibit a less harmful effect on the natural wildlife.

(6) The product or its ingredients have mutagenic capabilities or have not been tested for mutagenicity using current methods that evaluate all standard measures including, but not limited to DNA adduct formation, sister chromatid exchanges (SCE), and epigenetic genotoxicity.

(7) The product contains any ingredients, breakdown, or interaction products that are biologically active at concentrations or for exposure levels that may occur under ALL reasonable scenarios, including multimedia contamination, anticipated misuse or accidents, or concurrent exposures to other chemicals with the same target organs.

(8) The product and/or all of its ingredients have not been tested for biological impacts resulting from lifetime or near lifetime exposure periods, with comprehensive evaluation of impacts on all systems using clinical chemistry, hematology, and other standard measures of function and toxicity at the cellular, organ, organism, and population levels.

(9) The study results are not made available to the public in their entirety, including animal-specific results, laboratory notes, Quality Assurance/Quality Control reports and other standard scientific study data.

Each petition must be submitted to the Administrator by certified mail and must include:

- (1) the petitioner's name and address;
- (2) a statement of the Petitioner's interest in the proposed amendment; and
- (3) a statement of the need and justification for the amendment, including any supporting tests, studies, or other information.

(c) The Administrator will make a tentative decision to grant, deny, or review for no more than 14 days a petition and will publish notice of such tentative decision in the Federal Register for written public comment within 10 days of receiving the petition. The public comment period will be open for 30 days.

(d) Upon written request by any interested person, the Administrator may, at his discretion, hold an informal public hearing to consider oral comments on the tentative decision within 30 days of receiving the petition. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views.

(e) After evaluating all public comments the Administrator will make a final decision publishing in the Federal Register a regulatory amendment or a denial of the petition within 60 days of receiving the initial petition.

(f) Notwithstanding the above, the Administrator has the power to issue an emergency decision to remove any product that:

- (1) physically sinks oil or otherwise acts as a sinking agent;
- (2) impairs the ability to contain and remove oil from the environment;
- (3) does not perform in the field as anticipated under controlled laboratory conditions, ***including under realistic field scenarios and with appropriate test species known to be sensitive to the substances being tested;***

(4) does not have the toxicity tests described in paragraph (b)(5) through (8) of this section;

(5) contains a human health hazard and/or any priority ingredients;

(6) is found beyond reasonable doubt to create, or give the perception of creating, unacceptable health risks for workers, the public, or the environment; or

(7) was discontinued by the manufacturer but is still listed on the NCP Product Schedule.