



**MEMORANDUM OF AGREEMENT FOR
EMERGENCY RESPONSES TO OIL AND HAZARDOUS SUBSTANCE RELEASES**

BETWEEN

**THE WISCONSIN DEPARTMENT OF MILITARY AFFAIRS, DIVISION OF
EMERGENCY MANAGEMENT
THE STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES**

AND

**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION V
THE UNITED STATES COAST GUARD, NINTH DISTRICT**

PARTIES

This Memorandum of Agreement is between the Wisconsin Department of Military Affairs, Division of Emergency Management, the Wisconsin Department of Natural Resources (State Agencies) and the U. S. Environmental Protection Agency (USEPA) for the inland zone portion of Wisconsin as defined in the Regional Contingency Plan (RCP) and the U. S. Coast Guard (USCG) for the coastal zone portion of Wisconsin as defined in the RCP (Federal Agencies) (See Attachment).

This Memorandum of Agreement neither expands nor abridges the rights of any party, including potentially responsible parties, not signatory to this Agreement.

BACKGROUND

An effective response to any type of emergency requires coordinated, cooperative and unified efforts of all involved parties. A comprehensive approach to emergency response focusing on oil and hazardous substances has been established through federal legislation and regulation such as the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990 (OPA 90) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). Prior to the enactment of the federal legislation above-referenced, the State of Wisconsin enacted Emergency Management and Hazardous Substance Spills legislation (as codified in Chapter 166 and §292.11 of the Wisconsin

State Statutes respectively) which enhance and serve as companions to the federal legislation. These laws were established to protect public health and safety and to ensure the integrity of the environment by providing a mechanism for planning and conducting response actions.

PURPOSE

Responsibility for planning for an effective emergency response to a release rests with representatives from the affected local communities, industries and the State and Federal Agencies. For the vast majority of cases, the local jurisdiction's Incident Commander will have sufficient expertise and resources to mount a timely and effective emergency response. However, for larger or more complicated emergency responses involving multiple jurisdictions, two or more states, or significant national or international efforts, a Unified Command will be more effective. The NCP recognizes the need for a cooperative effort which can be enhanced through Unified Command. Within Unified Command, the local jurisdiction affected by an oil or hazardous substance release works together with State and Federal agencies, as appropriate, and in the event of a release, the responsible parties. The affirmation of that local authority, alternatively known as "Home Rule", is formally delegated to local units of government under Article XI §3 of the Wisconsin Constitution and in §§59.03, 59.04 and 62.04 of the Wisconsin Statutes. Recognition of this local authority and responsibility during an oil or hazardous substance spill is consistent with the intent of OPA 90, CERCLA and the NCP.

POINTS OF AGREEMENT

The State of Wisconsin considers the retention of authority by local jurisdictions in emergency responses to be integral to the principle of "Home Rule" as codified in Article XI §3 of the Wisconsin Constitution and in §§59.03, 59.04 and 62.04 of the Wisconsin Statutes. In order to respond more effectively, local, State and Federal agencies must work together within the concept of "Home Rule". This can be accomplished by defining the roles and responsibilities of all involved parties in the Area Contingency Plan, the State Contingency Plan and the Regional Contingency Plan. The following points clarify how local, State and Federal agencies will cooperate and coordinate in the State of Wisconsin during an oil or hazardous substance release:

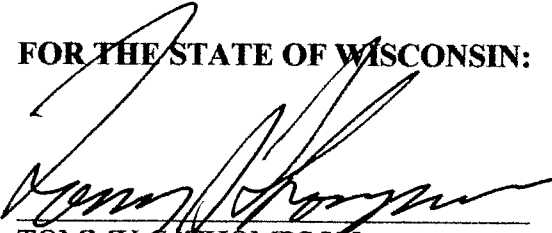
- Local units of government retain their respective authorities as delegated in Article XI §3 of the Wisconsin Constitution and in §§59.03, 59.04 and 62.04 of the Wisconsin Statutes.
- The State of Wisconsin retains its authority as provided in Chapter 166 and §292.11 of the Wisconsin Statutes.
- The Federal Agencies retain their authority and the ability to respond pursuant to the National Contingency Plan (NCP), CERCLA, CWA as amended by OPA 90, and the Constitution and laws of the United States.

- The local Incident Commander, who will normally be the first government representative on scene for a release, is expected to initiate public safety measures that are necessary to protect public health and welfare.
- Unified Command, when formed, shall include the local Incident Commander. The local Incident Commander, as delegated by the Chief Elected Official, will represent the authority of the local jurisdiction.
- The State and Federal Agencies will designate representatives to establish a Unified Command as outlined in the Area Contingency Plan and dependent upon the unique nature of the incident and emergency response expertise required.
- The local units of government, State and Federal Agencies will participate as members of the Unified Command during all stages of an emergency, from response to recovery, as provided in the Area Contingency Plan.
- All local, State and Federal Agencies and responsible parties, that are part of, or are reporting to, the Unified Command will retain their respective roles and responsibilities, and will function under the coordination of the Unified Command. Within the Unified Command, when State or Federal resources are required to effectively protect human health and the environment as indicated in the National Contingency Plan, overall coordination may shift from the local Incident Commander to a State or Federal On-Scene Coordinator. The Unified Command will, to the extent possible, form decisions by consensus among local units of government, State and Federal Agencies. It is acknowledged and agreed that neither the Federal, State or local authorities can direct each others resources without the approval from the jurisdiction who provided the resources.
- The Area Contingency Plan, the State Contingency Plan and the Regional Contingency Plan will reflect the intent of this Agreement.

Attachment: Appendix 1 to Region V Regional Contingency Plan

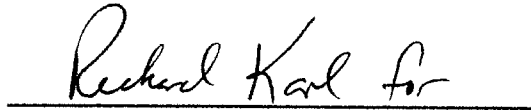
SIGNATURES

FOR THE STATE OF WISCONSIN:



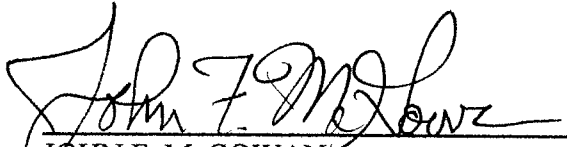
TOMMY G. THOMPSON
Governor
Date: October 7, 1998

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:



DAVID A. ULLRICH
Acting Regional Administrator
USEPA Region V
Date: 10-7-98

FOR THE U.S. COAST GUARD:



JOHN F. MCGOWAN
Rear Admiral, U.S. Coast Guard
Commander, Ninth Coast Guard District
Date: 10/7/98

APPENDIX 1: JURISDICTIONS IN REGION 5

1. REGIONAL AREAS

Region 5 has been divided into two operational areas, inland and coastal, which correspond to the areas in which U.S. EPA and USCG are responsible respectively for providing OSCs. The coastal operational area consists of the open waters of the Great Lakes, including Lake St. Clair, the interconnecting rivers, major bays, ports, and harbors of the Region 5 States; and the land surface, land substrata, ground water, and ambient air proximal to those waters. The inland operational area includes all other land territory of the six States of Region 5, including each State's inland lakes and rivers. Numerous Native American community reservations and treaty rights areas are also delineated within Region 5.

Two Coast Guard Districts share Federal Region 5. The Ninth Coast Guard District, headquartered in Cleveland, serves the Great Lakes drainage basin. The Eighth Coast Guard District, headquartered in New Orleans, serves the drainage basins of the upper Mississippi and the Ohio Rivers.

Within the Great Lakes coastal zone, the appropriate Captain of the Port (COTP) functions as the predesignated OSC for all oil and hazardous substance releases, subject to a DOT/U.S. EPA redelegation of certain CERCLA response authorities. U.S. EPA performs the following two categories of response actions within the coastal zone: 1) remedial actions for releases originating from facilities, and 2) all response actions for releases originating from hazardous waste management facilities.

The scope of the Eighth Coast Guard District response role is defined by a revised Memorandum of Understanding (MOU), between that District and U.S. EPA Region 5, signed by the Regional Administrator on April 12, 1993. The revised MOU assigned U.S. EPA as the predesignated OSC for the entire inland zone, including the inland river system within the Eighth Coast Guard District for responding to all discharges of oil and hazardous substances.

DOD or DOE provides OSCs for all response actions for releases of hazardous substances, pollutants, or contaminants which originate on any facility or vessel under the jurisdiction, custody, or control of DOD or DOE. In the case of a Federal agency other than U.S. EPA, USCG, DOD, or DOE, such agency shall provide OSCs for all removal actions necessitated by releases originating on any facility or vessel under its jurisdiction that are not emergencies.

U.S. EPA or USCG OSCs may be requested to provide technical assistance to the lead agency OSC who is responding to the release or threatened release. In the event of an emergency on Federal agency property, other than DOD or DOE, U.S. EPA or USCG retains response authority and U.S. EPA OSCs may respond and later initiate cost recovery actions against the potentially responsible party.

Definitions of the boundaries of OSC jurisdictions for Region 5 are provided in the following subsections. Where highways are used to delineate the boundary, the roadbed right-of-ways of the highway are included in the inland (U.S. EPA) zone.

2. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OSC BOUNDARIES

2.1. U.S. EPA REGION 3 OSC BOUNDARIES

U.S. EPA Region 3 will provide OSCs for investigating and responding to releases to the main stem of the Ohio River from the Ohio-Pennsylvania boundary, mile 40.1, to the Kentucky-West Virginia boundary, mile 317.2. All releases in the above-named stretch of the Ohio River emanating from sources in West Virginia will be handled by U.S. EPA Region 3 personnel; those from sources in Region 5 will be handled by personnel from Region 5.

If either RRT is activated, the Eighth USCG District would be involved along the entire stretch of the Ohio River.

2.2. U.S. EPA REGION 4 OSC BOUNDARIES

U.S. EPA Region 4 will provide OSCs for investigating and responding to releases of oil or hazardous materials to the main stem of the Ohio River from the Kentucky-West Virginia boundary, mile 317.2, to its junction with the Mississippi River, mile 981.2. Releases in the above-named stretch of the Ohio River emanating from shoreline sources in U.S. EPA Region 4 will be handled by personnel of Region 4; those spills from shoreline sources in Ohio, Indiana, and Illinois will be handled by personnel from Region 5. Region 4 will have the responsibility for ensuring notification of water users downstream of the location of the release, including coordination with ORSANCO, the USCG Eighth District, and COE when a release occurs on the south shoreline or in the main stream of the Ohio River; Region 5 has a like responsibility, including coordination with ORSANCO, the USCG Eighth District, and COE when a release occurs on the north shoreline of the river.

Either Region, when requested by the other, may assume the functional OSC role for a particular incident. The decision to accept this responsibility will rest with the Region being requested on an incident-specific basis. Boundary lines do not preclude mutual assistance between the two agencies.

2.3. U.S. EPA REGION 7 OSC BOUNDARIES

U.S. EPA Region 7 will provide OSCs for investigating and responding to releases to the main stem of the Upper Mississippi River (UMR) when either Iowa or Missouri is the principal first responding State. U.S. EPA Region 5 will have jurisdiction for such releases within the State of Minnesota and where Minnesota, Wisconsin, or Illinois is the first principal responding State. When releases to the UMR main stem will result in significant response by more than one State, or when there is uncertainty as to the responding States, Region 7 will provide OSCs for such releases occurring between Cairo, Illinois, and Keokuk, Iowa (miles 0.0 to 354.5), and Region 5 above that point.

For spills from shore facilities and non-waterborne sources, OSCs will be provided by the Region in which the source is located.

2.4. U.S. EPA REGION 8 OSC BOUNDARIES

U.S. EPA Region 5 will provide OSCs for investigating and responding to releases to the main stem of the Red River of the North from its origin in Lake Traverse near Browns Valley, Minnesota, to the Canadian border. All spills to the above-named stretch of the Red River emanating from sources in North Dakota and South Dakota will be handled by Region 8 personnel.

South of the Browns Valley area, the boundary between South Dakota and Minnesota involves the headwaters of the Minnesota River flowing southward. Region 5 Spill Response personnel will respond

to releases to the main stem of the Little Minnesota River and Big Stone Lake southward to Ortonville, Minnesota. All releases to the above-named headwaters of the Minnesota River emanating from sources in South Dakota will be handled by Region 8 personnel; releases from sources in Minnesota will be handled by Region 5 personnel.

U.S. EPA Region 8 will provide communications as necessary with the Canadian Province of Manitoba concerning all releases occurring in waters flowing into Canada, including those emanating from Region 5.

3. NINTH COAST GUARD DISTRICT OSC BOUNDARIES

Eight USCG units provide OSCs for releases occurring within the coastal zone, each serving a specific geographic area. These geographic areas are defined as: the international boundary with Canada, the boundaries between the units (described at 33 CFR 3.45), and the boundary between the inland zone and the coastal zone. In most locations, the boundary between inland and coastal zones follows the near shore areas adjoining the Great Lakes and the interconnecting rivers.

The following subsections detail, for each of the eight units, which tributaries fall within the coastal zone and where a geographic feature, such as a highway, serves as the boundary.

3.1. MARINE SAFETY OFFICE, CHICAGO, ILLINOIS

1. Lake Michigan: within limits of COTP Chicago.
2. North Point Marina (Winthrop Harbor, Illinois): Entire marina.
3. Waukegan Harbor: Entire harbor.
4. Wilmette Harbor: From the entrance to the sluice gate.
5. Montrose Harbor (Chicago, Illinois): Entire harbor.
6. Belmont Harbor (Chicago, Illinois): Entire harbor.
7. Diversey Harbor (Chicago, Illinois): Entire harbor.
8. Chicago River: The outer harbor, limited to the waters outside the Chicago Lock and retaining walls, including the waters inside the lock gates.
9. Burnham Park Harbor (Chicago, Illinois): Entire harbor.
10. 59th Street Harbor (Chicago, Illinois): Entire harbor.
11. Jackson Park Harbor (Chicago, Illinois): Entire harbor.
12. Calumet Harbor and River (Chicago, Illinois): From the mouth of the Calumet River south to the north side of O'Brien Lock and Dam, including the waters inside the lock gates. From "The Forks" west to the temporary dike at the south boundary of Lake Calumet.
13. Hammond Marina: Entire marina.
14. Indiana Harbor (East Chicago, Indiana): Upstream to Conrail Railroad Bridge.
15. Pastrick Marina (East Chicago, Indiana): Entire marina.
16. Buffington Harbor (Gary, Indiana): Entire harbor.
17. Gary Harbor (Gary, Indiana): Entire harbor.
18. Burns Harbor (Burns Harbor, Indiana): From the entrance to the south end of deep draft slip.
19. Michigan City Harbor: Entrance to Bascule Bridge.
20. Betsie Lake (Frankfort): Entire lake throughout up to and including the mouth of the Betsie River to Highway M-22 bridge.
21. Arcadia Lake: Entire lake.
22. Portage Lake: Entire lake.
23. Manistee Lake (Manistee): Entire lake throughout up to and including the mouth of the Manistee River to Highway M-55 bridge.
24. Pere Marquette Lake (Ludington): Entire lake throughout up to and including the mouth of the Pere Marquette River to Old U.S. 31 bridge.
25. Pentwater Lake: Entire lake.

26. White Lake: Entire lake.
27. Muskegon/Bear Lake (Muskegon, Michigan): Entire lake throughout up to and including the Muskegon River to the U.S. 31 bridges.
28. Mona Lake: Entire lake.
29. Spring Lake: Entire lake.
30. Grand River: From the mouth to the end of the dredged channel at Buoy #78 (in Ottawa County approximately 17 miles upstream).
31. Pigeon Lake: Entire lake up to the fixed bridge in the intake channel of the J.H. Campbell power plant and on the eastern end up to the fixed bridge of Lakeshore Avenue.
32. Lake Macatawa: Entire lake to the end of the dredged channel marked by buoys #25 and #26 (eastern end of the lake in Holland).
33. Kalamazoo Lake (Douglas/Saugatuck): Entire lake up to and including the Kalamazoo River to the CSX Railroad bridge, approximately 11 miles upstream.
34. Black River (South Haven): From the mouth to the U.S. 31 bridge, approximately 2.6 miles upstream.
35. St. Joseph River (St. Joseph): From the mouth to the Somerleyton bridge, approximately 6.6 miles upstream.
36. Paw Paw River (Benton Harbor): From the mouth to the CSX Railroad bridge, approximately 3.2 miles upstream.
37. Galien River: from the mouth to the Highway 12 bridge, approximately 2 miles upstream.

3.2. MARINE SAFETY OFFICE, CLEVELAND, OHIO

1. Ashtabula River (Ashtabula, Ohio): Upstream to East 5th Street.
2. Black River (Lorain, Ohio): Upstream to the turning basin at the National Tube Division of U.S. Steel (river mile 3.0).
3. Conneaut River (Conneaut, Ohio): Upstream to the Bessemer and Lake Erie Railroad Swing Bridge at the Pittsburg and Conneaut Dock Company (river mile 0.75).
4. Cuyahoga River (Cleveland, Ohio): Upstream to the mouth of Big Creek in the Metropolitan Parks (river mile 7.5).
5. Grand River (Fairport Harbor, Ohio): Upstream to the turning basin at Osborn Concrete and Tank Company.

In addition to the river miles mentioned above, the coastal/inland zone demarcation shall be defined by the boundary on the highway created by State Route 2 from Vermilion to North Perry and then U.S. Route 20 from North Perry to the Ohio/Pennsylvania border. The coastal zone being all waters and adjacent shoreline north of this boundary, any incident on the above-mentioned highways will be the responsibility of U.S. EPA but it should be noted that the COTP may be requested to respond as First Federal Official on scene until a U.S. EPA OSC can respond.

3.3. MARINE SAFETY OFFICE, DETROIT, MICHIGAN

1. Lake Huron: From Latitude 44-43' south and east to international boundary.
2. Saginaw Bay: The entire Saginaw Bay.
3. St. Clair River: East to international boundary.
4. Lake St. Clair: East to international boundary.
5. Detroit River: South to Detroit River Light and east to international boundary.
6. Au Gres River (Au Gres, Michigan): Upstream to U.S. 23 Bridge.
7. Au Sable River (Oscoda, Michigan): Upstream to Mill Street Bridge.
8. Bird Creek (Port Austin, Michigan): Upstream to Spring Street Bridge.
9. Belle River (Port Huron, Michigan): Upstream to M-29 Broadway Bridge.
10. Black River (Port Huron, Michigan): Upstream to and including Black River Canal.
11. Clinton River (Harrison Township, Michigan): Up to and including Clinton River Spillway.

12. Ecorse River (Ecorse, Michigan): Upstream to Jefferson Avenue Bridge.
13. Huron River (Rockwood, Michigan): Dixie Highway Bridge 1.8 miles above mouth of river.
14. Milk River (St. Clair Shores, Michigan): Up to Jefferson Avenue Bridge.
15. Pigeon River (Caseville, Michigan): Upstream to M-25 Bridge.
16. Pine River (St. Clair, Michigan): Upstream to CSX Railroad Bridge.
17. River Rouge (Saginaw and Bay City, Michigan): Upstream to .5 mile above Center Street Bridge in Saginaw.
18. Salt River (Chesterfield Township, Michigan): Upstream to Callens Road Bridge.
19. Sebawaing River (Sebawaing, Michigan): Upstream to M-25 Bridge.

3.4. MARINE SAFETY OFFICE, DULUTH, MINNESOTA

Within Duluth/Superior Harbor, COTP Duluth will assume the responsibility for providing FOSCs in Duluth/Superior Harbor to the mouths of all small tributary rivers and creeks entering into the harbor, plus the St. Louis River serviced by existing patrols and aids to navigation up to the Highway Bridge on Route 23 at Fond du Lac, Minnesota, and the waters of Lake Superior within COTP Duluth.

3.5. MARINE SAFETY OFFICE, MILWAUKEE, WISCONSIN

1. All waters of Lake Michigan within COTP Milwaukee's zone.
2. Pike Creek (Kenosha): To the Sixth Avenue Bridge.
3. Root River (Racine): To the Main Street Bridge.
4. Oak Creek (Milwaukee): To its mouth.
5. Kinnickinnic River (Milwaukee): To the South Kinnickinnic Avenue Bridge.
6. Menominee River (Milwaukee): To mile 2 (25th Street Bridge).
7. Milwaukee River (Milwaukee): To the North Humboldt Avenue Bridge.
8. Sauk Creek (Port Washington): To the Wisconsin Street Bridge.
9. Sheboygan River (Sheboygan): To the Pennsylvania Avenue Bridge.
10. Manitowac River (Manitowac): To the C&NW Railroad Bridge.
11. West Twin River (Two Rivers): To the 16th and Madison Streets Bridge.
12. East Twin River (Two Rivers): To the 22nd Street Bridge.
13. Kewaunee River (Kewaunee): To the Park Street Bridge.
14. Ahnapee River (Algoma): To the 2nd Street Bridge.
15. Fox River (Green Bay): To the State Route 172 Bridge.
16. East River (Green Bay): To the Monroe Avenue Bridge.
17. Oconto River (Oconto): To the turning basin.
18. Menominee River (Marinette, Wisconsin to Menominee, Michigan): To the Dunlap Avenue (Highway 41) Bridge.

3.6. MARINE SAFETY OFFICE, SAULT STE. MARIE, MICHIGAN

1. Lake Superior: The waters, bays, tributaries, and adjoining shoreline of Lake Superior within U.S. territory, eastward from the westernmost boundary of the Area of Operations (AOR) to a line between Point Iroquois running northeast to Gros Cap Reef Light on the International Boundary.
2. St. Mary's River: The waters, bays, tributaries, and adjoining shoreline of the St. Mary's River within U.S. territory, from a line between Point Iroquois and Gros Cap Reef Light southward to a line between Detour Reef Light and Crab Island Shoal Light, including the waters of Potagannissing Bay.
3. Lake Huron: The waters, bays, tributaries, and adjoining shoreline of Lake Huron within U.S. territory, northward from the southernmost boundary of the AOR, west to the Straits of Mackinaw Bridge.
4. Lake Michigan: The waters, bays, tributaries, and adjoining shoreline of Lake Michigan, eastward from the westernmost boundary of the AOR, to the Straits of Mackinaw Bridge.

3.7. MARINE SAFETY OFFICE, TOLEDO, OHIO

1. River Raisin (Monroe, Michigan): Upstream to the turning basin (river mile 1.5).
2. Maumee River (Toledo, Ohio): Upstream to the I-75 Bridge.
3. Portage River (Port Clinton, Ohio): Upstream to Highway 163.
4. Sandusky Bay (Sandusky, Ohio): Upstream to Highway 2.
5. Huron River (Huron, Ohio): Upstream to turning basin (mile .5).
6. Lake Erie: The open waters, bays, harbors, and mouths of tributaries within the COTP Toledo zone.

3.8. NINTH COAST GUARD DISTRICT RESPONSES IN THE INLAND ZONE

Ordinarily, the Ninth Coast Guard District will not provide the OSC for a release occurring in the inland zone. However, where a Marine Safety Officer responds in the inland zone to a marine casualty or other incident pursuant to USCG port safety and commercial vessel safety responsibilities, that officer will serve as the First Federal Official On Scene, pending arrival of the predesignated U.S. EPA OSC. In this capacity, that officer will manage any cleanup actions performed by the responsible party and, if necessary, will initiate a Federal removal.

The U.S. EPA Region 5 office may request that the Ninth Coast Guard District provide the OSC for a release in the inland zone, regardless of source, because of the particular circumstances of the incident.

4. EIGHTH COAST GUARD DISTRICT OSC BOUNDARIES

Agency responsibilities have been reassigned to more clearly reflect the inland and coastal zone delineation. The revised MOU assigns the U.S. EPA as the predesignated OSC for the entire inland zone, including the inland river system within the Eighth District. The previous agreement designating specified ports and harbors as portions of the Coastal Zone is no longer applicable.

The Eighth District will assist the predesignated U.S. EPA OSC where there is a discharge or release of oil or hazardous substances, or a threat of such a discharge or release, into or on navigable waters. Upon request by the U.S. EPA OSC, the USCG may act on behalf of U.S. EPA, assuming the functional role and responsibilities of the OSC. If the USCG is the first Federal official on-scene, the USCG will notify the U.S. EPA OSC and act as the OSC until such time as the U.S. EPA OSC arrives. If the incident involves a commercial vessel, a transfer operation, or a marine transportation related facility, the USCG will provide the OSC.