

MEMORANDUM OF AGREEMENT
BETWEEN
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 5
AND
UNITED STATES COAST GUARD
REGARDING RESPONSE BOUNDARIES FOR
OIL AND HAZARDOUS SUBSTANCES POLLUTION INCIDENTS AND
FEDERAL ON-SCENE COORDINATOR RESPONSIBILITIES

Section 1: PARTIES

The Parties to this Memorandum of Agreement (MOA) are the United States Environmental Protection Agency (EPA), Region 5 and the United States Coast Guard, Eighth District (“USCG D8”).

Section 2: PURPOSE AND AUTHORITIES

- A. The intent of this MOA is to delineate the Region 5 inland zone geographical boundaries establishing responsibility for the predesignation of Federal On-Scene Coordinators (FOSCs) for pollution response, pursuant to the Federal Water Pollution Control Act, as amended, also known as the Clean Water Act (CWA), 33 U.S.C. §§ 1251 – 1387; and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. § 300.120.
- B. This agreement is established under the provisions of 33 U.S.C. §§ 1251 – 1387, 14 U.S.C. § 93(a)(20), 14 U.S.C. § 141, 40 C.F.R. § 300.120, and EPA Delegation 1-11.

Section 3: DEFINITION

Except where otherwise specifically defined in the context of its use herein, or where specifically set forth below, terms used in this MOA shall have the meaning set forth in federal law. The definition supplied below is meant to enhance and supplement the understanding of those terms, as used in federal law, and is not meant to usurp or alter their meaning under federal law.

- **Commercial Vessels.** “Commercial vessels” are vessels in commercial service that conduct any type of trade or business involving the transportation of goods or individuals, except combatant vessels. This definition includes: tank vessels (ships and barges); freight vessels and inspected and uninspected barges; commercial fishing vessels; inspected passenger vessels; and uninspected towing vessels. This definition excludes recreational vessels, permanently moored structures, and cranes, generators, and temporary storage devices not an integral part of an uninspected barge, which, while they may appear to be vessels or part of the vessel are not inspected by the Coast Guard, e.g., an uninspected deck barge that experiences a ruptured hydraulic line from non integral crane would be an EPA-led response.

Section 4: ENTITIES WITHIN THE GEOGRAPHICAL ZONE

- A. The EPA Region 5 geographical zone includes the area that covers Illinois, Indiana, Minnesota, Ohio, and Wisconsin within U.S. Coast Guard Eighth District.
- B. The following USCG D8 commands fall within the geographical zone under this MOA:
 - 1. Sector Upper Mississippi River: The Sector Upper Mississippi River Captain of the Port (COTP) area of responsibility (AOR) is detailed within 33 C.F.R. § 3.40-40.
 - 2. Sector Ohio Valley: The Sector Ohio Valley Captain of the Port (COTP) area of responsibility (AOR) is detailed within 33 C.F.R. § 3.40-65.
 - 3. Marine Safety Unit (MSU) Pittsburgh: COTP MSU Pittsburgh is responsible for an area that covers Southwestern Pennsylvania and portions of Ohio and West Virginia. The AOR includes the following within EPA Region 5: Ohio River MM 40.5 to 112.0.

Section 5: INLAND ZONE BOUNDARY DESIGNATIONS

- A. EPA Region 5 designation:
 - 1. EPA Region 5 provides the predesignated FOSC for pollution response in the inland zone, as defined in the NCP, 40 C.F.R. § 300.5. All discharges or releases, or a substantial threat of such a discharge or release of oil, hazardous substances, pollutants or contaminants originating within the inland zone will be the responsibility of the EPA. Included are discharges and releases from unknown sources.
 - 2. The EPA FOSC is the predesignated FOSC for all areas or pollution incidents within Region 5 with exception of Section 5.B and the general response provisions delineated below. Responsibilities regarding inland waterways between EPA Regions (i.e., Ohio River and the Mississippi River) are delineated in separate Memorandums of Understanding (MOUs) among the EPA Regions.
- B. USCG D8 COTP FOSC Predesignation:
 - 1. The EPA Region 5 predesignates the relevant USCG D8 COTP as the FOSC in response to an incident in the inland zone when it:
 - (a) Involves either: (1) a commercial vessel, including a commercial vessel that has partially or completely sunk; (2) a commercial vessel transfer operation; or (3) it is within or originating from the USCG regulated portion of a facility; and

- (b) Results in a discharge or substantial threat of a discharge of oil or release or substantial threat of a release of a hazardous substance into or on the navigable waters of the United States or adjoining shorelines.
- 2. For the purposes of this MOA, the USCG regulated portion of a facility extends from the facility transfer system's connection with the vessel to the first valve inside the secondary containment surrounding tanks in the non-transportation-related portion of the facility or, in the absence of secondary containment, to the valve or manifold adjacent to the tanks comprising the non-transportation-related portion of the facility, unless another location has otherwise been agreed to by the COTP and the appropriate federal official.

Section 6: GENERAL RESPONSE PROVISIONS

- A. These provisions apply to all EPA FOSCs and USCG COTP/FOSCs serving EPA Region 5.
- B. The USCG and EPA Region 5 will assist each other consistent with agency responsibilities and authorities through the cognizant COTP and the inland zone predesignated EPA FOSC.
- C. These provisions do not preclude mutual assistance between the two agencies. In addition to 40 C.F.R. § 300.135(b), in this EPA Region, the EPA and the USCG will carry out agency and specific pollution response responsibilities under the NCP and the Regional Contingency Plan/Area Contingency Plan (RCP/ACP), and will assist each other to the fullest extent possible to prevent or minimize the impacts of a discharge of oil, or substantial threat of a discharge of oil, or release, or a substantial threat of release of a hazardous substance where each respective agency has jurisdiction.
- D. Such mutual assistance will be provided based on notification and mutual consent that the assistance is requested and necessary to respond to: (i) a discharge of oil, or a substantial threat of a discharge of oil, (ii) a release, or substantial threat of a release of a hazardous substance, (iii) a release or substantial threat of a release of pollutants or contaminants which may present an imminent and substantial endangerment to the public health or welfare. Notification will be provided by the COTP to the EPA FOSC, or by the EPA FOSC to the COTP, whenever a spill is discovered that appears to warrant the provision of mutual assistance. When it is mutually agreed that the provision of such assistance is beneficial, an FOSC from either organization may serve in the following capacities:
 - 1. As the FOSC for that incident;
 - 2. As the Federal On-Scene Coordinator's Representative (FOSCR) for the predesignated OSC; or,
 - 3. Perform duties as first federal official as outlined in 40 C.F.R. § 300.135(b).

- E. Regardless of any agreements within this MOA, it is the responsibility of the EPA and the USCG to ensure that the other agency has properly taken over FOSC responsibilities in its zone prior to relieving itself of any FOSC responsibility. Any verbal agreement to transfer FOSC responsibilities shall be followed up in writing and/or documented in a Situation Report (SITREP) or Pollution Report (POLREP).
- F. When the COTP is not notified via the National Response Center, the EPA shall notify the COTP immediately for all known commercial vessel and USCG regulated facility spills or releases in the inland zone.
- G. The USCG COTP shall inform the EPA Region 5 duty officer immediately when the reported discharge or release is an actual or potential medium or major discharge or release as defined in 40 C.F.R. § 300.5 and required by 40 C.F.R. § 300.320. Additionally, the COTP shall provide a verbal report or SITREP/POLREP for all other response actions.
- H. The USCG D8 COTP in each zone shall provide, annually, a list of fixed USCG regulated facilities (33 C.F.R. §§ 126, 127, and 154) located in the inland zone of their area of responsibility to the Co-Chairs of the Regional Response Team.
- I. In addition, EPA Region 5 will notify the COTP and the Eighth Coast Guard District of any Regional Contingency Plan/Area Contingency Plan (RCP/ACP) meetings for the participation of Coast Guard units in the regional contingency planning process.

Section 7: OTHER PROVISIONS

- A. Nothing in this Agreement is intended to conflict with current law or regulation or the directives of the United States Coast Guard or the Environmental Protection Agency, or any department in which these parties may be operating, nor any such laws, regulations or directives that may be promulgated hereafter. If a term of this Agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this Agreement shall remain in full force and effect.
- B. Notwithstanding any terms of this Agreement, nothing herein shall be construed to diminish or supersede any rights or authorities available to the parties. This MOA neither amends nor repeals any other requirement or authority conferred by any other provision of law. Nothing in this MOA shall limit, deny, amend, modify, or repeal any other requirements or authorities of agencies of the United States.

- C. This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this Agreement, against the EPA or USCG, their officers or employees, or any other person. This MOA does not direct or apply to any person outside of the EPA or USCG.
- D. Each party agrees that should a third party claim arise under the terms and conditions or the Federal Tort Claims Act (FTCA), Title 28, U.S.C. §§ 1346 and 2671 et seq., or of the laws of any state based on negligence or a wrongful act or omission, the party whose employee(s)' conduct gave rise to the claim shall be responsible for the investigation and disposition of said claim. For claims involving conduct of employees of more than one party arising out of a joint activity conducted pursuant to this MOA, the parties agree to work cooperatively to determine which entity will be primarily responsible for the investigation and disposition of the claim.
- E. As required by the Anti-deficiency Act, 31 U.S.C. §§ 1341 and 1342, all commitments made by the EPA and USCG in this MOA are subject to the availability of appropriated funds and budget priorities. Nothing in this MOA, in and of itself, obligates either party to expend appropriations or to enter into any contract, assistance agreement, interagency agreement or incur other financial obligations. Any transaction involving transfers of funds between the parties to this MOA will be handled in accordance with applicable laws, regulations and procedures under separate written agreements. This MOA will be incorporated by reference or included as an enclosure to any reimbursable agreement between the USCG and EPA resulting from this MOA.

Section 8: EFFECTIVE DATE, MODIFICATION, AND TERMINATION

This Agreement will become effective upon the signature of both parties. The Agreement will be subject to review and amendment coincident with each periodic review of the Regional, Area and other applicable contingency plans and at any other time at the request of either of the parties. It may be terminated by either party, effective 30 calendar days after providing written notice to the other. It will remain in effect until modified by mutual agreement or terminated.

Section 9: POINTS OF CONTACT

Points of Contact for the coordination, support, and implementation of this Agreement are as follows:

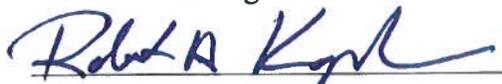
- A. EPA Region 5 – Mr. Jason El-Zein, Chief, Emergency Response Branch 1, Superfund Division, Chicago, IL at (734) 692-7661; EPA’s 24 hour number: (312) 353-3218.
- B. Eighth Coast Guard District – Captain Jose Jimenez, Chief, Response Division, New Orleans, LA at (504) 671-2229; USCG D8’s 24 hour number: (504) 589-6225.

Section 10: SUPERSEDING POWER

Regional and Area Contingency Plans of the signatory agencies will be amended to reflect the geographical boundaries and agreements contained herein. This MOA supersedes other MOU/MOAs previously in effect concerning the FOSC boundaries for purposes of pollution response within EPA Region 5.

Agreed to and entered into by the undersigned.

For U.S. EPA Region 5:



Date: 2/21/17

Robert A. Kaplan
Acting Regional Administrator
U.S. EPA Region 5
Chicago, IL

For USCG D8:



Date: 15 MAR 17

David R. Callahan
Rear Admiral, U.S. Coast Guard
Commander, Eighth Coast Guard District
New Orleans, LA