

National Contingency Plan - 40 CFR 300

Intro. Subpart A

Purpose, authority, scope of NCP. 300.1, 300.2, 300.3

Abbreviations 300.4

Definitions 300.5

“Applicable requirements” – substantive law/regulation specifically addressing circumstance at site. State stds must be timely identified and be more stringent than fed standards.

“Relevant and appropriate requirements”-

law/reg. not applicable but addresses problems similar to those encountered at the site that their use is well suited at the site.

“On-site”- area extent of contamination and areas in close proximity necessary to do the response.

Responsibility and Organization Subpart B

Three activities under the NCP 300.105(b)

- 1) preparedness, planning, coordination
- 2) notification, communication
- 3) response operation at discharge/release

Nat'l Response Team (NRT)

Activated as emergency response team when:

- 1) discharge/release: 300.105(j)(1)
 - a) exceeds response capacity of region,
 - b) transects regional boundaries, or
 - c) substantial threat to public health, welfare, property, nat'l resources
- 2) if requested by NRT member 300.110(j)(2)

EPA chairs & USCG vice chairs when not activated.

Member agency providing the OSC chairs when activated. 300.110(b)

Members fed agencies: EPA, USCG, USN, FEMA, DOD, (Army Corp., USN Supervisor of Salvage), DOE, USDA (Forest Serv., Agriculture Research Serv., Soil Conservation Serv., Animal and Plant Health Inspection Serv., Food Safety and Inspection Serv.), DOC (NOAA), HHS (Public Health Serv., CDC, ATSDR), DOI (ex. USFWS, BLM, Nat'l Park Serv., BIA), DOJ, DOL (OSHA), DOT, DOS, Nuclear Reg. Comm., GSA. 300.175

Regional Response Team 300.115 - includes state and local representation. Affected states may participate in all RRT deliberations and have same status as any fed member. 300.120(j)(6)

Standing team purpose: communications, planning, coordination, training, procedures, evaluation, preparedness. 300.115(b)(1).

EPA & USCG co-chair. 300.115(c).

Incident-specific team: Operations address release or discharge. Chair is agency providing the OSC. 300.115(b)-(c).

Incident specific team activated when release or discharge:

- 1) exceeds response ability of locality;
- 2) transects state boundaries;
- 3) substantial threat; or
- 4) worst case discharge.
- 5) request from OSC or any RRT representative, later confirmed in writing. 300.115 (j)(1-2)

OSC/RPM Responsibilities 330.120

OSC directs response efforts and coordinates all other efforts at the scene of the discharge/release.

Regional or district head of each agency **shall** predesignates OSCs for each area/region. 300.120.

EPA provides OSC in the inland zone; USCG Capt. of the Port (COTP) serves as OSC in coastal zone. 300.120(a)-(b).

Releases/discharge from fed. property, OSC provided by fed holder/owner of the property. 300.120(c).

OSC **shall** ensure persons designated to act as rep on-scene are adequately trained and able comply w/ NCP. 300.120(h)(2).

Notification & Communication 300.125

Reportable quantity release/discharge, call NRC 800-424-8802 or 202-267-2675. 300.125(a).

Determination to Initiate Response and Spec Conditions 300.130

EPA Administrator or Secretary of department in which USCG operates is authorized to initiate response to discharges of oil and releases of haz sub. 300.130(a)-(b)

EPA/USCG may ask US Atty General (DOJ) to issue administrative orders to address imminent and substantial threat of oil discharge or imminent and substantial endangerment of haz sub release. 300.130(d)

Major Disaster Declaration- if situation beyond scope of fed/state/local agencies, President declares major disaster under Disaster Relief Act of 1974 and appt Federal Coordinating Officer (FCO). OSC continues responsibilities; must coordinate activities w/ the FCO. 300.130(h)

Stafford Disaster Relief Act – in major disaster, FEMA may activate the FRP. FCO directs emergency assistance. 12 Emergency Support Functions annex to FRP. Under ESF-10, EPA addresses Haz Mat issues. 300.130(i).

Response Operations 300.135

OSC **shall** direct response efforts. 300.135(a)

First NRT agency to arrive initiates (w/ consultation with the OSC) necessary response actions until OSC arrives. 300.135(b)

OSC **shall** collect all pertinent facts of release including: 300.135(c)

- a. source and cause
- b. ID of PRPs
- c. nature, location and amt of discharged materials
- d. probable direction and time of travel of materials
- e. whether discharge is “worst case discharge”
- f. pathways to human and environmental exposure
- g. potential impact on human health, welfare, safety & environment
- h. impact on natural resources
- i. priorities for protecting human health, welfare & envt.
- j. maintain cost documentation 300.135(c)

OSC **shall** also:

- 1- coordinate w/ other fed agencies. 300.135(d)
- 2- consult with RRT and NSFCC. 300.135(e)
- 3- advise support agencies. 300.135(f)
- 4- advise FEMA on potential disasters. 300.135(g)
- 5- in public health emergency, notify HHS. 300.135(h)
- 6- notify nat'l resources trustees. 300.135(j)
- 7- if endangered species are effected, notify DOI/DOC (NOAA). 300.135(k)
- 8- address worker safety. 300.135(l), 300.150
- 9- submit PolReps to RRT. 300.135(n)
- 10- ensure all public/private interests are kept informed. 300.135(m), 300.155

OSC may designate capable persons from fed, state or local agencies to act as OSC. 300.135(d).

Multi-regional responses 300.140

If release/discharge moves from one area w/ ACP/RCP to another area w/ different ACP/RCP, authority to respond also shifts. 300.140(a)

If release/discharge affects 2 areas, ACP/RCP for both areas may be activated. 300.140(a)

There **shall** be only one OSC at any time during the response. Area vulnerable to greatest threat should provide OSC. If no agreem't, RRT decides. If RRT members can't agree, NRT decides 300.140.

Spec. teams and other assistance available to OSC/RPM 300.145.

ex. USCG (Strike Teams, Nat'l Strike Force Coordination Center, Public Info Assistance Team), Env'tl Response Team, Radiological ERT, Scientific Support Coordinators, etc.

Worker Health and Safety 300.150

Response actions under NCP (conducted by public or private party) must comply w/ Occupational Safety and Health Act, see 29 CFR 1910.120. OSHA program must be available for workers at response. 300.150(a)-(c).

Public information & Community Relations 300.155

Imperative to give prompt, accurate info about incident (nature of release/discharge and mitigation underway) to all public and private interests.

Public and private concerns are considered throughout the response. 300.155(a).

All fed news releases by participating agencies shld be cleared through OSC. Natural resources news releases shld go thru lead administrative trustee. 300.155(b).

Documentation / Cost Recovery 300.160

OSC **shall** maintain documentation supporting actions under NCP for cost recovery. 300.160(a)(1).

For fund-financed response, OSC **shall** transmit info/reports to RRT as appropriate. 300.160(a)(2).

OSC Reports 300.165

As requested by RRT/NRT, OSC **shall** submit complete report on removal operation. Report includes situation as it develops, actions taken, resources committed & problems encountered.

Planning and Preparedness Subpart C

Three levels of contingency planning under nat'l response system: 1- National (NCP) 2- Regional (RCP) 3- Area (ACP) 300.210

ACP created under direction of OSC, subject to approval of lead agency.

ACP includes: 300.210(c)(3)

- 1- description of area (noting special economic or env'tl importance)
- 2- responsibilities of owner/operator, fed, state, local.
- 3- list of equipment, dispersants & other mitigating factors,
- 4- procedures to expedite decision to use dispersants,
- 5- describe how ACP fits with other ACPs and FRPs,
- 6- Fish and Wildlife and Sensitive Environments Plan Annex. 300.210(c)(4).

While goal is to reach consensus in ACP, OSC retains authority to take all actions he deems appropriate.

59 FR 47387

OPA Facility & vessel response plan 300.211

Onshore and offshore facility which could reasonably expect to cause substantial harm to the environment by discharge into navigable waters must prepare and submit Facility Response Plan (FRP)

Area Response Drills 300.212

OSC **shall** periodically conduct drills of removal capabilities w/o prior notice under relevant FRPs.

Oil Removal Subpart D

Notification - immediate notify NRC & state agency 300.300

Preliminary Assessment – evaluate magnitude of release, assess feasibility of response, identify PRPs. 300.305(b)

PRP Response - OSC may allow PRP to do spill response if release is not substantial threat to public health or welfare. OSC must oversee PRP work. If PRP fails to respond properly, OSC may:

- 1) take over the removal;
- 2) direct fed/state/PRP removal;
- 3) remove & destroy discharging vessel. 300.305(d).

Nat'l Resource Trustees - OSC **shall** ensure trustees are notified, coordinate and consult w/ trustees, & share non-monetary resources. 300.305(e).

Containment, countermeasures, cleanup & disposal - Defensive actions **shall** be taken to recover oil or mitigate its effects. Cleanup method **shall** be consistent w/ protecting the public health and welfare. 300.310(b).

Documentation/cost recovery – OSC maintains docs to support cost recovery (samples & reports, ex). OSC **shall** submit OSC report if requested by NRT/RRT. Docs available to trustees. 300.315

Priorities: 300.317

- 1) safety of human life,
- 2) stabilize situation,
- 3) Coordination w/ containment and disposal efforts.

Pattern of Response: 300.320

Investigate spill (type, quantity, source)
Classify the size (minor, medium, major),
Major discharge, OSC **shall** notify the RRT and NRC.

Medium discharge, OSC **shall** activate RRT if applicable.

Minor discharge, OSC **shall** monitor.

Classify the type (substantial threat to public health and welfare, worst case discharge)

Substantial threat to public health can be reclassified as spill of national significance (SONS) by EPA or USCG.

Determine course of action. 300.322(a)(1-2)

PRP may do response if it has resources to do effective immediate response and in accordance with NCP. (can *not* be substantial threat to public health spills) 300.322(a)(3)

State/local can do response if capable, OSC determines. 300.322(a)(4)

OSC ensures notice to trustees. 300.322(a)(5).

OSC determines removal complete with Gov. consultation. 300.322(b)

Substantial Threat to Public Health & Welfare: 300.322

OSC **shall** determine if response is substantial threat.

Factors: size & character of discharge, nature of the threat. 300.322(a)

OSC **shall** direct fed, state & private actions to address substantial threat. OSC may act w/o regard to govt contracting/employment procedures. 300.322(b)

OSC **shall:**

- 1- assess whether to use special teams (ERT, strike team, etc.);
 - 2- activate RRT;
 - 3- additional action as appropriate (ex. ACP, FCP).
- Lead agency **shall** produce contracting officer. 300.322(c)

SONS: 300.323 (rare)

Inland spill -- EPA Administrator name senior Agency official to assist OSC, coordinate b/w fed, st and local govt., and communicate to public
Coastal zone – USCG Commandant name Nat'l Incident Commander who assumes role of OSC.

Worst Case Scenerio 300.324

May be substantial threat or SONS; “worst case” defined by the ACP.

OSC **shall:**

- 1) notify the NSFCC
- 2) require implementation of applicable ACP/FRP
- 3) take actions as appropriate

Funding - OSLTF fund removal. RP liable for reimbursement of removal costs and damages. 300.335

OSC may request assistance from other fed agency or for natural resources damages assessment, see 33 CFR part 136.

Discharge from fed owned vessel/facility, fed agency responsible. DOD has specific funds for this purpose.

CERCLA Haz Sub Response Subpart E

OSC responds to:

- 1-release of haz sub into envt.
- 2-pollutant/contaminant presenting I&SE. 300.400a

Limits on a response:

- 1-naturally occurring substance
- 2-part of structure, exposure inside bldg.
- 3-deterioration of drinking water system 300.400(b).

Entry & access: reasonable belief that there is or may be a release 300.400(d)

OSC may designate PRP for access if working under AOC or CD.

If consent not granted or conditional access, EPA issue UAO under CERCLA 104(e) for access.

Seek civil warrant/order as necessary.

Permits: Not required “on site” (areal extent of contamination and all suitable areas in close proximity necessary to implement response). Required off site. 300.400(e)

ARARs: OSC must identify laws or regulations addressing haz sub, pollutant, contaminant, response action, location, etc. Policies or guidances are not ARARs but may “be considered.” 300.400(g)

Oversight: required when PRP working under Order 300.400(h).

Response Discretionary 300.400(i)(3)

Response to haz sub release is discretionary. Fed govt doesn't have duty to take any response action at any particular time.

Discovery/Notification 300.405

For notification, NRC needs: location, material types, quantity, source, date and time. NRC **shall** notice the OSC. 300.405(d).

OSC **shall** notify the Gov. of release. 300.405(e)

Requires removal evaluation. 300.405(f)

Removal Site Evaluation: preliminary assessment + site inspection 3.410(a)

Shall occur as “promptly as possible” 300.410(b)

Prelim Assment based on readily available info. Ex: source, nature of release, ATSDR and state health data, magnitude of threat, whether non-fed party is properly doing response. 300.410(c)

Site Inspection if more info is needed and can be performed safely. 300.410(d)

OSC determine release of oil v. haz substance.

Does release present substantial threat to public health? Factors: size of the release, character of the release, nature of threat.

Terminate evaluation if: no release; source is not facility or vessel; no haz sub or pollutant or contaminant release; excluded under 300.400(b); quantity not warrant fed action; PRP adequately responding; evaluation complete.

Evaluation **shall** be documented. 300.410(g).

OSC/lead agency **shall** notify nat'l resource trustees. 300.410(h)

Removal Action

PRP lead- OSC **shall** determine if PRP can do response 300.415(a)(2).

Lead agency may abate, prevent, minimize, stabilize, mitigate or eliminate release. 300.415(b)(1)

8 Factors:

- 1- actual/potential exposure to humans or animals or food chain
- 2- actual/potential contamination of drinking water
- 3- haz sub/pollutants/contaminants in containers which may pose a threat
- 4- haz sub/pollutants/contaminants in surface soils that may migrate
- 5- weather conditions may cause haz sub or pollutants/contaminants
- 6- threat of fire/explosion
- 7- are other federal/state mechanisms available?
- 8- Other factors that may pose a threat

Once determination made, actions **shall** begin as soon as possible.

Fund-lead removals - \$2 million or 12 month limit, unless: 1) cont. response required, no timely response otherwise; or 2) cont response appropriate and consistent with remedial action. 300.415(b)(5)

CWA Haz Sub release, OSC may remove/mitigate release; direct fed/state/private response; remove and destroy vessel. 300.415(c)(1)

If CWA haz sub release is substantial threat, OSC

shall direct fed/state/private response. OSC may remove/mitigate release; direct fed/state/private response; remove and destroy vessel w/o regard to fed contracting laws. OSC **shall:** assess need for special teams; notify RRT; take appropriate actions. 300.415(c).

List of types of removal actions:

fences, security, drainage controls, stabilization, capping to reduce migration, chemicals to retard spread, excavation, removal of drums, containment, provide alternative water, etc. 300.415(e)

Relocation

OSC **shall** request relocation from FEMA (Corp) or evacuation by locals to protect public health. 300.415(f)

If State operates facility and facility becomes a NPL site, State is required to pay 50% of EPA's costs. 300.415(i)

ARARs- removal shall “to the extent practicable considering the exigencies of the situation” attain ARARs. Factors:

- 1) urgency of the situation;
- 2) scope of removal. 300.415(j)

If PRP working under UAO or AOC/CD, OSC does not have to:

- locate additional PRPs;
- consider other fed/state resources;
- limit removal to \$2 mil or 12 month;
- insure smooth transition from removal to remedial. 300.415(k)

Post removal site control should be consider prior to starting removal and is not subject to the \$2mil/12 month limit. Site control may be performed by state/local/PRP/remedial program. 300.415(l)

OSC Report -As requested by NRT or RRT, OSC **shall** submit OSC Report. 300.415(m), 300.165.

Community relations- spokesman assigned to inform the public. All new releases **shall** go thru OSC/RPM. 300.415(n)

Administrative Record - Notice of AR availability published in local newspaper within 60 days after mobilization for removal. 30-day comment period. 300.415(n)(2).

>120 days- If on-site work extends beyond 120 days, lead agency **shall** also conduct interviews of affected community, prepare Community Relations Plan, place AR in local repository. 300.415(n)(3)

Transferring haz sub/pollutant/contaminant off site. 300.440

In emergency removal, OSC may determine it necessary to transfer off-site w/o following NCP procedures. EPA determines acceptability of receiving facility for treatmt, storage or disposal. 300.440.

State Involvement Haz Sub Response - Subpart F Trustees for Natl Resources- Subpart G

Identifies fed, state, tribal and foreign govt trustees. Outlines responsibilities of trustees.

Participation by Other Persons – Subpart H

Lists cost recovery mechanisms.

Claims a/g the Fund (CERCLA 111(a)(2) claim).

PRP compliant with UAO may petition for reimbursement from Fund. CERCLA 106(b).

Reimbursement to local govt. CERCLA 123.

OPA reimbursement claims. OPA 1013.

Admin Record for Response Action- Subpart I

AR includes all docs that form basis for the selection of the response action. (ex. sampling data, QAQC assurances, agency guidance, tech literature, Action Memo, Orders, community involvement docs, index, etc.) 300.810(a)

AR does not include: internal memo, draft doc., day-to-day notes, privileged docs. 300.810(b)

Subpart J Use of Dispersants and Other Chemicals