

OSC AUTHORITIES AND RESPONSIBILITIES

Road Map through the Statutes
and NCP



THE BEGINNINGS

- Kenneth E. Biglane wrote the first NCP which the President signed November 13, 1968
- OSC defined as the single federal agent to direct and coordinate spills of oil and hazardous substances



LEGAL ROOTS

- OSC Authority is derived under law, regulation and agency delegation
- FWPCA/CWA/OPA
- CERCLA/SARA
- Executive Orders
- NCP
- HQ/Regional Delegation

STATUTORY AUTHORITY

- The OSC's position in the NCP relative to a discharge of Oil or Hazardous Substances under the CWA and CERCLA is based on the duties given the President

CLEAN WATER ACT 311 (c)(1)

General Removal Requirements

- The President shall in accordance with the NCP ensure effective and immediate removal of a discharge and mitigation or prevention of a substantial threat of discharge of oil or a hazardous substance
- The President may remove and mitigate or prevent a substantial threat of a discharge
- Direct or monitor all Fed, State (local), and private actions to remove a discharge

CLEAN WATER ACT 311 (c)(2)

Discharge Posing a Substantial Threat to Public Health or Welfare

- If a discharge or substantial threat of a discharge is a substantial threat to the public health or welfare the President shall direct all Federal, State (local), and private action to remove the discharge or to mitigate or prevent the threat of the discharge

CERCLA 104 (a)

Response Authorities

- Whenever any hazardous substance is released or there is a substantial threat of such a release into the environment, or there is a release or substantial threat of release of a pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act consistent with the NCP...

CERCLA 106 (a)

Enforcement Authority

- When the President determines that there may be an imminent and substantial endangerment to public health, welfare or the environment from a release or threat of release of a hazardous substance he may:
 - require the US. Attorney General to secure relief to abate the danger or threat
 - issue orders to protect public health, welfare, or the environment

EXECUTIVE ORDERS

- CWA/OPA Delegations
 - Executive Order 12777
- CERCLA Delegations
 - Executive Order 12580
 - Executive Order 13016

HEADQUARTERS AND REGIONAL DELEGATIONS

- CWA
- CERCLA

Headquarters' Delegations can be found on the EPA intranet site at:

<http://www.intranet.epa.gov>

NATIONAL CONTINGENCY PLAN (NCP)

- The Planning, Readiness, and Response Authorities under the CWA, OPA and CERCLA are required to be carried out under a set of guidelines which is the National Contingency Plan
- The NCP is a Federal Regulation prepared by the President (via EPA)
- Oil and Hazardous Substances Response will be consistent with it

CLEAN WATER ACT 311 (d)

National Contingency Plan

- The President shall prepare and publish a NCP for removal of oil and hazardous substances
- The NCP shall provide for efficient, coordinated, and effective action to minimize damage for discharges--
- Assignment of duties and responsibilities among Federal agencies in accordance with State and local agencies

CLEAN WATER ACT 311 (c)(3)

Actions in Accordance with National Contingency Plan

- Each Federal agency, state, owner or operator, or other person (e.g. locals) in efforts under this subsection shall act in accordance with the NCP or as directed by the President.

CERCLA 105

National Contingency Plan

- The President shall revise and republish the NCP
- Revisions shall establish procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants

NCP ORGANIZATION

Subparts:

- A - Introduction
- B - Responsibility and Organization for Response
- C - Planning and Preparedness
- D - Operational Response Phases for Oil Removal
- E - Hazardous Substance Response

NCP ORGANIZATION

Subparts:

- F - State Involvement in Haz Sub Response
- G - Trustees for Natural Resources
- H - Participation by Other Persons
- I - Administrative Record
- J - Use of Dispersants and Other Chemicals

NCP 300.105

ORGANIZATIONAL CONCEPTS

- Fundamental Activities
 - Preparedness, Planning and Coordination
 - Notification and Communication
 - Response Operations
- Organizational Elements
 - NRT
 - RRT
 - OSC/RPM
 - Area Committees

WHAT IS AN ON-SCENE COORDINATOR?

- NCP 300.5 Definition:

OSC means the federal official predesignated by EPA or the USCG to *coordinate* and *direct* responses under subpart D or the lead agency to *coordinate* and *direct* removal actions under subpart E of the NCP

THE NCP DESIGNATES THE OSC AS THE PERSON WHO:

- ensures prompt state notification of spills
- ensures natural resource trustees are notified
- evaluates the need for a removal response
- evaluates the magnitude of the spill
- decides when a removal response begins and ends

THE NCP DESIGNATES THE OSC AS THE PERSON WHO:

- determines if response actions are consistent with the NCP
- determines if state or local responders are capable of carrying out removal actions
- determines when a substantial threat exists
- is responsible for site safety
- directs the area committee
- conducts drills under ACPs

HOW AND WHAT DOES AN OSC DIRECT? (cont.)

- Best explained in the preamble of the NCP 1993 Proposed and 1994 Final Rule:
 - 1993 Federal Register Vol. 58, No. 203, pages 54704 – 5
 - 1994 Federal Register Vol. 59, No.178, pages 47387–8 & 47390

WHO'S RESPONSIBLE FOR SITE SAFETY?

- NCP 300.135 – Response Operations
 - The OSC is responsible for addressing worker health and safety concerns at a response scene in accordance with 300.150.
- NCP 300.317 – National Response Priorities
 - Safety of human life must be given top priority. This includes... ensuring safety of response personnel

SITE SAFETY (cont.)

- NCP 300.150 Worker Health & Safety
 - Response actions will comply with 29 CFR 1910.120. The NRS meets the requirements of the use of an incident command system.
- 1994 NCP Federal Register Vol. 59, No. 178, p. 47391
 - The OSC...is the senior official in charge of worker safety, health, and training requirements during a spill response under the NCP.

OSC RESPONSIBILITIES FOR COORDINATION

- NCP 300.135 – OSC’s efforts shall be coordinated with other appropriate federal, state, local, and private response agencies.
- The basic framework for the response management is a system (e.g., unified command) that brings together the federal and state (& local) govt. and the RP to achieve an effective and efficient response where the *OSC maintains authority*.

OSC RESPONSIBILITIES FOR COORDINATION (cont.)

- NCP 300.180 – State & Local Participation
- Appropriate local and state officials will participate as part of the response structure as provided in the ACP.
- Because state and local public safety organizations would normally be first at the scene, they are expected to initiate public safety measures that are necessary to protect public health consistent with the NCP.

OSC RESPONSIBILITIES FOR COORDINATION (cont)

- NCP 300.135 – OSC should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response to the extent practicable
- NCP 300.115 - Affected states are encouraged to participate actively in all RRT activities.

THE OSC, THE ACP, AND THE AREA COMMITTEE

- OSCs are responsible for directing Area Committees in the development of Area Contingency Plans to:
 - enhance the contingency planning of federal, state, and local agencies
 - assure preplanning of joint response efforts
 - expedite decisions for the use of dispersants and other substances or mitigating devices