

**APPENDIX L**

**DRAFT MEMORANDUM OF UNDERSTANDING BETWEEN EPA AND THE U.S. COAST GUARD**

**\*\*\* DRAFT \*\*\***

**A FINAL VERSION WILL BE FORWARDED WHEN AVAILABLE**



## I. PURPOSE

This Memorandum of Understanding (MOU) supersedes the MOU between the United States Coast Guard (USCG) and the Environmental Protection Agency (EPA) of January 4, 1982 and any subsequent amendments. The MOU establishes accounting, contracting, and fund management control procedures for USCG response actions under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) and EPA response under Section 311 of the Federal Water Pollution Control Act of 1972 (FWPCA), as amended.

## II. AUTHORITY

Section 104 of CERCLA (42 USC 9604) authorizes the President to respond to releases or threats of releases into the environment of hazardous substances or pollutants or contaminants which may present an imminent and substantial danger to the public health or welfare and the environment. Executive Order 12316 delegates certain authority and responsibility for response to the Administrator of the EPA and the Secretary of Transportation. Similarly, Executive Order 11735 delegates to EPA certain authority and responsibilities under FWPCA to respond to oil spills. The USCG and the EPA are entering into this agreement to carry out their joint responsibilities under CERCLA, the Executive Orders and FWPCA.

## III. SCOPE:

### A. CERCLA COSTS

Costs incurred by the USCG in the course of carrying out its responsibilities pursuant to CERCLA, Executive Order 12316 and the National Contingency Plan (NCP) are funded by the Hazardous Substance Response Trust Fund administered by EPA. Two major categories of costs may be incurred under the Trust Fund: vendor costs and non-vendor costs.

#### 1. Vendor Costs

The USCG and EPA agree that vendor costs are contractor costs incurred by the USCG in response to a release or threat of a release of hazardous substances or pollutants or contaminants which may present an imminent and substantial danger to the public health or welfare and the environment. Vendor costs qualify as allowable uses of the Hazardous Substance Response Trust Fund when USCG undertakes response activities pursuant to CERCLA, Executive Order 12316, and the National Oil and Hazardous Substances Contingency Plan (NCP). Examples of vendor costs include, but are not limited to the following:



- contractor and consulting costs
- lease or rental of equipment when supplied by the response contractor
- supplies, materials and equipment (including transportation costs) procured for the specific response activity by the response contractor.

Contracting and accounting procedures for vendor costs are discussed under Section IV.

## 2. Non-Vendor Costs

Non-vendor costs generally include all other costs incurred by the USCG directly in support of response activities pursuant to CERCLA, Executive Order 12316 and the NCP. Such costs are reimbursed by EPA via interagency agreements (IAGs) between EPA and USCG. Typically, non-vendor costs fall into two groups: site-specific, out-of-pocket expenses and the cost of carrying out on-going program functions. These groups are discussed below

### 2.1 Out-Of-Pocket Expenses

Out-of-pocket expenses incurred by USCG in undertaking a specific response action include but are not limited to the following items:

- travel and per diem for military and civilian USCG personnel
- salary costs for military and civilian USCG personnel including civilian overtime costs
- fuel for USCG vessels, aircraft or vehicles used in support of a response activity
- replacement or repair cost for equipment owned by the USCG.

Out-of-pocket costs incurred at a CERCLA incident by the USCG will be reimbursed by EPA through a site-specific IAG. These IAGs will be prepared in accordance with the procedures in Appendix A.

### 2.2 Ongoing Responsibilities Costs

Ongoing responsibilities costs refers to those costs incurred by the USCG in providing training and maintaining response capabilities as described in the U.S. Department of Transportation (DOT), USCG publication Policy Guidance for Response to Hazardous Chemical Releases



(COMDTINST M16465.30), Chapter 1. These capabilities include performing preliminary assessments to establish whether an incident meets the criteria of a CERCLA removal, monitoring non-federal removal actions, conducting medical monitoring, and maintaining information systems, the National Response Center, work force and enforcement activities. Funding for these costs is transferred annually to the USCG in the form of an ongoing responsibilities IAG. These are discrete IAGs for each fiscal year's transfer of funds.

B. FWPCA COSTS

The USCG and EPA agree that EPA can incur contractor costs in response to oil discharges. These costs qualify as allowable uses of the FWPCA 311(k) Fund when the EPA undertakes response activities pursuant to FWPCA 311, Executive Order 11735, and the National Contingency Plan (NCP). Examples of vendor or contractor costs are the same as those listed in Section A.1 above. Procedures for reimbursement of EPA out-of-pocket expenses and other non-vendor costs incurred by EPA in the course of response, with the exception of personnel salaries, are covered in 33 CFR 153, "Control of Pollution By Oil and Hazardous Substances, Discharge Removal".

IV. CONTRACTING AND ACCOUNTING:

A. CERCLA

The USCG may enter into response contracts in either of two situations:

- When the USCG OSC is acting in the capacity of the first responding Federal official, pursuant to the National Contingency Plan; or
- When the USCG is the lead Federal agency pursuant to the authority delegated under Executive Order 12316 and retained by the USCG in Section (c) of the Instrument of Redefinition, executed 2 October 1981 by the Secretary of Transportation and consented to on 9 October 1981 by the Administrator of the Environmental Protection Agency.

In the first case, the contract remains in effect only as long as the USCG OSC continues to serve in the capacity of first responding Federal official. The contract thus is terminated when the EPA OSC assumes responsibility for Federal response. In the second case, the contract is effective while the USCG serves as lead agency.



The USCG shall use one of the two following contracting systems in responding to CERCLA incidents:

- the USCG Contracting System established to respond to oil and hazardous substances discharges under the authority of Section 311 of the FWPCA, as amended, or
- the EPA Emergency Response Cleanup Services (ERCS) contract system.

The USCG and the EPA agree to the following procedures.

1. USCG Contracting System

For each incident where CERCLA funds are obligated, the USCG OSC must obtain a ten-digit account number and a six-digit document control number from the EPA HQ Emergency Response Division (ERD). Telephone numbers for business hours (Monday-Friday, 8:30 AM to 5:00 PM EST) are listed in Appendix B. For incidents which occur during non-business hours, the accounting data must be obtained during business hours the following workday. The USCG OSC shall submit an initial pollution report (POLREP) within 72 hours of initiating Federal Response to EPA HQ, Response Operations Branch, Emergency Response Division and the appropriate EPA Regional Contact (see Appendix B for addresses). This POLREP shall provide, as a minimum, the following information:

- Name and phone number of OSC
- Location, nature of the incident, and Coast Guard District in which incident occurred
- Nature of response activities to be performed
- Estimated, total costs to-date (show vendor costs and out-of-pocket costs separately).

Appendix C of this MOU provides the address and telephone numbers of USCG District Comptrollers who can be contacted by EPA on USCG Contracting System matters.

2. Activation of ERCS by USCG

To activate the ERCS, the USCG OSC must contact the EPA HQ ERCS Contracting Office. During business hours (Monday through Friday 8:30 AM to 5:00 PM EST), the ERCS Contracting Officer can be reached by calling the number listed in Appendix B. During non-business hours (after 5:00 pm EST on weekdays and on Saturday, Sunday, and holidays) USCG personnel should contact the National Response Center (800-424-8802), identify



himself/herself and ask to be put in contact with EPA's on-duty ERCS Contracting Officer.

Once the USCG OSC and the ERCS Contracting Officer have established contact, the ERCS Contracting Officer will consult with the OSC to:

- determine the scope and duration of response activities (including the response time performance period)
- ascertain the appropriate ERCS Zone Contractor
- develop a scope of work
- determine the delivery order ceiling
- issue a delivery order.

The ERCS Contracting Officer is authorized to approve ERCS usage up to \$1 million per ERCS zone per year, for USCG response actions.

During non-business hours, the ERCS Contracting Officer may issue a verbal delivery order, which will be followed up within 48 hours by a written delivery order. Accounting data will be obtained by the ERCS Contracting Officer. Once the delivery order has been issued, the Contracting Officer shall direct the ERCS contractor to immediately contact the USCG OSC to make the necessary arrangements for starting work. The Contracting Officer shall notify the ERCS project officer who then notifies the Regional Deputy Project Officer regarding fund activation.

### 3. Accounting Procedures

Specific accounting information is required by the EPA Financial Management Office in order to process both USCG contracts and ERCS delivery orders. The USCG should obtain the information when using their own SF 347 Purchase Orders and should include the information on all contract documents. The ERCS Contracting Officer will enter the information on all ERCS Delivery Orders. Five accounting codes are required. They are:

Appropriation Number: This number is permanently assigned to the trust fund:

68/20X8145



Account Number: A ten-digit number is obtained from EPA HQ ERD at the number listed in Appendix B. An accounting number is comprised in the following way:

YTFA72RESS

Y = Last digit of the fiscal year, e.g.  
for FY 85 Y=5

R = EPA Region where the incident occurs

SS = Site/Spill identification number  
for each separate incident

Document Control Number: The six-digit document control number (DCN) is obtained from EPA HQ ERD (See Appendix B for phone number) for each financial transaction associated with the incident. Each contract and contract modification to increase funding ceiling must have a unique DCN. Ceilings correspond to a specific DCN. For example, if two clean-up contractors are required, then two separate DCNs are needed. Similarly, if the dollar amount of a contract is increased (modified) then another DCN must be obtained.

Object Class: This number (2535) is permanently assigned to provide response contracting funds only.

Amount of contract or delivery order in dollars: \$ \_\_\_\_\_.

Additionally, for USCG contracts, the USCG District Contracting Officer shall ensure that the USCG contract number and the EPA accounting codes (appropriation number, account number, document control number, object class and dollar amount) are specified in the contract or other obligating document. He shall ensure that the EPA accounting codes and USCG contract number are provided to the contractor and shall retain the original contract or delivery order.



4. Transmittal of Contract to EPA

A legible, certified true copy of the contract or delivery order shall be submitted by certified mail within 72 hours of award to the EPA Financial Management Officer at the address provided in Appendix B. The USCG is responsible for forwarding contracts issued under the USCG Contracting System, and EPA will forward copies of ERCS delivery orders. Whenever a Basic Ordering Agreement (BOA) is utilized, a certified copy of the BOA should be transmitted to the EPA Financial Management Officer in order to verify the SF 347 Purchase Orders and invoices.

5. Processing of Contractor Invoices

5.1 Contractor Responsibilities:

The contractor shall submit a copy of the invoice to the USCG OSC and send the original invoice to the EPA disbursing office at the address in Appendix B. The contractor will ensure the USCG contract number or delivery order number and the EPA accounting codes (appropriation number, account number, document control number, object class and dollar amount) are included on the invoice and its copy. Contractors should number each invoice sequentially beginning with one (1) and make a notation of "FINAL INVOICE" on the last invoice under the contract or delivery order.

5.2 USCG OSC Responsibilities

The USCG OSC must certify each invoice as correct and proper. A correct and proper invoice is one in which the services performed are acceptable and consistent with the services billed and the accounting data is properly transcribed. The OSC should designate an alternate who will be responsible for voucher certification in his/her absence and notify the EPA Contracting Officer accordingly. The following certification statement must accompany each invoice:

"I, (OSC's NAME), certify to the best of my knowledge and belief that the services shown on this invoice have been performed and are accepted.

(OSC's SIGNATURE)

Date: \_\_\_\_\_

The USCG OSC will forward by certified mail the





certified invoice to the EPA disbursing office (See Appendix B for address) within three (3) business days of receiving the invoice from the contractor.

The USCG OSC shall not certify an invoice which includes any discrepancies between services performed and services billed. In the event there is a discrepancy, the USCG OSC shall immediately take appropriate action to notify the contractor and resolve the discrepancy. If the discrepancy cannot be resolved within three (3) days, the EPA disbursing office must be notified. For ERCS contracts, the OSC shall notify the ERCS Contracting Officer to direct the disbursing office to withhold payment on the disputed amount. For USCG contracts, the USCG OSC may direct withholding of payment for disputed amounts by noting on the invoice the following signed statement: "This invoice contains unresolved discrepancies. DO NOT PAY THIS INVOICE UNTIL YOU RECEIVE WRITTEN NOTIFICATION THAT THE DISCREPANCIES HAVE BEEN RESOLVED AND THE INVOICE REISSUED."

(OSC's SIGNATURE)

Date: \_\_\_\_\_

### 5.3 EPA Responsibilities

EPA is responsible for processing invoices and making payments in a timely manner. Payments are normally made within 30 days after invoice receipt. Payment is contingent on the EPA disbursing office's receipt of the original invoice from the contractor and USCG OSC's certified copy of the invoice and receipt of a certified copy of the contract. In case of discrepancies, payments will be made after such discrepancies are resolved, and the invoice is reissued and received at the disbursing office. However, partial payment may be made for any undisputed amounts.

The disbursing office will not pay any response costs in excess of the dollar amount of the contract or delivery order. In the event a contractor's invoice exceeds the dollar amount of the contract or delivery order, the EPA disbursing office will refer the matter to the USCG District Contracting Officer or EPA Contracting Officer.



6. Management and Oversight of ERCS Contracts

USCG OSCs have the same responsibilities as EPA OSCs for managing and overseeing ERCS contractors. The OSC is responsible for preparing daily work orders, monitoring contractor progress, and reviewing that progress with the contractor. The OSC shall adhere to the detailed requirements set forth in EPA's Emergency Response Cleanup Services Contracts (ERCS) User's Manual (October 1983) and updates. EPA will provide the USCG with copies of the manual, copies of any updates and with training, as necessary.

7. Contract Performance Evaluation:

The USCG OSC shall prepare a Contractor Performance Summary report upon completion of a CERCLA response conducted by an ERCS contractor. The report shall be forwarded to the ERCS Project Officer (see Appendix B for addresses) who will forward a copy to the Regional Deputy Project Officer. The ERCS Users Manual, Section V, contains the format for this report. All ERCS contractors are eligible for financial reward from the Performance Incentive Pools for outstanding performance. Awards are based on a performance evaluation by USCG OSCs and EPA Headquarters personnel. USCG OSCs can nominate an ERCS contractor for such an award. Consult the ERCS User's Manual for more information.

B. FWPCA

When activating the 311(k) Fund for oil spill response, the EPA OSC shall contact the appropriate USCG District in accordance with that District's established procedures. The USCG District is responsible for providing the Federal Project Number and committing the funds. The EPA OSC is responsible for management and oversight of the contractor, for requesting necessary ceiling increases, for certifying contractor invoices, and for compliance with response procedures contained in 33 CFR 153.

V. FINANCIAL MANAGEMENT

A. CERCLA

The USCG and EPA agree that the USCG may obligate up to \$1,000,000 per incident without prior approval from EPA. Total costs limited by the \$1 million restriction are:

- Commercial cleanup contracts
- Analytical services



- . Other Federal agency costs (e.g. NIOSH, FEMA)
- . USCG out-of-pocket expenses

Requests to obligate amounts in excess of the \$1,000,000 limit must document the criteria of CERCLA 104(c)(1) via the "Exemption to \$1 Million Limit Sample Action Memorandum" (See Appendix D). Requests shall be approved by the Assistant Administrator, Office of Solid Waste and Emergency Response, who acts as the Manager of the CERCLA Hazardous Substance Response Trust Fund. Requests shall be submitted to the Response Operation Branch, Emergency Response Division (ERD), Office of Emergency and Remedial Response.

ERD will process the request in accordance with EPA delegations of authority and procedures in effect at the time. The USCG will modify its existing contracts or request that the ERCS Contracting Officer modify any existing delivery orders to reflect each ceiling increase. Certified copies of the contract or delivery order modification must be submitted to EPA's disbursing office. The USCG is also authorized to grant six-month exemptions for USCG CERCLA responses, where the response meets the statutory criteria of CERCLA 104(c)(1).

#### B. FWPCA

EPA OSC's shall follow the specific procedures established by the appropriate USCG District Office which serves as the local 311(k) Fund Manager and contracting office. The initial ceiling request should reflect the OSC's best estimate of the cost of the response. The EPA OSC can request and receive approval of a financial ceiling for the spill of up to \$1,000,000. Total cumulative obligations over the amount require authorization by the Commandant (G-W).

Contract procedures must follow the guidance of the cognizant USCG District Contracting Office. If the Coast Guard has BOAs among contractors for the locality in which the oil spill emergency takes place, the EPA OSC is authorized to orally place an order or orders for a cumulative maximum amount not to exceed \$50,000 provided that:

- (1) The situation is of such urgency that contacting the USCG contracting office prior to placement of an oral order would cause undue delay and result in further environmental hazard;
- (2) The BOA provides for the placement of orders by EPA OSCs; and

- (3) The OSC documents his/her efforts to consider all available BOAs in the initial POLREP or in a separate document to be submitted to the contracting officer within two working days of placement of any oral order. This documentation shall include, as a minimum, the following:
  - (a) The names of the contractors contacted and the contractor's point of contact.
  - (b) If the response times and rates quoted by any one contractor were different from the terms of the BOA, and if so, what the contractors's quoted rates and times were.
  - (c) The rationale for awarding an order to the successful offeror, i.e. "Justification For Other Than Full and Open Competition", as required by Part 6 of the Federal Acquisition Regulation (FAR).

For services not listed on an existing BOA, or in the absence of a BOA, the EPA OSC may request that the USCG modify the contract or permit supplemental contracting. For questions on financial management matters, contact the appropriate USCG District office (see Appendix C for address and telephone numbers).

## VI. COST CONTROL AND DOCUMENTATION

### A. CERCLA

EPA, acting as manager of the Hazardous Substance Response Trust Fund, requires current information on CERCLA response actions and related obligations of CERCLA funds for these actions. In addition, CERCLA authorizes EPA to recover from responsible parties all government costs incurred during a response action. To ensure successful recovery of CERCLA funds, USCG shall maintain site specific accounts for all response contractor costs and site specific IAGs, by documenting the following:

- . USCG personnel hours and salary costs
- . USCG personnel travel and per diem expenses (travel authorizations, paid vouchers, and treasury schedules)
- . Contract costs (paid vouchers, treasury schedules, and a certified copy of the contract)
- . Receipts for materials, equipment, and supplies
- . Sample collection and analysis costs



- Standard costs for the use of USCG equipment, vessels, aircraft or vehicles used in support of a response activity

- Any other costs associated with the removal action not included in the above categories.

EPA must also have documentation of the fulfillment of the criteria of CERCLA 104(a) and the National Contingency Plan for undertaking a removal action. For cost recovery actions, upon request from EPA or the Department of Justice (DOJ), USCG will provide to EPA or DOJ, site-specific costs and copies of the back-up documentation which support those costs. USCG will provide EPA with a contact for obtaining such site-specific accounting information and documentation. This cost information and documentation must also be available for audit or verification on request of the EPA Inspector General.

B. FWPCA

The Coast Guard, acting as manager of the 311(k) Pollution Fund, requires current information on FWPCA response actions and related obligations of FWPCA funds for these actions. In addition, FWPCA authorizes the USCG to recover from responsible parties all government costs incurred during a response action.

In order to ensure successful recovery of FWPCA funds, EPA shall maintain site specific records for all response contractor costs and document the following:

- Employee hours and salary costs (Timesheets)
- Employee travel and per diem expenses (travel authorizations, paid vouchers, and treasury schedules)
- Contract costs (paid vouchers, treasury schedules, and a certified copy of the contract)
- Receipts for materials, equipment and supplies
- Sample collection and analysis costs
- Any other costs associated with the removal action not included in the above categories.

The USCG must also document fulfillment of the criteria the National Contingency Plan requires for undertaking a removal action. This includes documentation that proper notice was made to the responsible party before commencing the removal action.



For cost recovery actions, upon request from USCG or the Department of Justice (DOJ), EPA shall provide to USCG or DOJ, site-specific costs and copies of the back-up documentation which support those costs. EPA shall provide USCG with a contact for obtaining such site-specific accounting information and documentation. This cost information and documentation must also be available for audit or verification on request of the DOT Inspector General.

## VII. REPORTING REQUIREMENTS

### A. CERCLA

The USCG shall submit pollution reports (POLREPS) to the Director, Emergency Response Division, EPA (see Appendix B) to relate CERCLA response and fund obligation data. The initial POLREP shall be submitted within 72 hours of initiating a CERCLA response. Progress POLREPS should be submitted on a routine basis. Special POLREPS shall be submitted to report any major unanticipated event at approved response actions (e.g. fires, explosions and all accidents). Finally, for all CERCLA-financed USCG removals, the USCG OSC shall submit to EPA HQ ERD (via USCG HQ) within 60 days of the conclusion of the response a final OSC report that meets the requirements of the pollution report section of the NCP.

### B. FWPCA

The EPA OSC shall routinely report progress to the appropriate USCG District Office through POLREPS or any other means specified by the District Office. In addition, the EPA OSC shall notify the USCG District Office as soon as possible to report any major unanticipated events at active response sites. Finally, the EPA OSC shall complete and submit to the USCG District Office within 60 days of the conclusion of the response a final OSC report that meets the requirements of the pollution report section of the NCP.

## VIII. PERIOD OF AGREEMENT

This MOU shall continue in effect until modified or amended by the assent of both parties. Either party can terminate the MOU by giving a thirty (30) day written notice. Nothing in



this MOU is intended to diminish or otherwise affect the statutory authority of the USCG or the EPA. This MOU shall become effective on the date of the last signature below.

\_\_\_\_\_  
Commodore, U.S. Coast Guard  
Chief, Office of Marine  
Environment and Systems

DATE: \_\_\_\_\_

\_\_\_\_\_  
Assistant Administrator,  
Office of Solid Waste and  
Emergency Response

DATE: \_\_\_\_\_



PROCEDURES FOR USCG SITE-SPECIFIC  
INTERAGENCY AGREEMENTS (IAGs)

When the Coast Guard wishes to submit an IAG for reimbursement of out-of-pocket non-vendor costs incurred at Coast Guard-lead CERCLA incidents, the following procedures shall be followed:

1. The Coast Guard OSC shall contact the EPA HQ Superfund Funds Control Center (FCC) (475-8102) to request preparation of IAG documentation and to provide a cost breakdown and other site specific information. To ensure reimbursement of expenditures, the request, including a completed "Certification for Emergency Response Activities" form (sample attached), must be submitted no later than two weeks after completion of the response.
2. The Superfund Funds Control Center shall prepare the IAG package and route four (4) original IAG copies and a commitment notice through the EPA HQ Response Operations Branch (ROB). ROB shall prepare a decision memo, attach it to the IAG package and forward the package to the Director, Office of Emergency and Remedial Response (OERR) for review and sign-off.
3. The Director, OERR shall sign the four (4) originals and return them to the Superfund FCC for transmittal to the EPA Grants Administration Division (GAD)(EPA Mail Code PM-216) for review and sign-off.
4. Following GAD sign-off, the IAG is transmitted to the Chief, USCG Environmental Response Division at the following address:  
  
Commandant, G-WER  
U.S. Coast Guard  
2100 Second St., S.W.  
Washington, D.C. 20593  
ATTN: Chief, Environmental Response Division
5. The Coast Guard shall review and sign all four (4) originals, retain one signed original and return the other three (3) to EPA GAD.
6. GAD shall retain one signed original and transmit one original to the Financial Management Division (FMD), Cincinnati for obligation and one original to the EPA HQ FCC who in turn shall forward a copy to the EPA HQ Response Operations Branch.





7. Certified Coast Guard vouchers shall be submitted by USCG for processing and payment to EPA FMD, Cincinnati at the following address:

EPA Cincinnati Accounting Operations Office  
ATTN: Financial Management Officer  
26 West St. Clair Street  
Cincinnati, OH 45268  
(FTS-684-7831)

8. Cincinnati forwards a "Contract Status Notification" form (EPA Form 2550-19) to the EPA Superfund FCC for approval prior to payment.

NOTE:

The above procedures apply to USCG lead responses. When USCG assists at EPA-lead responses, requests for reimbursement of non-vendor out-of-pocket costs should be referred to the appropriate EPA Region. In such cases, the EPA OSC will be responsible for certifying USCG incurred expenses.

