

MARINE SAFETY MANUAL

CHAPTER 7. POLLUTION RESPONSE

A. General Provisions.

1. Authority. Section 311 of the Federal Water Pollution Control Act (FWPCA), as amended (33 U.S.C. 1321) and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601, et seq.), are the principal authorities for federal response to discharges of oil and releases of hazardous substances. The procedures and standards for conducting responses are contained in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR 300.34(b)). Each Coast Guard captain of the port (COTP), under the NCP and applicable Regional Contingency Plan (RCP), coordinates federal activities on scene as either the predesignated On-Scene Coordinator (OSC) or the first federal official in the absence of the predesignated OSC. The OSC's objective is to ensure rapid and efficient mitigation of actual or threatened pollution releases and discharges. This chapter supplements the procedures for carrying out the Coast Guard's responsibilities under the NCP. Legislative mandates and Executive Orders (E.O.'s) authorizing Coast Guard actions in pollution response and COTP functions are listed in volume I of this manual.

2. National Response Organization.

a. Role Of The OSC. It is the policy of the Coast Guard to ensure that timely and effective response action is taken to control and remove discharges of oil and releases of hazardous substances, including substantial threats of discharges and releases, into the coastal zone, unless such removal actions are being conducted properly by the responsible party. As the single federal official responsible for ensuring proper pollution response and enforcement, the OSC is the most important component in the national response organization. The OSC must quickly determine:

- (1) The nature, amount, and location of a pollutant;
- (2) The potential impact on public health and welfare or on the environment; and
- (3) The countermeasures necessary to adequately contain, control, or remove the pollutants.

The OSC shall use appropriate legislative and regulatory authorities, the NCP, regional and local contingency plans, and other circumstances unique to each incident to ensure that pollution response is carried out expeditiously and aggressively.

b. OSC's Emergency Task Force (ETF). A Coast Guard OSC manages the ETF cited in the NCP (40 CFR 300.32(b)). The ETF must be able to assess a spill to determine response measures, monitor and supervise pollution countermeasures, employ limited Coast Guard equipment until a contractor arrives, document all phases of the response, and conduct investigations. While many responsibilities

may be delegated to the OSC's staff, the OSC remains solely responsible to determine the threat to public health and welfare, to authorize the expenditure of federal funds, and to ensure that necessary response actions are performed. When the situation mandates, the OSC shall augment his or her staff with whatever expertise, personnel, and/or equipment that is available through national, regional, and local contingency plans. Most notable are the National Strike Force (NSF), the Environmental Response Team (ERT), the Scientific Support Coordinator (SSC), and the Public Information Assist Team (PIAT) described in the NCP as Special Forces. The capabilities of available Special Forces and guidance on when they should be contacted are found in paragraph 7.D.4 below.

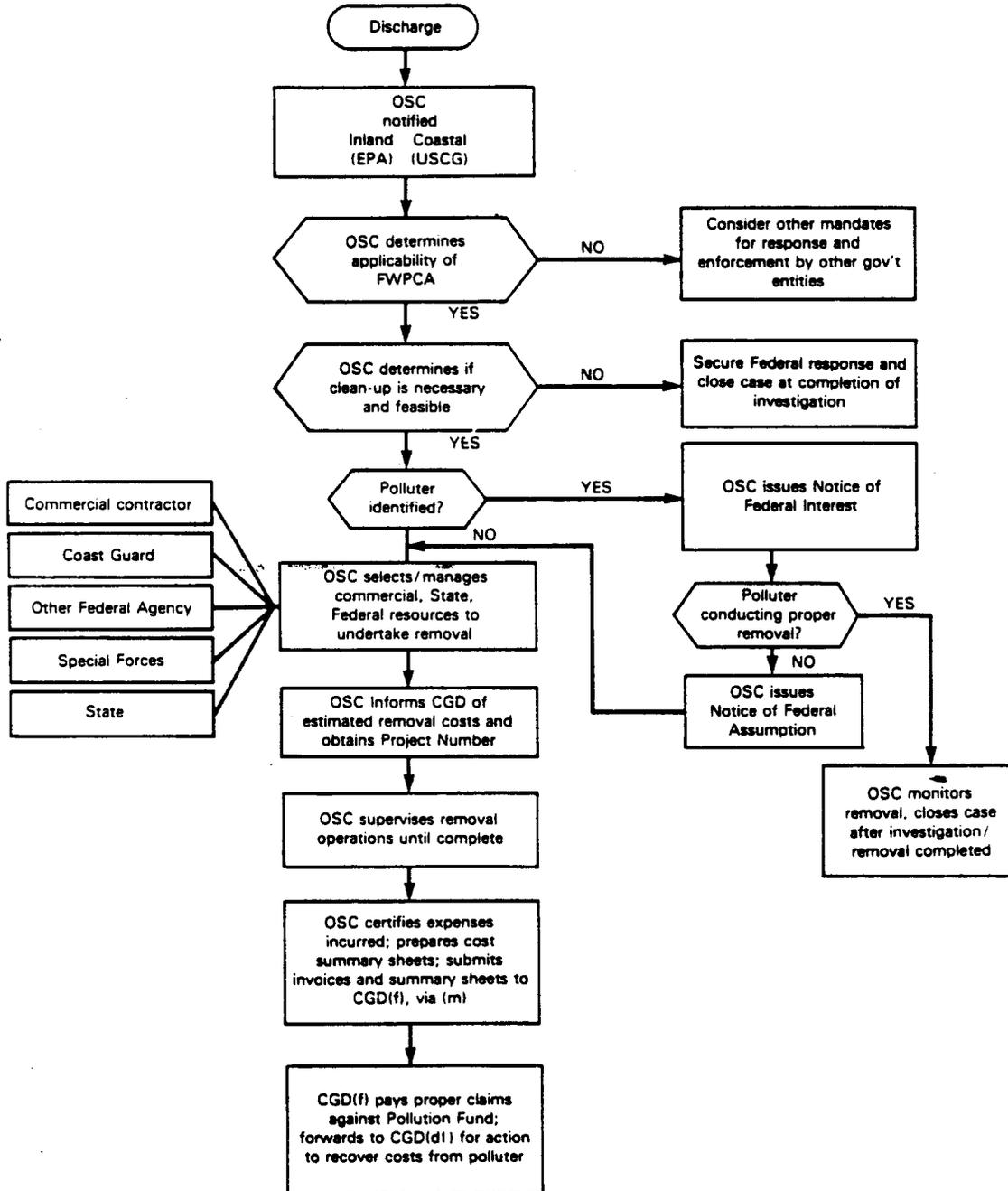
- c. Interagency Functions. The National and Regional Response Teams (NRT and RRT) act as the coordinating bodies that assist the OSC in rapidly obtaining expertise or resources from other federal or state organizations. Agencies comprising the NRT and RRT, along with their respective areas of expertise and responsibilities, are listed in the NCP (40 CFR 300).
3. Response Alternatives. The NCP describes separate procedures for "discharges" under the FWPCA, and "releases" under CERCLA. CERCLA does not apply to oil spills, but is more comprehensive than the FWPCA, and it should be used for response to all hazardous substance releases, even if the FWPCA is applicable. [NOTE: In order to enhance the potential for removal cost recovery in the case of a hazardous substance discharge from a foreign flag vessel neither owned nor operated by a United States citizen, both Section 104(a) CERCLA and Section 311(c) FWPCA should be cited as authority for necessary removal actions. Of course this would be limited to circumstances where both statutes apply. Since CERCLA Trust Fund monies will be used, CERCLA procedures will still be followed.] Usually, a limited federal effort is required, beyond the investigation duties described in volume V of this manual, if either mitigation measures are not feasible, or the polluter and/or other parties are taking appropriate measures. When more extensive federal involvement is required, the OSC must rapidly determine the appropriate response alternative provided for by the FWPCA, CERCLA, or other authority. Figures 7-1 and 7-2 are "standard" flowcharts for pollution response under the FWPCA and CERCLA, respectively Section 7.B below details pollution response under the FWPCA. Most of the procedures also apply to CERCLA and can generally be used in response to hazardous substance releases. Section 7.C below provides additional procedures that are unique to CERCLA.

B. Pollution Response Under The FWPCA.

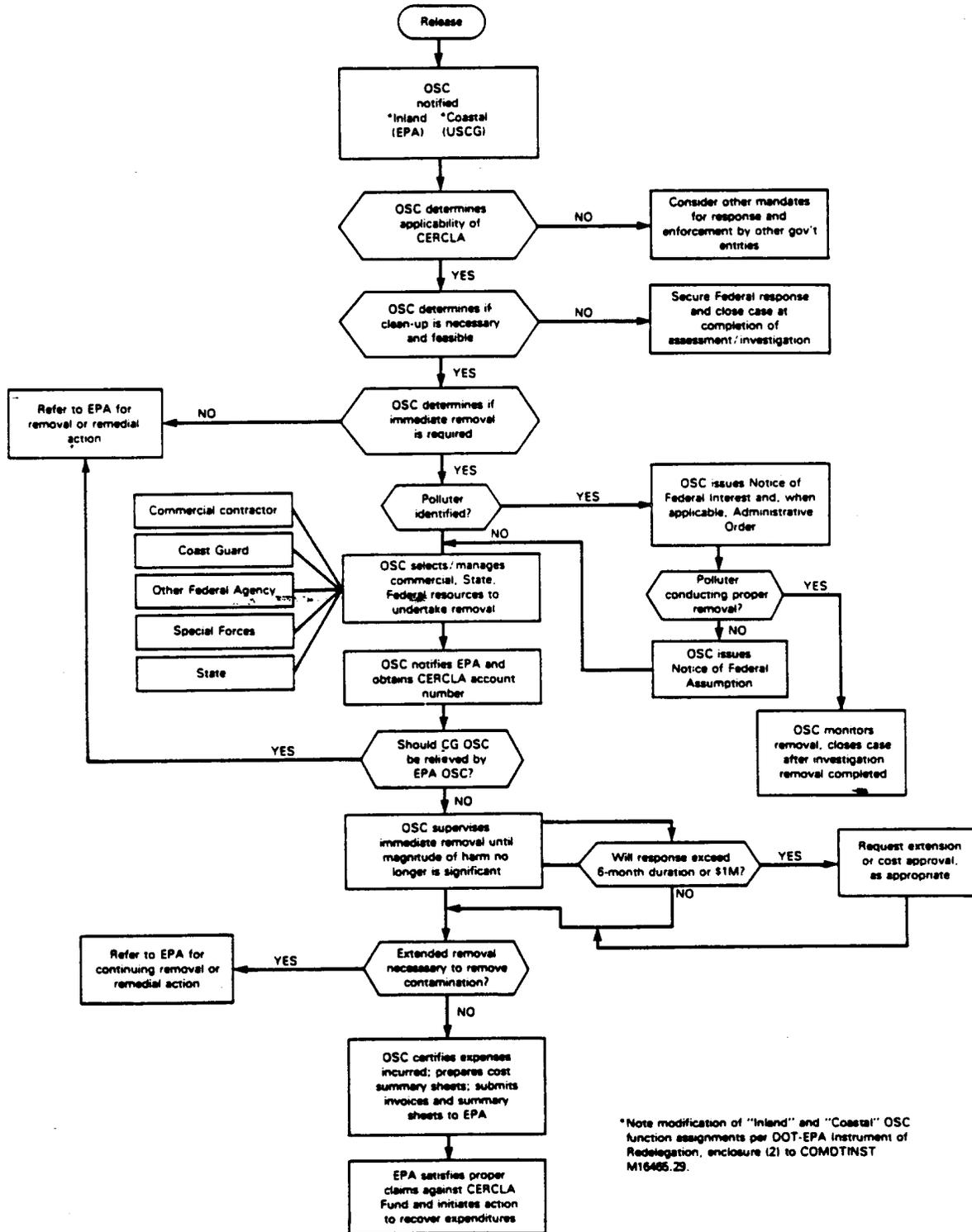
1. Handling The Report Of A Pollution Incident. The NCP (40 CFR 300.51(b)) requires that all reports of discharges be made to the National Response Center (NRC), unless reporting to the NRC is not practicable. In such cases, reports can be made to the Coast Guard or EPA predesignated OSC for the area where the discharge occurs. The OSC is required to promptly relay all such reports to the NRC. Telephone relay is not required. Entry of the NRC Case Number in the appropriate field of the Marine Safety Information System Marine Pollution Product Set (MSIS-MP) will meet this relay requirement.

FIGURE 7-1

FWPCA RESPONSE FLOWCHART



**FIGURE 7-2
CERCLA RESPONSE FLOWCHART**



*Note modification of "Inland" and "Coastal" OSC function assignments per DOT-EPA instrument of Redefinition, enclosure (2) to COMDTINST M16485.29.

- a. State Notification. On receipt of a pollution incident, the OSC shall notify the appropriate state representative and any other agency whose services may be necessary during a response. This notification also serves as notice to the applicable state natural resource trustees.
 - b. Notification Of Natural Resource Trustees. The OSC should notify the appropriate land managing agencies or trustees of natural resources whenever there is any indication of resources potentially being affected by an oil discharge or hazardous substance release. Federal resource trustees are identified in Subpart G of the NCP and should also be identified in the RCP.
2. Preliminary Assessment. The OSC shall determine the discharge's magnitude and severity, the identity of suspected polluters, threats to public health and welfare, the feasibility of countermeasures, and the Coast Guard's jurisdictional authority to pursue pollution countermeasures for all pollution reports.
- a. Determining The Need For On-Scene Assessment. Sections 300.52 and .64 of the NCP require that the OSC conduct a preliminary assessment of each reported discharge or release. However, this assessment does not necessarily require the on-scene presence of Coast Guard personnel. The following policy should be used in determining whether Coast Guard presence is required on scene:
 - (1) The OSC will rapidly assess every reported discharge of oil or release of hazardous substances. Based on the geographical size of the zone, resource limitations, and information received in the notification, the OSC may, as necessary, use capable representatives of other federal, state, or local government agencies for this initial assessment.
 - (2) If the responsible party is conducting the removal, the OSC will monitor, or assure that a capable representative from another federal, state, or local government agency monitors, all cleanup activities. In those cases where a Coast Guard or other government official is not on scene, conduct monitoring by the best practical means available.
 - (3) In all cases when Coast Guard investigation is required for civil or non-notification penalties, investigators will be dispatched in accordance with procedures detailed in volume V of this manual.

Whether or not Coast Guard personnel are dispatched, the Coast Guard COTP shall enter the pollution incident in the MSIS-MP using available information (see subparagraph 7.B.6.b.(2) below).

- b. Determining FWPCA Applicability. The OSC must ensure that three criteria are met before exercising enforcement or removal activity:
 - (1) There was a DISCHARGE or substantial threat of a discharge (see the FWPCA, Section 311(a)(2) , but note that removal authority is not limited by exclusions (A)₁ (B), or (C));

- (2) Of OIL or HAZARDOUS SUBSTANCES (see the FWPCA, Section 311(a)(1) for oil, 40 CFR 117 for hazardous substances);
- (3) Into or upon the NAVIGABLE waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act (OCSLA) or the Deepwater Port Act of 1974 (DPA), or which may affect natural resources belonging to, appertaining to or under the exclusive management authority of the United States (see the FWPCA, Section 311(b)(3)). "Quantities which may be harmful" (40 CFR 110.3 and 117) have no bearing on authority to undertake removal action.

Section 502(7) of the FWPCA broadly defines navigable waters as "waters of the United States." This includes waters "traditionally" recognized as navigable, along with streams, creeks, lakes, and ponds which form their tributaries. Storm drains and other artificial systems are extensions of waterways when an effluent could flow through them into the tributary system without passing through a treatment plant. "Waters of the U.S." also include seasonally dry watercourses when there is water standing or flowing. The mere existence of a channel or bed through which water could flow is, however, insufficient without the actual presence of water or potential presence of water in the near future due to tidal fluctuations, seasonal flooding, or other occurrences. Therefore, "navigability" is not the controlling factor. Definitions of jurisdictional terms are contained in 33 CFR 2.05.

c. Pollution Countermeasures. The OSC must ensure that response actions to mitigate damage are initiated as soon as possible after discovery or notification of a discharge or potential discharge. These actions include, but are not limited to:

- (1) Containment measures and monitoring the spread of the pollutant;
- (2) Measures required to warn the public of acute danger;
- (3) Provision of temporary drinking water sources;
- (4) Monitoring to determine the extent of contamination;
- (5) Removal/cleanup/disposal measures;
- (6) Providing navigational cautions while response activities are underway;
and
- (7) Response efforts required to locate and isolate spill sources or to identify the properties of the discharged pollutants.

Such countermeasures should be taken by the responsible party (usually through cooperatives or contractors), but may be initiated by the OSC if circumstances require. The long-term solution to some spills may require the construction of major capital structures including advanced treatment Systems or extension dikes. While such construction may mitigate the danger to the public, it normally is not

appropriate to undertake directly such extensive actions under Section 311(c) of the FWPCA.

d. Feasibility Of Removal Actions. The OSC must use experience and best judgment when applying the FWPCA authority in removing, arranging for removal, or ensuring the proper removal of pollutants. Considerations in determining the feasibility of removal include:

- (1) Will removal action cause more damage to the environment than allowing the pollutant to naturally dissipate?
- (2) Can cleanup be initiated before the pollutant disperses, making cleanup impractical?
- (3) Can equipment be deployed without excessive risk to the life and health of personnel?

3. Actions Required When The Polluter Is Identified. When the polluter is identified, the OSC shall undertake the procedures described below. [NOTE: It is of particular importance that the OSC make a reasonable effort to have the responsible party voluntarily and promptly perform removal operations (see the NCP, 40 CFR 300.52).]

a. Notice Of Federal Interest. The OSC shall present a Notice of Federal Interest for an Oil Pollution Incident (Form CG-5549) to every suspected discharger. [NOTE: This requirement is for internal direction only. The failure of an OSC to present this Notice in a given case does not affect any liability of any person which may arise in that case.] This informs the suspected discharger of a potential violation of the FWPCA, as amended, and of his or her possible liability to a civil penalty of up to \$25,000 per day of violation or up to 3 times the cost incurred by the OSLTF. Notice should also be made in potential pollution incidents when the actions of the potential discharger to abate the threat are considered insufficient, and Federal action is contemplated. If possible, any witness(es) should accompany the OSC's representative when the Notice is served. The OSC's representative shall retain the OSC's copy of the Notice that is signed and dated by the suspected discharger, or the suspected discharger's representative. If the discharger refuses to sign, the Notice will still be served. The investigator will note the circumstances on the copy, Sign and date it, and have the witness(es) sign and date it. Should the owner/operator be unavailable, the Notice shall be sent via Certified mail, return receipt requested. A sample Notice of Federal Interest for an Oil Pollution Incident (Form CC-5549) is shown in Figure 7-3.

b. Monitoring Removal Operations. Normally, the removal is done by the responsible party, and the OSC need only ensure that it is being conducted properly. "Proper" includes both the timeliness and the adequacy of the removal operations that are necessary to control the spread of the discharge and mitigate the environmental effect. When appropriate, the OSC shall guide the discharger on the preferred course of action. The OSC shall use good judgment in determining the extent of monitoring required and the need for the presence of

FIGURE 7-3

U.S. Department
of Transportation

United States
Coast Guard



COMMANDING OFFICER

NOTIFICATION OF FEDERAL INTEREST FOR (Rubber Stamp With MSO's
AN OIL POLLUTION INCIDENT Address to Fit Here)

(Address of Responsible Party)

(Date)

Gentlemen:

On or about _____ (Date) _____, an oil pollution incident occurred or threatens to occur at Vessel/Facility Name, Location, and Body of Water. You may be financially responsible for that incident. Under Federal Statutes, the United States Government may take action to minimize or mitigate damage to the public health or welfare that is threatened or that may be caused by this incident.

Under the Oil Pollution Act of 1990, the responsible party is liable for, among other things, removal costs and damages resulting from this incident. The failure or refusal of the responsible party to provide all reasonable cooperation and assistance requested by the Federal On-Scene Coordinator (OSC) will eliminate any defense or entitlement to limited liability which otherwise might be available under the Act.

You are advised that your failure to properly carry out the removal of the discharge as ordered by the OSC or to comply with any administrative orders necessary to protect the public health and welfare, may subject you to additional penalties. For such failure, owners, operators, or persons in charge of the vessel or facility from which the oil is discharged are subject under the Federal Water Pollution Control Act (FWPCA), as amended, to a civil penalty of up to \$25,000 per day of violation or up to 3 times the costs incurred by the Oil Spill Liability Trust Fund. Should you require further information concerning this matter, please contact _____ (Name of OSC) _____ at the above address and telephone number.

As long as the OSC determines that you are taking adequate actions in this matter, Federal removal action will usually be limited to monitoring the progress of your actions and providing guidance as necessary. Under the FWPCA, as amended, your response actions may be taken into account in determining the amount of any penalty assessed as a result of the discharge.

Sincerely,

(Signature of OSC or Representative)

Received and Acknowledged: _____
(Signature of Responsible Party)

Witness(es): _____
(Signature, Date, and Time)

(Signature, Date, and Time)

the Coast Guard or other government agencies on scene. The extent of monitoring required will largely depend on the known capabilities and the reliability of the discharger and/or the discharger's cleanup firm. The OSC will monitor, or assure that a capable representative from another federal, state, or local government agency monitors, all responsible party cleanups. Monitoring tasks include:

- (1) Prioritizing the areas to be cleaned-up and the degree of removal that is required;
- (2) Providing advice on removal methods;
- (3) Ensuring only authorized means of cleanup are used (i.e., no chemical agents other than those authorized by the NCP, Subpart H) (see paragraph 7.D.3 below);
- (4) Ensuring selected cleanup techniques and equipment result in the least environmental damage or interference with designated water uses including the protection of vulnerable or endangered species of waterfowl and wildlife; and
- (5) Recommending changes to improve cleanup operations.

c. "Arranging For Removal" (TO BE DEVELOPED)

d. Federal Assumption Of Response Activities. Under FWPCA Section (311)(c)(1), whenever a polluter is unknown or not acting responsibly, or when its removal effort is insufficient, or to present the substantial threat of a discharge, the OSC may assume total or partial control of response activities. The OSC must inform the suspected polluter, if known, of this action by issuing a Notice of Federal Assumption of Response Activities, even if the suspected polluter has not initiated any action. This Notice references the Notice of Federal Interest for an Oil Pollution Incident and indicates the date and time the Federal response is initiated. The same procedures used for issuing and obtaining signatures for the Notice of Federal Interest for an Oil Pollution Incident apply. Figure 7-4 is a sample Notice of Federal Assumption of Response Activities. [NOTE: This requirement is for internal direction only. The failure of an OSC to present a Notice of Federal Assumption of Response Activities in a given case does not affect any liability of any person which may arise in that case.] In some instances, the OSC may determine that the polluter's response efforts should continue, but that some Federal assistance is necessary to augment the cleanup (e.g., cleanup resources that the polluter cannot or will not provide). Whenever it is necessary for the federal government to expend funds in support of a cleanup operation, for purposes other than monitoring, the OSC should declare a Federal spill for the area(s) for which he or she is assuming control, activate the OSLTF to cover expenses and take whatever actions are necessary to ensure a proper cleanup. In these cases, the Notice of Federal Assumption shall clearly delineate those actions or areas for which the OSC is assuming control or providing other resources. [NOTE: The term "declare a Federal spill" as used in this chapter means: in the case where a suspected polluter has been identified, the presentment of the Notice of Federal Assumption; or in other cases, the initiation of Federal removal operation.]

4. Initiating Federal Removal Operations.

a. Resources.

- (1) Introduction. The OSC may use the OSLTF to pay for removal costs as described in subparagraph 7.B.3.d above. In addition to the resources listed below, any of the Special Forces (see paragraph 7.D.4 below) may be activated whenever local resources are unable to provide necessary equipment, personnel, or expertise. In managing a Federally-funded removal, the OSC must make every effort to:
 - (a) Minimize elapsed time from notification to deployment of equipment;
 - (b) Match equipment and personnel to spill characteristics; and
 - (c) Minimize the cost of labor, equipment, and materials and rapidly secure those resources that are no longer needed.

FIGURE 7-4

SAMPLE NOTICE OF FEDERAL ASSUMPTION OF RESPONSE ACTIVITIES

(Name/Address)

Gentlemen:

My letter of (date) notified you of federal interest in an actual or potential pollution incident at (vessel/facility) at (location and body of water), for which you are presently considered financially responsible.

You are hereby given notice that your actions to abate this threat and to remove the substance(s), and to mitigate (its/their) effects have been evaluated as unsatisfactory by the U.S. Coast Guard On-Scene Coordinator (OSC), (name). Effective (date/time), the Coast Guard will conduct all response activities under the authority of [Section 311(c)(1) of the Federal Water Pollution Control Act (FWPCA), as amended] [Section 104(a)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)]. Removal will be effected in accordance with the criteria of the National Oil and Hazardous Substances Pollution Contingency Plan and federal regulations. You may then be liable for all removal costs incurred by the federal government as set forth in [Section 311(f) of the FWPCA] [Section 107(a) of CERCLA].

Should you require further information concerning this matter, you should contact: (name, address, and telephone number of OSC).

Sincerely,

(OSC or Representative)

Received and acknowledged:

(Name of Addressee), (Date/Time)

Witness: (Name), Date/Time)

- (2) Managing A Commercial Contractor. The OSC shall, whenever possible, use contractors having current Basic Ordering Agreements (BOA's) with

the district commander (fcp) (see Commandant Instruction (COMDTIRST) 4200.14 (series)). Consult with the district contracting officer when a contractor is not under a BOA. In all cases, the OSC must know the contractor's capabilities. The selection shall be based on the OSC' 5 determination of the lowest cost contractor capable of performing the job in a timely manner, not solely on a rotation schedule or other method. The OSC shall specify the needed cleanup resources and authorize the contractor to proceed in writing or verbally, with a written follow-up. Documentation of contractor costs is described in subparagraph 7.B.6.c.(2) below. Operations performed at the scene of a federally-funded spill that are not authorized by the OSC will not be paid from the Pollution Fund.

- (3) Use Of Coast Guard Unit Equipment. Each OSC shall maintain levels of "first aid" oil pollution response equipment as determined through the contingency planning process; however, it is the Coast Guard' 5 policy not to compete with the commercial sector. Consistent with this policy, the use of Coast Guard equipment is appropriate only when:
- (a) It can be used in a more timely fashion than commercially available equipment;
 - (b) It includes a necessary containment or removal device that cannot be reasonably obtained from commercial sources; or
 - (c) It will significantly enhance removal activities.

COKDTINST 7310 (series) establishes standard rates to compute charges for Coast Guard pollution response equipment. Questions concerning these rates or the determination of other charges should be addressed to Commandant (G-FAC-6). Whenever the OSC must utilize Coast Guard-owned equipment for purposes other than monitoring, the OSC shall declare a federally-funded removal to the extent necessary to ensure effective removal of pollutants. Upon arrival of commercial equipment, Coast Guard-owned equipment should be removed, provided a smooth transition can be made. Additional guidance on the administration and use of Coast Guard-owned material for pollution response is found in volume I of this manual.

- (4) Use Of The State In Removal Operations. Under contracts or cooperative agreements established under the FWPCA (Section 311(c)(2)(h)), states may be reimbursed for OSC authorized expenditures incurred while conducting removal operations. determination by the OSC that the responsible party is not properly conducting removal operations is a prerequisite for reimbursement of state removal expenses. Without a Section 311(c)(l) determination by the OSC prior to initiation of response actions, a state cannot obtain reimbursement for costs incurred in those activities. In addition, the OSC must determine that state removal actions are necessary. The OSC may authorize state removal actions when the state can minimize or mitigate significant damage which federal removal

actions cannot, or when the cost incurred by the state will be less than, or not significantly greater than, that incurred by federal departments or agencies (NCP, 40 CFR 300.58). Also, since the OSC must certify that the activities of the state and the corresponding expenses were authorized, the OSC must maintain an appropriate level of supervision over state response actions. Only expenses prepaid from state funds may be considered for reimbursement. This policy recognizes the responsibility of the OSC to determine the propriety of any removal actions taken by the party responsible for the discharge and allows the OSC to maintain effective control over removal activities in the OSC's geographic area of responsibility. Care must be exercised in a state removal operation to ensure that misunderstandings do not develop concerning reimbursement of funds expended for removal activities. State resources are to be used in accordance with formal agreements established among federal departments and agencies, the state, and the Coast Guard. These agreements should describe the mechanisms governing state reimbursement from the Pollution Fund for reimbursable activities listed in 33 CFR 153.407. To remain consistent with the policy on use of the 311(k) fund for hazardous substance removals, as described in section 7.B.7.a below, all agreements should be limited to oil discharge removal actions. The procedures for coordinated federal and state response activities should be included in the RCP. A sample agreement with a state agency is shown in Figure 7-5.

- (5) Use Of Other Federal Agencies. The OSC shall be familiar with existing Memorandums of Understanding (MOU's) and Interagency Agreements (IAA's) that describe the responsibilities and expectations of participating agencies during response operations. Figure 7-6 contains a list of existing MOU's and IAA's pertaining to pollution response (volume X (TO BE DEVELOPED) of this manual will contain copies of these documents).

- b. Accessing The FWPCA 311(k) Pollution Fund. The OSC shall promptly request the issuance of a project number from the district Fund Administrator for all federally-funded removals (see paragraph 7.B.7 below concerning use of the Fund). The OSC will provide the following information with the project number request:

- (1) The amount of obligation needed;
- (2) The name of the discharger, if known or suspected;

FIGURE 7-5

SAMPLE AGREEMENT BETWEEN THE UNITED STATES AND THE STATE OF _____
CONCERNING REIMBURSEMENT FROM THE FEDERAL POLLUTION FUND

WHEREAS, the state of _____, through its (state agency), and the U.S. Coast Guard, through its Coast Guard District, have a mutual interest in protecting the environment from the damaging effects of oil pollution discharged into the navigable waters of the United States and the adjoining shorelines within their mutual jurisdictions; and

WHEREAS, the Coast Guard is authorized by the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.), hereinafter called the "Act," and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300), hereinafter called the "National Contingency Plan," to reimburse state agencies from the Federal Pollution Fund under certain circumstances in which the Federal On-Scene Coordinator, hereinafter called the "OSC," determines that such action is necessary; and

WHEREAS, the state of _____, through its (state agency), and other political subdivisions and state instrumentalities, is authorized by state statute and local ordinances to pursue vigorous action to abate, contain, and recover oil pollutants discharged into its waters; and

WHEREAS, the (state agency) is the agency of the state of _____ designated pursuant to 40 CFR 300.24(a) to direct the cleanup of pollution by state and local agencies, and is the sole agency to submit requests for reimbursement for all ~ subdivisions, and instrumentalities; and

WHEREAS, the (state agency) and the Coast Guard District desire to establish uniform procedures for the authorization, documentation, certification, and reimbursement from the Federal Pollution Fund of Phase III (Containment, Countermeasures, Cleanup, and Disposal) oil pollution cleanup expenses incurred by the (state agency) or other state agencies, instrumentalities and political subdivisions under its supervision and control, and which are required to be paid by the Act, the National Contingency Plan, and by appropriate implementing regulations;

NOW THEREFORE, the (state agency) and the Coast Guard District agree as follows:

- (1) The OSC, designated in accordance with the National Contingency Plan, is the person solely responsible for coordinating federal pollution control efforts and the only person who may authorize activities which are reimbursable from the Pollution Fund.
- (2) This agreement is not intended to limit, to those situations in which reimbursement from the Pollution Fund is permissible, the activities of (state agency), other state agencies, instrumentalities, or political subdivisions in carrying out the mandate of statutorily approved programs. It is anticipated that exercise of state authority may be appropriate in circumstances in which federal action is not deemed necessary by the OSC. Activities of (state agency) other state agencies, instrumentalities, or political subdivisions may include expenditure of state funds which under other circumstances would be reimbursable, or expenditures (such as restoration expenses) which are not reimbursable from the Pollution Fund.
- (3) The OSC may inquire of the designated representative of (state agency) what, if any, equipment, personnel, or materials of (state agency), other state agencies, instrumentalities, or political subdivisions are available for use hereunder. The designated representative

shall inform the OSC of what items, if any are available and to what extent, if any, (state agency) desires to assume a portion of the responsibility for Phase III actions during a particular oil pollution incident, and the estimated costs of such actions.

- (4) Upon determination by the OSC that all of the following conditions have been met, he or she may authorize (state agency) to proceed with certain work to contain, clean up, and remove oil deposited upon the navigable waters of the United States or on adjacent shorelines or beaches:
 - (a) That the party causing the discharge is unknown; or that the responsible party has been notified, if possible, of his or her liability for the costs of federal removal in accordance with Section 311(f) or (g) of the Act, the need to perform the removal in accordance with listing federal and state statutes and regulations, including the National Contingency Plan, and the name and availability of the OSC;
 - (b) That, despite these efforts by the OSC or other officials, the responsible party does not act promptly and adequately to remove the discharge; and
 - (c) That state action is required to minimize or mitigate significant damage to the public health and welfare which federal action cannot minimize or mitigate; or that state action can be effected at a cost not significantly greater than that which would be incurred through action by federal agencies.
- (5) If the OSC determines that the conditions of paragraph (4) have been met and that state action is necessary, he or she may authorize the designated representative of (state agency) to proceed with the performance of appropriate services. This notice to proceed may be limited in any fashion and may be terminated at any time by the OSC, in whole or in part, by written or oral notice to the designated representative.
- (6) All labor and equipment offered by the designated representative of (state agency) and authorized for use by the OSC shall be performed using the employees of (state agency), other state agencies, instrumentalities, or political subdivisions, unless the provisions of paragraph (8) of this agreement are met in contracting private concerns. All authorized work shall be supervised by the designated representative of (state agency). Work authorized hereunder, whether rendered by (state agency), other state agencies, instrumentalities, or political subdivisions shall be paid for by state or local appropriations and shall be considered, for the purpose of this agreement, as work rendered by (state agency). If the service of private contractors is deemed necessary by the designated representative of (state agency), those services will be obtained from concerns under contract to the United States, or through the Coast Guard District contracting officer.
- (7) (State agency) shall be reimbursed for the following costs incurred hereunder and paid for by state or local appropriations, upon the submission of a report supported by accounting data, itemizing the actual costs incurred, to the Commander, _____ Coast Guard District via the OSC:
 - (a) Costs found reasonable by the Coast Guard and incurred by government industrial-type facilities, including charges for overhead in accordance with the facility accounting system;

- (b) Actual costs for which an agency is required or authorized by law to obtain full reimbursement.
- (c) Costs found to be reasonable by the Coast Guard and incurred by removal activities that are not ordinarily funded by regular appropriations-and that are unusual in nature. These include, but are not limited to, the following:
 - (i) Travel (transportation and per diem) specifically requested of the agency by the OSC;
 - (ii) Overtime for civilian personnel specifically requested of the agency by the OSC;
 - (iii) Incremental operating costs for vessels, aircraft, vehicles, and equipment incurred during removal activities;
 - (iv) Supplies, materials, and equipment procured for specific removal activities and fully expended during those activities;
 - (v) Lease or rental of equipment for specific removal activities; or
 - (vi) Contract costs for specific removal activities authorized in accordance with paragraph (B).
- (8) Subcontracts:
 - (a) Subcontracts may be made by (state agency) for the furnishing of work only with concerns having the prior approval of the OSC, who shall consult with the District contracting officer. For the purpose of this clause, purchase of raw materials or commercial stock items shall not be considered "work."
 - (b) No subcontract placed by (state agency) hereunder shall provide for payment on a cost-plus-percentage-of-cost basis.
- (9) All individual requests for services hereunder shall be made by order of the OSC. Oral orders shall be confirmed in writing. (State agency) shall issue daily work orders to its labor force, and shall prepare daily (in a manner acceptable to Commander, Coast Guard District (f)) a complete list of personnel, equipment, and materials provided hereunder, the inclusive times of their employment, and their costs if known, or an accurate estimate thereof if actual costs are not ascertainable. The list shall be sufficiently itemized to permit the OSC to maintain an accurate record of actual or estimated costs for each category of activity, and to identify each item of work for which actual costs will be included in the final billing. For minor incidents, the OSC may require less frequent reports at intervals not longer than three (3) days. Each daily report should also include an estimate of the percentage of work completed, an estimate of expenses necessary to complete removal activities, and remarks concerning any unusual problems encountered or anticipated.
- (10) Hourly charges under paragraph (7) shall commence with the time personnel and equipment depart for the scene of the oil pollution incident, excluding any diversions. Charges shall terminate at the conclusion of necessary cleanup activities and transportation

of personnel and equipment to their respective bases of operation; or, in the case of a notice of termination of authorization to proceed on certain work issued by the OSC, after the time which would have been necessary for cleanup activities and return transportation, had the work been terminated at the time of the notice.

- (11) If it is deemed in the best public interest, the United States reserves the right to request cleanup services simultaneously from competitive firms and will expect harmonious cooperation from the various contractors working in the same or adjacent areas. The apportionment of contractors' services will lie solely within the discretion of the OSC, and no guarantee of volume of requested services shall be intended or implied.
- (12) Services provided hereunder by (state agency) shall be in accordance with the following general provisions:
 - (a) No member of or delegate to Congress, or resident commissioner, shall be admitted to any part or share of this contract, or to any benefit that may arise here from; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.
 - (b) (State agency) warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by (state agency) for the purpose of securing business. For breach or violation of this warranty, the Government shall reserve the right to annul this agreement without liability or to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
 - (c) The parties to this contract act in an independent capacity in the performance of their respective functions under the provisions of this contract, and neither party is deemed the officer, agent, or employee of the other. [NOTE: Other provisions may be added as necessary.]
- (13) This agreement shall go into force thirty (30) days after signing by both parties to the agreement.

_____ (Name and title, U.S. Coast Guard)	_____ (Name and title, state agency)
_____ (Date)	_____ (Date)

FIGURE 7-6

MEMORANDUMS OF UNDERSTANDING AND INTERAGENCY AGREEMENTS
PERTAINING TO POLLUTION RESPONSE

1. USCG-EPA: Mitigating of Damage to the Public Health or Welfare Caused by a Discharge of Hazardous Substances Under Section 311 of the Clean Water Act. (3 OCT 1979)
2. Department of Transportation (DOT)-EPA: Redelelegation of Certain Pollution Response Functions Under CERCLA or SUPERFUND. (9 OCT 1981)
3. USCG-EPA: A Mechanism for Funding Vendor Costs Incurred by the U.S. Coast Guard During Emergency Response to Releases or Threats of Releases of Hazardous Substances. (4 JAN 1982)
4. USCG-U.S. Geological Survey (USGS): Regulation of Activities and Facilities on the Outer Continental Shelf of the United States. (18 DEC 1980)
5. USCG-U.S. Fish and Wildlife Service (F&WS): Participation in Pollution Incidents. (24 JUL 1979)
6. USCG-National Institute for Occupational Safety and Health (NIOSH)-Occupational Safety and Health Administration (OSHA)-EPA: Guidance for Worker Protection During Hazardous Waste Site Investigations and Cleanup and Hazardous Substance Emergencies. (18 DEC 1980)
7. DOT-Department of Interior (DOI): Responsibilities Under the National Oil and Hazardous Substance Pollution Contingency Plan. (16 AUG 1971)
8. USCG-U.S. Navy (USH): Cooperation in Oil Spill Cleanup Operations and Salvage Operations. (15 SEP 1980)

- (3) The location of the discharge and water body involved;
- (4) The cleanup contractor selected; and
- (5) The time cleanup commenced and estimated duration.

The OSC shall ensure that expenditures from the fund remain within the limit of the expenditure authorization. Requests to increase authorized expenditures must be promptly communicated to the district Fund Administrator, following procedures in Annex G of the District Operation Plan (OPLAN).

c. Supervising Federally-Funded Removal Operations. The OSC shall supervise all operations supported by federal funds directly. In all federally-funded operations, the "appropriateness" of the actions taken will include consideration of the resulting costs to the federal government. Supervision of field operations will be in accordance with the OSC' 5 Pollution Response Bill detailed in local contingency plans. Supervisory functions include:

- (1) Coast Guard supervision of each operational site where a federally-funded cleanup is being performed;
- (2) Ensuring that the OSC's instructions and priorities are carried out and that recommended changes are forwarded to the OSC;
- (3) Daily completion of the Pollution Control Contractors Daily Report., Form CG-5136, to record contractor activities and use of resources (see subparagraph 7.B.6.c.(2) below);
- (4) Maintaining daily records of activities and use of resources by other federal, state, or local agencies whose costs may be reimbursed with federal pollution funds; and
- (5) Advising the contractor's foreman of unsafe, unauthorized, or unsatisfactory operations.

5. Determining Removal Completeness. Whether the polluter or the federal government conducts the removal, the OSC determines removal completeness and authorizes termination of operations. Where uncertainty exists, the OSC may seek the advice of the RRT in making this determination. Generally, for oil discharges, removal is "complete" when:

- a. There is no longer any detectable oil present on the water, adjoining shorelines, or places where it is likely to reach the water again; or
- b. Further removal operations would cause more environmental harm than the oil to be removed; or
- c. Cleanup measures would be excessively costly in view of their insignificant contribution to minimizing a threat to the public health or welfare, or the environment; and

- d. Activities required to repair unavoidable damage resulting from removal actions have been performed.

6. Documenting The Response.

- a. General. Pollution incident documentation serves to:

- (1) Inform response personnel at other organizational levels and agencies, through the mechanism of pollution report (POLREP) messages;
- (2) Provides the evidentiary basis to support the imposition of civil or criminal sanctions (see volume V of this manual);
- (3) Document federal expenditures for recovering costs from the responsible party;
- (4) Document OSC decisions and actions throughout the incident; and
- (5) Forecast program resource levels needed for pollution response.

Each OSC shall comply with the documentation requirements listed below in addition to those detailed in volume V of this manual.

- b. Reports Required For Every Incident.

- (1) POLREPS, POLEEPS are required for every spill or potential spill. The COTP shall submit a POLREP for each reported incident to the district commander, with information copies to appropriate agencies; subsequent POLREPS should be sent as significant developments occur. The NRC and Commandant (G-WER) shall be information addressees on all messages reporting medium or major spills as defined in the NCP (40 CFR 300.6) for oil, and in paragraph 7.C.7 below for hazardous substances. Figure 7-7 provides a general POLREP format.
- (2) MSIS Marine Pollution Product Set (MSIS-MP). Data entries shall be made in the MSIS-MP whenever: a report is received of a discharge or release in a location where the Coast Guard acts as predesignated OSC; Coast Guard forces respond to a discharge or release as OSC or as first federal official; or Coast Guard forces respond at the request of an EPA or Department of Defense (DOD) OSC when those agencies are the predesignated OSC. Detailed instructions for entering MSIS-MP data is located in COMDTINST M5230.18 and its enclosure, the Marine Pollution Transaction Guide (MSIS-8).
- (3) Port And Environmental Safety (PES)/Marine Environmental Response (MER) Quarterly Activities Report (QAR), Form CG-4957, RCS-WP-14013. The Coast Guard OSC shall tabulate pollution incident totals, staff hours expended, and resources used as required by chapter 12 of volume I of this manual. The QAR serves as the basis for operational analysis, facilities planning, and budget programming for Coast Guard

units performing response activities. Directions for preparing and submitting the form are contained in the instruction.

FIGURE 7-7

GENERAL POLREP FORMAT

(PRECEDENCE/DTG)

FM

TO

INFO [*1]

ACCT CG-W2GZZZ

BT

UNCLAS//N16465//

POLREP (#) (Type of Pollutant) (Magnitude of Spill [*2])

(Source [*3] (Waterway/s involved)

(Unit case number) (Federal Project Number (FPN), if applicable [*4])

1. SITUATION

A. (Local time and notification information). Give names and telephone number or radio frequency.

B. (Local time when investigator is on scene). Give description of spill and status of cleanup. For federally-funded response operations, include the latest estimate of funds expended.

C. (On-scene weather conditions).

D. (Particulars of vessels/facilities involved).

2. ACTION.

A. (List chronologically every major action taken by the Coast Guard with regard to spill).

3. PLANS/RECOMMENDATIONS.

A. (Give appropriate information).

4. CASE PENDING/CLOSED. (NO) VIOLATION REPORT TO FOLLOW (OR REASON WHY NO VIOLATION REPORT TO FOLLOW).

NOTES: 1. Routing should be as specified in the RCP. In addition, include the NRC and Commandant (G-WER) as info addressees on actual or potential medium and major spills only. Include EPA Headquarters Emergency Response Division (TWX #710-8229269) and Commandant (G-WER) as info addressees on all spills with CERCLA-funded removals.

2. Magnitude of spill: potential, minor, medium, or major.

3. Source: Name of vessel or facility believed to be source. For foreign vessels, include nationality.

4. Federal Project Number (FPN): 311(k) Account # or CERCLA Account #.

c. Documentation Required For Federally-Funded Removal Actions. Each Coast Guard OSC shall maintain daily records and associated costs of all personnel, equipment, supplies, and services used during federal removal actions. Also, know the types of activities that are reimbursable to a federal or state agency from the Section 311(k) Pollution Fund described in paragraph 7.B.7 below, and document these activities accordingly. As the basis for cost recovery from the polluter and proper administration of the fund, the accuracy of documentation pertaining to federal expenses incurred during removal operations cannot be overemphasized.

(1) Documenting Contractor Costs.

- (a) Daily Work Orders. Each Coast Guard OSC shall issue daily work orders to the contractor for the next day' 5 work specifying authorized work force and equipment, precedence for jobs and locations, and special instructions. Responsible Coast Guard supervisors will ensure compliance with these orders and, if necessary, recommend changes to the OSC.
- (b) Pollution Control Contractor Daily Report, Form CG-5136. Form CG-5136 shall be completed by the OSC' 5 representative supervising the site of operations. The form shall show all personnel and equipment employed at the scene. Overtime work performed by the contractor or subcontractor must be preauthorized by the OSC and recorded on the form. Also, record all quantities of recovered product and specify quantities suitable for sale or reclamation. The OSC's copy of the form shall be signed by the contractor end maintained for verification of contractor invoices. It is generally recommended that the OSC's supervisor at each scene of operations complete the form for activity at that site. The information required on the form shall be based on activity logs maintained throughout the day. Frequent comparison with the contractor foreman's records will minimize and help resolve discrepancies in preparing the form.
- (c) OSC Certification Of Invoices. Timely certification of the invoices submitted by contractors will enable them to minimize their debt level, and will enable the Coast Guard to recover cleanup costs more effectively. Each invoice certified must bear, or be an enclosure to a statement from the OSC that the invoice has been reviewed. The format for this certification shall be provided by the district commander. As a minimum, it shall contain the statement "I certify that [except as noted below] the services and materials were authorized and received by me in conjunction with Phase III oil removal actions, and reasonable costs related thereto are proper for payment from the Pollution Fund. [The following services and materials were not authorized by me and are not proper for payment from the Pollution Fund.]"

and shall be signed by the OSC. Charges for time and materials not properly recorded on Form CG-5136 shall not be certified by the OSC for payment unless a discrepancy between the final invoice and the form is clearly due to Coast Guard error. On each invoice, the OSC shall state that the services and materials (except as noted) were authorized and received during removal actions. The OSC shall promptly forward certified invoices to the district commander for verification that costs charged are reasonable and payable from the fund.

- (2) State And Other Federal Agency Costs. Federal and state agencies shall submit records of expenses for activities performed to the district commander via the OSC. It is recommended that the OSC use Form CG-

5136 to document daily personnel and equipment used by other agencies. Based on these daily records, the OSC shall certify requests for reimbursement from other federal or state agencies⁵ in the format shown in 33 CFR 153.417(b)(1) or (2). The OSC shall promptly submit certified records to the district commander and maintain copies to prepare the cost summary sheets.

- (3) Cost Summary Report. Within 30 days following the completion of removal operations at a federally-funded removal, the OSC shall submit a cost summary report documenting expenses recoverable from the polluter, and payments made from the Pollution Fund to contractors and federal or state agencies (see paragraph 7.B.7 below). This cost summary report should include a brief summary of the response and a general description of the function performed by each agency or contractor with costs incurred. This response summary is not required if an OSC report is also completed for an incident (see subparagraph 7.B.6.d below). Requests for reimbursement of Coast Guard out-of-pocket expenses should be submitted following district procedures.
 - (a) Costs Reimbursable To The Pollution Fund. These are costs recoverable from the polluter. As specified in the Comptroller Manual (COMDTINST M7300.4 (Series)), Volume I, summarize estimated expenditures into the following categories:
 - (i) Access control costs;
 - (ii) Coast Guard-owned equipment;
 - (iii) Coast Guard personnel;
 - (iv) Travel, per diem¹ contracted quarters, and subsistence;
 - (v) Purchase orders;
 - (vi) Contractor costs;
 - (vii) State and other federal agency costs; and
 - (viii) Pollution removal damage claims (see Chapter 14, COMDTINST M5890.9).

Figure 7-8 describes each category. A sample cost summary report is shown in Figure 7-9. Documentation to support all costs included in the cost summary report should be included as an enclosure to that report. This documentation would include all daily work orders; Pollution Control Contractor Daily Reports, Form CG-5136; boat/aircraft or personnel logs; purchase orders and/or contracts; invoices; notifications to suspected dischargers, including notice of federal interest and notice of federal

assumption; and any other documentation that supports the costs included in the report.

- (b) Payments From The Pollution Fund. Summarize payments that have been made from the Pollution Fund to pay contractor invoices or reimburse agency expenditures as a result of the incident. Do not duplicate the detailed documentation supporting the recoverable costs indicated above; it is sufficient to list payments made and proof of payment. Payments from the fund will be summarized as follows:
- (i) Travel, per diem, contracted quarters;
 - (ii) Operational costs for removal and support equipment;
 - (iii) Personnel costs (nonresponse personnel, etc.);
 - (iv) Purchase orders;
 - (v) Contractor costs;
 - (vi) State and other federal agency costs; and
 - (vii) Pollution removal damage claims (see 33 CFR 25, Subpart H).

FIGURE 7-8

OSC PREPARATION OF COST SUMMARY SHEETS

Supporting documentation for each category below should indicate that the costs incurred are directly related to the removal effort. Where applicable, state exact dates and hours of personnel and equipment use. Use COMDTINST 7310 (Series) to compute standard rates for Coast Guard personnel and equipment. More detailed guidance on the costs included in each of the below categories is found in the Comptroller Manual (COMDTINST M7300.4), Volume I. Figure 7-9 contains examples of each summary sheet category.

<u>CATEGORY</u>	<u>DESCRIPTION</u>
ACCESS CONTROL COSTS	Expenses for limiting access to an area including vessel traffic services (VTS). Summarize the reason for limiting access prior to itemizing the costs of establishing, maintaining, replacing, and removing equipment for limiting access.
USCG-OWNED EQUIPMENT	Hours, costs for all vessels, aircraft, vehicles, and response equipment used during the actual response operation. Only include those hours devoted to the response. For pollution response equipment, separately itemize charges for: fuel used to operate equipment; transporting the equipment to and from the job site including fuel; and refurbishment cost when performed by a contractor. Consult the district comptroller for assistance in calculating these costs.
USCG PERSONNEL SALARIES	The name, rate, dates, hours, and wages of personnel devoted to the response effort. List USCG regular, Reserve, civilian, and Strike Force personnel separately.
TRAVEL AND PER DIEM	The date of the voucher, the amount, and the TONO or bureau schedule number. When the receipt does not clearly indicate the reason for the expenditure, include a short explanation.
PURCHASE ORDERS	The date of the voucher, the amount, and the Purchase Order number. Small nonexpendable items procured for the response that are retained by the Coast Guard should include a depreciation factor.
CONTRACT COSTS	The firm, the contract number, the amount of payment made and the estimated invoiced amount.
STATE AND OTHER FEDERAL AGENCIES	Include a summary of each agency's expenses. All invoices included as supporting documentation must be certified by the OSC with the endorsement in 33 CFR 153.417.
POLLUTION REMOVAL DAMAGE CLAIMS	Cost and nature of damage claims, settled or pending, that resulted from damages directly related to the removal operation. Separate efforts of a contractor to restore private property from the general contract costs (see Chapter 14, COMDTINST M5890.9 and 33 CFR 25, Subpart H).

FIGURE 7-9

SAMPLE COST SUMMARY SHEET ENTRIES

The following is an example of a cost summary sheet for a medium oil pollution incident. It is intended only to provide an example of the types of information to be included in each section of the sheet. It is important to note that documentation to support each category of the cost summary sheet must be attached to the sheet.

M/V CLEAN SWEEP
PIC 1-O-0098

The following is a summary of the costs incurred during the federal removal action initiated by COTP Houston for a 16,000 gallon #2 oil spill from the M/V CLEAN SWEEP into Houston Ship Channel on 13 May 1986. Expenses totalling an estimated \$108,413.39 are reimbursable to the Pollution Fund. Approximately \$44,335.01 was paid from the Pollution Fund to finance the response. These expenses are noted by an asterisk.

1. Access Control. The following costs were incurred for enforcing a safety zone that was established by COTP Houston to control marine traffic in the vicinity of cleanup activities resulting from the oil discharge from the M/V CLEAN SWEEP. This safety zone was in effect from 13 - 15 May 1986. Detailed documentation of boat hours is available from COTP Houston boat logs (copies attached).

32 ft. FWB	37 hrs. @ \$315	\$11,655.00
CGC POINT HERRON	28 hrs. @ \$274	\$7,672.00

TOTAL ACCESS CONTROL COST		\$19,327.00
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2. USCG Equipment Expenses. The following expenses were incurred by COTP Houston, the Gulf Strike Team, and AIRSTA Houston during the response to the oil discharge from the M/V CLEAN SWEEP. These costs were incurred in providing transportation for Coast Guard personnel to and from the scene of the incident, to conduct overflights of the affected area, and to support Gulf Strike Team response equipment that was used due to the unavailability of commercial equipment. Detailed documentation is available from COTP Houston vehicle logs, AIRSTA Houston logs, and the Gulf Strike Team Incident Summary (copies attached).

<u>Aircraft</u>		
HC-130	6 hrs. @ \$3,618	\$21,708.00
HH-52A	8.5 hrs. @ \$2,065	\$17,552.50

<u>Vehicles</u>		
Auto Lic. #GS 12-1532	3 days @ \$9	\$27.00
	178 miles @ \$.11	\$19.58
Pickup Lic. #GS 12-8987	3 days @ \$7	\$21.00
	132 miles @ \$.17	\$22.44
Tractor Lic. #GS 17-5647	3 days @ \$9	\$27.00
	38 miles @ \$.47	\$17.86

FIGURE 7-9 (cont'd)

2. USCG Equipment Expenses (cont'd)

Oil Pollution Response Equipment

ADAPTS	8 hrs. @ \$103	\$824.00
Skimming Barrier	8 hrs. @ \$146	\$1,168.00
Biomarine O ₂ /CGI	12 hrs. @ \$7	\$84.00

TOTAL USCG EQUIPMENT EXPENSES \$41,471.38

3. Personnel Expenses. The costs listed below cover the personnel from COTP Houston and the Gulf Strike Team that were involved in supervising the federal removal activities or operating Coast Guard response equipment. Detailed documentation for these costs is available in the daily work logs (copies attached).

Regular

LT SMITH	21 hrs. @ \$32	\$672.00
MK1 JONES	26 hrs. @ \$22	\$572.00
MST2 POPE	26 hrs. @ \$15	\$390.00
BM3 SCOTT	16 hrs. @ \$15	\$240.00

Strike Team

MKC JOHNS	19 hrs. @ \$22	\$418.00
BM1 JONES	19 hrs. @ \$22	\$418.00
BM2 JACKSON	19 hrs. @ \$15	\$285.00
MK2 STEVENS	19 hrs. @ \$15	\$285.00

Reserve TEMAC

None

Civilian

None

TOTAL PERSONNEL COSTS \$3,280.00

4. Travel And Per Diem Expenses. The following expenses were incurred by the Gulf Strike Team personnel that were deployed away from their home unit to operate Coast Guard-owned pollution response equipment. Documentation to support these expenses is attached.

15 May 1986	MKC JOHNS	TONO D628143	\$238.12
15 May 1986	BM1 JONES	TONO D628144	\$238.12
15 May 1986	BM2 JACKSON	TONO D628145	\$238.12
15 May 1986	MK2 STEVENS	TONO D628146	\$238.12

TOTAL TRAVEL AND PER DIEM EXPENSES \$952.48*

5. Purchase Orders. The following expenses were incurred purchasing small equipment items expended during the response to the oil spill from the M/V CLEAN SWEEP. Copies of contracts and SF-44's that document these purchases are attached.

FIGURE 7-9 (cont'd)

5. Purchase Orders (cont'd)

13 May 1986	Joe's Boat Works	PO #37-5560	\$37.50
14 May 1986	Frank's Junk Shop	PO #37-5567	\$50.00

TOTAL PURCHASE ORDER EXPENSES \$87.50*

6. Contract Costs. The following costs were incurred by contractors conducting oil removal operations under contract to the Coast Guard resulting from the spill from the M/V CLEAN SWEEP. Documentation to support these costs include contracts, contractor invoices, daily work sheets, daily work orders, and other associated documents (copies attached).

Firm/Contract Number	Invoice Received, Certified, and Forwarded to District
Ajax Oil Pollution Service DTCG 08-15788	\$37,512.15
Sea-Sweep Marine DTCG 08-15790	\$3,215.38

TOTAL CONTRACT COSTS \$40,727.53*

7. State/Federal Agency Expenses. The following costs were incurred by the U.S. Fish and Wildlife Service, U.S. Department of the Interior (DOI), to provide specialized assistance in the area of mitigation of estuarine damage resulting from the oil spill from the M/V CLEAN SWEEP. This assistance was requested by the OSC and was outside the normal support provided by DOI through their RRT representative. Documentation to support these costs include the U.S. Fish and Wildlife Service letter of 1 June 1986 (copy attached).

U.S. Fish and Wildlife Service, Albuquerque, NM	\$1,217.50
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TOTAL STATE/FEDERAL AGENCY EXPENSES \$1,217.50*

8. Pollution Removal Damage Claims. The following damage claim covers the cost of repairing damages to the property of Mr. Joe Smith that were incurred when oil cleanup equipment was staged and deployed from his property. Mr. Smith's property was the only property available for use in equipment deployment. Documentation of the damages incurred and repair costs is attached.

Mr. Joe Smith	\$1,350.00
---------------	------------

TOTAL POLLUTION REMOVAL DAMAGE CLAIMS \$1,350.00*

Encl: (1) Notice of Federal Interest	(6) Purchase Orders and SF-44's
(2) Notice of Federal Assumption of Response Activities	(7) Contractor Invoices and Supporting Documentation
(3) Excerpts From COTP Houston Logs	(8) DOI Letter of 1 June 1986
(4) Excerpts From AIRSTA Houston Logs	(9) Damage Claim of Mr. Joe Smith
(5) Gulf Strike Team Incident Summary	

d. Reports Of Major Pollution Incidents. The NCP requires the OSC to submit an OSC Report to the RRT and NRT, via Commandant (G-WER), within 60 days of completion of removal operations for all major pollution incidents, or when requested by the RRT. The district commander shall ensure that a copy of the OSC's report for each major pollution incident is forwarded, with appropriate

endorsements, to Commandant (G-WER) and the cognizant strike team(s) within 75 days of the conclusion of the incident. Reports for other than major incidents, should be submitted to Commandant (G-WER) whenever the reports contain information that may be useful for general program planning. The format should include the information specified in the NCP (40 CFR 300.40), with the following information as enclosures:

- (1) Maps, charts, or diagrams of the areas affected by the spill;
- (2) MSIS-MP screen images;
- (3) All POLREPS;
- (4) Radio, telephone, and other applicable logs;
- (5) Copy of cost summary report (for federally-funded removal);
- (6) Photographic documentation of response, arranged chronologically; and
- (7) Any other documentation necessary to supplement the information contained in the OSC report.

- e. District Requirements. District (mep) offices should review all documentation forwarded by OSC' 5 for completeness and accuracy. They should also act as the consolidation point for all documentation applicable to a federally-funded removal action for use in cost recovery activities. The information at the district office should include the OSC report (when applicable), the cost summary report, all documentation that supports the costs incurred on the case, any FWPCA violation reports and associated civil or criminal penalty correspondence, any officer in charge, marine inspection (OCMI)/COTP investigations and/or proceedings arising from the case, and any other documentation related to the case that may be necessary to support cost recovery actions.

7. Use Of The FWPCA 311(k) Pollution Fund.

- a. General. The primary purpose of the Pollution Fund is to provide a source for financing federal removal operations when an oil discharger is unknown, does not act promptly, or is unwilling to undertake necessary response actions. The types of activities that may be charged to the Pollution Fund have been subject to varying interpretation. Discovery, notification, and monitoring expenses are considered operating expenses of the Coast Guard. Although the cost of monitoring is a cost of doing business when the discharger takes responsibility, the cost of supervising federal removal efforts is chargeable to the discharger, and under certain conditions reimbursable to an agency, when a federal assumption of control is made. 33 CFR 153.407 lists response activities that may be funded by the Pollution Fund, either by direct payment from the fund or through reimbursement to a federal or state agency. [ENOTE: Direct payment may not be made to state contractors.] Normal pollution response operating expenses, such as response personnel salaries and equipment maintenance, cannot be reimbursed from the fund. These costs, however, in addition to all expenses incurred during federal

removal operations, are recoverable from the polluter. Figure 7-10 summarizes the types of expenses that are reimbursable from the Fund and/or recoverable from the polluter. It is the responsibility of each NRT/RRT member agency to plan and formally assign employees to perform discharge response duties as a matter of routine. However, if a particular pollution incident requires agency personnel not normally detailed to respond to perform response duties, the normal salaries of such personnel are subject to reimbursement from the Pollution Fund. The sole purpose of this policy is to provide the OSC with access to assistance from agencies that are unable to assign their personnel to response duties unless their salaries are reimbursed. An example would be certain personnel in the F&WS who, although they are F&WS employees, are in a position totally funded by the U.S. Army Corps of Engineers (USAGE) and fully committed to a USAGE-sponsored task. If those personnel are withdrawn from the USAGE-sponsored task to assist in response activities, their salaries must be paid through other means during the time they are diverted. As a general rule, the 311(k) Fund shall not be used for response to hazardous substance incidents. Although there are some situations where the Pollution Fund could be used to fund removal costs (e.g., the discharge of a substance listed in 40 CFR 117 into navigable waters), the Coast Guard and EPA have agreed that, whenever possible, the CERCLA Trust Fund will be used for hazardous substance response. In any case, the 311(k) fund shall not be used for response to hazardous incidents without prior Commandant (G-WER) approval. Subparagraph 7.B.7.b and c below cite specific expenditures that are reimbursable from the fund and/or recoverable from the polluter. To ensure proper use of the fund, the following policies shall also apply:

- (1) The Pollution Fund may not fund the removal of pollutants discharged from a vessel or facility owned or operated by the United States. The OSG may, however, use the fund for removal operations when the discharge is from an unknown or a nonfederal source and impacts federal lands or property. In addition, the Coast Guard may fund cleanup actions involving a public vessel or federal activity from the Operating Expense Appropriation, using the OG-80.OO reimbursement technique, when requested by the responsible federal agency, or when the urgency of the situation demands immediate action (see GOMDTINST M7300.4, Comptrollers Manual).
- (2) No agency's expenses are reimbursable unless a federal removal activity has been declared, the fund has been activated, and those agency services have been requested by the OSC. In the case of a partial federal removal, only those expenses incurred specifically to support the federal removal activity are reimbursable.
- (3) Federal agency salaries shall not be reimbursed if such a transaction would result in transfer of funds from the Pollution Fund to the U.S. Treasury (General Fund).

FIGURE 7-10

REIMBURSABLE/RECOVERABLE EXPENSES UNDER THE FWPCA

TYPE OF COST	COVERING	METHOD OF FUNDING	RECOVERABILITY
EXPENSES OF FEDERAL RESOURCES NORMALLY USED FOR RESPONSE	Observation, monitoring, providing guidance and advice when there is no federal removal activity.	CG funds not reimbursable from the Pollution Fund.	Not recoverable from polluter.
	Personnel costs (OSC and staff, members of Special Forces, etc.), pollution equipment depreciation, routine maintenance, expendable materials, and supplies (e.g., sorbents) associated with federal removal operations.		
PAYMENTS TO COMMERCIAL CONTRACTORS OR VENDORS	Containment, countermeasures, clean-up and disposal.	Chargeable directly to the Pollution Fund.	Recoverable from the polluter.
EXPENSES OF FEDERAL RESOURCES NOT NORMALLY USED FOR RESPONSES	<ol style="list-style-type: none"> (1) Overhead costs of industrial facilities. (2) Reimbursements required by law. (3) Costs specifically and directly incurred as a result of removal activity, such as travel costs (transportation and per diem), increased maintenance costs of equipment, fuel, supplies and materials, equipment rental or lease, and temporary employment (e.g., CG Reservists recalled specifically for the response effort, civilian overtime). 	CG funds reimbursable from the Pollution Fund.	
POLLUTION REMOVAL DAMAGE CLAIM	<p>Damage to or loss of property resulting from activities conducted under Phase III operations if:</p> <ol style="list-style-type: none"> (1) Caused by the United States, its employees, agents, or contractors; and (2) In the exercise of care reasonable under the circumstances, the incident giving rise to the claim was necessary and the damage unavoidable. <p>Not payable if:</p> <ol style="list-style-type: none"> (1) For death or personal injury; or (2) Claim arises out of incident involving discharge or discharge threat from a U.S. or foreign public vessel or federally-controlled facility. 	Chargeable to the Pollution Fund.	

- (4) The Pollution Fund may be used to procure nonexpendable equipment when the OSC determines it is necessary for the removal. Requests for procurement of nonexpendable equipment shall be transmitted to the district commander prior to purchase.

- (5) Federal and state agencies are entitled to replacement or repair costs for nonexpendable equipment that is damaged while under the administrative control of the OSC, provided the damage did not occur as a result of negligence on the part of the parent agency or its appointed agent. It is not intended, however, that the Pollution Fund be used to replace the normal budget process by funding replacement of major acquisition items which are accidentally damaged (e.g., an aircraft crashes during support operations for a response activity).
- (6) Normally, federal agencies should use their own funds, subject to reimbursement from the Pollution Fund. The OSC may, however, authorize the procurement of supplies, equipment, or services with costs charged directly to the fund.
- (7) Damage assessment studies, other than those the OSC determines are necessary to conduct a proper removal (e.g., efforts to identify environmentally sensitive areas or evaluate alternate defensive measures), are not chargeable to the Pollution Fund.
- (8) Salaries of Coast Guard Reserve personnel called to active duty specifically to assist in a federal removal activity are reimbursable. Cases in which Reservists are likely to be employed would be those having an acute need for additional personnel (e.g., a large discharge area in which a great number of supervisors are required). However, while it may be desirable to utilize Reserve personnel to supplement the OSC staff for other than discharge-related duties during a particular incident, or to monitor the cleanup actions of responsible parties, salaries of such employment are not reimbursable from the Pollution Fund. Further, it is inappropriate to attempt to alleviate chronic shortages of personnel within the Coast Guard or other federal agencies through the use of the Pollution Fund.
- (9) To receive reimbursement and to provide proper documentation for cost recovery, each agency is responsible for providing documentation to the OSC in the manner prescribed by the Pollution Fund administrator (the Coast Guard). Procedures compatible with these requirements, which will enhance coordinated federal response activities, shall be included in the RCP.

b. Reimbursable Activities. The following types of removal costs incurred by federal or state agencies and authorized by the OSC may be reimbursed from the Pollution Fund:

- (1) Costs incurred by government industrial facilities, including charges for overhead;
- (2) Actual costs for which an agency is required or authorized by law to obtain full reimbursement; and

- (3) Costs incurred during removal activities not normally funded by regular appropriations, including:
 - (a) Transportation costs incurred in delivering equipment to and from the scene;
 - (b) Travel and per diem for the OSC and personnel required to deploy and maintain federally-owned equipment;
 - (c) Replacement costs for expendable materials provided and utilized, including fuel for vessels, aircraft, or vehicles, used at the OSC's request in support of response activities;
 - (d) Supplies, materials, and minor equipment procured specifically for recovery activities;
 - (e) Incremental operating and contract costs incurred in providing assistance to the OSC;
 - (f) Rental costs, as approved by the parent nonexpendable removal and support equipment including the refurbishment, repair, and replacement costs;
 - (g) Salaries of personnel not routinely part of response efforts but specifically requested by the OSC (including Coast Guard Reservists called to active duty to assist in supervising federal removal activities).
 - (h) Travel and per diem for RRT members to attend meetings specifically convened to provide OSC support during federally-funded oil discharge removal.

c. Recoverable Costs. The discharger incurs liability, up to the discharger's legal limit of liability, for all actual costs associated with the federal removal following the federal assumption of response activities. Recoverable costs include:

- (1) Direct expenditures from the fund (i.e., payment of contractors or vendors);
- (2) All reimbursable expenses listed in subparagraph 7.B.7.b above;
- (3) All personnel costs, including response personnel salaries;
- (4) Equipment costs, including depreciation and maintenance;
- (5) Administrative overhead (included in standard rates for subparagraphs 7.B.7.c.(3) and (4) above in COMDTINST 7310 (Series)); and
- (6) Pollution removal damage claims referred to in subparagraph 7.B.6.c.(3)(a)(viii) above.

- d. Damage Assessment Studies. A question is often raised as to whether the Pollution Fund (established under 33 U.S.C. 1321(k)) may be used to pay for damage assessment studies in preparation for potential claims which may be filed for oil pollution damage. It has been determined that the Pollution Fund is not available for damage assessment studies. However, it is recognized that some form of limited scientific inquiry, which may be supportive of damage assessment efforts, may be required to assist the OSC in the performance of Phase III (Subpart E, NCP) activities. Efforts to identify particularly environmentally-sensitive areas and to evaluate alternate countermeasures are Phase III activities and, therefore, may be funded from the Pollution Fund. The funding of scientific actions other than those that are requested by the OSC and that directly support Phase III (Subpart E, NCP) activities, such as scientific investigations or damage assessment studies, shall be provided by the agency having legal responsibility for such activities and are not payable from the Pollution Fund.
- e. Limits. For each incident, the OSC may commit up to the fund without preauthorization from the district commander; amounts over this limit must be requested from the cognizant district commander. The district commander may authorize expenditures up to \$1 million for each incident (see 33 CFR 153.105(a)). Authorization for expenditures over \$1 million must be obtained through Commandant (G-WER).

C. Procedures Unique To Hazardous Substance Releases.

- 1. General. Response to hazardous substance releases are, in many respects, similar to responses to oil discharges. There are, however, significant differences. The nature of the hazards posed by such releases requires a much more cautious approach. Personnel involved in hazardous substance response must be properly trained and equipped to carry out the necessary response functions.
 - a. Hazardous Substance Response Functions. These functions include:
 - (1) Carrying out traditional COTP response measures such as restricting access to the affected area, controlling marine traffic, notifying affected facilities, coordinating with state and local agencies, and assisting as resources and capabilities permit;
 - (2) Conducting a preliminary assessment of the incident;
 - (3) Identifying potentially responsible parties and informing them of their potential liability for removal costs, explaining the Coast Guard's role as OSC, and gathering information for response and port safety purposes;
 - (4) Carrying out "first aid" mitigation measures if the situation warrants;
 - (5) Monitoring cleanup actions of responsible parties to ensure that appropriate action is taken; and
 - (6) If required, initiating appropriate federal removal or remedial actions.

b. Use Of CERCLA Guidance. This section describes the more important and unique aspects of a hazardous substance response under CERCLA. Its use requires a working knowledge of the more detailed information found in:

- (1) Response procedures described in section 7.B above;
- (2) CERCLA and the relevant provisions of the NCP;
- (3) COMDTINST M16465.29, CERCLA Response Authority and Associated Coast Guard Policies;
- (4) COMDTINST M16465.30, Policy Guidance for Response to Hazardous Chemical Releases.

In reading the above extensive policy guidance for carrying out Coast Guard responsibilities under CERCLA, the OSC must not lose sight of the program's foremost objectives to ensure that proper measures are undertaken by the responsible party to mitigate damages from releases; and when appropriate, federal efforts are initiated, then managed and coordinated by the OSC. As hazardous substance response procedures and policies become refined with field experience, the detailed COMDTINST' 5 will be canceled, with policies of continuing importance incorporated into this section. Basic CERCLA response procedures can be contrasted to an FWPCA response by comparing the flowcharts shown in Figures 7-1 and 7-2.

c. Levels Of Response Capability.

- (1) The program goal is that COTP's predesignated as OSC's shall be capable of performing the functions described in subparagraph 7.C.1.a above. Performing these functions may require persons to enter contaminated environments. However, the actual level of response capability to be maintained at a unit must be based on the risk of chemical releases occurring in the OSC's 5 zone and the mix of industry, state, local, and other federal response capability already in place.
- (2) In those zones where the district commander and OSC determine there is a significant risk of chemical releases, and the existing response capability (Coast Guard and others) within these zones are inadequate, units shall develop Level A or B entry capability. When this is not possible because of insufficiently trained personnel or inadequate protective equipment, as detailed in COMDTINST M16465.30, the OSC shall seek the necessary additional resources and adopt a conservative response posture until these requirements are met. OSC's with jurisdiction over zones where the risk of a chemical release is low shall maintain a conservative response posture.
- (3) Units maintaining a conservative response posture shall carry out all of the above OSC functions not requiring entry of unit personnel to hazardous environments. In situations requiring entry to hazardous environments, these units shall rely on capabilities of the Strike Teams, state and local response teams, and commercial resources.

- (4) The integration of Coast Guard resources with existing response organizations is an important consideration. This means of achieving the required level of capability is appropriate when the existing response organization routinely responds to chemical releases, and they can perform the survey actions (sampling, environmental monitoring, etc.) essential for assessing the hazards presented by a release. Units relying on outside organizations to provide the required response capability must periodically reassess the ability of these organizations to provide an adequate response.
- (5) It is important to note that, whatever the response capability maintained at the unit, the OSC can not relinquish that responsibility, no matter who is carrying out the actual response, and shall monitor the response as necessary to ensure its adequacy. If a response is not adequate, the OSC shall, to the extent that resources are available, provide advice to responders or assume control of the response.

2. Preliminary Assessment. The OSC may call upon a broad range of resources (RRT members, Special Forces, state/local agencies, industry personnel, information systems, etc.) to assist in determining the risks associated with a released hazardous substance. The OSC often does not need to extensively investigate an incident prior to determining the need for response. If the release poses an obvious threat to public health or welfare, or the environment, the OSC should take appropriate actions as rapidly as circumstances dictate. General guidelines for determining whether to conduct an on-scene assessment and for determining the feasibility of removal actions are the same as for oil incidents contained in subparagraph 7.B.2.d above.

- a. Determining CERCLA Applicability. CERCLA applies to pollution incidents when the following conditions exist:
 - (1) The material is a hazardous substance (see CERCLA, Sec. 101(14)), or a pollutant or contaminant (see Sec. 104(a)(2)) that may present an imminent and substantial danger to the public health or welfare;
 - (2) The material is released (see Sec. 101(22)), or there is a substantial threat of release, into the environment (see Sec. 101(8)); and
 - (3) The responsible party is not taking proper removal actions.

The OSC is authorized and responsible for assessing releases of any size and for initiating response action under CERCLA 104(a)(1) whenever a release requires a federal removal action. Although the level of response action taken by the unit (active or conservative) will depend on available resources, units predesignated as OSC' B shall monitor the response as necessary, no matter who is carrying it out, to ensure its adequacy. The reportable quantity of a substance has no bearing on the Coast Guard' 5 authority to respond under CEROLA. Response authority exists whatever the quantity released or threatened to be released into the environment.

- b. Coast Guard, EPA, DOD Jurisdiction. CERCLA geographic jurisdiction is broader than the FWPCA in that it encompasses all environmental media (air, land, groundwater, and surface waters). E.O. 12316, as modified by the Instrument of Redefinition, signed between DOT and the EPA, specifies that the Coast Guard OSC shall respond to hazardous substance releases or threats of releases, occurring in the coastal zone (specified in RCP's), not involving DOD vessels or facilities, that originate from:
- (1) Vessels (including remedial actions);
 - (2) Facilities, other than hazardous waste management facilities, when the release requires immediate action to prevent risk of harm to human life, health, or the environment; or
 - (3) Hazardous waste management facilities or other illegal disposal areas, when the Coast Guard OSC determines emergency containment or other immediate removal actions are necessary prior to the arrival of the EPA OSC. EROTE: The EPA has agreed to respond to these incidents to relieve Coast Guard OSC' 5 within 48 hours of notification. However, ad hoc agreements concerning the time for relief may be made between EPA and Coast Guard OSC' 5. A "hazardous waste management facility" includes land, structures, appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste, whether lawfully or unlawfully.]

Therefore, the Coast Guard OSC's preliminary assessment should include a determination of which agency should ultimately provide the OSC. If the assessment indicates that no cleanup is required or is not feasible, the response may be secured. If it indicates that action is necessary, the OSC must then determine whether an immediate removal is required. If the results of the assessment indicate that federal action may be necessary, but the release does not require any of the actions described above, the appropriate EPA regional office should be advised by the most expeditious means. This request should be confirmed with a message documenting the need for an EPA OSC. In all cases, the Coast Guard OSC shall log the report and include the incident in the QAR and MSIS-MP. The DOD acts as OSC for releases of hazardous substances from their vessels and facilities. When a release from a DOD vessel or facility in the coastal zone affects areas away from the immediate vicinity of the source, the Coast Guard OSC should provide assistance to the DOD OSC as requested. Note that the Instrument of Redefinition uses the term "immediate removal." The 1985 revisions to the NCP (40 CFR 300.65) deleted the previous differentiation between immediate removals and planned removals, replacing them with one category of removal action. This should not affect Coast Guard response activities, however, since planned removals were rarely performed. OSC's should continue to use the definition of "immediate removal" in the Instrument of Redefinition when evaluating the need for Coast Guard response actions. Releases not meeting these criteria should be referred to EPA for any necessary follow-up action.

- c. Removal Action Determination. The NCP (40 CFR 300.65) lists factors to consider when determining the appropriateness of a removal action. Generally, a removal action is appropriate when:
- (1) Prompt actions are required to control the release or to mitigate the associated damages; or
 - (2) The magnitude of harm or potential harm is sufficient to warrant removal.

"Removal actions" encompass not only the physical cleanup, but actions such as limiting access, recommending evacuation or temporary relocation to the appropriate authorities, collecting samples to determine the source and extent of removal, and disposing of all hazardous substances, pollutants, or contaminants recovered during a removal action. When the OSC determines that immediate action is not required, a more extensive removal or remedial action may still be warranted. This may occur in situations where the release poses no immediate threat, but action is necessary to reduce or eliminate the potential for harm in the future. In such cases that do not involve vessels, the OSC shall refer the release to the appropriate EPA regional office. Prior to referring a release, however, the OSC should be aware that the administrative procedures for remedial action will require that the referred release compete for funding against a multitude of uncontrolled waste sites across the country. As a consequence, it is unlikely that EPA will respond to a release that affects only a limited area. The OSC must be prepared to conduct immediate removal actions if the situation deteriorates before remedial action can be accomplished. OSC' 5 should recognize this circumstance when they refer releases to EPA for action.

3. Actions Required When The Polluter Is Identified. As is the case with oil spills, the OSC shall make every effort to have the responsible party initiate removal actions, including issuing a Notice of Federal Interest (see subparagraph 7.B.3.a and Figure 7-3 above) and, when appropriate, issue an Administrative Order. Normally, the responsible party will take proper actions and the OSC need only monitor operations as described in subparagraph 7.B.3.b above. CERCLA differs from the FWPCA in that, under certain conditions, it enables the OSC to order the polluter to undertake the corrective measures specified in an Administrative Order (see CERCLA 106(a)). Administrative Orders are most appropriately issued prior to initiating a federal response. Their use is limited to releases, or threats of releases that:
- a. Involve a hazardous substance;
 - b. Originate from a facility; and
 - c. May pose an imminent and substantial endangerment to the public health or welfare or the environment.

Administrative Orders may not be used when the source of the release is a vessel, or the release involves a pollutant or contaminant. For further guidance as to Administrative Order policy and scope, see Chapter 5 of COMDTINST M16465.29. The OSC shall notify the affected state, or state representative on the RRT, of the intent to issue an Administrative Order. Figure 7-11 outlines a sample Administrative Order.

4. Initiating Federal Removal Operations.

- a. The OSC will use CERCLA funds to pay for removal costs when the responsible party does not conduct proper removal actions, or is unknown, and immediate removal is necessary. A Notice of Federal Assumption of Response Activities should be issued if the polluter is known. As discussed in paragraph 7.A.3 above, for those incidents involving foreign vessels, the Notice of Federal Assumption should also cite FWPCA 311(c) if both statutes apply (i.e., discharge of hazardous substance listed in 40 CFR 117 in a reportable quantity into navigable waters, the contiguous zone, or other offshore waters under FWPCA jurisdiction). In a similar manner, the same types of resources for federal operations described in subparagraph 7.B.4.a above should be used. The OSC shall supervise the operation as generally described in subparagraph 7.B.4.c above.
- b. Although there are some situations where the 311(k) Pollution Fund could also be used to fund removal costs (i.e., discharge of substance listed in 40 CFR 117 into navigable waters, the contiguous zone, or other offshore waters under FWPCA jurisdiction) the Coast Guard and EPA have agreed that, whenever possible, CERCLA will be used for a hazardous substance response. In any case, the 311(k) fund shall not be used for response to hazardous substance incidents without prior Commandant (G-WER) approval.
- c. Upon determining that a federal removal is necessary, the OSC must notify EPA Headquarters of the estimated costs, and obtain a CERCLA account number and document control numbers. For incidents that occur after working hours and/or on weekends, the OSC should initiate necessary actions and contact EPA the next working day. When notifying EPA, the OSC must provide information on the location and nature of the incident, and the nature of response activities to be performed. Note that the OSC must obtain a new document control number for each contract initiated for a response and each subsequent modification (i.e., if five contractors are involved in a response, five document control numbers must be initially obtained from EPA). If the obligated amount for a contract is increased at a later date, another document control number must be obtained to account for the increase.
- d. CERCLA encourages state and local response actions and can be used to provide reimbursement for certain actions described in Section 111 of the law when certified by the OSC. The EPA (the administrator of the fund) establishes policies that govern what specific costs are reimbursable. Any state that desires to enter into a contract or cooperative agreement to carry out response actions under CERCLA should be referred to the EPA.