



MEMORANDUM OF UNDERSTANDING

ON

OIL AND HAZARDOUS SUBSTANCE POLLUTION PREVENTION AND RESPONSE

BETWEEN

**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
(REGION X)**

AND

**THE STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

The United States Environmental Protection Agency (EPA) and the State of Alaska, Department of Environmental Conservation (ADEC) share a common interest and responsibility for protecting Alaska's environment and have determined that a cooperative emergency response effort in dealing with oil spills will allow the agencies to leverage available resources to better protect the environment.

EPA and ADEC believe efficiency in government is important to the public they serve and that entering into a Memorandum of Understanding builds upon present close working relationships and identifies areas for expanded interaction that will lead to increased protection of Alaska's inland zone with greater efficiency.

The President designated the EPA as the Federal On-Scene Coordinator (FOSC) within the Alaska inland zone under the Clean Water Act as amended by the Oil Pollution Act of 1990 (OPA) to protect the waters of the United States from oil pollution and to plan for the effective and immediate response to oil spills.

Congress explicitly provided that the provisions of OPA do not preempt any State from (1) impose additional liability or requirements regarding oil discharges or other oil pollution

within the state or removal activities in connection with such a discharge; (2) paying for oil pollution damage or the substantial threat of oil pollution costs, or requiring any person to contribute to a fund established for these purposes; or (3) imposing any fine or penalty for violation of any law regulating the discharge of oil.

The State of Alaska has enacted laws in Title 46 Alaska Statutes to protect the land and waters of the State from oil pollution; to plan for the effective and immediate response, removal, abatement, and cleanup in the event of an oil spill; to augment State authority for the prevention and response to spills in waters under the jurisdiction of the State including the inspection of vessels, facilities, and Response Action Contractors, and to conduct oil spill response exercises.

The Commissioner of the ADEC is authorized by statute (AS 46.09.020(e)) to enter into an agreement with the EPA to facilitate a coordinated and effective hazardous substance release response, provide for cooperative hazardous substance release notification, and provide for cooperative review of hazardous substance release response contingency plans.

The Commissioner of the ADEC is designated by Alaska law as the administrator of pollution prevention and response activities and has delegated responsibility for emergency response to oil and hazardous substance releases to the State On-Scene Coordinator.

The Commissioner of the ADEC, subject to approval by the Governor, has the primary State authority to direct prevention, removal, abatement, response containment and cleanup efforts with regard to any oil spill in the State in accordance with the applicable industry contingency plan and the Alaska Federal/State Preparedness Plan for Response to Oil and Hazardous Substance Discharges/Releases (Unified Plan).

The Commissioner of the ADEC has the primary State authority to adopt rules, regulations, and guidelines for reviewing the location, type, character, performance standards, size, and operation of petroleum facilities within the State.

The EPA has primary Federal responsibility for oil pollution planning and response in the inland areas of Alaska.

Inland oil spills require a rapid, efficient, and coordinated response and cleanup by Federal and State agencies, responsible parties, and private entities to minimize the deleterious effects on human, wildlife, and other natural resources.

Both the EPA and ADEC recognize the critical role each plays within their respective areas of authority in preventing oil spills and planning for and responding to oil spills.

The EPA and ADEC recognize that cooperation in the implementation and exercise of their respective statutory and regulatory authority is essential to avoid conflict and unnecessary

duplication.

The EPA and ADEC believe that they will significantly enhance their oil spill prevention and response efforts in the State of Alaska by acting in a cooperative and coordinated manner.

The Parties agree, to the extent permitted by law and consistent with their respective regulations, policies, and available resources, to cooperate and coordinate their efforts in implementing and exercising their respective statutory and regulatory duties related to oil spill planning, prevention and response.

I

PARTIES

The Parties to this Memorandum of Understanding are the United States Environmental Protection Agency Region X (“EPA”) and the State of Alaska (“State”) Department of Environmental Conservation (“ADEC”).

II

MOU PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to ensure that the EPA and ADEC in accordance with applicable state and federal statutes, regulations and policies exercise their respective authorities for oil spill prevention and to respond in a manner which avoids unnecessary duplication and conflict and ensures the best achievable protection from the impact of oil spills within the inland areas of Alaska.

III

DEFINITION OF AUTHORITIES

Except where otherwise specifically stated in the text of this Memorandum of Understanding (MOU) the following conditions shall apply to respective oversight authorities between the EPA, U.S. Coast Guard (USCG) and ADEC:

1. **Inland Zone:** Federal regulations designate the EPA as the Federal On-Scene Coordinator (FOSC) for oil and hazardous substance spills within the Alaska inland zone. The USCG is the FOSC for all spills within the coastal zone. The ADEC is the State On-

Scene Coordinator for all inland areas and State waters. The jurisdictional boundary between these zones is specified in the Unified Plan and a Memorandum of Understanding between the EPA's Region X and the USCG Seventeenth District.

2. **The Unified Plan:** The Unified Plan fulfills State Master Plan statutory requirements for oil and other hazardous substance spill response planning and is an addendum to the State Emergency Operations Plan. The Unified Plan and the ten subarea plans also serve as the Federal Regional and Area Contingency Plans for the Federal agencies in Alaska as required by Federal law. The ten subarea contingency plans fulfill the State requirements to prepare Regional Master Plans. The Unified Plan provides broad policy guidance, defines Federal and State agency roles and responsibilities, and provides the response boundaries for both the Federal On-Scene Coordinators (FOSCs) and the State On-Scene Coordinators (SOSCs).

IV

INFORMATION SHARING

The exchange of information between the parties about past oil and hazardous substance spills and current risks is necessary to develop appropriate prevention and response systems. Both Parties maintain information systems that are relevant to both historical and real-time incidents. The Parties will seek to encourage the fullest degree of information sharing from available and pertinent data bases in order to make accurate and timely decisions to prevent and or respond to oil pollution. Transmission of information shall be in accordance with procedures adopted by the Parties for that purpose.

A. Actions:

1. The Parties agree, subject to limitations imposed by applicable laws, regulations, and policies to expand upon present efforts to share information from relevant studies.
2. The EPA will advise the State of any information it receives about events where oil or hazardous substance pollution or substantial threat of pollution exists. The State will ensure that its emergency notification systems report these incidents to EPA.
3. The Parties agree to identify and share existing data bases, and to work toward developing risk management programs that provide risk data sharing for facilities and provide access to all data, subject to the requirements of applicable law, regulations, and policy, to conserve and leverage agency resources.
4. The Parties agree to identify and share information on proposed Research and Development projects and progress reports and final results from relevant research and

development projects.

V

OIL SPILL RESPONSE PREPAREDNESS

The National Contingency Plan (NCP) establishes the response organization within the United States and requires tiered contingency planning efforts. The State and EPA, consistent with existing statutes and the NCP, constitute the basic response organization through the Unified Plan.

A. Planning Documents:

1. With the objective of cooperatively responding to oil and hazardous substance spills, the State and the EPA, along with the USCG, have worked together to develop the joint Alaska Federal/State Preparedness Plan for Response to Oil and Hazardous Substance Discharges/Releases (“Unified Plan”). The Unified Plan contains information pertinent to all of Alaska. The Unified Plan is supplemented by ten subarea contingency plans, each containing region-specific information. These plans will be written to meet the requirements for Federal Regional and Area Contingency Plans for Alaska (as required by the National Contingency Plan), as well as State Master Plan and Regional Master Plan requirements (as defined in Alaska Statute 46.04.200 and 46.04.210).
2. The Alaska “Unified Plan” has established a Unified Command response system that will ensure cooperative responses to pollution incidents, facilitate the leveraging of state and federal resources, and ensure consistency among local, state, and national contingency plans.
3. **Regional Contingency Plan:** The State of Alaska has been designated as a region by the National Contingency Plan. The Unified Plan fulfills the requirements of the Regional Contingency Plan.
4. **Area Contingency Plan:** The Area Committees, established by the President under the authority of the Oil Pollution Act of 1990, are responsible for the development of Area Contingency Plans for those areas under the direction of the Federal On-Scene Coordinator (FOSC). The Area Contingency Plans describe the responsibilities of owners, operators, and Federal, State and local agencies in responding to oil spills or threats of spills, list equipment and personnel available to respond, and describe procedures for the use of dispersants and other non-mechanical spill countermeasures (such as in situ burning procedures). The Unified Plan, as supplemented by the ten subarea plans, fulfills the area contingency planning requirements for the Alaska Region and the state master and regional master plan requirements for the State.
5. **Subarea Contingency Plans:** These plans are being jointly developed by the EPA,

ADEC, USCG, and the Subarea Committees and will supplement the Unified Plan. To meet State requirements, these plans and any revisions will undergo a public review process and be reviewed by the State Emergency Response Commission and the Alaska Regional Response Team.

6. State Oil Discharge Prevention and Contingency Plans and EPA Facility Response Plans: These plans are required by both federal and state law and describe facility capabilities to prevent and respond to pollution emergencies. The State and the EPA will coordinate the review of these plans as appropriate.

B. Government Committees

The National Contingency Plan (NCP) directs the organization of government committees to prevent and respond to pollution emergencies.

1. Alaska Regional Response Team:

The Alaska Regional Response Team (ARRT) is established as a planning and incident support committee by the NCP and includes the State along with Federal agencies which have pollution prevention and pollution response responsibilities. The co-chairs for the ARRT are the USCG (USCG Seventeenth District Chief, Maritime Planning Division) and the EPA (Alaska Operations Office Region X.) The ARRT will review and provide comments on the Unified Plan and the subarea plans as part of the overall joint planning process.

Action: The Parties agree to jointly participate as members of the Alaska Regional Response Team (ARRT). ARRT participation includes attending regularly scheduled meetings and work groups, and participation in incident-specific ARRT activation.

2. The three U.S. Coast Guard Federal On-Scene Coordinators (FOSCs), the Chief, Maritime Planning Division (mp) for the Seventeenth Coast Guard District, the two EPA FOSCs for Alaska, and the ADEC Program Manager for the Prevention and Emergency Response Program are responsible for the following:

- a. Guiding the subarea committees and expediting the approval process of subarea plans and the Unified Plan to ensure plan consistency;
- b. Coordinating funding, format, guidance, content and level of detail for the Unified Plan and the subarea plans;
- c. Discussing and consulting on policy issues, and maintaining and serving as a review body for comments received on the Unified Plan and its revisions;

- d. Working with Alaska-based federal, state and local officials to enhance oil spill and hazardous substance release contingency planning and to assure pre-planning of joint response efforts;
- e. Facilitating the Unified Plan and subarea plan linkage with vessel and facility response plans;
- f. Developing a strategy for coordination and scheduling of the Unified Plan and subarea plan drills to minimize duplication and maximize integration with industry and NPREP drills; and
- g. Providing resolution to disputes involving subarea plans, subarea participants and the Unified Plan.

C. Drills and Exercises:

Drills and exercises are required by both Parties to ensure the readiness and response capabilities of pollution response organizations. It is the intention of the Parties to encourage coordination, participation, and cross-training in periodic drills and exercises to facilitate a better understanding of each Party's duties and responsibilities as well as to ensure a combined, effective, and familiar working relationship at oil spill incidents.

Action:

The Parties agree to interact in the planning, scheduling, design, conduct and evaluation of pollution response exercises as time and resources permit. The Parties will seek to jointly implement the objectives of the National Preparedness for Response Exercise Program (NPREP) with respect to scheduling, designing, executing, and providing feedback whenever possible. The Parties also agree to conduct joint Unified Command System (UCS) drills to test the Unified Plan and appropriate subarea contingency plans on a biennial basis.

D. Public Review Process for Joint Federal/State Plans

The ADEC, USCG, and EPA will jointly determine the public review process appropriate for the Unified Plan and each subarea plan, and jointly carry out the activities and interaction needed to gain meaningful public input.

VI

PREVENTION OF OIL DISCHARGES AND HAZARDOUS SUBSTANCE RELEASES

A. Cooperative Implementation:

The Parties are coordinating their efforts to prevent oil spills and hazardous substance releases in the inland zone.

Action: To the extent permitted under applicable laws, the Parties agree to cooperate in the execution of their respective regulatory responsibilities to minimize duplication of effort. The Parties will also seek to identify opportunities for innovative implementation of facility spill prevention plans. Both Parties recognize the importance of encouraging cross-training in each other's regulations and rules including the areas of inspection and response.

B. Facility (non-transportation related facilities) Inspections:

Each Party recognizes they may elect to independently exercise their respective inspection responsibilities in accordance with applicable law, regulations and policies. Both the State and the EPA conduct inspection programs for the purpose of ensuring compliance with state and federal laws and regulations, respectively.

Actions:

1. The Parties agree to work together to avoid inconsistent requirements and to find ways to conduct facility inspections in such a way that disruption to the industry is minimized and efficiency and safety maximized. To this end, the Parties will endeavor to exchange information.
2. Review of inspection records: The Parties each agree to make inspection records available to the other and to cooperatively review inspection results, subject to applicable laws, regulations, and procedures.

C. Public Information/Education

The Parties agree that public education in areas of pollution prevention, which includes oil and hazardous substances is a high priority. Each agency shall seek opportunities to coordinate pollution prevention public awareness and education programs.

Action:

Rural/Small Oil Transfer Facilities: Public information and education will be developed cooperatively and implemented targeting small oil transfer facilities to reduce pollution

from oil and hazardous substances.

VII RESPONSE

The Parties have learned from major inland spills and hazardous material releases that close State and Federal relationships during these incidents are essential to ensuring coordinated, effective multi-agency responses. Federal law establishes the EPA as the primary federal agency tasked with responding to oil or hazardous substance releases impacting or threatening the inland zone waters of the United States. In such cases, the Federal On-Scene Coordinator (FOSC) is the pre-designated official responsible for ensuring appropriate cleanup operations are undertaken by the responsible party or other entities as appropriate. Pursuant to the authorities provided by the Oil Pollution Act (OPA-90) the FOSC may direct or monitor all federal, State, and private actions in response to an oil or hazardous substance release or a potential release on waters of the U.S. in the inland zone. State law designates the Department of Environmental Conservation as the State On-Scene Coordinator (SOSC). The SOSCs have the authority to evaluate the responsible party's response efforts and to supplement those efforts or "take over" the response. The Parties will respond to inland oil and hazardous substance releases as required by and in accordance with the National Contingency Plan (NCP) and the Unified Plan. The EPA pre-designated Federal On-Scene Coordinator will consult, as required by OPA 90 and other applicable federal law, with the Alaska Department of Environmental Conservation which has pre-designated State On-Scene Coordinators, concerning response activities. State On-Scene Coordinators are responsible for coordinating State response and cleanup efforts.

Action: The Parties agree to work together within the framework of their respective authorities to ensure a coordinated effort with a minimum of duplication is undertaken in response to oil and hazardous substance releases.

A. Unified Command System (UCS):

The Unified Command System (UCS) establishes lines of communication, information sharing and control for the conduct of emergency response operations. This response organization facilitates joint agency responses to oil and hazardous substance releases. The UCS organization and relationships are outlined in the Unified Plan. This system ensures notification procedures are in place which inform cognizant State agencies of when actual or potential releases present a threat to State land and resources.

Actions:

1. Notification: The Parties agree to provide the earliest possible notification of discharges of oil and hazardous substances and imminent threats of such releases to each other in accordance with applicable law, regulations and policies consistent with the National Oil and Hazardous Substances Pollution Contingency Plan and the Unified Plan.

In order to provide a single point of contact for the FOSC in the event of an inland release, the SOSOC will represent all State agencies and will be the primary point of contact.

2. Unified Command: The Parties agree to implement a Unified Command to ensure coordination of emergency response decision making during a pollution incident. In those circumstances where governmental action is required to develop and direct action to clean up or abate the effects of a release, the Parties agree to consider the best use of existing resources, avoiding duplication while taking advantage of resource availability. The FOSC may request the State to undertake response actions on a case-by-case basis. If the State assumes responsibility for response activity, the State will conduct those activities as directed by the SOSOC, in accordance with the National Contingency and Unified Plans.

3. Spill Response Resources: The State SOSOC may request access to Federal resources (as listed in the National Contingency Plan) through the FOSC for the purposes of supporting a State-led spill response operation. Similarly, the FOSC may request the use of State resources (such as communications) to satisfy/augment the federal spill response effort.

4. Response Decisions: The EPA FOSC will consult with the State in making decisions related to the conduct of inland oil spill response operations and other matters affecting the release of spilled oil, its containment or its cleanup.

5. The Parties agree to establish a joint public information center to provide for the coordinated dissemination of information during a response operation. This provision does not preclude the Parties from making independent responses to the media and the public.

B. Natural Resource Protection

Both Parties recognize the importance of protecting and preserving natural resources in responding to an oil spill event. Both Parties agree that response strategies and procedures will be established through the Unified Command System (UCS), in accordance with applicable laws, regulations, policies, and procedures.

C. Response Monitoring and Technology

Both Parties agree that the methods used to clean up oil and oily debris shall, as circumstances permit, be established through the Unified Command System (UCS). The Unified Command, subject to the Federal On-Scene Coordinator's authority outlined in 40 CFR Part 300, will decide what level of action is required by the responsible party, and may decide to direct the

clean up operations by the responsible party or assume responsibility for the cleanup operation. The Parties agree to serve as advocates of new or alternative response technologies including in situ burning, dispersants, bioremediation, chemical beach cleaners and other methods that will enhance spill response capabilities and serve to minimize the impact of oil spills to the environment.

Actions:

1. Both Parties agree to provide timely input and recommendations to the EPA FOSC and the SOSC, through the Unified Command on dispersant usage, in situ burning, bioremediation, and other non-mechanical cleanup technologies. The SOSC has been delegated authority by the SPAR Director to act on ARRT response issues.
2. Both Parties agree that decisions to discontinue cleanup operations and demobilize response activities shall be made through the Unified Command System as appropriate. The State retains the authority to undertake remedial or mitigating actions beyond the response actions required by the National Contingency Plan.

VIII

NATIONAL POLLUTION FUNDS CENTER INFORMATION

A. The Oil Spill Liability Trust Fund (The Fund)

The Fund provides federal funding under certain conditions for oil discharge removal actions. The Fund is available in certain circumstances to compensate the State for costs and damages incurred associated with oil discharges. To the extent allowed, a state may access the Fund under currently published regulations and National Pollution Fund Center (NPFC) procedures.

B. The National Pollution Fund Center (NPFC)

1. The NPFC administers the Fund in order to provide state access to the Fund, conduct cost recovery, accept and process claims, and evaluate requests by Federal trustees to fund initiation of the assessment of natural resource damages.

2. The State may receive payment from the Fund in the State's role as a response organization engaged in removal activities consistent with the National Contingency Plan, as appropriate claimant for damages, and in the State's role as a natural resource trustee.

Actions:

a. The State may negotiate directly with the NPFC to establish a cooperative agreement to provide access to the Fund under Section 1012(d)(2) of the Oil Pollution Act of 1990 (OPA 90). Any agreement between the State of Alaska and the National Pollution Fund Center shall be attached as an annex to this MOU.

b. The NPFC, upon request of the SOS (who is formally delegated specific authority from the Governor of Alaska) and as authorized by the Federal On-Scene Coordinator (FOSC), may obligate the Fund for payment in an amount not to exceed \$250,000 for removal costs. This must be consistent with the National Contingency Plan (NCP), required for the immediate removal of a discharge of oil, or the mitigation or prevention of a substantial threat of a discharge. The NPFC's Technical Operating Procedures (TOPs) for State access under Section 1012(d)(1) of OPA 90, and the TOPs for resource documentation under OPA 90 are approved guidelines for the State to access the Fund under this section.

c. Claims. The Fund may be used for the payment of State claims for uncompensated removal costs determined by the NPFC and EPA pursuant to the procedures found in 33 CFR Part 136.

d. When the State works directly in support of the EPA Federal On-Scene Coordinator (FOSC) in performing removal actions, a Pollution Removal Funding Authorization (PRFA) may be provided to the State to establish a contractual relationship and to obligate the Fund.

IX

ENFORCEMENT

Enforcement action by either Party may include administrative, civil and criminal penalties.

Actions:

a. Subject to the requirements and limitations of applicable state and federal law and agency policy, the Parties agree to coordinate inland spill investigations including, but not limited to: the sharing of information regarding witnesses, reports, sampling, analyses, and other available information that may assist in determining the cause of the casualty.

b. Enforcement action undertaken by each of the Parties must occur independently in accordance with applicable laws and regulations. The Parties agree that to the extent appropriate, they will consult with each other as to intended enforcement action.

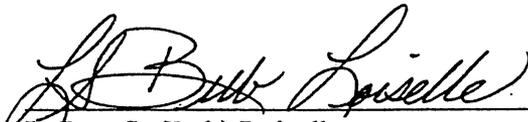
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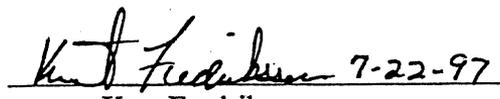
UNDERSTANDING

- A. This MOU represents a voluntary understanding between the EPA (Region X) and the State of Alaska.
- B. The terms of this MOU may be changed at any time without notice to any person other than the other Party.
- C. The MOU may be terminated by either Party at any time without notice to any person other than the other Party.
- D. No rights, duties, obligations, or liabilities enforceable at law are created by this MOU.
- E. No action based upon this MOU may be brought against the United States or the State of Alaska by any person.
- F. This MOU does not alter, modify, abridge, or in any way affect any rights, duties, obligations, or liabilities of any person under the laws of the United States or the State of Alaska.
- G. In the event that individual and severable portions of this MOU are found to be in conflict with either state or federal law, regulations or policies and therefore of no effect, the MOU will remain in effect without those provisions unless either Party notifies the other in writing that the entire MOU is terminated.
- H. Any action to modify, amend or terminate this MOU may only be taken by the Commissioner, ADEC or Director, Spill Prevention and Response or the EPA Emergency Response Unit Manager or persons to whom this authority is specifically delegated.

FOR THE U. S. EPA:

FOR THE STATE OF ALASKA:


6/15/97
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