

§ 153.101

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Subpart D—Administration of the Pollution Fund

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AUTHORITY: 14 U.S.C. 633; 33 U.S.C. 1321, 1903, 1908; 42 U.S.C. 9615; 46 U.S.C. 6101; E.O. 12580, 3 CFR, 1987 Comp., p. 193; E.O. 12777, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

SOURCE: CGD 73-185, 41 FR 12630, Mar. 25, 1976, unless otherwise noted.

Subpart A—General

§ 153.101 Purpose.

The purpose of this part is to prescribe regulations concerning notification to the Coast Guard of the discharge of oil or hazardous substances as required by the Federal Water Pollution Control Act, as amended (FWPCA); the procedures for the removal of a discharge of oil; and the costs that may be imposed or reimbursed for the removal of a discharge of oil or hazardous substances under the FWPCA.

[CGD 84-067, 51 FR 17965, May 16, 1986]

§ 153.103 Definitions.

As used in this part:

(a) *Act* means the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*).

(b) *CERCLA* means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*).

(c) *Chemical agents* means those elements, compounds, or mixtures that coagulate, disperse, dissolve, emulsify, foam, neutralize, precipitate, reduce, solubilize, oxidize, concentrate, congeal, entrap, fix, make the pollutant mass more rigid or viscous, or otherwise facilitate the mitigation of deleterious effects or removal of the pollutant from the water. The term “chemical agents” as used in this part in-

cludes dispersants, surface collecting agents, biological additives, burning agents, and sinking agents as defined in Subpart H of the National Contingency Plan.

(d) *Assistant Commandant for Marine Safety, Security and Environmental Protection* means the Coast Guard Officer designated by the Commandant to assist and advise the Commandant on matters related to marine environmental response, port and environmental safety, and waterways management.

(e) *Coastal waters* means all U.S. waters subject to the tide, U.S. waters of the Great Lakes, specified ports and harbors on the inland rivers, waters of the contiguous zone, or other waters of the high seas subject to discharges in connection with activities under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*) or the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*), or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*)). These waters include those contained within the Exclusive Economic Zone declared by Presidential Proclamation 5030 on March 10, 1983 (43 FR 10605).

NOTE: Coastal waters are those waters where the Coast Guard has the responsibility for providing On-Scene Coordinators under the National Contingency Plan. Specific dividing lines between coastal and inland waters, and the identification of specified ports and harbors on inland rivers, are contained in Regional Contingency Plans prepared pursuant to the National Contingency Plan.

(f) *Contiguous zone* means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone, as published in the June 1, 1972 issue of the FEDERAL REGISTER (37 FR 11906).

(g) *Discharge* includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping, but excludes (A) discharges in compliance with a permit under Section 402 of the Act, (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit

issued or modified under Section 402 of the Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Act, which are caused by events occurring within the scope of relevant operating or treatment systems.

(h) *Hazardous substance* means any substance designated by the Administrator of the Environmental Protection Agency pursuant to section 311(b)(2) of the Act.

(i) *Inland waters* means all other waters of the U.S. not included in the definition of coastal waters.

NOTE: Inland waters are those waters where the Environmental Protection Agency has the responsibility for providing On-Scene Coordinators under the National Contingency Plan. Specific dividing lines between coastal and inland waters are contained in Regional Contingency Plans prepared pursuant to the National Contingency Plan.

(j) *Mechanical removal* means the use of pumps, skimmers, booms, earthmoving equipment, and other mechanical devices to contain the discharge of oil and to recover the discharge from the water or adjoining shorelines.

(k) *Navigable waters* means the waters of the United States as defined in paragraph 2.36(b) of this Chapter.

(l) *Offshore facility* means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

(m) *Oil* means oil of any kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(n) *On-Scene Coordinator* or *OSC* is the Federal official predesignated by the Environmental Protection Agency (EPA) or Coast Guard to coordinate and direct Federal removal efforts at the scene of an oil or hazardous substance discharge as prescribed in the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan) as published in 40 CFR Part 300.

(o) *Onshore facility* means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.

(p) *Person* includes an individual, firm, corporation, association, and a partnership.

(q) *Pollution Fund* and *Fund* means the revolving fund established in the Treasury under the authority in section 311(k) of the Act to carry out the provisions of section 311 (c), (d), (i), and (l) of the Act.

(r) *Public vessel* means a vessel owned or bare-boat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

(s) *Remove* or *Removal* refers to removal of oil or hazardous substances from the waters and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(t) *Sorbent* means materials essentially inert and insoluble used to remove oil from water through a variety of sorption mechanisms. Examples include straw, expanded perlite, polyurethane foam, reclaimed paper fibers, and peat moss.

(u) *Such quantities as may be harmful* means those quantities of oil and any hazardous substances determined in accordance with the provisions of section 311(b)(4) of the Act.

NOTE: Regulations that relate to such quantities as may be harmful of oil are published in 40 CFR Part 110. Regulations that relate to such quantities as may be harmful (reportable quantities) of hazardous substances are published in 40 CFR Part 117 and also listed in 40 CFR Part 302.

(v) *United States* means the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(w) *Vessel* means every description of watercraft or other artificial contrivance used, or capable of being used, as

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a means of transportation on water other than a public vessel.

[CGD 84-067, 51 FR 17965, May 16, 1986, as amended by CGD 88-052, 53 FR 25121, July 1, 1988; CGD 96-026, 61 FR 33665, June 28, 1996; CGD 97-023, 62 FR 33363, June 19, 1997; USCG-2002-12471, 67 FR 41333, June 18, 2002; USCG-2008-0179, 73 FR 35014, June 19, 2008]

§ 153.105 FWPCA delegations and re-delegation.

The delegations and redelegations under the Federal Water Pollution Control Act (FWPCA) [33 U.S.C. 1321 *et seq.*] are published in §1.01-80 and §1.01-85, respectively, of this chapter.

[CGD 91-225, 59 FR 66485, Dec. 27, 1994]

§ 153.107 [Reserved]

§ 153.109 CERCLA delegations.

The delegations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) are published in §1.01-70 of this chapter.

[CGD 83-009, 49 FR 575, Jan. 5, 1984]

Subpart B—Notice of the Discharge of Oil or a Hazardous Substance

§ 153.201 Purpose.

The purpose of this subpart is to prescribe the manner in which the notice required in section 311(b)(5) of the Act is to be given and to list the government officials to receive that notice.

§ 153.203 Procedure for the notice of discharge.

Any person in charge of a vessel or of an onshore or offshore facility shall, as soon as they have knowledge of any discharge of oil or a hazardous substance from such vessel or facility in

violation of section 311(b)(3) of the Act, immediately notify the National Response Center (NRC), U.S. Coast Guard, Room 2111, 2100 Second Street, SW., Washington, DC 20593-0001, toll free telephone number: 800-424-8802, direct telephone: 202-267-2675, or Fax: 202-267-1322. If direct reporting to the NRC is not practicable, reports may be made to the Coast Guard or EPA predesignated OSC for the geographic area where the discharge occurs. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or the predesignated OSC immediately, reports may be made immediately to the nearest Coast Guard unit, provided that the person in charge of the vessel or onshore or offshore facility notifies the NRC as soon as possible. A report made under this section satisfies the reporting requirements of §151.15 of this chapter and of 46 CFR 4.05-1, if required under that provision.

NOTE: Geographical jurisdiction of Coast Guard and EPA OSC's are specified in the applicable Regional Contingency Plan. Regional Contingency Plans are available at Coast Guard District Offices and EPA Regional Offices as indicated in Table 2. Addresses and telephone numbers for these offices are listed in Table 1.

[CGD 84-067, 51 FR 17966, May 16, 1986, as amended by CGD 88-052, 53 FR 25121, July 1, 1988; USCG-2000-6927, 70 FR 74675, Dec. 16, 2005; USCG-2006-25150, 71 FR 39209, July 12, 2006; USCG-2008-0179, 73 FR 35014, June 19, 2008]

§ 153.205 Fines.

Section 311(b)(5) of the Act prescribes that any person who fails to notify the appropriate agency of the United States Government immediately of a discharge is, upon conviction, fined in accordance with Title 18, U.S. Code, or imprisoned for not more than 5 years, or both.

TABLE 1—ADDRESSES AND TELEPHONE NUMBERS OF COAST GUARD DISTRICT OFFICES AND EPA REGIONAL OFFICES

	Address	Telephone
EPA Regional Offices		
Region:		
1	1 Congress St., Suite 1100, Boston, MA 02114-2023	617-918-1111
2	290 Broadway, New York, NY 10007-1866	212-637-3000
3	1650 Arch St., Philadelphia, PA 19103-2029	215-814-5000
4	Atlanta Federal Center, 61 Forsyth St., SW, Atlanta, GA 30303-3104	404-562-9900
5	77 West Jackson Boulevard, Chicago, IL 60604-3507	312-353-2000

TABLE 1—ADDRESSES AND TELEPHONE NUMBERS OF COAST GUARD DISTRICT OFFICES AND EPA REGIONAL OFFICES—Continued

	Address	Telephone
6	Fountain Place 12th Floor, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202-2733.	214-665-2200
7	901 North 5th St., Kansas City, KS 66101	913-551-7003
8	999 18th St., Suite 500, Denver, CO 80202-2466	303-312-6312
9	75 Hawthorne St., San Francisco, CA 94105	415-744-1305
10	1200 Sixth Avenue, Seattle, WA 98101	206-553-1200
Coast Guard District Offices		
District:		
1st	408 Atlantic Avenue, Boston, MA 02210-3350	617-223-8480
5th	Federal Building, 431 Crawford St., Portsmouth, VA 23704-5004	757-398-6638
7th	909 S.E. First Avenue, Miami, FL 33131-3050	305-536-5651
8th	Hale Boggs Federal Bldg., 500 Camp Street, New Orleans, LA 70130-3396.	504-589-6901
9th	1240 E. 9th St., Cleveland, OH 44199-2060	216-902-6045
11th	Coast Guard Island, Building 50-6, Alameda, CA 94501-5100	510-437-2940
13th	Jackson Federal Bldg., 915 Second Avenue, Seattle, WA 98174-1067	206-220-7090
14th	Prince PJKK Federal Bldg., Room 9212, 300 Ala Moana Blvd., Honolulu, HI 96850-4982.	808-541-2114
17th	P.O. Box 25517, Juneau, AK 99802-5517	907-463-2199

TABLE 2—STANDARD ADMINISTRATIVE REGIONS OF STATES AND CORRESPONDING COAST GUARD DISTRICTS AND EPA REGIONS

States and EPA region	Coast Guard district
Region I:	
Maine	1st
New Hampshire	1st
Vermont:	
All except Northwestern portion	1st
Northwestern portion	1st
Massachusetts	1st
Connecticut	1st
Rhode Island	1st
Region II:	
New York:	
Coastal area and Eastern portion	1st
Great Lakes area and other portions	9th
New Jersey:	
Upper portion	1st
Lower portion	5th
Puerto Rico	7th
Virgin Islands	7th
Region III:	
Pennsylvania:	
Eastern portion	5th
Great Lakes area	9th
Southwestern portion	8th
Maryland	5th
Delaware	5th
West Virginia	8th
Virginia	5th
District of Columbia	5th
Region IV:	
Kentucky	8th
Tennessee	8th
North Carolina	5th
South Carolina	7th
Georgia	7th
Florida:	
Atlantic and Gulf coasts	7th
Panhandle area	8th

TABLE 2—STANDARD ADMINISTRATIVE REGIONS OF STATES AND CORRESPONDING COAST GUARD DISTRICTS AND EPA REGIONS—Continued

States and EPA region	Coast Guard district
Alabama	8th
Mississippi	8th
Region V:	
Minnesota:	
Great Lakes area	9th
Inland rivers area	8th
Wisconsin:	
Great Lakes area	9th
Inland rivers area	8th
Michigan	9th
Illinois:	
Great Lakes area	9th
Inland rivers area	8th
Indiana:	
Great Lakes area	9th
Inland rivers area	8th
Ohio:	
Great Lakes area	9th
Inland rivers area	8th
Region VI:	
New Mexico	8th
Texas	8th
Oklahoma	8th
Arkansas	8th
Louisiana	8th
Region VII:	
Nebraska	8th
Iowa	8th
Kansas	8th
Missouri	8th
Region VIII:	
Montana	13th
Wyoming	8th
Utah	11th
Colorado	8th
North Dakota	8th
South Dakota	8th
Region IX:	
California	11th

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TABLE 2—STANDARD ADMINISTRATIVE REGIONS OF STATES AND CORRESPONDING COAST GUARD DISTRICTS AND EPA REGIONS—Continued

States and EPA region	Coast Guard district
Nevada	11th
Arizona	11th
Hawaii	14th
Guam	14th
American Samoa	14th
Trust Territory of the Pacific Islands	14th
Northern Mariana Islands	14th
Region X:	
Washington	13th
Oregon	13th
Idaho	13th
Alaska	17th

[CGD 84-067, 51 FR 17967, May 16, 1986, as amended by CGD 88-052, 53 FR 25121, July 1, 1988; CGD 97-023, 62 FR 33364, June 19, 1997; USCG-1998-3799, 63 FR 35530, June 30, 1998; USCG-2000-7223, 65 FR 40057, June 29, 2000]

Subpart C—Removal of Discharged Oil

§ 153.301 Purpose.

The purpose of this subpart is to prescribe methods and procedures to be used to remove discharges of oil from coastal waters.

§ 153.303 Applicability.

The provisions of this subpart apply to any owner or operator of a vessel or onshore or offshore facility from which a discharge of oil into coastal waters occurs who acts to remove or arranges for the removal of such discharges.

§ 153.305 Methods and procedures for the removal of discharged oil.

Each person who removes or arranges for the removal of a discharge of oil from coastal waters shall:

- (a) Use to the maximum extent possible mechanical methods and sorbents that:
 - (1) Most effectively expedite removal of the discharged oil; and
 - (2) Minimize secondary pollution from the removal operations;

NOTE: The Federal OSC is authorized by the provisions of the National Contingency Plan to require or deny the use of specific mechanical methods and sorbents. Sorbent selection considerations of the OSC include hydrographic and meteorological conditions, characteristics of the sorbent, and avail-

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ability of a mechanical method for containment and recovery.

(b) Control the source of discharge, prevent further discharges, and halt or slow the spread of the discharge by mechanical methods or sorbents or both to the maximum extent possible;

(c) Recover the discharged oil from the water or adjoining shorelines by mechanical or manual methods or both to the maximum extent possible;

(d) Use chemical agents only in accordance with the provisions of Subpart H of the National Contingency Plan and with the prior approval of the Federal OSC; and

(e) Dispose of recovered oil and oil contaminated materials in accordance with applicable State and local government procedures.

[CGD 73-185, 41 FR 12630, Mar. 25, 1976, as amended by CGD 84-067, 51 FR 17966, May 16, 1986]

§ 153.307 Penalties.

Any person who fails or refuses to comply with the provisions of this part, or to comply with an order issued by the Federal On-Scene Coordinator under 33 U.S.C. §§1321(c) or (e)(1)(B), is liable for a civil penalty per day of violation or an amount equal to three times the costs incurred by the Oil Spill Liability Trust Fund as a result of such failure.

[USCG-1998-3799, 63 FR 35531, June 30, 1998]

Subpart D—Administration of the Pollution Fund

§ 153.401 Purpose.

This subpart prescribes policies, procedures, and reporting requirements for the payment from and deposit into the Fund established pursuant to section 311(k) of the Act.

§ 153.403 Applicability.

The provisions of this subpart apply to:

- (a) Each Federal and State agency that desires reimbursement from the Fund for costs incurred during a removal activity; and
- (b) The owner or operator of the vessel or onshore or offshore facility from which a discharge occurs that requires Federal removal activity.

§ 153.405 Liability to the pollution fund.

The owner or operator of the vessel or onshore or offshore facility from which a discharge occurs that requires Federal removal activity is liable to the pollution fund for the actual costs of Federal and State agencies, including the employment and use of personnel and equipment, not to exceed the limits established by sections 311(f) and (g) of the Act.

§ 153.407 Payments or reimbursements from the pollution fund.

(a) The following costs incurred during performance of a Phase III activity as defined in Subpart E of the National Contingency Plan, or a removal action as defined in Subpart F of the National Contingency Plan, are reimbursable to Federal and State agencies when authorized by the appropriate OSC under the authority of section 311(c) of the Act, and are reimbursable to Federal agencies when authorized by the appropriate Coast Guard or EPA official in the case of the summary removal or destruction of a vessel, other "intervention" (as defined in § 153.105(e) of this Part), or any other action under the authority of section 311(d) of the Act or the Intervention on the High Seas Act (33 U.S.C. 1471 *et seq.*):

(1) Costs found to be reasonable by the Coast Guard incurred by government industrial type facilities, including charges for overhead in accordance with the agency's industrial accounting system.

(2) Actual costs for which an agency is required or authorized by any law to obtain full reimbursement.

(3) Costs found to be reasonable by the Coast Guard incurred as a result of removal activity that are not ordinarily funded by an agency's regular appropriations and that are not incurred during normal operations. These costs include, but are not limited to, the following:

(i) Travel (transportation and per diem) specifically requested of the agency by the On-Scene Coordinator.

(ii) Overtime for civilian personnel specifically requested of the agency by the On-Scene Coordinator.

(iii) Incremental operating costs for vessels, aircraft, vehicles, and equip-

ment incurred in connection with the removal activity.

(iv) Supplies, materials, and equipment procured for the specific removal activity and fully expended during the removal activity.

(v) Lease or rental of equipment for the specific removal activity.

(vi) Contract costs for the specific removal activity.

(4) Claims payable under Part 25, Subpart H of this title.

(b) The District Commander may authorize the direct payment of the costs found to be reasonable under paragraph (a)(3) of this section. Direct payment may only be made to Federal or State agencies, or to Federal contractors or suppliers. Direct payments to State or local agency contractors or suppliers will not be authorized.

(c) The Pollution Fund is not available to pay any foreign, Federal, State or local government or agency for the payment or reimbursement of its costs incurred in the removal of oil or hazardous substances discharged from a vessel or facility that it owns or operates.

NOTE: Federal procurement procedures governing contracts to purchase property and services apply to costs incurred as a result of removal activity. Where the public exigency will not permit the delay incident to advertising, purchases and contracts are negotiated pursuant to 10 U.S.C. 2304(a)(2) or 41 U.S.C. 252(c)(2), as applicable.

[CGD 73-185, 41 FR 12630, Mar. 25, 1976, as amended by CGD 84-067, 51 FR 17967, May 16, 1986]

§ 153.411 Procedures for payment of judgments.

An owner or operator of a vessel or an onshore or offshore facility who obtains a judgment against the United States under section 311(i) of the Act may have the judgment satisfied by requesting payment of the judgment in writing from the Commandant (G-L), 2100 Second Street SW., Washington, D.C. 20593. This request must be accompanied by a copy of the judgment and must designate to whom payment should be made.

§ 153.413 Deposit of money into the fund.

Any person liable for the payment of the following shall remit payment by

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check or postal money order, payable to the U.S. Coast Guard, to the cognizant District Commander, or to the Commandant for deposit into the Pollution Fund as prescribed in section 311(k) of the Act:

(a) A fine or penalty imposed, assessed, or compromised under section 311 of the Act, including the proceeds of a bond or other surety obtained pursuant to section 311(b)(6).

(b) A claim asserted by the cognizant District Commander for costs recoverable under sections 311 (f) and (g) of the Act.

(c) A judgment obtained by the United States for costs recoverable under sections 311 (f) and (g) of the Act.

§ 153.415 Cost summary reports.

As soon as practicable after completion of an action authorized under section 311 (c) or (d) of the Act or the Intervention on the High Seas Act, the OSC submits a cost summary report to the cognizant District Commander that includes:

(a) Names of agencies and contractors authorized to participate in the action;

(b) A general description of the function performed by each participating agency and contractor;

(c) An estimate of the cost of each function performed by each participating agency and contractor; and

(d) A copy of contracts, memoranda, or other documents pertaining to the functions performed by the participating agencies and contractors.

[CGD 73-185, 41 FR 12630, Mar. 25, 1976, as amended by CGD 84-067, 51 FR 17967, May 16, 1986]

§ 153.417 Reimbursement for actions under section 311(c) or 311(d) of the Act of the Intervention on the High Seas Act.

(a) Each Federal or State agency requesting reimbursement for an action authorized under section 311(c) or 311(d) of the Act or under the Intervention on the High Seas Act must, within 60 days after completion of the action, submit to the cognizant District Commander, through the OSC for review and certification, required in paragraph (b) of this section, lists accompanied by sup-

porting accounting data, itemizing actual costs incurred.

(b) Requests for reimbursement submitted by Federal and State agencies are reviewed by the OSC to ensure that the costs for which reimbursement is being sought were authorized as Phase III removal actions for oil discharges, or removal actions as defined in Subpart F for hazardous substance discharges, and must have one of the following certifications by the OSC, as appropriate:

(1) I certify that the actions for which reimbursement is being requested in the attached statements were authorized by me as [(Phase III oil removal actions) or (hazardous substance removal actions)], and reasonable costs related thereto are proper for payment from the Pollution Fund.

(OSC signature)

(Incident title)

(Pollution incident project number)

(2) I certify that, except as noted below, the actions for which reimbursement is being requested in the attached statements were authorized by me as [(Phase III oil removal actions) or (hazardous substance removal actions)], and reasonable costs related thereto are proper for payment from the Pollution Fund. The following actions were not authorized by me and are not subject to reimbursement from the Pollution Fund:

(OSC Signature)

(Incident title)

(Pollution incident project number)

[CGD 84-067, 51 FR 17967, May 16, 1986]

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

Subpart A—General

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