

**MEMORANDUM OF AGREEMENT
BETWEEN
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 4
AND
UNITED STATES COAST GUARD
REGARDING RESPONSE BOUNDARIES FOR
OIL AND HAZARDOUS SUBSTANCES POLLUTION INCIDENTS AND
FEDERAL ON-SCENE COORDINATOR RESPONSIBILITIES**

Section 1: PARTIES

The Parties to this Memorandum of Agreement (MOA) are the United States Environmental Protection Agency (EPA), Region 4 and the United States Coast Guard, Fifth, Seventh and Eighth District (USCG D5, etc.).

Section 2: PURPOSE AND AUTHORITIES

- A. The intent of this MOA is to delineate the Region 4 inland and coastal zone geographical boundaries establishing responsibility for the predesignation of the Federal On-Scene Coordinators (FOSC) for pollution response, pursuant to the Federal Water Pollution Control Act, as amended, also known as the Clean Water Act (CWA), 33 U.S.C. §§ 1251-1387; and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. § 300.120.
- B. This Agreement is established under the provisions of 33 U.S.C. §§ 1251-1387, 14 U.S.C. § 93(a) (20), 14 U.S.C. § 141, 40 C.F.R. § 300.120 and EPA Delegation 1-11.

Section 3: DEFINITION

Except where otherwise specifically defined in the context of its use herein, or where specifically set forth below, terms used in this MOA shall have the meaning set forth in federal law and regulation. The definition supplied below is meant to enhance and supplement the understanding of those terms.

- Commercial Vessels. "Commercial vessels" are vessels in commercial service that conduct any type of trade or business involving the transportation of goods or individuals, except service performed by combatant vessels.

Section 4: ENTITIES WITHIN THE GEOGRAPHICAL ZONE

- A. The EPA Region 4 geographical zone includes the following eight States/Commonwealths: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee.
- B. The following USCG commands have areas of responsibility (AOR) which fall within the geographical zone under this MOA.
 1. USCG D5: Sector North Carolina: The Sector North Carolina Captain of the Port (COTP) AOR is detailed within 33 C.F.R. § 3.25-20.

2. USCG D7:
 - i. Sector Charleston: The Sector Charleston COTP AOR is detailed within 33 C.F.R. § 3.35-15, which includes concurrent COTP authority with Marine Safety Unit (MSU) Savannah.
 - ii. MSU Savannah: MSU COTP Savannah AOR is detailed within 33 C.F.R. § 3.35-15(b).
 - iii. Sector Jacksonville: The Sector Jacksonville COTP AOR is detailed within 33 C.F.R. § 3.35-20.
 - iv. Sector Miami: The Sector Miami COTP AOR is detailed within 33 C.F.R. § 3.35-10.
 - v. Sector Key West: The Sector Key West COTP AOR is detailed within 33 C.F.R. § 3.35-40.
 - vi. Sector Saint Petersburg: The Sector Saint Petersburg COTP AOR is detailed within 33 C.F.R. § 3.35-35.

3. USCG D8:
 - i. Sector Mobile: The Sector Mobile COTP AOR is detailed within 33 C.F.R. § 3.40-10.
 - ii. Sector Lower Mississippi River: The Sector Lower Mississippi River COTP AOR is detailed within 33 C.F.R. § 3.40-60.
 - iii. Sector Ohio Valley: The Sector Ohio Valley COTP AOR is detailed within 33 C.F.R. § 3.40-65.

Section 5: BOUNDARY DESCRIPTIONS

A. Inland Zone Boundary Designation

1. The EPA Region 4 provides the predesignated FOSC for pollution response in the inland zone. All discharges or releases, or a substantial threat of such a discharge of oil or threat of release of hazardous substances, pollutants or contaminants originating within the inland zone will be the responsibility of the EPA except as described in paragraph A.3 of this section. Included are discharges and releases from unknown sources or those classified as "mystery spills."
2. The EPA Region 4 AOR includes the States/Commonwealths listed in Section 4.A. Responsibilities regarding inland waterways between the EPA Regions (i.e., Ohio River, Mississippi River, Pearl River, Big Sandy River and Tug Fork) are delineated in separate Memorandums of Understanding (MOU) between the EPA Regions. These MOUs are provided in Appendix 2 of this document.
3. The EPA Region 4 predesignates the relevant USCG COTP as the FOSC in response to an incident in the inland zone when it:
 - i. Involves either:
 - (1) a commercial vessel;
 - (2) a commercial vessel transfer operation; or
 - (3) it is within or originating from the USCG regulated portion of a facility; and
 - ii. Results in a discharge or substantial threat of a discharge of oil or release or threat of a release of hazardous substances, pollutants or contaminants into or on the navigable waters of the United States or adjoining shorelines.

4. For the purposes of this MOA, the USCG regulated portion of a facility extends from the facility transfer system's connection with the vessel to the first valve inside the secondary containment surrounding tanks in the non-transportation-related portion of the facility or, in the absence of secondary containment, to the valve or manifold adjacent to the tanks comprising the non-transportation-related portion of the facility, unless another location has otherwise been agreed to by the COTP and the appropriate federal official.

B. Coastal Zone Boundary Designation

1. The relevant USCG COTP is the predesignated FOSC for pollution response within or threatening the coastal zone. All discharges or releases, or a substantial threat of such a discharge of oil, or threat of release of hazardous substances, pollutants or contaminants originating within the coastal zone will be the responsibility of the USCG. Included are discharges and releases from unknown sources or those classified as "mystery spills."
2. Incidents for which the USCG does not provide the FOSC are outlined in 40 C.F.R. § 300.120(c) and (d).
3. The USCG hazardous substance response role is generally limited to the emergency actions in response to hazardous substance releases, as further defined in the NCP at 40 C.F.R. § 300.120(a)(1) and the Department of Transportation (DOT)/EPA Instrument of Redefinition dated May 27, 1988.
4. The [coastal zone boundary description](#) for the USCG FOSCs located within the EPA Region 4 can be found in Appendix 1.

Section 6: GENERAL RESPONSE PROVISIONS

These provisions apply to all EPA FOSCs and USCG COTP/FOSCs serving within the EPA Region 4. The established boundary lines identified in Appendix 1 delineate the AOR for federal response action to a discharge of oil or a release of a hazardous substance, pollutant or contaminant within the EPA Region 4 and describe the transition point from the coastal zone (USCG jurisdiction) to the inland zone (EPA jurisdiction). For ease of denotation, the boundaries were drawn following prominent state and federal highways, state boundaries, and other landmarks. Therefore, the boundaries do not preclude one agency from transferring to the other agency FOSC responsibilities for releases and/or discharges which occur within its zone, as set forth below.

A. Inland Zone

1. The USCG, through the cognizant COTP and the inland zone predesignated EPA FOSC, will assist each other consistent with agency expertise, resources, responsibilities and authorities.
2. Such mutual assistance will be provided based on notification and mutual consent that the assistance is requested and necessary to respond to: (i) a discharge of oil, or a substantial threat of a discharge of oil, (ii) a release, or threat of a release of a hazardous substance, (iii) a release or threat of a release of pollutants or contaminants which may present an imminent and substantial endangerment to the public health or welfare. Notification will be provided by the COTP to the

EPA FOSC, or by the EPA FOSC to the COTP, whenever a spill is discovered that appears to warrant the provision of mutual assistance. When it is mutually agreed that the provision of such assistance is beneficial, a FOSC from either organization may serve in the following capacities:

- i. As the FOSC for that incident;
 - ii. As the Federal On-Scene Coordinator's Representative (FOSCR) for the predesignated FOSC; or
 - iii. Perform duties as first federal official as outlined in 40 C.F.R. § 300.135(b).
3. When the COTP is not notified via the National Response Center, the EPA shall notify the COTP immediately for all known commercial vessel and USCG-regulated facility discharges or releases in the inland zone. Additionally, the COTP shall ensure that all reported pollution incidents received by the COTP are promptly communicated to the EPA Region 4 duty officer.
 4. The USCG COTP shall inform the EPA Region 4 duty officer immediately when the reported discharge or release is an actual or potential medium or major discharge or release as defined in 40 C.F.R. § 300.5 and required by 40 C.F.R. § 300.320. Additionally, the COTP shall provide a verbal report or Situation Report (SITREP)/Pollution Report (POLREP) for all other response actions.
 5. The USCG COTP in each zone shall provide annually, a list of fixed USCG-regulated facilities (33 C.F.R. §§ 126, 127, and 154) located in the inland zone of their AOR to the Co-Chairs of the Regional Response Team and to the relevant District Incident Management and Preparedness Advisor.

B. Inland and Coastal Zone

1. The established boundary lines identified in Appendix 1 do not preclude mutual assistance between the two agencies. In addition to 40 C.F.R. § 300.135(b), in this federal region, the EPA and the USCG will carry out agency and specific pollution response responsibilities under the NCP, the Regional Contingency Plan (RCP), and the applicable Area Contingency Plan(s) (ACP), and will assist each other to the fullest extent possible to prevent or minimize the impacts of an actual discharge or release, or a substantial threat of such a discharge or threat of release, of an oil or hazardous substance into or on the waters of the United States or adjacent shorelines where each respective agency has jurisdiction. Per 40 C.F.R. § 300.140, should a discharge or release affect two or more areas, prime consideration to the area vulnerable to the greatest threat shall determine which agency provides the FOSC.
2. Regardless of any agreements within this MOA, it is the responsibility of the EPA and the USCG to ensure that the other agency has properly taken over FOSC responsibilities in its zone prior to relieving itself of any FOSC responsibility. Any verbal agreement to transfer FOSC responsibilities shall be followed up in writing, and/or documented in a SITREP or POLREP.
3. In addition, the agency responsible for the Regional Contingency Plan/Area Contingency Plan (RCP/ACP) in their AOR will notify the other agency of meetings to ensure both agencies have the opportunity for participation in the planning process (EPA within the inland zone; USCG within the coastal zone).

4. Unified Command: When spills originate in either the inland or coastal zones that appear to threaten the adjoining zone, the FOSCs responsible for both zones will coordinate to determine the most effective response strategy (cannot be more than one FOSC per incident). When either agency provides the FOSC in the AOR of the other agency (EPA in coastal zone or USCG in inland zone), the host agency shall be afforded the opportunity to participate in the Unified Command. Options available for FOSC assignment are as stated previously in this section.
- C. Drinking Water/Waste Water Infrastructure Incidents: As directed by Homeland Security Presidential Directive 7 (HSPD-7) regarding critical infrastructure, the EPA will provide the FOSC for all drinking water, water treatment system attacks or upsets, regardless of the zone in which the utility is located.

Section 7: OTHER PROVISIONS

- A. Nothing in this Agreement is intended to conflict with current law or regulation or the directives of the USCG or the EPA, or any department in which these parties may be operating, nor any such laws, regulations or directives that may be promulgated hereafter. If a term of this Agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this Agreement shall remain in full force and effect.
- B. Notwithstanding any terms of this Agreement, nothing herein shall be construed to diminish or supersede any rights or authorities available to the parties. This MOA neither amends nor repeals any other requirement or authority conferred by any other provision of law. Nothing in this MOA shall limit, deny, amend, modify or repeal any other requirements or authorities of agencies of the United States.
- C. This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this Agreement, against the EPA or USCG, their officers or employees, or any other person. This MOA does not direct or apply to any person outside of the EPA or USCG.
- D. Each party agrees that should a third-party claim arise under the terms and conditions of the Federal Tort Claims Act (FTCA), Title 28, U.S.C. §§ 1346 and 2671 et seq., or of the laws of any state based on negligence or a wrongful act or omission, the party whose employee(s)' conduct gave rise to the claim shall be responsible for the investigation and disposition of said claim. For claims involving conduct of employees of more than one party arising out of a joint activity conducted pursuant to this MOA, the parties agree to work cooperatively to determine which entity will be primarily responsible for the investigation and disposition of the claim.
- E. As required by the Anti-Deficiency Act, 31 U.S.C. §§ 1341 and 1342, all commitments made by the EPA and USCG in this MOA are subject to the availability of appropriated funds and budget priorities. Nothing in this MOA, in and of itself, obligates either party to expend appropriations or to enter into any contract, assistance agreement, interagency agreement or incur other financial obligations. Any transaction involving transfers of funds between the parties to this MOA will be handled in accordance with applicable laws, regulations and procedures under separate written agreements. This MOA will be incorporated by reference or included as an enclosure to any reimbursable agreement between the USCG and the EPA resulting from this MOA.

Section 8: EFFECTIVE DATE, MODIFICATION AND TERMINATION

This Agreement will become effective upon the signature of all parties. This Agreement will be subject to review and amendment coincident with each periodic review of the Regional Area and other applicable contingency plans and at any other time at the request of any of the parties. It may be terminated by any party, effective 30 calendar days after providing written notice to all parties. It will remain in effect until modified by mutual agreement or terminated.

Section 9: POINTS OF CONTACT

Points of Contact for the coordination, support and implementation of this Agreement are as follows:

- EPA Region 4 – Chief, Emergency Response, Removal and Prevention Branch, Atlanta, GA at (404) 562-8769; 24-hour (404) 562-8700.
- Fifth Coast Guard District – Chief, Response Division, Portsmouth, VA at (757) 398-6676; 24-hour (800) 815-3171.
- Seventh Coast Guard District – Chief, Response Division, Miami, FL at (305) 415-6780; 24-hour (305) 415-6800.
- Eighth Coast Guard District – Chief, Response Division, New Orleans, LA at (504) 671-2229; 24-hour (504) 589-6225.

Section 10: SUPERSEDING POWER

Regional and Area Contingency Plans of the signatory agencies will be amended to reflect the geographical boundaries and agreements contained herein. This MOA supersedes other MOAs and/or MOUs previously in effect concerning the FOOSC boundaries for purposes of pollution response within the EPA Region 4.

Agreed to and entered into by the undersigned.

**USCG D5, D7, D8 and EPA R4 Inland/Coastal Boundary MOA
Signature Page EPA Region 4**


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Region 4
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Signature: 

Date: 4/26/18


**USCG D5, D7, D8 and EPA R4 Inland/Coastal Boundary MOA
Signature Page USCG District 7**

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Signature:  , Rear Admiral
Date: 11 APR 2018

**USCG D5, D7, D8 and EPA R4 Inland/Coastal Boundary MOA
Signature Page USCG District 5**


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**USCG D5, D7, D8 and EPA R4 Inland/Coastal Boundary MOA
Signature Page USCG District 8**

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