

**MEMORANDUM OF AGREEMENT**  
**BETWEEN**  
**THE UNITED STATES COAST GUARD**  
**EIGHTH DISTRICT**  
**AND THE TEXAS NATURAL RESOURCE**  
**CONSERVATION COMMISSION**

WHEREAS, coastal and marine oil discharges or releases of hazardous substances require a rapid, efficient, and coordinated response and cleanup by Federal, State and local agencies as well as from private entities to minimize any imminent or substantial danger to the public health, or the environment; and

WHEREAS, Congress enacted the Oil Pollution Act of 1990 (OPA 90), to protect the waters of the United States from oil pollution and to plan for the effective and immediate response in the event of an oil spill; and

WHEREAS, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, (CERCLA), a requirement of which is the development of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which provides the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants; and

WHEREAS, under the NCP, the on-scene coordinator (OSC) is the federal official pre-designated by the Environmental Protection Agency (EPA) or the United States Coast Guard (Coast Guard) who directs response efforts and coordinates all other efforts at the scene of a discharge or release; and

WHEREAS, the Coast Guard shall provide OSC's for oil discharges, including discharges from facilities and vessels under the jurisdiction of another federal agency, within or threatening the coastal zone and for the removal of releases of hazardous substances, pollutants, or contaminants into or threatening the coastal zone; and

WHEREAS, the Commander, Eighth Coast Guard District is the senior Coast Guard Officer within the Texas Coastal Zone exercising Federal authority under OPA 90, NCP and other Federal laws with respect to oil discharges or hazardous substance releases and the planning and responding thereto in waters subject to the jurisdiction of the United States in and outside the State of Texas and matters dealing with areas of vessel manning and safety equipment; and

WHEREAS, the State of Texas has enacted the Oil Spill Prevention and Response Act of 1991 (OSPRA), Texas Natural Resources Code § 40.001 et seq., to protect the coastal waters and adjacent shorelines from spills, discharges and escapes of oil; furthermore, OSPRA was intended to support and complement OPA 90, and other federal laws, specifically those provisions relating to the national contingency plan for cleanup of oil and hazardous substance spills and discharges, including provisions

relating to the responsibilities of state agencies designated as natural resources trustees (Texas Natural Resources Code § 40.002(d)); and

WHEREAS, pursuant to Section 40.004(a) of OSPRA, the Texas Legislature designated the General Land Office (GLO), under the direction and control of the GLO commissioner, as the State of Texas' lead agency for response to actual or threatened unauthorized discharges of oil and for cleanup of pollution from unauthorized discharges of oil; additionally, all persons and all other officers, agencies and subdivisions of the state shall carry out response and cleanup operations related to unauthorized discharges of oil subject to the authority granted to the GLO commissioner (Texas Natural Resources Code § 40.004(b)); and

WHEREAS, pursuant to Section 40.052 of OSPRA, if the discharge involves predominantly a hazardous substance, the TNRCC shall carry out responsibility for abatement, containment, removal and cleanup of the hazardous substances discharged, pursuant to its statutory authority for the protection of the environment of the state under the Hazardous Substances Spill Prevention and Control Act (Chapter 26, Subchapter G, Section 26.262, Texas Water Code) and Spill Prevention and Control Rules (30 Texas Administrative Code, Section 327), as well as for the public health and safety under the Health and Safety Code (Sections 361.002, 361.011, and 361.017), and carry out its responsibilities pursuant to the state coastal discharge contingency plan and the state spill contingency plan entitled "State of Texas Oil and Hazardous Substances Spill Contingency Plan"; similarly, the State of Texas has enacted the Texas Water Code and Section 26.127 of this Code which establishes the TNRCC as the principal authority in the State on matters relating to the quality of water in the State; and

WHEREAS, GLO, TNRCC and the Texas Parks and Wildlife Department (TPWD) have been designated by the governor of Texas as a natural resource trustees under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. §§ 9601 et seq. (CERCLA), and OPA 90, and as natural resource trustees, have the obligation to protect and preserve all trust resources of the state of Texas; and

WHEREAS, a Memorandum of Agreement (MOA) among the TNRCC, TPWD, GLO, National Oceanic and Atmospheric Administration (NOAA), and United States Department of the Interior (DOI) was entered into in 1995 which addresses natural resources within the boundaries of the State of Texas that are held in trust by both the federal and state trustees and that are injured as a result of discharges of oil or releases of hazardous substances; such MOA details the framework for the coordination and cooperation among the trustees with regard to responses, removals, remediations or corrective actions; furthermore, the MOA recognized the necessity of future specific MOA which may further clarify such responsibilities of the trustees; and

WHEREAS, both the Eighth Coast Guard District and the TNRCC recognize the critical roles each has within their respective areas of authority in preventing oil discharges and releases of hazardous substances and in planning for and responding to the discharges and releases; and

WHEREAS, the Parties believe and intend that by acting in a cooperative and coordinated manner, the effect will be an enhanced oil spill and/or hazardous material release prevention and response effort in the State of Texas;

NOW THEREFORE, the Parties agree, to the extent permitted by law, and as consistent with their respective

policies and available resources, to cooperate and to coordinate their efforts in implementing and exercising their respective statutory and regulatory duties related to oil spill and/or hazardous material release.

## I

### PURPOSE AND SCOPE OF THE AGREEMENT

- A. This Memorandum of Agreement (MOA), executed by the Texas Natural Resource Conservation Commission (TNRCC) and Eighth Coast Guard District is entered into in recognition of their common interests and the overlapping responsibilities, which exist, between themselves and other state and federal agencies. The purpose of this MOA is to provide the framework under which there is a coordination of marine pollution activities and the development of a cooperative marine environmental protection strategy by:
- (1) minimizing duplication of requirements or efforts, and
  - (2) making the most efficient use of State and Coast Guard resources,

To achieve the goals of this MOA with regard to oil discharges or hazardous substance releases, the parties must coordinate all planning, assessment, and investigations with the lead agency to ensure the protection or restoration of the natural resources of the state of Texas, as well as to coordinate all the services involved as part of the removal, remedial or corrective action.

## II

### GENERAL PROVISIONS (JURISDICTION)

- A. Under the provisions of Titles 14, 18, 19, 33, 40, 46, 49 and 50 United States Code (U.S.C.), the United States Coast Guard has authority to regulate vessels and shore facilities to ensure safety of life and property at sea, and protect the marine environment. The Coast Guard's regulatory and enforcement authority extends throughout the navigable waters of the United States, the high seas and other waters over which the United States has jurisdiction.
- B. The TNRCC has statutory authority for the protection of the environment of the State under the Hazardous Substances Spill Prevention and Control Act (Chapter 26, Subchapter G, Section 26.262, Texas Water Code) and Spill Prevention and Control Rules (30 Texas Administrative Code, Section 327), as well as for the public health and safety under the Health and Safety Code (Sections 361.002 and 361.011). Pursuant to the Hazardous Substances Spill Prevention and Control Act, the TNRCC has prepared a State spill contingency plan entitled "State of Texas Oil and Hazardous Substances Spill Contingency Plan."
- C. GLO has statutory authority for the protection of the coastal waters of the State from spills discharges and escapes of oil under OSPRA (Section 40.002, Texas Natural Resources Code).
- D. The body of Federal marine pollution law and regulation, particularly as enhanced by OPA 90 and new regulations issued under its authority, and other laws and regulations, provide for coordinated marine environmental protection effort across all pollution sources, including all transportation modes.

- E. Each party recognizes that Eighth Coast Guard District, GLO and the TNRCC have various overlapping authorities, and are committed to working together to complement rather than duplicate programs and resources.
- F. This MOA is jurisdictionally applicable in such areas that Eighth Coast Guard District, GLO and TNRCC have overlapping authority.
- G. This MOA is authorized under the provisions of 14 U.S.C. §§ 93(d), 141 and 42 U.S.C. § 9604(d).

### III

#### PARTIES

- A. The parties to this MOA are the U.S. Coast Guard Eighth District and the Texas Natural Resource Conservation Commission (TNRCC).
- B. The Commander, Eighth Coast Guard District and the Executive Director, TNRCC enter into this MOA to the extent permitted by law and as consistent with their respective policies and available resources, to coordinate their respective statutory and regulatory duties related to protection of the marine environment.
- C. Nothing in this MOA shall detract from the existing responsibility or authority of each party. Furthermore, no other agency, neither federal nor state, which may have concurrent or overlapping jurisdiction, shall be affected by this MOA, nor shall their powers or responsibilities be diminished.

### IV

#### DEFINITIONS

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 as set forth in Federal and applicable State laws.

##### A. Specific definitions:

1. **State Waters.** Those navigable waters of the United States which lie within the jurisdiction of the State of Texas and over which the Coast Guard has concurrent Federal authority for response to oil spills and/or hazardous material releases.
2. **On - Scene Coordinator (OSC).** In accordance with 40 CFR § 300.5, the OSC is the pre-designated Federal official responsible for ensuring immediate and effective response to a discharge or release. The Coast Guard designates OSC's for the U.S. coastal zones. The jurisdictional boundary between these zones is specified in a Memorandum of Understanding between the U.S. Environmental Protection Agency (EPA) and the Coast Guard, and is specifically delineated in the Region VI Regional Contingency Plan.
3. **Direct Oversight** includes but is not limited to: pre-response planning, coordination and notification of appropriate state and federal agencies, supervision of contractor during

response, coordination of sampling and review of analytical data, coordination of waste profiling, coordination of transport and proper disposal, contract administration, and response documentation.

4. Imminent and substantial endangerment. Endangerment is imminent if, given the entire circumstances surrounding each case, exposure of persons or the environment to hazardous substances is more likely than not to occur in the absence of preventive action. Endangerment is substantial if, given the current state of scientific knowledge, the harm to public health and safety or the environment which would result from exposure could cause adverse environmental or health effects.

## V

### PROGRAMMATIC PROVISIONS

Abandoned Unknown Containerized Substances. Containers or drums that have washed ashore within the State's coastal jurisdiction will be routinely handled by either MSO Corpus Christi, MSO Houston/Galveston, or MSO Port Arthur or TNRCC. The Eighth Coast Guard District and the TNRCC agree that they will provide timely notifications to one another of any containerized incidents that require the other's removal action. The TNRCC and the Eighth Coast Guard District may negotiate, on a case by case basis, removal and disposal actions necessitated by unusual incidents. An on-site assessment, after notification of either agency will be conducted by one or both of the agencies signatory to this MOA and the potential threat to the public health and the environment will be abated as detailed below:

- A. Abandoned Unknown Containerized Substance - **Leaking**: If the container is leaking, unless otherwise specifically agreed upon, the Coast Guard Eighth District pre-designated Federal On-Scene Coordinator will serve as the lead agency for the safe and proper removal of the threat to the environment.
- B. Abandoned Unknown Containerized Substance - **Not Leaking**: If the container is not leaking, unless otherwise specifically agreed upon, TNRCC will serve as the lead agency for the safe and proper removal of the threat to the public health and the environment.
- C. Deteriorated containers that no longer pose a substantial threat to public health or the environment will be handled as beach trash and disposed of by the appropriate property owner or trustee.
- D. Standard Protocols for Immediate Removal of Abandoned Unknown Containerized Substances.
  1. Locate and/or receive report of abandoned unknown containerized substance pursuant to standard checklist.
  2. Ensure the timely notification of other agency signatory to this MOA.
  3. Conduct an initial on-site assessment with one or both agencies present.
  4. Each container shall be assessed on a case-by-case basis. Assess container to evaluate if it poses an imminent and substantial endangerment to public health or

the environment. If the container does not pose an imminent and substantial endangerment, any and all removal actions are stopped.

5. Agree who will serve as the lead agency responsible for the removal and proper disposal of the containers.
6. The Coast Guard MSO shall generate a Marine Casualty Investigative Report (MCIR), as soon as possible, verifying that this container(s) poses a substantial threat to public health or the environment and should be removed.
7. The Coast Guard MSO will identify potential funding source (OSLTF/CERCLA/DOI) based upon on-site assessment. If TNRCC is assuming the role of lead agency in the removal action, then the respective Coast Guard MSO will execute a Pollution Removal Funding Authorization (PRFA) with the respective TNRCC regional office in accordance with National Pollution Fund Center (NPFC) Instruction 16451.2 Technical Operating Procedures for Resource Documentation, Chapter 8, Pollution Removal Funding Authorization.
8. Lead removal agency will coordinate the following response activities:
  - a. Identify contractor to conduct removal operations and proper disposal.
  - b. Provide direct oversight to and otherwise monitor all removal operations.
  - c. Provide photo documentation and Global Positioning System (GPS) coordinates of the in-situ and removal operations.
  - d. Require contractor to conduct a Hazard Categorization (HAZCAT) test within twelve (12) hours of removal (as applicable).
  - e. Profile waste stream for disposal or recycling
  - f. Generate reports/claims for contractor payment and/or reimbursement within 90 days of removal, in accordance with National Pollution Fund Center (NPFC) Instruction 16451.2 Technical Operating Procedures for Resource Documentation, Chapter 3, Removal Action: Oil and Hazardous Substances.

## VI

### PAYMENT

For all removal activities performed by TNRCC under this MOA, the respective Coast Guard MSO will issue a PRFA to the respective regional TNRCC office in accordance with National Pollution Fund Center (NPFC) Instruction 16451.2 Technical Operating Procedures for Resource Documentation, Chapter 8, Pollution Removal Funding Authorization.

## VII

### EVALUATION OF MOA

- A. Each party shall continuously evaluate the effectiveness of this MOA in light of the purpose and scope, particularly with respect to the underlying principles of cooperation, the minimization of regional regulatory impacts on industry, and environmental protection.
- B. At least every three (3) years, the parties shall present their findings and any proposals to revise this MOA as appropriate to the other signatory agency.

## VIII

### MISCELLANEOUS

- A. This MOA represents a voluntary understanding between the Commander, Eighth Coast Guard District and the Executive Director, TNRCC.
- B. This MOA may be executed in counterparts. A copy with original executed signature pages affixed shall constitute the original MOA. The date of execution shall be the date of the final parties signature.
- C. This MOA will remain in effect until rescinded by either party. At any time the parties determine that there is no purpose served by this MOA, the MOA will terminate upon such a finding. Either party may withdraw from this MOA at any time for any reason. In the event either party withdraws from the MOA, it must provide thirty (30) days written notice before the withdrawal can become effective. In the event of the withdrawal of either party, or at the termination of this MOA, each party agrees to cooperate in preparing a full and complete accounting for and status report of all accounts, which may be required for each agency.
- D. The terms of this MOA may be changed at any time by the parties by a written, signed amendment hereto. Any action to modify, amend or terminate this MOA may only be taken by the signatory parties or persons to whom this authority is specifically delegated by them.
- E. The parties to this MOA support an open government policy of providing access to information created or obtained by the parties during the damage assessment process. The parties do hereby agree that any information in the possession of the parties shall be confidential if, and only if, such information is obtained or retained in anticipation of litigation or during pending litigation, provided, however, that all such information is subject to disclosure pursuant to federal and state rules of evidence and discovery. It is further understood and agreed that information subject to public disclosure upon request and pursuant to the Freedom of Information Act or the Texas Public Information Act shall be released. However, the parties acknowledge and agree that all federal documents produced in fulfillment of obligations under this MOA that are protected from release under federal law will be protected from release by the state agencies to the extent the documents are protected by state law. The parties agree to mark shared information deemed confidential as restricted access and to notify each other in writing, of each request for information no more than five (5) days from the date of such request. The parties will disseminate all relevant documents to each other so that each agency can respond to any request it receives.

it receives.

- F. This MOA does not create, alter, modify, or 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 Texas or any other entity not a party to this MOA. Nothing in this MOA is to imply that any signatory government is in any way abrogating or ceding any responsibilities or authority inherent in its control or trusteeship over the public health and welfare or the environment.
- G. No legal action or claim based upon this MOA may be brought against the United States, U.S. Coast Guard, the State of Texas, or the TNRCC by any person, nor shall this MOA be the basis of any third party challenges or appeals.
- H. Nothing in this MOA shall be construed as obligating the United States, the State of Texas or any other public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law. Further, the rights and responsibilities contained herein are subject to the availability of funding and are intended to be guidance for the parties hereto.
- I. In the event that individual or several portions of this MOA are found to be in void, unenforceable or in conflict with either State or Federal law, regulations or policies and therefore of no effect, the MOA will remain in effect and those provisions shall be reformed to replace such void portions with valid and enforceable provisions that come as close as possible to expressing the intention of the stricken portion, unless either party notifies the other in writing that the entire MOA is terminated.

UNITED STATES COAST GUARD  
EIGHTH COAST GUARD DISTRICT

By Ray J. Casto  
RADM Roy J. Casto

District Commander

Date May 21, 2001

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

By Jeffery A. Saitas  
Jeffery A. Saitas, P.E

Executive Director

Date 5/29/01



National Pollution Funds Center (NPFC)  
Funding Information Annex

Pursuant to Section 1012(d) (1) of  
the Oil Pollution Act of 1990 (OPA 90)

(P.L. 101-380)

1. **Introduction.** This Annex is reserved for funding information that the NPFC may eventually develop in order to enter into agreements with the State; currently, however, this annex is available for use only as a reference for accessing the Oil Spill Liability Trust Fund (the Fund) and does not constitute a binding agreement. To the extent allowed, a State may access the Fund under currently published regulations and NPFC procedures.
2. **The Fund.**
  - A. 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 the initiation of the assessment of natural resource damages. Also, the NPFC administers Certificates of Financial Responsibility and provides CERCLA/Superfund funding to Coast Guard OSCs responding to hazardous material incidents.
  - B. An individual State may receive payments from the Fund in the State's role as a response organization engaged in appropriate claimant for damages, and in its role as a natural resource trustee. In addition to the test herewith concerning Section 1010(d)(2) of OPA 90, States recognize the following provisions outline alternative funding methods for State removal activity.
    - (1) Section 1012 (d)(1). Regulations under Section 1012 (d)(1) of OPA 90 allow the NPFC, upon the request of the Governor of a State of Texas and as authorized by the OSC, to obligate the Fund for payment in an amount not to exceed \$250,000 for removal costs, consistent with the NCP, required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge of oil. 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 states use to access the Fund under this section.
    - (2) **Claims.** Regulations under Section 1010(a)(4) of OPA 90 authorize use of the Fund for the payment of claims in accordance with Section 1013 of OPA 90 for uncompensated removal costs determined by the President (Coast Guard) to be consistent with the NCP or for uncompensated damages. Procedures for claims are found in 33 CFR Part 136. States have a special status under Section 1013 of OPA 90 regarding claims for uncompensated removal costs which allows States to make such claims directly to the Fund rather than first to the responsible party.

(3) Working Directly for the OSC. State agencies may work directly for the Coast Guard OSC in performing removal actions. In these situations, the OSC issues a Pollution Removal Funding Authorization (PRFA) to the State to establish a contractual relationship and to obligate the Fund. The OSC actively directs and is responsible for the response actions. (Additionally, a Coast Guard OSC may request State assistance and participation in emergency removal actions under CERCLA in response to a hazardous materials incident or threatened incident and where funding for these actions is via a PRFA).

C. Natural Resource Damage Assessments. Working through a Federal Lead Administrative Trustee (one of the Federal Trustees designated in the NCP), a State trustee may, in accordance with the procedures established by the NPFC, request access for the initiation of an assessment of natural resource damages resulting from a discharge of oil (section 6002(b) of OPA 90).