

**GUIDANCE FOR USE BY FEDERAL ON-SCENE COORDINATORS
WHEN RESPONDING TO SPILLS OF OIL OR HAZARDOUS SUBSTANCES ON
TRIBAL LANDS**

REGIONAL RESPONSE TEAM VI

INTRODUCTION

General principles guide the federal government's interaction with tribal governments. Those principles are summarized as:

- Department and Agency heads shall be responsible for ensuring their operations occur within a government-to-government relationship with Federally-recognized tribal governments.
- To the extent practicable and permitted by law, departments and agencies shall consult openly and candidly with Indian tribal governments before actions are taken that affect them.
- Departments and agencies shall assess the impact of United States Government plans, projects, programs and activities on tribal trust and restricted resources and assure that Indian tribal government rights and concerns are considered during their development.

See Memorandum on Government-to-Government Relations with Native American Tribal Governments, 30 Weekly Comp. Pres. Doc. 936 (April 28, 1994).

These principles are based on the unique relationship of the United States Government with Indian Tribes. The U. S. Department of the Interior (DOI)/Bureau of Indian Affairs (BIA) acts as the principal agent of the United States in carrying out the Federal Government's responsibilities as trustee of property held in trust or restricted status for the benefit of Federally-recognized tribes and individual Indians.

EXECUTIVE ORDERS B STATUTES PERTAINING TO SPILL RESPONSE

- Executive Order 12580 - Superfund Implementation

Section 104(a)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) indicates that the President of the United States is authorized to take response, removal or remedial actions relating to hazardous substances, pollutants or contaminants in order to protect public health or welfare or the environment. These responsibilities are delegated to the Secretary of the Department of Homeland Security and performed by the U.S. Coast Guard in the coastal zone, Great Lakes waters, ports and harbors, and to the Administrator of the Environmental Protection Agency in the remaining inland areas.

In addition, assurances related to cost recovery, maintenance and waste disposal facilities that are required by States are instead provided to Tribes by the EPA Administrator in consultation with the Secretary of the Interior.

- Executive Order 12777 B Implementation of Section 311 of the Federal Water Pollution Control Act (FWPCA) of October 18, 1972, as amended, and the Oil Pollution Act of 1990 (OPA)

The functions vested in the President by Section 311(c) of the FWPCA and Section 1011 of OPA were delegated to the Secretary of the Department of Homeland Security (U.S. Coast Guard) for the coastal zone and to the Administrator of EPA for the inland zone. These functions include the removal of an oil discharge and mitigation or prevention of the threat of a discharge: (1) into the navigable waters of the U.S. or adjoining shorelines; (2) into or on the waters of the Exclusive Economic Zone; or (3) that may affect natural resources of the U.S. In addition, the U.S. Coast Guard or the EPA are also delegated the President's authority to direct all Federal, State, and private actions to remove a discharge or mitigate or prevent the threat of a discharge from onshore or offshore facilities which is determined to be a substantial threat to the public health or welfare of the U.S.

Based on Executive Orders 12580 and 12777, which delegate responsibility for implementing CERCLA, FWPCA and OPA provisions related to spill response, EPA and U.S. Coast Guard On-Scene Coordinators have the authority and responsibility to direct spill response actions. Since title to Indian trust lands are held by the United States Government as trustee, On-Scene Coordinators are responsible for representing the Federal Government by overseeing response actions that protect those lands. Indian tribal governments that have been determined to have the capability and resources to take over spill response actions can enter into agreements with appropriate federal agencies to do so.

ON-SCENE COORDINATION

Federal On-Scene Coordinators (FOSCs) should take the following steps when incidents are reported that might impact Indian lands held in trust by the United States Government:

- Notify the U.S. Department of the Interior, Office of Environmental Policy and Compliance, Regional Environmental Officer (REO), Albuquerque, New Mexico
Phone: 505-563-3572, Cell: 505-249-2462

The REO will contact the appropriate BIA Regional Office which will contact the BIA agency that works with the interested Indian tribal government and/or the responsible Indian tribal government representative. The REO and BIA representatives can facilitate a determination of land ownership which in turn has a bearing on FOSC authorities and responsibilities in directing an appropriate response.

- If the FOOSC has points of contact for Indian tribal government representatives or there are agreements in place, those representatives may also be contacted directly in addition to the DOI REO above.
- The FOOSC, if provided by EPA, should notify the EPA Regional Office of Environmental Justice and Tribal Affairs.
- The FOOSC should communicate with Indian tribal government officials prior to entering Indian reservations or Indian lands if it is decided that it is necessary to do so. DOI and BIA can facilitate that communication if necessary.
- The FOOSC should constitute a Unified Command (UC) Incident Command System (ICS) structure to include themselves, a representative of the Indian tribal government, a BIA representative, a potentially responsible party representative, and a state government representative if warranted by the incident specifics.
- Cleanup decisions, including response technologies and cleanup endpoints, should be made collaboratively with Indian tribal government officials within the UC/ICS structure.