

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
And
THE UNITED STATES COAST GUARD

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For use of the
Oil Spill Liability Trust Fund

June 11, 2012

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TABLE OF CONTENTS

LIST OF ACRONYMS	4
I. PURPOSE.....	4
II. AUTHORITY	4
III. DEFINITIONS	5
IV. USES OF THE OSLTF	5
V. ACCESSING THE OSLTF.....	5
VI. REPORTING	6
VII. COST DOCUMENTATION.....	6
VIII. COST RECOVERY AND LITIGATION SUPPORT	6
IX. DISPUTES.....	7
X. MODIFICATION AND TERMINATION	7
XI. PERIOD OF AGREEMENT	7
XII. MISCELLANEOUS	7
XIII. SIGNATURES.....	8
APPENDIX A. MASTER CBI NON-DISCLOSURE AGREEMENT	
APPENDIX B. EPA FULL COST DOCUMENTATION LIST	

LIST OF ACRONYMS

CWA	Clean Water Act
FPN	Federal Project Number
FWPCA	Federal Water Pollution Control Act
IA	Interagency Agreement
MOU	Memorandum of Understanding
NCP	National Oil and Hazardous Substances Pollution Contingency Plan
NPFC	National Pollution Funds Center
OEM	Office of Emergency Management
OPA	Oil Pollution Act of 1990
OSC	On-Scene Coordinator
OSLTF	Oil Spill Liability Trust Fund (or “the Fund”)
OSWER	Office of Solid Waste and Emergency Response
POLREP	Pollution Report
RP	Responsible Party
USCG	United States Coast Guard
USDHS	United States Department of Homeland Security
USEPA	United States Environmental Protection Agency

I. PURPOSE

This Memorandum of Understanding (MOU) between the United States Environmental Protection Agency (USEPA) and the United States Coast Guard (USCG) establishes the agreement by which USEPA accesses the Oil Spill Liability Trust Fund (OSLTF or “the Fund”), administered by the National Pollution Funds Center (NPFC), in order to carry out oil removal under 33 U.S.C. 1321 [Clean Water Act (CWA) or Federal Water Pollution Control Act (FWPCA)], with the concomitant USEPA responsibility to fully account for OSLTF funds and support the NPFC’s efforts to recover the Federal government’s costs from responsible parties (RPs). This MOU also describes the NPFC’s responsibility to fully support the USEPA by providing timely funding and other support to carry out oil removals.

II. AUTHORITY

This MOU is entered into under the authority of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 et seq, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. pt 300, and Executive Order 12,777 (as amended by E.O. 13,286).

OPA § 1012(a)(1), 33 U.S.C. § 2712(a)(1), authorizes the use of the Fund for removal costs by Federal authorities. OPA § 6002 (33 U.S.C. § 2752) provides that amounts are available from the Fund only as provided in annual appropriation acts, except, inter alia, the President may make available up to \$50,000,000 annually to carry out FWPCA section 311(c) and to initiate the assessment of natural resource damages. The OPA Conference Report, House Report 101-653 (August 1, 1990) p. 113, explains that these purposes fall within categories (1) and (2) of OPA

section 1012(a). FWPCA section 311(s) provides that the Fund shall be available to carry out subsection 311(c) as it applies to discharges and substantial threats of discharges of oil.

Section 7 of E.O. 12,777 delegates management of the Fund, including the functions vested in the President by OPA section 1012(a)(1) respecting payment of removal costs, to the Secretary of the Department in which the USCG is operating. That section also correspondingly delegates the functions vested in the President by OPA section 6002(b) respecting making amounts, not to exceed \$50,000,000 and subject to normal budget controls, in any fiscal year, available from the Fund (i) to carry out section 311(c) of FWPCA, and (ii) to initiate the assessment of natural resources damages to the Secretary of the Department in which the USCG is operating.

The USCG operates in the United States Department of Homeland Security (USDHS). The Secretary, USDHS has delegated these above functions to the Commandant, USCG who in turn has re-delegated these functions to the Director, NPFC.

Section 3 of E.O. 12,777 delegates the functions vested in the President by section 311(c) of FWPCA respecting an effective and immediate removal of a discharge and mitigation or prevention of a substantial threat of a discharge of oil to the USEPA Administrator for the inland zone. Those functions are re-delegated to the Regional Administrators and the Assistant Administrator for Solid Waste and Emergency Response (OSWER) by Delegation 2-89 Removal of Discharge or Threat of Discharge. The Regional Administrators and the Assistant Administrator for OSWER have further authority to re-delegate these functions to On-Scene Coordinators (OSCs).

The principal organizations within the two agencies with fiscal responsibilities for these matters are OSWER for the USEPA and the NPFC for the USCG.

III. DEFINITIONS

The terms “oil,” “remove,” “removal,” and “removal costs” as they may be used in this MOU are defined at FWPCA section 311(a), 33 U.S.C. § 1321(a).

IV. USES OF THE OSLTF

The OSLTF is available to reimburse the USEPA via Interagency Agreements (IAs) for oil removal costs resulting from their activities conducted under 33 U.S.C. § 1321(c). To be reimbursable from the Fund, the removal activities which resulted in the costs being incurred must be consistent with the NCP.

V. ACCESSING THE OSLTF

The NPFC provides funding for oil removals through a Federal Project Number (FPN) and an approved project ceiling.

VI. REPORTING

The USEPA shall send to the NPFC in Pollution Report (POLREP) 1 (or as soon as possible) consistent with the NCP, Subpart B, section 300.135(m), documentation of the determination that a FWPCA section 311(c) incident has occurred as well as removal activities and their connection to the incident, and resulting costs. The USEPA will also provide status reports in accordance with current NPFC reporting requirements.

VII. COST DOCUMENTATION

To effect reimbursement, the USEPA shall provide for every case a full and timely “cost documentation” of all removal costs to document disbursements from the OSTLF. “Cost documentation” is defined in Appendix B. In addition, this documentation will support the determination that access to the Fund is appropriate and support recovery of costs from the responsible parties (RPs) and other liable persons. The USEPA OSCs shall also review all costs incurred during the removal operation and certify that they are proper and consistent with the NCP. For open cases, the USEPA may provide additional documentation or information to the NPFC on a more regular basis, such as via monthly billings, rather than waiting until projects are completed. To obtain reimbursement for eligible costs, USEPA will present billing documentation supported by case documentation to the NPFC. EPA’s Cincinnati Finance Center (CFC) alone will be responsible for submitting all EPA oil cost reimbursements packages to the USCG.

The CFC will serve as the USCG point of contact for oil cost documentation issues. The USCG will either approve in full or in part, reimbursement, or provide a detailed explanation of what additional information is required to EPA. Recognizing that the required procedures will add time to the disbursement to reimbursement time frame, the USCG will expedite the review of billing documentation with a goal of completing the review within 30 days or less.

Agreement(s) between USEPA and USCG on the treatment and use of confidential business information is attached as Appendix A to this MOU. Changes to agreements under Appendix A are not changes to this memorandum. USCG will give EPA a courtesy notice when seeking a non disclosure statement from an RP.

VIII. COST RECOVERY AND LITIGATION SUPPORT

USEPA shall fully support NPFC with respect to all USEPA uses of OSLTF funds following removal activities when NPFC proceeds to recover the Federal Government’s removal costs from the RP(s).

I X. DISPUTES

Any project-specific disputes that may arise in connection with access to the Fund and uses of amounts accessed, that cannot be resolved between the USEPA OSC and NPFC Case Manager shall be referred first to the USEPA Regional Oil Manager and the NPFC Case Management Division Chief for resolution and if necessary to the USEPA Director, Office of Emergency Management (OEM) and the Director, NPFC. Where the dispute is in respect to the potential application of more than one response or enforcement authority and source of funds, e.g. so-called mixed oil and hazardous substance pollution, the parties will coordinate to achieve the best interests of the United States in efficient and effective pollution response, and enforcement against liable polluters.

Any project-specific disputes that may arise in connection to the adequacy and timeliness of cost documentation that cannot be resolved between the USEPA and NPFC Case Manager shall be referred first to the USEPA Cincinnati Finance Center Director and the NPFC Case Management Division Chief for resolution and if necessary to the USEPA Director, Office of Financial Services (OFS/OCFO) and the Director, NPFC.

X. MODIFICATION AND TERMINATION

Either the USCG or the USEPA may propose changes to this MOU. Both agencies must approve a change before it becomes effective. Either agency may terminate the MOU by giving a thirty (30) day advance written notice to the other Agency. This MOU may be further supported by other agreements between USEPA and USCG, which may be attached as annexes to this MOU. Changes to such annexed agreements are not changes to this MOU.

This agreement shall be reviewed at a meeting between the parties 6 (six) months from the date of signature to determine if modifications are necessary, and may be reviewed periodically thereafter at the request of either party to determine if modifications are necessary. Any modification of this agreement shall require the written consent of both parties. Furthermore, on a quarterly schedule, both parties will commit to jointly review and evaluate the timeliness of the site billings (EPA) and the reimbursement reviews (USCG).

XI. PERIOD OF AGREEMENT

This MOU shall continue in effect until terminated, modified or amended. This MOU shall become effective on the date of the last signature below.

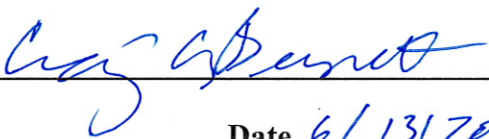
XII. MISCELLANEOUS

As required by the Antideficiency Act, 31 U.S.C. §§ 1341 and 1342, all commitments made by the USEPA and the USCG in this MOU are subject to the availability of appropriated funds and budget priorities. Nothing in this MOU, in and of itself, obligates the USEPA or USCG to

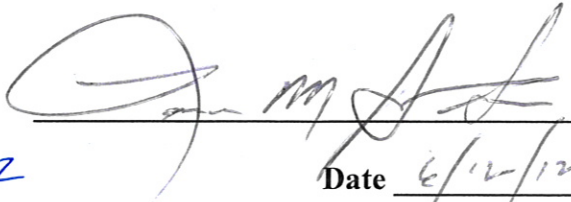
expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations. Any transaction involving transfer of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

This MOU is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

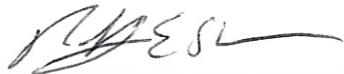
XIII. SIGNATURES


Date 6/13/2012

Craig Bennett
Director, National Pollution Funds Center
United States Coast Guard
U.S. Department of Homeland Security


Date 6/12/12

Lawrence Stanton
Director, Office of Emergency Management
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency


Date 6/11/12

Raffael Stein
Director, Office of Financial Services
Office of the Chief Financial Officer
U.S. Environmental Protection Agency

APPENDIX A

MEMORANDUM OF AGREEMENT USE OF CONFIDENTIAL BUSINESS INFORMATION AND MASTER NON- DISCLOSURE AGREEMENT IN RESPECT TO U.S. ENVIRONMENTAL PROTECTION AGENCY OIL REMOVAL COST DOCUMENTATION PROVIDED TO U.S. COAST GUARD NATIONAL POLLUTION FUND CENTER

Under this agreement, the U.S. Environmental Protection Agency (“USEPA”) will provide the U.S. Coast Guard National Pollution Fund Center (“NPFC”) all cost documentation, including all information that has been claimed as Confidential Business Information (“CBI”) by an USEPA contractor or contractors, resulting from actions authorized under the Federal Water Pollution Control Act, 33 U.S.C. § 1321 (FWPCA); the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq* (OPA); and/or the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR §§ 300 *et seq.* (“NCP”) [hereinafter referred to as “actions”]. These provisions also serve as the authority for this agreement.

USEPA has collected/will collect this cost documentation in a manner consistent with the NCP and as defined in Appendix B, and access to this information is being provided to the NPFC to satisfy cost documentation requirements mandated by the OPA and, where applicable, other various Memoranda of Understanding, Pollution Removal Funding Authorizations, or other agreements entered into between USEPA and the NPFC. This agreement covers all cost documentation related to all actions taken by USEPA and its contractors under USEPA’s removal authority under Section 311 of the FWPCA, OPA, and/or the NCP.

Prior to providing the cost documentation to the NPFC, USEPA will mark all material that is claimed as CBI. Material claimed as CBI shall be marked in a manner that clearly distinguishes it from material that is not claimed as CBI. USEPA will undertake this effort to ensure that the NPFC is aware of what is/is not material claimed as CBI.

In order to ensure effective NPFC use of material claimed as CBI for cost recovery USEPA will include the EPAAR 1552.235-79 (MAR 2001) Deviation Clause, “Release of Contractor Confidential Business Information,” (Deviation Clause) in its contracts, or, if not included in its contracts, USEPA will request contractor consent to disclosure consistent with the Deviation Clause prior to providing documentation containing material claimed as CBI to NPFC.

For CBI use not addressed by the Deviation Clause, or by contractor consent to disclosure consistent with the Deviation Clause, USEPA and the NPFC consider this agreement as the written request for this information pursuant to 40 C.F.R. § 2.209(c)(1). If required by 40 C.F.R. § 2.209(c)(3), USEPA will provide advance notice to any contractor at least ten days before disclosure to the NPFC. The parties understand that CBI is entitled to confidential treatment and

that further disclosure of information may be in violation of the Trade Secrets Act, 18 U.S.C. § 1905. CBI shall not be disclosed by the NPFC except pursuant to an applicable Deviation Clause, contractor consent to disclosure consistent with the Deviation Clause, or as otherwise in accordance with 40 CFR § 2.209(c)(5).

This agreement shall apply to all past actions that do not already have a preexisting 40 CFR § 2.209(c) agreement and any future actions upon assignment of a Federal Project Number.

Either party may terminate this agreement by giving a thirty (30) day advance written notice to the other party.

APPENDIX B

USEPA – Full Cost Documentation	
1) Payroll	
a) Name	
b) Title	
c) Pay Period	
d) Daily Hours	
e) Total Cost	
2) Travel	
a) Travel Voucher Summary	
b) Receipts	
3) Miscellaneous	
a) Small Purchase Orders	
i) Purchase Order	
ii) Invoice	
iii) Proof of Payment	
b) Purchase Card Purchases	
i) Purchase Card Report	
ii) Proof of Payment	
4) Vouchers	
a) Interagency Agreements (IA's)	
i) Interagency Agreement	
ii) Itemized Invoice	
b) Contracts	
i) Cost Summary Report Details	
ii) Itemized Invoice	
iii) Proof of Payment	
iv) Work Performed Documents (this will include all documentation provided by contractors per contract terms), which can include the following:	
v) 1900-55 (RCMS) Contractor Reports	
vi) Monthly Contractor Report	
vii) TDD's	
5) Other (non-cost) Documentation	
a) OSC Certification (provided with each bill issued)	
b) Polreps	