

Removal Cost Policy and Operating Procedures (CERCLA)

United States Coast Guard

National Pollution Funds Center

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CERCLA INCIDENT COST POLICY AND PROCEDURES FOR COAST GUARD FOSCs

CG FOSCs, operating under the National Contingency Plan, 40 CFR 300, Subpart E - Hazardous Substance Response, have access to SUPERFUND/CERCLA Fund on a reimbursable basis when responding to a hazardous substance incident. EPA annually provides to the CG NPFC an Inter-Agency Agreement (IAG), which supplies limited funding for CG FOSC hazardous substance removals in the coastal zone. Under an instrument of Redelelegation between the Coast Guard and EPA, the Coast Guard does not perform remedial actions under CERCLA/SARA in the coastal zone. Rather, EPA Remedial Project Managers perform these.

Fund Access

CG FOSCs shall contact the NPFC and follow the procedures for access to the CERCLA fund when responding to a hazardous substance incident.

ACTIONS THAT CAN BE FUNDED UNDER CERCLA

The NCP, Subpart E, Sections 400, 405, 410, and 415 lay out a wide range of actions which CG FOSCs may take when responding to a CERCLA incident. Any action consistent with this Subpart of the NCP can be funded under CERCLA. In addition, action taken under Section 104(b) of CERCLA and emergency assistance under the Disaster Relief Act of 1974 (Stafford Act) may be funded. Finally, CERCLA may fund enforcement activities related to hazardous substance responses. However, CG FOSCs are cautioned that CERCLA, unlike the OSLTF, does not contain provisions for paying claims to injured third parties, nor does EPA authorize funding via the CG to Natural Resource Trustees conducting Natural Resource Damage Assessments.

FUNDING OTHER AGENCIES SUPPORTING THE FOSC

As when responding to oil incidents, the FOSC is encouraged to utilize other agencies and participants within the National Response System. FOSCs may fund these authorized activities using PRFAs and other incident specific funding tools that cite the CERCLA reimbursable funds provided to the FOSC by the NPFC. Some federal agencies receive funding directly from EPA for certain case specific activity. The FOSC should advise the NPFC case officer of any PRFAs issued to federal agencies to ensure that the CG is not issuing duplicate funding.

FUND MANAGEMEMENT DURING THE RESPONSE

Ceiling Management and Obligation Log

The FOSC must always know the current financial status of a response. On large, complex cases the FOSC should compare the authorized ceiling against cumulative obligations daily. For other cases, this must be done for each POLREP. The FOSC must maintain a running

log of obligations issued against the ceiling, and adjust the resulting ceiling balance accordingly. This ensures that the FOSC does not commit more funds than are available against the ceiling authorized by the District or the NPFC. An obligation log (also known as a Document Control Number Log) is required by the Coast Guard for financial management of all funds.

Use of LUFs

Units that are LUFs certified shall use LUFs when processing purchases and all other obligations aid for CERCLA reimbursable funds. Enter contracts, purchase orders, PRFAs, cash purchases, TONOS, etc., in LUFs. Take care to avoid entering unit AFC-30 purchases against the CPN, or incident purchases against the unit's AFC-30 funds. When more than one LUFs terminal is used on a spill (i.e., MSO and MLC(fcp), each LUFs location will generate its own DCN log. The FOSC financial staff must then collect the data from each log. Using LUFs facilitates keeping a Document Control Number (DCN) log. If LUFs is not used, then the unit must establish and maintain a "purchases" DCN log for the incident.

Maximum Fund Limits

- 1) CG FOSCs may not obligate more than \$250,000 for an incident without an approved Action Memorandum. (See Paragraph 6.)
- 2) CERCLA limits removal actions to no more than \$2,000,000 or 12 months' duration. EPA may grant incident specific waivers to this requirement.

SPECIAL FOSC REQUIREMENTS FOR CERCLA INCIDENTS

Finding of Imminent and Substantial Endangerment

The CG/EPA Memoranda of Understanding and its resulting funding agreement place special requirements on the FOSC. If a response requires less than \$250,000 in funding, the FOSC must document a finding of imminent and substantial endangerment. This finding may be included in the situation description section of POLREP One, and at a minimum must include:

- 1) the hazardous substance(s), pollutant(s), or contaminant(s) involved;
- 2) description of what is affected or threatened (people, animals, crops, drinking water, etc.);
- 3) a statement indicating that this situation presents an imminent and substantial threat to public health, welfare, or the environment;
- 4) description of the response action necessary to neutralize the threat.

Action Memorandum

Coast Guard FOSCs are required to prepare an Action Memorandum whenever the removal ceiling exceeds \$250,000.

- 1) An Action Memorandum is a standard EPA document used in managing Superfund. Detailed instructions are contained in EPA publication, OSWER DIRECTIVE 9360.3-01, Superfund Removal Procedures. A copy of this directive is found at Chapter 3, Subtab "Action Memo Guidance". If necessary, NPFC(cf) can provide a copy. Use the model Action Memorandum to define the substance of the memorandum, skipping references and sections specific to EPA.

- 2) Action Memorandums shall be prepared by the FOSC and forwarded via the chain of command to Commandant (G-MRO). The FOSC shall concurrently provide a copy of the Action Memorandum and subsequent endorsements to the NPFC.
- 3) The NPFC and COMDT (G-MRO) will coordinate approval of the Action Memorandum and any funding issues, including IAG Amendments, that accompany it.
- 4) When the CG has sufficient funds to cover the ceiling and additional funding is not required from EPA, COMDT (G-MRO) will approve the Action Memorandum, advise NPFC, and forward the Action Memorandum to EPA/ERD prior to the CG FOSC obligating more than \$250,000.
- 5) When NPFC advises COMDT (G-MRO) that additional funding is required from EPA, COMDT (G-MEP) will forward the draft Action Memorandum to EPA/ERD for review and timely comment. The NPFC will coordinate the IAG Amendment that provides the additional funding with EPA/ERD. Upon concurrence by EPA/ERD with the draft Action Memorandum and the IAG increase, COMDT (G-MRO) will approve the Action Memorandum and NPFC will increase the incident ceiling to the approved amount.
- 6) When a CG FOSC needs to act immediately while an Action Memorandum is being prepared, advise the NPFC. EPA/ERD may extend an oral commitment of funding and/or permission for the FOSC to exceed the \$250,000 obligation limit.

Resource Documentation Requirements

CG FOSCs shall follow the procedures of the NPFC Resource Documentation TOPs for all CERCLA incidents. The forms are equally applicable to CERCLA funded incidents. CG FOSCs must be guided by the fact that all CERCLA costs are reimbursable in nature. The Coast Guard pays them initially, and then must bill EPA for replenishment of the funds. Costs that are not adequately documented and reported to the NPFC, and therefore cannot be billed to EPA, must be paid by the Coast Guard from existing budgeted operating funds.

- 1) Within 30 days of the completion of a CERCLA response, CG FOSCs shall submit the Cost Summary Report required by the NPFC Resource Documentation TOPs.
- 2) Units shall retain all records associated with a CERCLA response for 10 years following submission of the Cost Summary Report to the NPFC.



NATIONAL STRIKE FORCE (NSF) GUIDANCE ON CERCLA RESPONSES WHEN SUPPORTING EPA OSCS

The NSF, when called upon as a special force to assist an EPA OSC on a CERCLA case, operates using reimbursable funding authorized by the EPA's OSC and their respective Region, provided to the Coast Guard in an Inter-Agency Agreement (IAG) negotiated between the EPA Region and the NPFC. These IAGs may be either incident specific or "blanket" for a set period of time, usually one year.

Funding procedures

Strike Teams or PIAT, upon receipt of an EPA OSC request and after determining that the strike team will respond, are authorized to issue a locally generated CERCLA Project Number (CPN) and associated ceiling. The Strike Team will promptly advise NPFC via the Strike Team Launch Message that the CPN has been issued and the amount of ceiling the EPA FOSC has authorized. If the Strike Team must obligate funds in advance of the launch message being sent, the Strike Team will notify the NPFC by message and request activation of the CPN in the Coast Guard accounting system.

NPFC(cf), upon receipt of a strike team request, will promptly verify the availability of funds. If funds are not available, the NPFC will immediately initiate negotiations with the respective EPA Region to ensure funds are made available. However, the Strike Team is authorized to continue the response while those negotiations proceed, unless the NPFC specifically directs the Strike Team that funds are not available and the CG actions in support of the EPA FOSC must be paid for in some other way.

Financial procedures

Strike teams shall not request CPNs and ceilings from the NPFC when they are supporting a CG OSC on a CERCLA response. They shall seek funding from the respective CG OSC, and use the CERCLA accounting string assigned to the CG OSC by the NPFC.

Response documentation and financial close-out

Strike Teams/PIAT shall use LUFs to record appropriate obligations and expenditures when using CERCLA reimbursable funds on a response. Strike Teams/ PIAT shall follow the NPFC Resource Documentation TOPs in documenting the daily cost of CG personnel, equipment, and other CG provided services (e.g.: MSL) used during a response. If the EPA OSC is using EPA's RCMS system and recording these costs in RCMS, then RCMS printouts, signed by the EPA OSC, are acceptable alternative documentation. Strike Teams shall retain supporting documentation for a period of 10 years from the conclusion of the response.



Chapter 3: Removal Actions: Oil and Hazardous Substances

Strike Teams/PIAT shall document obligations and resulting expenditures using LUFs. NFPC(cf) will provide Unbilled Expenditure Reports to allow the strike team to compare local records against official DAFIS records. Once the Strike Team has corrected all discrepancies, including submitting PES error reports when necessary, the Strike Team may endorse Unbilled Expenditure Reports and return it to NFPC(cf). This will serve as adequate documentation of all spending under the respective CPN. Strike Teams shall retain supporting documentation (purchase orders, travel claims, etc.) for a period of 10 years from the conclusion of the response.

When the response has concluded, or when extended operations last more than 6 months, the Coast Guard will bill EPA under the IAG for the costs incurred to date. The NPFC is responsible for compiling the bill and directing FINCEN to bill EPA. The Strike Team is responsible for providing NPFC the cost information supporting the bill.

For an interim bill, the NPFC will coordinate with the respective strike team a timetable for the strike team to submit cost documentation to the NPFC.

Within 90 days of the conclusion of any Strike Team support to an EPA OSC under CERCLA, the strike team shall provide a cost summary report to the NPFC for the response. The cost summary report shall have the format as specified in the NPFC Resource Documentation TOPs.