

CHAPTER 5 - OIL AND HAZARDOUS SUBSTANCES SPILLS

5-1. Purpose. This chapter establishes policy for the prevention, control, reporting , and contingency planning for spills of oil and hazardous substances. The USACE goal is to use, generate, transport, store, handle, and dispose of oil and hazardous substances in a manner that protects the environment and public health.

5-2. Applicability.

a. This chapter applies to USACE commands having responsibility for civil works-funded facilities and activities, including floating plant. Military-funded USACE facilities and activities are subject to guidance provided in AR 200-1, Environmental Protection and Enhancement. Hazardous, Toxic and Radioactive Waste (HTRW) Program activities and projects are subject to guidance provided in CEMP-RT memorandum, 20 Jul 95, subject: Spill Reporting Procedures for USACE Personnel Involved in HTRW Projects.

b. Throughout this document the term “Commander/Director” is used to refer to the organizational leader, such as the District Commander, Laboratory Director, FOA Director, etc.

5-3. Policy.

a. It is the Army policy to prevent spills of oil and hazardous substance due to Army activities and maintain readiness to rapidly respond to contain and clean up a spill.

b. It is the policy of USACE to prevent spills of oil and hazardous substances, including extremely hazardous substances, from USACE operated facilities or due to USACE activities. Unpermitted willful discharges from USACE operated facilities, activities or vessels are prohibited.

c. When a USACE spill occurs despite preventive measures, USACE operated facilities will provide for a prompt, coordinated and effective spill response to contain and clean up the spilled material.

d. USACE personnel will not respond at a level higher than the “First Responder, Operations Level” (as defined in 29 CFR 1910.120(q)) unless authorized by the Commander/Director and appropriately trained to do so. (For additional guidance on First Responder, Operations Level and other Emergency Spill Response levels, see Appendix D of EP 200-2-3.)

e. USACE personnel will not respond to any spill unless it is safe to do so and they are adequately trained and equipped.

f. In the event of a spill emergency, USACE policy provides for protection of human life and health, and requires optimal effort to protect the environment, particularly in sensitive areas, and to protect property and structures.

g. USACE personnel will not respond to non-USACE spills off USACE operated facilities, except as provided in paragraph 6b(6) (c) and (d) of this guidance.

h. The Operations Project Manager or facility manager at each USACE facility where there is a potential for a spill of oil or hazardous substances from the USACE facility or from USACE activities, will designate in writing an On-Scene Coordinator who is responsible for executing the project's response plan.

5-4. Major Program Requirements.

a. Notification.

(1) USACE spill response teams and representatives will provide notification to and coordination with Federal, state and local agencies as prescribed by applicable laws and regulations, including notification of the National Response Center in the event of a release or discharge of oil or a hazardous substance at, or in excess of, its reportable quantity.

(2) Internal agency coordination will include notification of:

(a) The functional element that is responsible for operation of a facility. (In many cases, but clearly not all, this will be the Operations element and its sub-element(s).)

(b) The Environmental Compliance Coordinator.

(c) The Safety Office, and the Occupational Health Officer (Industrial Hygienist).

(d) The Public Affairs Officer.

(e) The Readiness Management Office in Districts and Divisions. In Corps labs, reports will be made through command channels to the appropriate level.

(f) The Office of Counsel.

(3) Where state and local laws and regulations differ from Federal requirements, USACE facilities will comply with all applicable requirements. Where applicability of law is in question, the Office of Counsel will be consulted.

(4) Where an extremely hazardous substance is involved, USACE operated facilities will comply with the requirements defined in 40 CFR Part 355.

(5) Where oil or a hazardous substance has been spilled in a quantity that does not equal or exceed the Federal reportable quantity, USACE facilities may still have to report the spill to state authorities. State regulations may be more stringent than federal.

(6) Additional technical guidance is provided in 40 CFR 110 and 40 CFR 355.

b. Spill Response Actions.

(1) USACE Personnel.

(a) USACE personnel will not respond at a level higher than the "First Responder, Operations Level" (as defined in 29 CFR 1910.120(q)) unless authorized by the Commander/Director and appropriately trained and qualified to do so. (For additional guidance

on First Responder, Operations Level and other Emergency Spill Response levels, see Chapter 5 of EP 200-2-3.)

(b) USACE personnel will not respond to any spill unless it is reasonably safe to do so and they are adequately trained and equipped. (For additional guidance on training, see Appendix D of EP 200-2-3, "Training Requirements for Spill Responses.")

(c) In the event of a spill emergency, the following protection priorities are hereby established as a guideline for spill responders:

- human life and health
- environment
- property and structures

(d) USACE personnel will not respond to non-USACE spills off USACE operated facilities, except as provided in paragraph 5-4b(7)(c) and (d) of this guidance.

(2) Determining Appropriate Level of Emergency Spill Response:

(a) USACE Districts, Labs and field offices, including floating plant, will provide for a prompt, effective, coordinated response to contain and clean up spills at USACE operated facilities or resulting from USACE activities.

(b) Potential USACE Emergency Spill Response Scenarios:

(i) Many USACE operated facilities are or will be able to rely on public or private Hazardous Materials Emergency Response Teams in their area for assistance. USACE personnel from these facilities may not need to provide any emergency spill response.

(ii) A few facilities may need to establish their own in-house spill response teams.

(iii) In some cases, USACE personnel will need to provide an initial emergency spill response for containment at the First Responder, Operation Level. USACE First Responders would then manage the spill scene until the arrival of a responder with whom the USACE facility has made previous arrangements for spill response services. This second responder may be a contractor or a Memorandum of Agreement (MOA) partner as discussed below.

(c) Commanders/Directors, with the assistance of the appropriate Safety and Occupational Health elements, must determine the appropriate level of emergency spill response to be provided at USACE operated facilities. Each commander should maximize the use of qualified non-USACE spill response sources to minimize the risk to in-house personnel.

(d) Most facilities will establish in-house spill teams for limited emergency spill responses to meet initial emergency spill response needs until full scale emergency spill responders can arrive at a spill site. USACE personnel would typically be trained and qualified at the "First Responder, Operations Level" designated in 29 CFR Part 1910.120(q). Riskier, more demanding emergency spill response levels would typically be performed by a well-trained and experienced contractor or other non-USACE responder.

(e) Remote locations or lack of qualified available assistance may prompt the establishment of some in-house emergency spill response teams who are to provide a full scale emergency spill response. These teams should be closely managed and monitored by a designated team leader to assure maximum personnel protection. In some cases, team members will require medical surveillance health monitoring as part of these duties. Periodic reviews for the availability of a qualified non-USACE responder should be performed and the burden removed from USACE personnel when the situation changes.

(f) Facilities which purchase and store spill response equipment and supplies for use by spill response teams should limit their purchase to no more equipment and supplies than would be required for response to a worst case scenario of a USACE spill. Generally, equipment and supplies purchased and stored should be consistent with the level of spill response training and qualifications maintained for USACE employees by the USACE facility. However, purchase and storage of equipment and supplies for response to USACE spills on behalf of a spill response contractor or spill response MOA partner is permitted. All spill response equipment stored at USACE facilities will be regularly inspected, maintained and serviced by a qualified technician in accordance with manufacturer and USACE requirements.

(g) Facilities which train employees to respond at the First Responder or higher levels will include training in initiating an Incident Command System.

(3) USACE Contractor Spills. Response to spills from contractor facilities and activities on USACE lands is the responsibility of the contractor. In the event that a USACE contractor causes a spill on a USACE operated facility or from USACE activities and is unwilling or unable to respond, USACE will provide a response to contain and clean up the spill. As in any case of a contractor's non-compliance with safety and environmental standards, USACE officials have the option of stopping contractor work and/or seeking compensation from the contractor for expenses incurred in fulfilling spill response obligations. Office of Counsel will be consulted to assure compliance with all legal requirements, proper documentation, and presentation of any claim under the contract or any other applicable statute.

(4) Potential Sources of Response Support. Potential spill response services are available to many USACE operated facilities by contract or MOA. Sources include county and city Hazardous Materials Response Teams, local fire departments, nearby military installations and other Federal facilities and private sector companies. Private sector sources include both companies specializing in providing emergency spill response support and others who have their own teams which can be trained and equipped to handle USACE emergencies as well. In seeking non-USACE responders, USACE operated facilities should assure that both emergency spill response and clean up operations needs are addressed. However, emergency spill response and clean up operations do not have to be addressed in the same contract or MOA; they can be separate actions.

(5) Formulation of MOAs with non-USACE Responders. Identifying a source of qualified spill response support is a critical part of formulating a spill plan. It is possible that to provide adequate support for the USACE operated facility's "worst case scenario," the team may require additional equipment or supplies. The MOA should specifically address these issues and the agreed costs to be paid in the event of a spill, including an agreed hourly rate, maximum possible cost for clean up of one "worst case" event, chain of communication and command during the emergency, designation of the party responsible for disposal of spill generated wastes, agreement that the USACE operated facility will retain originals of all disposal documents and

copies of all spill records, etc. The MOA should specify that the responder will minimize costs during the spill response. Contracts and agreements with states, local governments, Indian tribes or private entities should include some method of cost control to assure all responder costs are necessary.

(6) Public Information Related to Emergency Spill Response Actions. Release of information regarding spills of oil or hazardous substances will be conducted per the following guidelines:

(a) Officials assigned to release information about the spill should ensure public safety, prevent or reduce widespread public alarm, and ensure public understanding of the extent and nature of the public hazard resulting from the spill.

(b) The public is entitled to all unclassified information concerning a spill. Furnishing such information in a timely, positive manner that assures accuracy and reflects consideration of the public welfare is in USACE interest and is a function of Command.

(c) The Commander/Director has authority to approve release of information when a spill poses an imminent threat to public health and welfare or the environment.

(d) Information proposed for release will be coordinated with the District Public Affairs Officer.

(e) Prompt release of information, not otherwise required by statute or regulation, will be made at the discretion of the Commander/Director for spills that are contained within the project boundaries and pose no threat to the public health and welfare or the environment.

(7) Emergency Spill Response to Non-USACE Spills and Spills not on USACE Operated Facilities.

(a) Except for personnel serving in the Work for Others program or in an Emergency Management function, emergency spill responses by USACE personnel will be limited to spills on USACE lands or facilities or caused by USACE activities.

(b) USACE responders may respond to non-USACE spills on USACE lands at the discretion of the USACE facility manager when the spill poses an immediate threat to USACE operated facilities or personnel, is not being adequately controlled or contained by another spill response team, and when USACE responders are adequately trained and qualified to respond.

(c) Commanders/Directors may authorize emergency spill responses to non-USACE spills off USACE property when they determine the spill poses a threat to USACE operated facilities or personnel, is beyond the capability of available emergency spill responders, and that USACE personnel are adequately trained and qualified to provide such a response. When such a situation is resolved to the point that available emergency spill responders are capable of managing and controlling the spill, the Commander/Director will withdraw USACE personnel from the emergency spill scene.

(d) A follow-up report regarding such a spill response must be prepared and submitted to the MSC Commander within four weeks of the initial response date. MSC commanders will review such reports for concurrence with best interest determination and appropriateness of

actions taken.

(e) Where he determines that it is advantageous, the Commander/Director may fulfill requests from the U.S. Coast Guard (USCG) or other agencies for assistance from USACE contractor's drift collection vessels to assist clean up operators when oil-saturated debris hampers USCG contractor's clean up efforts. Costs should be reimbursed by USCG.

(8) Leased Area Spills. Response to spills from lessee facilities and activities on USACE lands are the responsibility of lease area operator.

(a) Where leased areas are mandated by Federal or state regulations to have and maintain a spill plan, district commanders will require the lessee to comply with spill planning requirements and to be able to clearly provide for an adequate response in the event of a spill. This requirement should be an element of lease compliance inspections.

(b) Where leased areas are not required by Federal or state regulations to have a spill plan, Commanders/Directors will encourage lease area operators to coordinate with local emergency response authorities to obtain necessary support in the event of a spill.

(c) In the event that any leased area facility appears to present a high risk of a spill of oil or a hazardous substance without being able to provide for an adequate response, the Commander/Director will take prompt action to reduce the potential risk. In the case of very high risks of a spill without provision for adequate response, the Commander/Director will notify regulatory authorities.

(9) USACE Response Cost Recovery. When USACE responds to spills caused by others, whether off-site sources, lessees, or invitees, costs may be recovered either through lease or contract provisions, or by claims under CERCLA for recovery or response costs, or by other legal authority. The Office of Counsel should be involved to assure compliance with legal requirements, proper documentation, and presentation and pursuit of any claims.

c. Spill Plan Documents. CECW-OD is the proponent for Vessel Response Plan guidance. Guidance for onshore facilities is provided below.

(1) HQUSACE recommends using a single spill plan document format to meet all the requirements specified in various regulations for the Spill Prevention, Control and Countermeasure Plan; the Spill Contingency Plan; the Emergency Response Plan; and the Emergency Action Plan. General guidance is provided in Chapter 5 of EP 200-2-3, Recommended Organization of a Spill Prevention and Response Plan (SPRP). Chapter 5 of EP 200-2-3 provides guidance on determining which, if any, of these four related plans may be required for any USACE operated facility.

(2) USACE facility spill plans will identify potential spill site locations, specific measures to be taken in case of a spill from those facilities or activities, and what level of emergency spill response is expected from USACE personnel to provide that response. The plan will also specify at what emergency spill response level USACE personnel at that location will be trained and qualified, and Commanders/Directors will assure that USACE personnel are not responding at levels beyond their training, qualification or beyond his authorization.

(3) Responsibility to assure that USACE facility spill plans are promptly developed and

adequately meet requirements rests with the functional element responsible for the operation of the facility. In many cases, this will be the Operations element, but in some cases it may be Engineering, Construction Logistics, or Emergency Management. The functional element may write the spill plan itself or may enlist the aid of other USACE elements, other agencies or even contractors to obtain the most effective plan possible. No matter who actually develops the plan, involvement of facility personnel is important to the development of any spill plan.

5-5. Responsibilities.

a. Major Subordinate Commands. MSC commanders are responsible for providing oversight, assuring spill plans are adequately prepared and that emergency spill response methods are appropriate.

b. Subordinate Commands and Laboratories. District and applicable laboratory and FOA Commanders/Directors are responsible for:

(1) Evaluating options for spill response support and seeking contract(s) or MOA(s) to provide response. In the event that the Commander determines an in-house team is needed, establish and maintain a trained and qualified emergency spill response team at the appropriate response level, and assure annual training, appropriate medical surveillance, availability of proper equipment and supplies, etc.

(2) Reviewing state and local laws and regulations to determine if additional requirements apply to spill plan documents for USACE operated facilities under their command.

(3) Reviewing the status of spill planning and response requirements and assuring that spill prevention or contingency plan requirements are met.

(4) Routinely evaluating and updating existing spill prevention and contingency plan documents to assure they meet current criteria specified in applicable Federal and state regulations. Plan documents should include compliance requirements related to Section 304 of the Emergency Planning and Community Right-to-Know Act spill reporting requirements defined in 40 CFR 355. Plans that do not meet regulatory requirements will be corrected immediately.