(b) "Agency" means the Environmental Protection Agency.

(c) "Administrator" means the Administrator of the Environmental Protection Agency.

(d) The definitions of terms contained in sections 10 and 23 of the act shall be applicable to such terms as used in this part unless the context otherwise requires.

§ 107.3 Initiation of request for report.

(a) The Administrator at the request of a majority of the conferees in any conference may request, or in connection with any public hearing called under section 10 of the Federal Water Pollution Control Act, as amended, may require any person whose alleged activities result in discharges causing or contributing to water pollution of the subject waters of such conference or public hearing to file with him a report as to the character, kind and quantity of such discharges and the use of facilities or other means to prevent or reduce such discharges by the person filing such report.

(b) When the Administrator finds that the conditions precedent to the requesting or requiring of such report or reports have been met he may request or require in writing the submission to him of such report in the time, form and content as herein provided.

(c) The request for or requirement of such report shall be served on any person whose alleged activities result in discharges causing or contributing to the pollution of waters in the matter of which the conference or the public hearing has been called.

§ 107.4 Service.

The written request for or requirement of such report may be served by mailing a copy thereof to the person whose alleged activities result in discharges causing or contributing to the pollution of waters subject to the conference or to the public hearing, or in the case of a corporation, partnership, association, State, municipality, other political subdivision of a State, upon an authorized representative thereof at his residence, office or place of business as ascertained by the Administrator.

§ 107.5 Report; form and content, time for submission.

(a) No particular form for such reporting will be required unless specified within the written request for or requirement of such report.

(b) Such report shall detail, based on existing data, and covering such period as the Administrator may direct, all pertinent and useful information as to the character, kind and quantity of the discharges, treated, or untreated, alleged to be causing or contributing to the pollution of the waters. The reported data shall identify the causes and sources of the alleged pollutional discharges and shall include but not be limited to applicable information as to the physical, chemical, or biological properties of any liquid, gaseous, solid, radioactive, or other substance composing the discharges in whole or in part. Thermal characteristics of the discharges and the level of heat in flow shall be included in the reported data. Where available in existing data, twenty-four (24) hour daily average quantities of discharges, in whole and of separate individual component substances shall be stated either in units of pounds per day or, as measurable in concentration, in milligrams per liter. Peak hourly discharge quantities, in whole, in combination, or of separate individual component substances, which exceed such twenty-four (24) hour daily average by twenty (20) percent or more shall be noted.

(c) Facilities or other means used to prevent or reduce such discharges shall be reported and described in sufficient detail, including pertinent plans and specifications, to permit a technical judgment of the present and future effectiveness of such facilities or other means, together with any specific data the Administrator may reasonably consider necessary and useful. Plans for future improvement of existing facilities or other means or for the installation of new facilities or other means may be included, together with a projected timetable for their planning and installation, at the option of the respondent.

(d) Five (5) copies of the report shall be furnished. It shall be directed to the Administrator, be dated, clearly identify the subject matter of the report, bear the name, address and telephone number of the reporting person and shall be signed by such person, or in the case of a corporation, municipality or other political subdivision, by a duly authorized officer thereof. The report shall be clearly typed, printed, or duplicated and shall be securely stapled or otherwise fastened. Each page shall be numbered and in proper sequence. Any exhibits shall be included in or securely attached to the report.

(e) Such reports shall be filed with the Administrator within such time as specified in his written request or requirement which shall not be less than thirty (30) days from the date of the request or requirement unless the Administrator finds that an emergency exists requiring the report to be furnished in a shorter time, or unless an extension for good cause shown is requested of and granted by the Administrator in writing.

§ 107.6 Protection of trade secrets; confidential information.

No person shall be required in such report to divulge trade secrets or secret processes and all information reported shall be considered confidential for the purposes of section 1905 of title 18 of the United States Code which provides:

Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof of any book containing any abstract or particulars thereof to be seen or examined by any persons except as provided by law; shall be fined not more than $1,000, or imprisoned not more than 1 year, or both; and shall be removed from office or employment. June 25, 1948, c. 645, 62 Stat. 791.

§ 107.7 Penalties.

(a) If any person fails to file a report required by the Administrator in connection with any public hearing within the time set for the filing of such report and such failure shall continue for thirty (30) days after written notice of such default given by the Administrator to such persons by registered or certified mail at his last known address, such person shall forfeit to the United States the sum of $100 for each and every day of continued default following immediately upon the expiration of the thirtieth (30th) day after the Administrator has given written notice; such forfeiture to be paid into the Treasury of the United States.

(b) If any person, having agreed to submit a report to any conference, fails to file a report requested by the Administrator in response to a request of a majority of the conferees in such conference within the time set for the filing of such report and such failure shall continue for thirty (30) days after written notice of such default given by the Administrator to such person by registered or certified mail at his last known address, the Administrator shall forthwith report such failure to the conferees.

(c) A majority of the conferees of said conference may order such person to be subject to a forfeiture of $100 for each and every day of continued default following immediately upon the expiration of the thirtieth (30th) day after the Administrator has given written notice; such forfeiture to be paid into the Treasury of the United States.

(d) Such forfeitures, without demand or further notice, may be recovered in a civil suit in the name of the United States brought in the district in which such person has his principal office or in which he does business.

(e) The Administrator may, upon timely application therefor, remit or mitigate any forfeiture and he shall have authority to determine the facts upon all such applications.

## PART 109—CRITERIA FOR STATE, LOCAL AND REGIONAL OIL REMOVAL CONTINGENCY PLANS

Sec.
109.1 Applicability.
109.2 Definitions.
109.3 Purpose and scope.
109.4 Relationship to Federal response actions.
109.5 Development and implementation criteria for State, local and regional oil removal contingency plans.
109.6 Coordination.

AUTHORITY: The provisions of this Part 109 issued under sec. 11(j)(1)(B), 84 Stat. 96, 33 U.S.C. 1161(j)(1)(B).



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§ 109.1 Applicability.

The criteria in this part are provided to assist State, local and regional agencies in the development of oil removal contingency plans for the inland navigable waters of the United States and all areas other than the high seas, coastal and contiguous zone waters, coastal and Great Lakes ports and harbors and such other areas as may be agreed upon between the Environmental Protection Agency and the Department of Transportation in accordance with section 11(j)(1)(B) of the Federal Act, Executive Order No. 11548 dated July 20, 1970 (35 F.R. 11677) and section 306.2 of the National Oil and Hazardous Materials Pollution Contingency Plan (35 F.R. 8511).

§ 109.2 Definitions.

As used in these guidelines, the following terms shall have the meaning indicated below:

(a) "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(b) "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(c) "Remove" or "removal" refers to the removal of the oil from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(d) "Major disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, or other catastrophe in any part of the United States which, in the determination of the President, is or threatens to become of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and available resources of States and local governments and relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(e) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(f) "Federal Act" means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1151, et seq.

§ 109.3 Purpose and scope.

The guidelines in this part establish minimum criteria for the development and implementation of State, local, and regional contingency plans by State and local governments in consultation with private interests to insure timely, efficient, coordinated and effective action to minimize damage resulting from oil discharges. Such plans will be directed toward the protection of the public health or welfare of the United States, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches. The development and implementation of such plans shall be consistent with the National Oil and Hazardous Materials Pollution Contingency Plan. State, local and regional oil removal contingency plans shall provide for the coordination of the total response to an oil discharge so that contingency organizations established thereunder can function independently, in conjunction with each other, or in conjunction with the National and Regional Response Teams established by the National Oil and Hazardous Materials Pollution Contingency Plan.

§ 109.4 Relationship to Federal response actions.

The National Oil and Hazardous Materials Pollution Contingency Plan provides that the Federal on-scene commander shall investigate all reported spills. If such investigation shows that appropriate action is being taken by either the discharger or non-Federal entities, the Federal on-scene commander shall monitor and provide advice or assistance, as required. If appropriate containment or cleanup action is not being taken by the discharger or non-Federal entities, the Federal on-scene commander will take control of the response activity in accordance with section 11(c)(1) of the Federal Act.

§ 109.5 Development and implementation criteria for State, local and regional oil removal contingency plans.

Criteria for the development and implementation of State, local and regional oil removal contingency plans are:

(a) Definition of the authorities, responsibilities and duties of all persons, organizations or agencies which are to be involved or could be involved in planning or directing oil removal operations, with particular care to clearly define the authorities, responsibilities and duties of State and local governmental agencies to avoid unnecessary duplication of contingency planning activities and to minimize the potential for conflict and confusion that could be generated in an emergency situation as a result of such duplications.

(b) Establishment of notification procedures for the purpose of early detection and timely notification of an oil discharge including:

(1) The identification of critical water use areas to facilitate the reporting of and response to oil discharges.

(2) A current list of names, telephone numbers and addresses of the responsible persons and alternates on call to receive notification of an oil discharge as well as the names, telephone numbers and addresses of the organizations and agencies to be notified when an oil discharge is discovered.

(3) Provisions for access to a reliable communications system for timely notification of an oil discharge and incorporation in the communications system of the capability for interconnection with the communciations systems established under related oil removal contingency plans, particularly State and National plans.

(4) An established, prearranged procedure for requesting assistance during a major disaster or when the situation exceeds the response capability of the State, local or regional authority.

(c) Provisions to assure that full resource capability is known and can be committed during an oil discharge situation including:

(1) The identification and inventory of applicable equipment, materials and supplies which are available locally and regionally.

(2) An estimate of the equipment, materials and supplies which would be required to remove the maximum oil discharge to be anticipated.

(3) Development of agreements and arrangements in advance of an oil discharge for the acquisition of equipment, materials and supplies to be used in responding to such a discharge.

(d) Provisions for well defined and specific actions to be taken after discovery and notification of an oil discharge including:

(1) Specification of an oil discharge response operating team consisting of trained, prepared and available operating personnel.

(2) Predesignation of a properly qualified oil discharge response coordinator who is charged with the responsibility and delegated commensurate authority for directing and coordinating response operations and who knows how to request assistance from Federal authorities operating under existing national and regional contingency plans.

(3) A preplanned location for an oil discharge response operations center and a reliable communications system for directing the coordinated overall response operations.

(4) Provisions for varying degrees of response effort depending on the severity of the oil discharge.

(5) Specification of the order of priority in which the various water uses are to be protected where more than one water use may be adversely affected as a result of an oil discharge and where response operations may not be adequate to protect all uses.

(e) Specific and well defined procedures to facilitate recovery of damages and enforcement measures as provided for by State and local statutes and ordinances.

§ 109.6 Coordination.

For the purposes of coordination, the contingency plans of State and local governments should be developed and implemented in consultation with private interests. A copy of any oil removal contingency plan developed by State and local governments should be forwarded to the Council on Environmental Quality upon request to facilitate the coordination of these contingency plans with the National Oil and Hazardous Materials Pollution Contingency Plan.



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