



# Chapter 6000

## Finance/ Administration

### **Northwest Area Committee Expectations:**

- Northwest Area Committee members and those responding within the region are expected to be aware of the importance of rapidly and effectively managing Finance and Administrative duties with adequate and appropriate staffing, as well as how to access various funding mechanisms.

### **Critical Elements of Chapter 6000:**

- Describes federal, state, and local/tribal access criteria and limitations to available federal and state response funding streams such as the Oil Spill Liability Trust Fund; Comprehensive Environmental Response, Compensation, and Liability Act; and Washington Oil Spill Response Account
- Requirements for Record Keeping and Documentation
- Claims and Cost Recovery overview
- Natural Resource Damage Assessment access to funds and overview of some Natural Resource Damage Assessment procedure references

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## Finance/Administration

### **6100 Finance/Administration Section Organization**

The functions of the Finance/Administrative Section must be accomplished during an incident; however, they can be performed by one individual or can be expanded, as needed, into additional organizational units with appropriate delegation of authority.

### **6200 Roles and Responsibilities**

The Finance/Administrative Section is usually staffed in large-scale or complex incidents. Since most of the activities performed by the Finance/Administrative Section do not require face-to-face communication, these operations may be located remotely from the incident site. All functions not assigned by the Section Chief remain the responsibility of the Section Chief.

### **6300 Federal On-Scene Coordinator Access to the Federal Fund**

Federal removal actions are authorized by the Federal Water Pollution Control Act (FWPCA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) if the required elements of jurisdiction exist. In the event of a discharge or release, if the spiller is not acting promptly or is not known, the Federal On-Scene Coordinator (FOSC) may initiate federal removal under the authority of section 311 (o)(l) of the FWPCA or section 104(a) of CERCLA. The responsible party (RP) is liable for government removal costs in accordance with section 311(f) of the FWPCA, and section 107 of CERCLA. Section 300.58 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) outlines the types of funds that may be available to remove certain oil and hazardous substances discharge.

### **6310 National Pollution Fund Center**

The National Pollution Fund Center (NPFC) manages the Oil Spill Liability Trust Fund (OSLTF), a source for payment of removal costs and damages resulting from oil spills or incidents that threaten to spill oil into navigable waters of the United States, adjoining shorelines, or the Exclusive Economic Zone.

The NPFC:

- Acts as the fiduciary agency for the OSLTF and administers the United States Coast Guard (USCG) portion of CERCLA;
- Provides 24-hour funding to FOSCs for immediate removal actions at an incident, to monitor an RP's actions, or to initiate an assessment of damages to natural resources; and
- Issues Federal Project Numbers as requested by an FOSC.

The NPFC operates within a Case Team concept. There are four case teams: Southeast, Gulf Coast, West Coast, and Northeast. Each case team includes legal, financial, natural resource damage claims, and OSLTF claims specialists.

### **6320 Accessing the Oil Spill Liability Trust Fund**

The OSLTF was established by section 311 (k) of the FWPCA and is administered by the USCG. Title 33 Code of Federal Regulations (CFR) subchapter M provides regulatory information on state access to the OSLTF, claims procedures, financial responsibility for vessels, and other topics. Additional information on the OSLTF can be found in "Oil Spill Liability Trust Fund (OSLTF) Funding for Oil Spills" (NPFC PUB 16465.2) and in Chapter 7 of the USCG Marine Safety Manual, Volume VI (COMDTINST M16000.11).

In the event of an oil spill, the FOSC, states, claimants, and trustees can obtain access to federal funds. FOSCs can obtain immediate access to a funding account and ceiling for incident response by accessing the Ceiling and Number Assignment Processing System online at: <https://npfc.uscg.mil/canaps/>.

The following funding limitations exist in accessing the OSLTF:

- The maximum, per case, is \$1 billion, or the balance in the OSLTF, whichever is less.
- Removal funding (including response to a substantial threat) and initiate request funding are limited to the funds available in the OSLTF Emergency Fund.
- There is a maximum of \$500 million per case to satisfy Natural Resource Damage claims and assessments.
- Initiation of Natural Resource Damage Assessment (NRDA) costs may be paid out of the Emergency Fund, subject to its availability and the process through which funding was requested.
- The discharge (or substantial threat of discharge) must impact navigable waters of the United States (including the 200-mile Exclusive Economic Zone).

### **6330 Hazardous Substance Response Trust Fund**

A Memorandum of Understanding (MOU) between the USCG and the United States Environmental Protection Agency (EPA) allows the USCG to access the Hazardous Substance Response Trust Fund when the USCG undertakes response

activities pursuant to CERCLA, Executive Order 12316, and the provisions of Subpart E of the NCP. When EPA provides the On-Scene Coordinator (OSC), the OSC has the authority to spend up to \$200,000 in emergency situations. The EPA Regional Administrator has authority to approve Trust Fund expenditures not to exceed \$6,000,000. Expenditures exceeding \$6,000,000 must be approved by EPA Headquarters. When the USCG provides the OSC, the USCG OSC has authority to approve Trust Fund expenditures not to exceed \$50,000. USCG OSCs can receive approval for CERCLA Trust Fund expenditures up to \$250,000 through the Commander, Thirteenth Coast Guard District. For additional expenditures, approval from the EPA Office of Land and Emergency Management is necessary. To access the fund, an account number must be obtained from EPA Headquarters.

Other federal agencies have authority to expend Trust Fund money in accordance with Interagency Agreements (IAGs) and MOUs with EPA. Agency expenditures will be reimbursed in accordance with the procedures specified in these IAGs and MOUs. The CERCLA statute allows state access to Superfund monies only through a Cooperative Agreement between EPA and the state.

In accordance with 40 CFR 300.415(b)(2), the Trust Funds may be used to undertake immediate removal actions when the agency providing the OSC determines that such action will prevent or mitigate immediate and significant risk of harm to human life or health or to the environment from such situations as:

- Human, animal, or food chain exposure to acutely toxic substances;
- Contamination of a drinking water supply;
- Fire and/or explosion; and
- Similar acute situations.

In the event of a hazardous substance release or imminent threat of a release, the FOSC can obtain access to federal funds through CERCLA.

- The FOSC determines if federal funds are required and requests a spending ceiling and CERCLA Project Number from the NPFC Case Officer/Regional Manager. The FOSC can fund USCG resources contracts, other government agencies, and contractor costs through the CERCLA Project Number (NPFC User Reference Guide, Chapter 3).

CERCLA Access Criteria and Limitations:

- The release or substantial threat of a release of a hazardous substance, pollutant, or contaminant must impact the environment. "Environment" is defined in CERCLA as waters of the United States, other surface waters, ground water, drinking water supply, land surface or subsurface, or ambient air.
- Removal funding is limited to no more than \$2,000,000 or 12 months duration. EPA may grant incident specific waivers to this requirement.

- FOSCs may only obligate less than \$250,000 for an incident without an approved Action Memorandum. (See NPFC User Reference Guide, Chapter 3, Section entitled “EPA Superfund Removal Procedures-Action memorandum Guidance.”)
- There is no provision for state access.
- There is no provision for funding pre-assessment phase activities of NRDA.
- Compensation to claimants damaged by hazardous substances is not available.
- The substance must not be oil as defined by 33 United States Code Section 2701(23) (NPFC User Reference Guide, Chapter 3)

## **6400 Other Access to Funds**

### **6410 Access through Pollution Removal Funding Authorizations**

Federal, state, local, and tribal governments assisting the FOSC may receive reimbursable funding authority through a Pollution Removal Funding Authorization (PRFA). The NPFC can be consulted regarding PRFAs, but authorization to establish and use this funding source is provided by the FOSC. PRFAs must be approved by the FOSC.

### **6420 State access to the Oil Spill Liability Trust Fund**

The Oil Pollution Act of 1990 (OPA) allows state governors to request payments of up to \$250,000 from the OSLTF for removal costs required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge, of oil. Requests are made directly to the FOSC, who will determine eligibility. If a state anticipates the need to access the fund, it must advise the NPFC in writing of the specific individual who is designated to make requests. The designation must include the person’s name, title, address, telephone number, and the capacity in which they are employed. FOSCs will provide initial coordination of the request and subsequent coordination and oversight.

### **6421 Eligibility for State Access to the Oil Spill Liability Trust Fund**

The following eligibility considerations will be evaluated by the FOSC when contacted by the state requesting OSLTF monies:

1. Is the incident eligible for immediate removal under the Clean Water Act, as amended by the OPA?
2. Is the substance discharged/threatening discharge oil?
3. Did the incident occur after August 18, 1990?
4. Is the aggregate amount of the request equal to or less than \$250,000?
5. Are the proposed actions consistent with the NCP (including the requirement in 40 CFR 300.305 (c) that a reasonable effort was voluntarily made by the discharger to promptly perform removal actions)?
6. Are the proposed level of response, proposed actions, and amounts requested appropriate for the circumstances?
7. Does the state have the means to complete immediate removal?

The FOSC will then notify the state and the NPFC Director of his or her decision.

#### **6422 Required Record Keeping**

The state shall maintain records of expenditures of fund monies, including:

- Daily expenditures for each individual worker, the individual's name, title or position, activity performed, time on task, salary or hourly rate, travel costs, per diem, out-of-pocket or extraordinary expenses, and whether the individual is normally available for oil spill removal;
- Equipment purchased or rented each day, with the daily or hourly rate;
- Miscellaneous materials and expendables purchased each day; and
- Daily contractor or consultant fees, including costs for their personnel and contractor-owned or rented equipment, as well as that of any subcontractor.

The state shall submit a copy of these records and a summary document, stating the total of all expenditures made, to the NPFC within 30 days after completion of the removal actions. A copy of these documents shall also be submitted to the cognizant FOSC.

#### **6430 Lead Administrative Trustee Access to the Fund**

Section 6002 (b) of the OPA provides that the OSLTF Emergency Fund is available "to initiate the assessment of natural resource damages" (Initiate/Initiation). For the purpose of this agreement, Initiate activities have been defined as the Pre-assessment activities as outlined in 15 CFR 990, Subpart D.

Executive Order 12777 limits funding for Initiation to the Federal Trustees, who are as follows:

- United States Department of the Interior,
- United States Department of Commerce,
- United States Department of Agriculture,
- United States Department of Defense, and
- United States Department of Energy.

Executive Order 12777 introduced the Federal Lead Administrative Trustee (FLAT) concept to provide a focal point for addressing natural resource issues associated with a specific incident. The NPFC will only accept requests for Initiation from, and normally works directly with, the FLAT. State and Tribal Trustees must work through a FLAT. State and Tribal Trustees acting in the event of a spill may join with the designated Federal Trustees to name a FLAT.

#### **Criteria for Initiation**

Initiation of a NRDA must be performed in response to an OPA incident, i.e., a discharge or substantial threat of a discharge of oil into or upon the navigable waters or the adjoining shorelines or the Exclusive Economic Zone of the United States.

**6440 Claims against Fund**

Claimants (individuals, corporations, and government entities) can submit claims for uncompensated removal costs or certain damages (natural resources, real/personal property, loss of profits, loss of subsistence use of natural resources, loss of government revenues, and increased costs of government services) caused by the oil spill to the NPFC if the RP does not satisfy their claim. The NPFC adjudicates claims and pays those with merit. RPs can submit claims to the NPFC, provided that:

- The total of all response costs and damage claims exceed the RP's statutory limit of liability, or
- The spill was solely caused by a third party, an Act of God, or an Act of War.

The categories of uncompensated losses covered by the OSLTF are:

- Removal costs,
- Real or personal property damages,
- Loss of profits or earning capacity,
- Loss of subsistence,
- Loss of government revenues,
- Cost of increased public services, and
- Damages to natural resources.

Generally, claims for all costs and damages resulting from an oil pollution incident must be presented first to the RP or its guarantor. The guarantor is typically the RP's insurer.

**6450 State Access to the CERCLA Fund**

Expenditures of Trust Fund money by a state must be performed in accordance with a contract or cooperative agreement between EPA and that state.

**6451 Cost Recovery**

EPA will make all decisions regarding recovery of expenditures from the Trust Fund. All agencies expending Trust Funds must submit an itemized account of all funds expended in accordance with provisions of contracts, IAGs, or Cooperative Agreements with EPA. These agreements must be in place prior to the expenditure of funds.

**6452 Reimbursement Procedures**

Agency expenditures will be reimbursed in accordance with procedures specified in contracts, IAGs, or Cooperative Agreements with EPA.

Local governments may request reimbursement of costs to carry out temporary measures without a contract or cooperative agreement. All costs for which local governments are seeking reimbursement must be consistent with the NCP and federal cost principles outlined by the Office of Management and Budget.



Reimbursements are limited to \$250,000 per hazardous substance response. In addition, reimbursement must not supplant local government funds normally provided for emergency response. States are not eligible for reimbursement, and no state may request reimbursement on its own behalf or on behalf of political subdivisions within the state.

#### **6453 Local and Tribal Government Access to the CERCLA Fund**

Local and federally recognized tribal governments may request reimbursement of costs to carry out temporary measures to protect human health and the environment without a contract or cooperative agreement. All costs for which local governments are seeking reimbursement must be consistent with the NCP and federal cost principles outlined by the Office of Management and Budget. Reimbursements are limited to \$25,000 per hazardous substance response. In addition, reimbursement must not supplant local government funds normally provided for emergency response. States are not eligible for reimbursement, and no state may request reimbursement on its own behalf or on behalf of political subdivisions within the state.

More information on the Local Government Reimbursement program may be found at: <https://www.epa.gov/emergency-response/local-governments-reimbursement-program>.

#### **6460 Access to the Washington State Oil Spill Response Account**

The Oil Spill Response Account (OSRA) is provided to “pay for costs associated with the response to spills of crude oil or petroleum products into the navigable waters of the state” (Revised Code of Washington [RCW] 90.56.500). The state may use the OSRA for costs associated with responses to oil spills to water that are likely to exceed \$50,000. The Washington State Department of Ecology (Ecology) uses its appropriation from the OSRA to pay for NRDA, response costs, containment, cleanup and disposal costs, wildlife rescue, contracts, and equipment costs during large oil spill incidents. All state cost recovered (not including penalties or NRDA assessments) are deposited back into the OSRA.

#### **6470 Access to Oil and Hazardous Materials Cleanup Funds in Oregon**

Under Oregon Revised Statutes (ORS) 465.255 through 465.260, the owners or RPs in possession of oils and/or hazardous substances that have been spilled are responsible to conduct and pay for all costs associated with cleanup. The Director of the Oregon Department of Environmental Quality (DEQ) may take any removal or remedial action necessary to protect public health, safety, welfare, and the environment and recover those costs from liable persons or parties.

The State of Oregon collects fees and penalties under several funding programs to pay for cleanups when the RP is unknown, unable, or unwilling to conduct cleanup, at the time of an incident. These include the Oregon Oil Spillage Control Fund, the Hazardous Substance Remedial Action Fund (HSRAF), the Oregon Highway Emergency Response Fund, the Drug Lab Cleanup Fund, and the

Orphan Site Account. The purpose and uses of each of these accounts are described below. Access to all funds must be arranged through the State On-Scene Coordinator representing DEQ, who will determine whether funds may be used and will facilitate access.

**6471 The Oregon Oil Spillage Control Fund**

The Oregon Oil Spillage Control Fund is funded through penalties recovered from enforcement cases involving the willful or negligent discharge of oil to water of the state under ORS 468B.450 and is used by DEQ to conduct cleanup activities and rehabilitate affected fish and wildlife, as provided under ORS 468B.060.

**6472 The Oregon Hazardous Substance Remedial Action Fund and Orphan Site Account**

Costs from several sources, including natural resources damages penalties, tipping fees at hazardous waste landfills, remedial action costs, and environmental enforcement penalties contribute to the HSRAF administered by DEQ under ORS 465.381. The HSRAF may be used for DEQ's remedial action costs at contaminated sites that may affect human health or the environment.

The Orphan Site Account is a subaccount within HSRAF and is additionally funded through fees associated with the possession of hazardous substances and by the sale of general obligation bonds as allowed under ORS 453.398 to 453.402. This account is used to fund expenses of the department related to activities associated with removal or remedial action at properties that have been identified as orphan sites.

**6473 The Oregon Highway Emergency Response Fund**

Under ORS 465.104 to 465.127, the Oregon Department of Revenue collects fees associated with the withdrawal of petroleum products from bulk facilities. These funds support agencies in carrying out the state's oil, hazardous material, and hazardous substance emergency response program as it relates to the maintenance, operation, and use of public highways, roads, streets, and roadside rest areas. This fund is used primarily by the Oregon Department of Transportation and DEQ.

**6474 The Oregon Illegal Drug Lab Cleanup Fund**

Under ORS 475.405 to 475.495, funds (including forfeiture of property) are recovered or received from RPs and from federal, state, and local government and are placed in the Oregon Illegal Drug Lab Cleanup Fund. These funds are used by DEQ to clean up illegal drug manufacturing sites as needed. Cleanup and disposal of chemicals located at an alleged illegal drug manufacturing site may be performed by law enforcement agencies and is coordinated through a DEQ State On-Scene Coordinator.

## **6500 Federal Fund Documentation and Cost Recovery Procedures**

Through Executive Orders, the President has delegated certain functions and responsibilities vested to him by the FWPCA and CERCLA to the EPA and the USCG. Under CERCLA, the Hazardous Substance Response Trust Fund has been set up to fund federal responses to hazardous substances, pollutants, or contaminants, as defined by CERCLA that may present an imminent or substantial threat to public health or the environment. Responses to discharges of petroleum products are specifically excluded from CERCLA. Section 311 of the Clean Water Act, as amended by the OPA, established the OSLTF for response to discharges of petroleum products. Response includes conducting NRDA's and paying claims for removal costs or damages. EPA and the USCG both have access to both funds through MOUs established between both agencies. Only costs incurred during containment, countermeasures, cleanup, and disposal (Phase III) during a federal response to an oil pollution incident are recoverable from the Pollution Fund (311 (k)) and must be certified as Phase III costs by the FOSC. The NCP contains information and procedures with regard to both the FWPCA and CERCLA and contains sections dealing with documentation and cost recovery for both acts. USCG Commandant Instruction 16465.1 defines documentation for enforcement and cost recovery. The instruction is incorporated into this plan by reference.

### **6510 Letters**

- Notice of Federal Interest for an Oil Pollution Incident (Form CG-5549);
- Notice of Federal Assumption; and
- Letter of Designation of Source.

The OSC is responsible for notifying the NPFC of the source of a discharge, actual or potential. The NPFC must also be notified if the source is not identified. Notification may be made by letter, Rapidraft, or message (POLREP or Situation Report). The NPFC should be contacted for guidance on procedures, or with any questions relating to this.

- Administrative/Directive Order (To be distributed under separate cover).

### **6520 Reports**

- FOSC Reports will be submitted as determined necessary by the RRT for a particular incident.
- POLREPS shall be submitted for the coastal zone in accordance with the requirements outlined in Volume VI, Chapter 7.B.5.b of the Marine Safety Manual. The POLREP format can be found in Volume VII of the Marine Safety Manual. In the inland zone, POLREPS shall follow the format outlined in EPA's Superfund Removal Procedures: Removal Response Reporting guidance.

## 6600 Damage Assessment Procedures

The National Oceanic and Atmospheric Administration published a final rule to guide trustees in assessing damages to natural resources from discharge of oil. The rule provides a blueprint that enables natural resource trustees to focus on significant environmental injuries, to plan and implement efficient and effective restoration of the injured natural resources and services, and to encourage public and RP involvement in the restoration process.

Under the rule, the NRDA process is divided into three phases:

- **Preassessment:** The trustees evaluate injury and determine whether they have the authority to pursue restoration and if it is appropriate to do so.
- **Restoration Planning:** The trustees evaluate and quantify potential injuries and use that information to determine the appropriate type and scale of restoration actions.
- **Restoration Implementation:** The trustees and/or RPs implement restoration, including monitoring and corrective actions.

This process is designed to rapidly restore injured natural resources and services to the condition that would have existed had the spill not occurred and to compensate the public for the losses experienced from the date of the spill until the affected natural resources and services have recovered.

## 6610 Washington State Damage Assessment Procedures

Under state law (RCW 90.56.370), individuals or companies responsible for spilling oil into state waters are liable for damages resulting from injuries to public resources. In cases where the federal damage assessment procedure is not used, the state damage assessment procedure may be used. This process in Washington is defined in the Oil Spill Natural Resource Damage Assessment Rule (Washington Administrative Code 173-183).

In 1989, state lawmakers created the Resource Damage Assessment Committee to oversee the protection and restoration of natural resources that are injured by oil spills. The committee is made up of representatives from:

- Washington State Department of Ecology,
- Washington Department of Fish and Wildlife,
- Washington State Department of Natural Resources,
- Washington State Department of Health
- Washington State Parks and Recreation Commission
- Washington State Department of Archaeology and Historical Preservation

Under the state's process, the spiller may be able to reduce the damages by acting quickly to contain and recover the spilled oil from the water.

Following an oil spill, the committee will decide to proceed with a formal damage assessment, work with the spiller to develop an acceptable restoration or

enhancement project or study, or use the state's oil spill compensation schedule from the rule. The compensation schedule helps to determine a monetary value (damages) for injuries to public resources caused by the oil spill. The compensation schedule allows Ecology to collect damages based on a dollar per gallon charge. For spills less than 1,000 gallons this is \$1 to \$100 per gallon range. For spills of 1,000 gallons or more this range is \$3 to \$300 per gallon spilled.

Ecology deposits damages collected through the compensation schedule into the state Coastal Protection Fund. The Resource Damage Assessment Committee authorizes expenditures from this fund after consulting with impacted local agencies and tribal governments. The monies are usually used for restoration projects or studies related to the resource damaged and spent in the area where the damages occurred.