

Law Judge, on his own motion, or at the request of any party, shall have the power to hold prehearing conferences, to issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. The Regional Administrator, and any party submitting a request pursuant to § 108.3 or § 108.4, or counsel or other representative of such party or the Regional Administrator, may appear and offer evidence at the hearing.

§ 108.6 Recommendations.

At the conclusion of any hearing under this part, the Administrative Law Judge shall, based on the record, issue tentative findings of fact and recommendations concerning the alleged discrimination, and shall submit such tentative findings and recommendations to the Administrator. The Administrator shall adopt or modify the findings and recommendations of the Administrative Law Judge, and shall make copies of such findings and recommendations available to the complaining employee, the employer, and the public.

§ 108.7 Hearing before Administrator.

At his option, the Administrator may exercise any powers of an Administrative Law Judge with respect to hearings under this part.

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: Sec. 11(j)(1)(B), 84 Stat. 96, 33 U.S.C. 1161(j)(1)(B).

SOURCE: 36 FR 22485, Nov. 25, 1971, unless otherwise noted.

§ 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 FR 11677) and § 306.2 of the National Oil and Hazardous Materials Pollution Contingency Plan (35 FR 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.

§ 109.3

(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 ac-

40 CFR Ch. I (7-1-05 Edition)

cordance 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 communications 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:

Environmental Protection Agency

§ 110.1

(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.

PART 110—DISCHARGE OF OIL

Sec.

110.1 Definitions.

110.2 Applicability.

110.3 Discharge of oil in such quantities as "may be harmful" pursuant to section 311(b)(4) of the Act.

110.4 Dispersants.

110.5 Discharges of oil not determined "as may be harmful" pursuant to section 311(b)(3) of the Act.

110.6 Notice.

AUTHORITY: 33 U.S.C. 1321(b)(3) and (b)(4) and 1361(a); E.O. 11735, 38 FR 21243, 3 CFR Parts 1971-1975 Comp., p. 793.

SOURCE: 52 FR 10719, Apr. 2, 1987, unless otherwise noted.

§ 110.1 Definitions.

Terms not defined in this section have the same meaning given by the Section 311 of the Act. As used in this part, the following terms shall have the meaning indicated below:

Act means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.*, also known as the Clean Water Act;

Administrator means the Administrator of the Environmental Protection Agency (EPA);

Applicable water quality standards means State water quality standards adopted by the State pursuant to section 303 of the Act or promulgated by EPA pursuant to that section;

MARPOL 73/78 means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, Annex I, which regulates pollution from oil and which entered into force on October 2, 1983;

Navigable waters means the waters of the United States, including the territorial seas. The term includes:

(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters