Removal Process
ASTSWMO Removal Coordination at Federal Facilities Symposium
December 4, 2006
Objectives for Session

◆ Provide overview of EPA’s Removal Process through:

  » Brief overview of authorities and limitations of an OSC

  » Brief overview of the Removal Program tools & resources available to the OSC; time and tasks needed to complete a removal action
Evolution of the Removal Program

- 1968: Removal authority and OSC position created under the FWPCA, later amended by the CWA in 1972; NCP established
- 1980: Passage of CERCLA or Superfund
- 1982: NCP revised to incorporate Superfund requirements
- 1985: NCP revised to address issues encountered during Superfund implementation
- 1986: SARA enacted

(continued)
Evolution of the Removal Program

- 1990: NCP revised to incorporate SARA requirements, and Oil Pollution Act enacted
- 1994: NCP revised to incorporate OPA requirements
- 1998 – 2002: Counterterrorism initiatives and preparedness planning
- 2002: Responses to terrorism
Introduction to the Chronological Steps of a Removal Action

- Removal project timeline
  » Emergency response
  » Time-critical response
  » Oil response
  » Non-time-critical response
Legal Authority for OSCs to Direct Removal Responses

- OSC authority is derived from law, regulation, and Presidential and Agency Delegations
  - Laws: CERCLA/SARA, CWA/OPA, and Stafford Act
  - PDDs and Executive Orders: E.O.s 12580, 12777, and 13016
  - Regulations: The NCP
  - Agency Delegations
- OSC cannot redelegate authority
The NCP

- Established in 1968 and amended by the CWA and CERCLA
- Promotes overall coordination of the hierarchy of responders and establishes procedures for conducting responses for oil and hazardous substances
- Designates the OSC as the manager of spills of oil and removal response for hazardous substances

**Definition of OSC:**

“Federal official predesignated by EPA, DoD, DOE, or USCG to coordinate and direct responses under Subpart D, or the government official designated by the lead agency to coordinate and direct removal actions under Subpart E of the NCP.”
EPA Headquarters and regional offices have developed policies and guidance to assist OSCs in conducting removal responses for oil spills and releases of hazardous substances.

Policies and guidance may vary among different EPA regions.
Overview of the Removal Response Process for Hazardous Substance Releases

- Site discovery or notification
- Removal site evaluation
- Community relations activities
- Enforcement activities
- Removal Action implementation
- Removal Action documentation
OSC’s Responsibilities for Coordination

- The NCP requires that the OSC’s efforts be coordinated with other federal, state, local, and private response agencies.
- State and local agencies have a meaningful role and will participate in the response.
- OSC should maintain a dialogue with all appropriate public and private interests.
- OSC is responsible for directing Area Committees in the development of ACPs.
The National Response System

◆ Provides coordination of pollution response actions by all levels of government

1 This usually includes local authorization as well

2 Resources available to support the FOSC upon request

Site Discovery or Notification

Discovery:
- Inspections of the regulated community under
  » Federal authorities
  » State authorities
- Specific inventory or survey projects
- Complaints from citizens
- PA petition filed by citizens
- Media investigations

Notification:
- Historical basis of Superfund notification
- Informal notification and discovery mechanisms
- Formal, ongoing notification mechanisms
The OSC Decision-Making Process

Discovery or Notification → Removal Site Evaluation

- No Release or Threatened Release → OSC Involvement Ends
- Non-Federal Party Undertaking Proper Response → OSC Provides Technical Support, Monitoring/Oversight, Direction
- Federal Removal Action Needed → OSC Directs PRP, EPA Lead
- Refer to Other Response Program (State, FIFRA, TSCA, RCRA, NPL) → OSC Participation in Referral/Site Strategy
- Other Federal Agencies → OSC Provides Technical Support, Monitoring/Oversight, Direction
OSC Role at State-, Local-, and PRP-led Responses

- Local responders lead public safety response efforts
- First response capabilities vary
- Technical support vs. direction
  - Become part of the existing ICS/UC
  - Monitor the incident and provide support or technical assistance
  - Mobilize Federal resources
Removal Actions - Types

- Two NCP categories of removal actions
- Three types of removal actions
  - Emergency type of removal action
  - Time-critical type of removal action
  - Non-time-critical type of removal action
Determining the Need for a Removal Action

- Eight removal factors used to initiate a CERCLA removal action
  - Actual or potential exposure to nearby human populations, animals, or the food chain;
  - Actual or potential contamination of drinking water supplies or sensitive ecosystems;
  - Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers that may pose a threat of release;
  - High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate;
  - Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;
  - Threat of fire or explosion;
  - Availability of other appropriate federal or state response mechanisms to respond to the release;
  - Other situations or factors that may pose threats to public health or welfare or the environment.
Enforcement: PRP Participation

- Enforcement authorities and concerns at removal responses
  - enforcement authorities and limitations
    - CERCLA: Sections 104 (a) & (e), 106, 107, 122
    - CWA/OPA: Sections 308, 309, 311(b) and (c) and (e)
- Integration of enforcement activities with removal response actions
  - Site access
  - Investigation and PRP searches
  - PRP notification and negotiations
  - AOCs and UAOs
  - Oversight of PRP-led response
- Cost recovery
Writing the Action Memo

◆ Importance of AM
  » Summarizes past, current, and proposed activities
  » Substantiates need for removal action and reserves funds
  » Critical component of AR and cost recovery efforts
    – Basis for judicial review and cost recovery efforts
    – Provides for public participation

◆ Sections of AM
  » Including identification of Applicable or Relevant and Appropriate Requirements (ARARs)

◆ Amending the AM
  » Statutory exemptions (12 month, $2M limit)
  » Change in scope

◆ Nationally significant and precedent-setting issues
◆ Approval authorities
Planning a Removal Action

- Considerations for planning removal actions
  - Removal scoping
  - AR
  - Public participation
  - Contracting services and technical assistance
Administrative Record

- AR is required by the NCP
- Relationship to site files
- CBI
Public Participation

- CERCLA requires public participation throughout the planning and implementation of responses
  - Public participation objectives:
    - Inform the public of risks associated with the site, planned or on-going actions, and other issues
    - Provide an opportunity to comment on decisions
    - Identify and respond to concerns
- NCP specifies two forms of public participation
  - Community relations
  - AR
Community Involvement Activities for Different Types of Removal Actions

- Time-critical removal actions
- Removal actions with greater than 120 days of on-site activity
- Non-time-critical removal actions
Community Involvement Activities to Enhance Public Participation

- Circumstances that may require additional activities
- Meet directly with the public
- Develop and distribute written public information materials
- Develop community involvement mailing list
- Prepare meeting summaries
- Establish on-scene information office
Conducting a Removal Action: Planning and Reporting Documents

Key Documents

» HASP
» Sampling QA/QC plan
» CIP
» POLREPs
» OSC report/removal summary
Access to Information and Public Interaction

- FOIA requests and congressional inquiries
- CBI
- OSCs must make appropriate information readily accessible to the public
Completing a Removal Action

◆ A removal action has been completed when:
  » The threat posed by the site has been abated or mitigated and all restoration is finished
  » All work specified in the AM has been completed
  » Cleanup contractor, PRP, and OSC have demobilized permanently from the site
  » The final POLREP documents completion

◆ Completion of removal contract
◆ Post-Removal Site Control (PRSC)
◆ Final OSC report (optional)
A Torn OSC

FRP! SPCC! EPCRA! PREP! LEPSs! ACPs! More Plans! ORC!

ICS/UC! POLREPs! CT! OPA! TSCA! Fac Plans! NPFC! BOAs! NCP! CORE ER!

COI! FRERP! OSHA! ARARs! Lawyers! FOIA! States! ESF-10!

Audits! GAO! IG! OAM! NPR! Regional Backup! DBA! CLP!

Special Events! RSE! Integrated Assessment! RDT!

More Exercises! Be Nice to Remedial! NTCR! EJ! NPL Caliber! CIC! TDDs!

Special Events!

Integrated Assessment!

RDT!