

## MEMORANDUM

Date: November 11, 2001

FOR: Olga Kebis

FROM: Meggan Engelke-Ros  
Office of General Counsel for Environmental Compliance

SUBJECT: NWS/NOAA Liability for Oil Spill Arising From Entering Into a Contract For  
Emergency Remediation

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It is a basic tenet of Environmental Law that parties undertaking clean-up can bring actions for contribution against other responsible parties. This tenet is reflected in the Oil Pollution Act as well.<sup>1</sup> The principle is that it is the polluter who should pay.

Without facts about a specific spill, it is difficult to address liability, however there is nothing in The Oil Pollution Act (OPA)<sup>2</sup> that would create any new liability in NWS/NOAA merely by signing a contract for emergency remediation services. OPA applies only to spills into navigable waters,<sup>3</sup> so its applicability depends on the spill reaching a waterway. Assuming that OPA does apply, NOAA/NWS, as the owner/operator of the on-shore facility where the spill occurred would be a responsible party regardless of who signed the contract for emergency remediation.<sup>4</sup> If it could be established that the spill was caused by a third party, NOAA could seek contribution for any remediation costs incurred.

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<sup>1</sup> 33 U.S.C.A. § 2709

<sup>2</sup> 33 U.S.C.A. § 2701 *et. seq.*

<sup>3</sup> 33 U.S.C.A. § 2702 (a)

<sup>4</sup> 33 U.S.C. § 2701 (32)(B)