

SCANNED
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**MEMORANDUM OF AGREEMENT
BETWEEN THE UNITED STATES COAST GUARD
AND THE COMMONWEALTH OF VIRGINIA
CONCERNING MARINE ENVIRONMENTAL PROTECTION
AND RESPONSE TO MARINE POLLUTION**

I. PURPOSE AND SCOPE

This Memorandum of Agreement (MOA) is an umbrella agreement of broad scope, coordinating the Commonwealth of Virginia and the United States Coast Guard's international, domestic, regional, state and local agenda to provide a foundation for cooperation in the full range of marine pollution related activities. The objective of this cooperative agreement is to ensure a sound state, regional, national and international marine environmental protection strategy by:

1. minimizing duplicative requirements,
2. leveraging Commonwealth and Coast Guard resources, and
3. eliminating potential barriers to marine transportation due to differing Federal and State program requirements.

II. GENERAL PROVISIONS

Whereas, the United States Coast Guard has statutory authority to protect the safety of life and property at sea and to protect the marine environment in the navigable waters of the United States, the high seas and other waters over which the United States has jurisdiction, under the provisions of Titles 14, 18, 19, 33, 40, 46, and 49, United States Code (U.S.C.);

Whereas, the Commonwealth of Virginia has similar statutory authority for the protection of the marine environment and in State waters within the Commonwealth, under the provisions of the State Water Control Law, Title 62.1;

Whereas, the body of Federal law and regulation, particularly as enhanced by the Oil Pollution Act of 1990 (OPA 90) and new regulations issued under its authority, provide for a coordinated federal and state marine environmental protection effort across all pollution sources, including all transportation modes;

Whereas, each party recognizes that dual sets of regulatory requirements may discourage safe and environmentally enhancing conduct rather than to promote it; and

Whereas, each party recognizes that the Coast Guard and the Commonwealth of Virginia have similar authorities, and are committed to working together to complement, rather than duplicate, programs and resources.

III. PARTIES

1. The parties to this MOA are the Fifth Coast Guard District (the "Coast Guard") and the Commonwealth of Virginia (the "State").
2. Whereas, the Commander, Fifth Coast Guard District in 33 CFR 1.01-1 has been delegated by the Commandant of the U. S. Coast Guard final authority for performance of duties within the confines of the Commonwealth of Virginia and surrounding waters, which in general terms are maritime law enforcement, saving and protecting life and property, and safeguarding navigation and the environment;
3. Whereas, the Governor of the Commonwealth of Virginia has designated the Secretary of Natural Resources to act on behalf of the Commonwealth to oversee the development of this MOA and to enter this MOA; and
4. Whereas, the Natural Resources Secretariat, Commonwealth of Virginia will exercise authority under Commonwealth law and the Virginia Department of Environmental Quality is the representative for all OPA 90 initiatives as they apply to oil. The Virginia Department of Emergency Services will coordinate OPA 90 initiatives as they apply to hazardous substances.

IV. DEFINITIONS

Terms not defined in this section have the meaning given by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Clean Water Act, the National Contingency Plan, the Oil Pollution Act of 1990, and the State Water Control Law including future amendments.

ACP: Area Contingency Plan. Prepared by the Area Committee, a multi-agency committee designed to create a plan to conduct coordinated responses to oil and hazardous substances incidents in specific locations, taking into account unique environmental, and economic concerns.

CERCLA: The Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA).

COASTAL ZONE: As defined by the National Contingency Plan (NCP), means all U.S. waters subject to the tide, the contiguous zone, other waters of the high seas subject to the NCP and the land surface or land substrata, ground waters and ambient air proximal to those waters. The term coastal zone delineates the area of federal responsibility for

response action. Under Section 311 of the Federal Water Pollution Control Act, section 104 of CERCLA and the Intervention on the High Seas Act, (PL 93-248), the Coast Guard Federal On-Scene Coordinator's authority may be extended to the high seas if it is determined a vessel poses a grave and imminent danger to the coastline.

Inland Zone means the environment inland of the coastal zone.

COTP: Captain of the Port. Commanding Officer, Coast Guard Marine Safety Office Hampton Roads, VA.

DRAT: District Response Advisory Team. Coordinates Coast Guard training and assists FOSC with oil and hazardous substance pollution response activities for the District Response Group (DRG), which comprises all available Coast Guard assets.

FOSC: Federal On-Scene Coordinator: The predesignated federal person in charge of all response activities for oil and hazardous substances incidents. The Coast Guard provides the FOSC for incidents in the coastal zone while the Environmental Protection Agency (EPA) provides the inland FOSC.

RRT: Regional Response Team. The Region III RRT is a multi-agency team designed to assist the FOSC with technical advice and planning for oil and hazardous substances. The RRT is comprised of U. S. Coast Guard, EPA, Departments of Interior, Justice, Energy, Commerce, Agriculture, Defense, State, Transportation, Health and Human Services, Labor, the Federal Emergency Management Agency, the General Services Agency, the Commonwealths of Virginia and Pennsylvania, States of Delaware, Maryland, West Virginia, and District of Columbia.

SOSC: State On-Scene Coordinator. The Commonwealth of Virginia's On-Scene Coordinator (OSC) for oil spill incidents will be a representative from the Department of Environmental Quality. The SOSC for hazardous substance incidents will be designated in accordance with the Commonwealth of Virginia Emergency Operations Plan.

STATE WATERS: Means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.

V. TERMS OF AGREEMENT

A. It is agreed that the Commander, Fifth Coast Guard District and the Commonwealth of Virginia enter into this Memorandum of Agreement to the extent permitted by law and as consistent with their respective polices and available resources, to coordinate their respective statutory and regulatory duties related to the protection of the marine environment. Nothing in this MOA shall detract from the existing

responsibilities or authority of each party. This agreement is not a contract and relates solely to coordination between the Commonwealth and the Coast Guard of the subject matters of mutual responsibility as addressed herein. It does not create obligations or establish rights not otherwise provided by law and specifically creates no third party beneficiaries.

B. PREPAREDNESS: To be ready, able, and competent to manage the immediate removal and mitigation of any pollutant in the adjoining shorelines, the Coast Guard and the Commonwealth agree to work together in the following areas to prepare for discharges of pollutants that threaten the waters of mutual concern.

(1) PLANNING: The Coast Guard will work with the Commonwealth to exercise the Area Contingency Plan as mandated by OPA 90 to prepare for threats of marine pollution from oil and hazardous substances.

(2) TRAINING: The Coast Guard and Commonwealth will, when feasible, inform each other of any available or proposed commercial, state-sponsored or federal-sponsored training to ensure that all response personnel are as qualified and knowledgeable on state-of-the-art prevention/response strategies as possible.

(3) PREPARATION OF RESPONSE PLAN: The Coast Guard will lead in the preparation of the Coastal Area Contingency plan as required by OPA 90. The Commonwealth will actively assist in the preparation and maintenance of this plan as the Vice-Chair of the Coastal Area Committee.

(4) EXERCISES AND DRILLS: The Coast Guard and Commonwealth will inform each other of any planned or proposed exercises or drills. When feasible, the parties will invite participation in planned exercises by notice to each other and to other members of the response and planning community. The Commonwealth in conjunction with the Coast Guard, will endeavor to conduct annual exercises to test the Area Contingency Plan, as mandated by OPA 90. The Commonwealth will assist the Coast Guard in identifying facilities, at a no-cost or low-cost basis, to conduct the required annual exercises.

(5) INTERNATIONAL JOINT CONTINGENCY PLANS: Both the Commonwealth and the Coast Guard will inform each other of any work on international pollution prevention or response contingency plans. Each will encourage the participation and consent of the other party in the negotiations and final preparation and agreement on such plans.

C. RESPONSE: Whereas it is in the best interests of both parties to respond quickly and effectively in the event of a release to minimize shoreline impact and before substantial weathering can occur, the Coast Guard and the Commonwealth agree to conduct a timely, coordinated response to discharges of pollutants that threaten the waters of mutual concern.

(1) Oil and Hazardous Substance Pollution: Actions by the Commonwealth and Coast Guard will be in accordance with the Area Contingency Plan, the Regional Contingency Plan, and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300). The Area Contingency Plan and the National Contingency Plan which reflect changes to the Federal Water Pollution Control Act (FWPCA) as mandated by OPA 90 in conjunction with the Commonwealth of Virginia Emergency Operations Plan, shall guide the course of response efforts. Each party will aggressively respond to reports of spills in their respective areas and, by the most expeditious means, inform each other of the occurrence of any reported spill.

(2) Release of Garbage: Under Annex V of MARPOL 73/78, the Coast Guard is assigned the responsibility to ensure mariners properly dispose of shipboard generated wastes. Any reports of illegal dumping of garbage will be reported immediately to the COTP, Hampton Roads, VA. The COTP will forward any report of illegal dumping of garbage into state waters to the Department of Environmental Quality. The State Department of Health in conjunction with local health officials will assess the threat to the public and contact the appropriate government agencies for cleanup and appropriate action for any garbage that reaches the shorelines. The Coast Guard will assist in determining origination of ship generated garbage. If appropriate, the Coast Guard will initiate federal criminal or civil action which will require the owner of the garbage generating ship to clean up any garbage spills impacting the marine environment.

(3) Response Equipment: Response equipment inventories will be shared between parties. In the event of a spill, equipment will be shared on a cost reimbursable basis. Nothing in this or any other agreement will hamper the expeditious use of resources owned by either party during the emergency response phase of an incident due to contractual or cost reimbursable agreements. Both parties will endeavor to assist each other in acquiring additional resources including cleanup gear, trained personnel, communications capabilities and facilities, to combat pollution to the extent permitted by applicable regulation.

D. POLLUTION PREVENTION: To prevent all pollution, including oil, chemicals, sewage, plastics, garbage, and other wastes before being released into the marine environment, the Coast Guard and the Commonwealth agree to support marine pollution prevention efforts.

(1) Intervention on the High Seas: Under 49 CFR 1.46 the Coast Guard has been assigned responsibility to carry out the provisions of the Intervention on the High Seas Act. Any reports of pollution or threats of pollution by oil or other hazardous substances on the high seas that pose an imminent threat or danger to the coastlines of Virginia will be forwarded immediately to the COTP Hampton Roads and to the Department of Environmental Quality.

(2) Operational Controls: The Commonwealth and the Coast Guard will continue to support the existing structure of port and harbor control. If a vessel poses a potential hazard to the port (or its environs) the Coast Guard COTP will be notified. Under 33 CFR Parts 6, 165.120, and 165.130 the COTP can issue orders to establish safety zones and security zones for specific vessels or during certain circumstances, such as extreme weather or other conditions as specified in 33 CFR 160.111.

(3) Land Based Sources of Pollution: The Commonwealth and the Coast Guard will continue to support the existing response structure for discharges of oil or hazardous substances to land which threaten the marine environment.

(4) Fishing and Recreational Vessels: The Coast Guard and the Commonwealth will continue compliance and education programs for fishing and recreational vessels. The Coast Guard conducts checks on marine sanitation devices, pollution placards and bilge wastes during fishing vessel examinations and during Coast Guard Auxiliary courtesy marine examinations. The Commonwealth and the Coast Guard shall continue to support mutual enforcement of laws relating to boating safety within the concurrent jurisdiction of the Commonwealth and the United States in accordance with existing agreements.

(5) Human Factors: The Coast Guard is responsible for enforcing federal regulations regarding merchant mariner qualifications. The Coast Guard will continue to enforce the regulations and share information with the Commonwealth if requested.

(6) Commercial Vessel Safety: The Coast Guard is responsible for enforcing the regulations regarding commercial vessel inspection, operation and maintenance requirements. Information will be made available to the Commonwealth through data sharing capabilities in the Coast Guard Marine Safety Information System (MSIS).

(7) Waterfront Facility Inspection and Operation Requirements: The Coast Guard regulates certain waterfront facilities as mandated. The Commonwealth regulates facilities under state law and existing regulations and is encouraged to conduct joint facility inspections with the Coast Guard and to provide input on targeting facilities to avoid duplication of effort.

(8) Shipboard Clean Air Act Requirements: EPA is responsible for Clean Air Act regulations. The Commonwealth and the Coast Guard will work jointly to ensure Coast Guard inspected/regulated vessels comply with Volatile Organic Compound Regulations.

E. OIL SPILL TRUST FUND MANAGEMENT

(1) The National Pollution Funds Center (NPFC) administers the Oil Spill Liability Trust Fund in order to provide State access to the Fund, conduct cost recovery, accept and process claims, and evaluate requests by federal trustees to fund the initiation of the assessment of natural resource damages. Also, the NPFC administers Certificates of Financial Responsibility and provides CERCLA/Superfund funding to Coast Guard On-Scene Coordinators (OSC) responding to hazardous substance incidents.

(2) An individual State may receive payments from the Fund in the State's role as a response organization engaged in removal activities consistent with the National Contingency Plan, as an appropriate claimant for damages, and in its role as a natural resource trustee. In addition to the text herewith concerning Section 1012 of OPA 90, States recognize the following provisions outlining alternative funding methods for State removal activity:

(a) Section 1012(d)(1). Regulations under Section 1012(d)(1) of OPA 90 allow the NPFC, upon the request of the Governor of a State as authorized by the Federal On-Scene Coordinator, to obligate the Fund for payment in an amount not to exceed \$250,000 for removal costs, consistent with the National Contingency Plan, required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge, of oil. The NPFC's Technical Operating Procedures (TOPs) for State Access Under Section 1012(d)(1) of OPA 90, and the TOPs for Resource Documentation under OPA 90 are approved guidelines for State use to access the Fund under this section.

(b) Claims. Regulations under Section 1012(a)(4) of OPA 90 authorize use of the Fund for "the payment of claims in accordance with Section 1013 of OPA 90 for uncompensated removal costs determined by the President [Coast Guard] to be consistent with the NCP or [for] uncompensated damages." Procedures for claims are found in 33 CFR Part 136. States have a special status under Section 1013 of OPA 90 regarding claims for uncompensated removal costs which allows States to make such claims directly to the Fund rather than to the responsible party.

(c) Working Directly for the FOSC. State agencies may work directly for the Federal On-Scene Coordinator in performing removal actions. In these situations, the FOSC issues a Pollution Removal Funding Authorization (PRFA) to the State to establish a contractual relationship and to obligate the Fund. The FOSC actively directs and is responsible for the response actions. Additionally, a Coast Guard FOSC may request State assistance and participation in emergency removal actions under CERCLA in response to a hazardous substances incident or threatened incident and where funding for these actions is via a PRFA.

(3) Natural Resource Damage Assessments. Working through a Federal Lead Administrative Trustee (one of the Federal Trustees designated in the NCP), a State trustee may, in accordance with the procedures established by the NPFC, request access to the Oil Spill Liability Trust Fund for the initiation of an assessment of natural resource damages resulting from a discharge of oil (Section 6002(b) of OPA 90).

F. MARINE LAW ENFORCEMENT: The Coast Guard and Commonwealth will work together on marine environmental law enforcement. The Coast Guard maintains the Marine Safety Information System (MSIS) computer system, and will share relevant MSIS information with the Commonwealth. MSIS is an effective documentation tool and achieves good results in processing civil and criminal penalties.

(1) Harbor, River, Coastal and Offshore Surveillance: Data on harbor, coastal and offshore surveillance will be shared by both parties. The Coast Guard will include Commonwealth input for targeting vessels for COTP boardings. Joint efforts with the Coast Guard and the Commonwealth will continue.

(2) Pollution Prevention/Port Safety Boardings: The Coast Guard conducts annual port safety boardings of vessels covering general safety, pollution prevention methods and certificates including the Oil Record Book.

G. VESSEL TRAFFIC MANAGEMENT: The Coast Guard and the Commonwealth will support the existing waterways management system. The Commonwealth will monitor and enforce applicable state pilotage provisions and the Coast Guard will monitor overall safety and navigational concerns, intervening when necessary to issue COTP orders or other requirements. The COTP has the authority and can assist the Commonwealth by requesting vessels to operate with special provisions, such as tug requirements and operating restrictions.

H. DATABASE SHARING: The Coast Guard and Commonwealth will share information from the databases they maintain. The Coast Guard administers the Marine Safety Information System, which is a database that contains information on vessel inspections, port safety boardings, marine violation processing, marine casualty

investigations and marine pollution incident reporting. The Department of Environmental Quality maintains several databases which contain information related to pollution prevention, response and enforcement.

I. INVESTIGATIONS: The Coast Guard conducts casualty and pollution investigations for marine incidents. The Coast Guard and Commonwealth will share information when conducting and upon completion of investigations for possible litigation and informational purposes under the provisions stated in part VI. C. of this agreement.

J. PUBLIC AND MEDIA RELATIONS: The Fifth Coast Guard District Public Affairs Branch and the Department of Environmental Quality will act as a link between the Coast Guard and the Commonwealth in providing the public and the media with information on marine environmental protection and response to marine pollution issues.

VI. MISCELLANEOUS

A. INFORMATION CLEARINGHOUSE: The Fifth Coast Guard District will perform the clearinghouse function and forward to the Department of Environmental Quality all Coast Guard policy, studies, research and development projects, rulemakings, and reports that may be of interest to the Commonwealth. The Commonwealth's DEQ shall perform a similar function for the Commonwealth. Requests for data, status of investigations, studies and civil penalty actions shall also be coordinated through the Fifth Coast Guard District and the Department of Environmental Quality.

B. ADMINISTRATIVE PROCEDURES: The Coast Guard and the Commonwealth will promptly furnish to each other the text of any proposed or enacted law, rule, or regulation having to do with prevention of or response to pollution of the marine environment or any related matters that are the subject of this agreement, along with any published administrative interpretations thereof. The Coast Guard will carefully consider all recommendations and comments by the Commonwealth on Coast Guard proposed regulations, under the requirements of the Administrative Procedure Act. The Commonwealth will carefully consider all recommendations and comments by the Coast Guard on Commonwealth proposed rules, under the requirements of the Commonwealth Administrative Process Act.

C. FREEDOM OF INFORMATION AND PRIVACY: In order to promote the efficiency and effectiveness of investigations where there is concurrent jurisdiction, the Coast Guard and the Commonwealth agree to share information on such investigations in a timely manner. The Coast Guard agrees that it will protect information provided by the Commonwealth that is exempt from disclosure under the Freedom of Information

Act by 5 U.S.C. Section 552(b). Information released to Commonwealth investigatory agencies by the Coast Guard, which the Coast Guard determines to be exempt from public disclosure under 5 U.S.C. 552(b) will not be disclosed to any person or agency not involved in the investigation except as required by Virginia Law, including the Virginia Freedom of Information Act, section 2.1-340 et seq., Code of Virginia. The Commonwealth and the Coast Guard reserve the right of nondisclosure of any information which would disclose the identity of a confidential source, endanger the life or physical safety of law enforcement personnel, or constitute an unwarranted invasion of personal privacy except as required by law. This provision is not intended to supersede the provisions of 5 U.S.C. Section 552.

D. **INTERNATIONAL AFFAIRS:** Both the Commonwealth and the Fifth Coast Guard District through the activities of the Region III Regional Response Team, will inform each other of international initiatives with respect to pollution prevention and response.

E. **SUPREMACY CLAUSE:** Nothing in his agreement is intended to, nor shall operate to, preempt Federal or Commonwealth law.

F. **POLICY CLAUSE:** This agreement does not supplant duly established Coast Guard or Virginia policy. Any terms in conflict with established Coast Guard or Virginia policy shall be void.

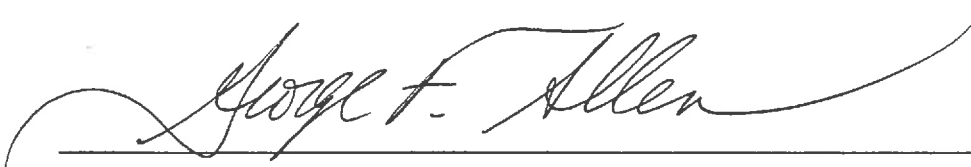
VII. REVIEW/REVOCATION TERMS

A. **REVIEW TERMS:** This agreement will be reviewed periodically and at least biennially.

B. **REVOCATION TERMS:** The agreement may be revoked by any party upon thirty days notice to all concerned.

VIII. EFFECTIVE DATES

Provisions of this MOA shall be effective when signed by both parties. This MOA will remain in effect until rescinded by either party in writing, revised by both parties, or until three years after the effective date, unless renewed by both parties.



5-22-95

HONORABLE GEORGE F. ALLEN
GOVERNOR OF THE COMMONWEALTH OF VIRGINIA

DATE



5-23-95

REAR ADMIRAL, U.S. COAST GUARD
COMMANDER, FIFTH COAST GUARD DISTRICT

DATE