

(F) Oil storage facilities including all equipment and appurtenances related thereto as well as fixed bulk plant storage, terminal oil storage facilities, consumer storage, pumps and drainage systems used in the storage of oil, but excluding inline or breakout storage tanks needed for the continuous operation of a pipeline system and any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(G) Industrial, commercial, agricultural or public facilities which use and store oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(H) Waste treatment facilities including in-plant pipelines, effluent discharge lines, and storage tanks, but excluding waste treatment facilities located on vessels and terminal storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels and associated systems used for off-loading vessels.

(I) Loading racks, transfer hoses, loading arms and other equipment which are appurtenant to a nontransportation-related facility or terminal facility and which are used to transfer oil in bulk to or from highway vehicles or railroad cars.

(J) Highway vehicles and railroad cars which are used for the transport of oil exclusively within the confines of a nontransportation-related facility and which are not intended to transport oil in interstate or intrastate commerce.

(K) Pipeline systems which are used for the transport of oil exclusively within the confines of a nontransportation-related facility or terminal facility and which are not intended to transport oil in interstate or intrastate commerce, but excluding pipeline systems used to transfer oil in bulk to or from a vessel.

(2) *Transportation-related onshore and offshore facilities* means:

(A) Onshore and offshore terminal facilities including transfer hoses, loading arms and other equipment and appurtenances used for the purpose of handling or transferring oil in bulk to or from a vessel as well as storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels, but excluding terminal waste treatment facilities and terminal oil storage facilities.

(B) Transfer hoses, loading arms and other equipment appurtenant to a non-transportation-related facility which is used to transfer oil in bulk to or from a vessel.

(C) Interstate and intrastate onshore and offshore pipeline systems including pumps and appurtenances related thereto as well as in-line or breakout storage tanks needed for the continuous operation of a pipeline system, and pipelines from onshore and offshore

oil production facilities, but excluding onshore and offshore piping from wellheads to oil separators and pipelines which are used for the transport of oil exclusively within the confines of a nontransportation-related facility or terminal facility and which are not intended to transport oil in interstate or intrastate commerce or to transfer oil in bulk to or from a vessel.

(D) Highway vehicles and railroad cars which are used for the transport of oil in interstate or intrastate commerce and the equipment and appurtenances related thereto, and equipment used for the fueling of locomotive units, as well as the rights-of-way on which they operate. Excluded are highway vehicles and railroad cars and motive power used exclusively within the confines of a nontransportation-related facility or terminal facility and which are not intended for use in interstate or intrastate commerce.

APPENDIX B TO PART 112—MEMORANDUM OF UNDERSTANDING AMONG THE SECRETARY OF THE INTERIOR, SECRETARY OF TRANSPORTATION, AND ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

PURPOSE

This Memorandum of Understanding (MOU) establishes the jurisdictional responsibilities for offshore facilities, including pipelines, pursuant to section 311 (j)(1)(c), (j)(5), and (j)(6)(A) of the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990 (Public Law 101-380). The Secretary of the Department of the Interior (DOI), Secretary of the Department of Transportation (DOT), and Administrator of the Environmental Protection Agency (EPA) agree to the division of responsibilities set forth below for spill prevention and control, response planning, and equipment inspection activities pursuant to those provisions.

BACKGROUND

Executive Order (E.O.) 12777 (56 FR 54757) delegates to DOI, DOT, and EPA various responsibilities identified in section 311(j) of the CWA. Sections 2(b)(3), 2(d)(3), and 2(e)(3) of E.O. 12777 assigned to DOI spill prevention and control, contingency planning, and equipment inspection activities associated with offshore facilities. Section 311(a)(11) defines the term "offshore facility" to include facilities of any kind located in, on, or under navigable waters of the United States. By using this definition, the traditional DOI role of regulating facilities on the Outer Continental Shelf is expanded by E.O. 12777 to include inland lakes, rivers, streams, and any other inland waters.

RESPONSIBILITIES

Pursuant to section 2(i) of E.O. 12777, DOI redelegates, and EPA and DOT agree to assume, the functions vested in DOI by sections 2(b)(3), 2(d)(3), and 2(e)(3) of E.O. 12777 as set forth below. For purposes of this MOU, the term "coast line" shall be defined as in the Submerged Lands Act (43 U.S.C. 1301(c)) to mean "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters."

1. To EPA, DOI redelegates responsibility for non-transportation-related offshore facilities located landward of the coast line.

2. To DOT, DOI redelegates responsibility for transportation-related facilities, including pipelines, located landward of the coast line. The DOT retains jurisdiction for deep-water ports and their associated seaward pipelines, as delegated by E.O. 12777.

3. The DOI retains jurisdiction over facilities, including pipelines, located seaward of the coast line, except for deepwater ports and associated seaward pipelines delegated by E.O. 12777 to DOT.

EFFECTIVE DATE

This MOU is effective on the date of the final execution by the indicated signatories.

LIMITATIONS

1. The DOI, DOT, and EPA may agree in writing to exceptions to this MOU on a facility-specific basis. Affected parties will receive notification of the exceptions.

2. Nothing in this MOU is intended to replace, supersede, or modify any existing agreements between or among DOI, DOT, or EPA.

MODIFICATION AND TERMINATION

Any party to this agreement may propose modifications by submitting them in writing to the heads of the other agency/department. No modification may be adopted except with the consent of all parties. All parties shall indicate their consent to or disagreement with any proposed modification within 60 days of receipt. Upon the request of any party, representatives of all parties shall meet for the purpose of considering exceptions or modifications to this agreement. This MOU may be terminated only with the mutual consent of all parties.

Dated: November 8, 1993.
Bruce Babbitt,

Secretary of the Interior.

Dated: December 14, 1993.
Federico Peña,

Secretary of Transportation.

Dated: February 3, 1994.
Carol M. Browner,

Administrator, Environmental Protection Agency.

[59 FR 34102, July 1, 1994]

APPENDIX C TO PART 112—SUBSTANTIAL HARM CRITERIA

1.0 INTRODUCTION

The flowchart provided in Attachment C-I to this appendix shows the decision tree with the criteria to identify whether a facility "could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines." In addition, the Regional Administrator has the discretion to identify facilities that must prepare and submit facility-specific response plans to EPA.

1.1 Definitions

1.1.1 *Great Lakes* means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far as Saint Regis, and adjacent port areas.

1.1.2 Higher Volume Port Areas include

- (1) Boston, MA;
- (2) New York, NY;
- (3) Delaware Bay and River to Philadelphia, PA;
- (4) St. Croix, VI;
- (5) Pascagoula, MS;
- (6) Mississippi River from Southwest Pass, LA to Baton Rouge, LA;
- (7) Louisiana Offshore Oil Port (LOOP), LA;
- (8) Lake Charles, LA;
- (9) Sabine-Neches River, TX;
- (10) Galveston Bay and Houston Ship Channel, TX;
- (11) Corpus Christi, TX;
- (12) Los Angeles/Long Beach Harbor, CA;
- (13) San Francisco Bay, San Pablo Bay, Carquinez Strait, and Suisun Bay to Antioch, CA;
- (14) Straits of Juan de Fuca from Port Angeles, WA to and including Puget Sound, WA;
- (15) Prince William Sound, AK; and
- (16) Others as specified by the Regional Administrator for any EPA Region.

1.1.3 *Inland Area* means the area shoreward of the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, it means the area shoreward of the lines of demarcation (COLREG lines as defined in 33 CFR 80.740-80.850). The inland area does not include the Great Lakes.

1.1.4 *Rivers and Canals* means a body of water confined within the inland area, including the Intracoastal Waterways and other waterways artificially created for navigating that have project depths of 12 feet or less.