



FEMA

RECOVERY DIVISION

FACT SHEET

9580.202

# DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

## Overview

This fact sheet identifies and describes the authorities of federal departments and agencies in support of debris operations following a presidential emergency or major disaster declaration. The following nine Federal agencies and departments are invested with authorities (described in detail below) addressing various aspects of debris management.

- Department of Homeland Security
  - *Federal Emergency Management Agency*
  - *United States Coast Guard*
- Department of Defense: *U.S. Army Corps of Engineers*
- Department of Agriculture
  - *Natural Resources and Conservation Service*
  - *Farm Service Agency*
  - *Animal Plant and Health Inspection Service*
- Department of Transportation: *Federal Highway Administration*
- Department of Commerce: *National Oceanic and Atmospheric Administration*
- Environmental Protection Agency

## Department of Homeland Security

### Federal Emergency Management Agency (FEMA)

- FEMA is authorized in Sections 403, 407 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act to provide assistance to eligible applicants to remove debris from public and private property following a Presidential disaster declaration, when in the public interest.
- Removal must be necessary to eliminate immediate threats to lives, public health and safety; eliminate immediate threats of significant damage to improved public or private property; or ensure

## DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

the economic recovery of the affected community to the benefit of the community-at-large. The debris must be the direct result of the disaster and located in the disaster area, and the applicant must have the legal responsibility to remove the debris.

- FEMA will (1) reimburse applicants to remove eligible debris, or (2) through a mission assignment to another Federal agency (and upon request of the State) - provide *direct Federal assistance* when it has been demonstrated that the State and local government lack the capability to perform or contract for the requested work.
- Assistance will be cost-shared (at no less than 75% Federal and 25% non-Federal). In extreme circumstances, FEMA will provide up to 100% funding for a limited period of time.

### United States Coast Guard (USCG)

- Under the National Contingency Plan (NCP), the USCG and Environmental Protection Agency (EPA) are responsible for providing pre-designated Federal On-Scene Coordinators (FOSCs) to conduct emergency removals of oil and hazardous materials.
- USCG is responsible for the coastal zone, and the EPA is responsible for the inland zone. The delineation between coastal and inland zones is by mutual agreement between the USCG and the EPA, and the geographic limits are indicated in Area Contingency Plans.
- Under the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA (also known as Superfund), and the Clean Water Act, USCG has the authority to respond to actual or potential discharges of oil and actual or potential releases of hazardous substances, pollutants and contaminants that may endanger public health or the environment.
- Response actions may include containment, stabilization, decontamination, collection (e.g., orphan drums tanks and drums), and final disposal. Debris may be mixed with, or contain, oil or hazardous materials that are subject to USCG response authorities. Oil removal is funded from the Oil Spill Liability Trust Fund, while hazardous materials removal is conducted using CERCLA funds.
- USCG, under the Ports and Waterways Safety Act (33 U.S.C. §§1221), is responsible for keeping waterways safe and open. While there is no specific language stating that the USCG is responsible for debris removal from waterways, the USCG has been tasked - in the past - to assist in waterway and marine transportation system recovery.

## DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

### Department of Defense

#### United States Army Corps of Engineers (USACE)

- USACE is authorized by Section 202 of Water Resources Development Act (WRDA) of 1976 (PL 94-587) to develop projects for the collection and removal of drift and debris from publicly maintained commercial harbors, and from land and water areas immediately adjacent thereto.
- Specific and limited local programs for continuing debris collection and disposal have been authorized (on an individual basis, with the authorized work carried out at each locality as a separate, distinct project) by Congress for:
  - New York Harbor
  - Baltimore Harbor
  - Norfolk Harbor
  - Potomac and Anacostia Rivers, in the Washington, D.C. Metropolitan area
  - San Francisco Harbor/Bay, California.
- Sections 15, 19, and 20 of the River and Harbor Act of 1899, as amended, authorize USACE to remove sunken vessels or other obstructions from navigable waterways under emergency conditions. A navigable waterway is one that has been authorized by Congress, and which USACE operates and maintains for general (including commercial and recreational) navigation. Funding for operation and maintenance of these “Federal” waterways is through USACE’s annual Operations and Maintenance General Appropriation. USACE’s policy is to oversee removal of sunken vessels by an identifiable owner, operator or lessee if the sunken vessel is in or likely to be moved into a Federal navigation channel. USACE will remove a vessel using its emergency authorities only if the owner, operator, or lessee cannot be identified or they cannot effect removal in a timely and safe manner.
- USACE is also authorized, under Flood Control and Coastal Emergencies (PL 84-99), to provide assistance for debris removal from flood control works, i.e., structures designed and constructed to have appreciable and dependable effects in preventing damage by irregular and unusual rises in water level. Under this authority, USACE requires that an applicant, to be eligible for assistance, be an active participant in its PL 84-99 Rehabilitation and Inspection Program at the time of the disaster.

## DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

### United States Department of Agriculture

#### Natural Resources Conservation Service (NRCS)

- NRCS' Emergency Watershed Protection Program (EWP) is authorized by Section 216 of the Flood Control Act of 1950, PL 81-516, 33 U.S.C. 701b-1; and Section 403 of the Agricultural Credit Act of 1978, PL 95-334, as amended by Section 382, of the Federal Agriculture Improvement and Reform Act of 1996, PL 104-127, 16 U.S.C. 2203.
- Debris clean up must be for either runoff retardation or soil erosion prevention that is causing a sudden impairment in the watershed creating an imminent threat to life or property. Typically, this includes debris within channels but could also include debris in close proximity to a channel or situated where the next event could create an imminent threat to life or property. There is no size limit to the watershed except that EWP assistance is not eligible for coastal erosion restoration.
- The EWP is funded through specific Congressional appropriations.
- Public and private landowners are eligible for assistance but must be represented by a project sponsor (a state or political subdivision thereof, qualified Indian tribe or tribal organization, or unit of local government).
- Work can be done either through Federal or local contracts. Sponsors are responsible for the 75% local cost share.
- NRCS can provide assistance when the President declares an area to be a major disaster area or when an NRCS State Conservationist determines that a watershed impairment exists.
- NRCS will not provide funding for activities undertaken by a sponsor prior to the signing of an agreement between NRCS and the sponsor.

#### Farm Service Agency (FSA)

- Emergency Conservation Program (ECP) is authorized by Sections 401 - 406 of the Agricultural Credit Act of 1978, PL 95-334, and provides emergency assistance for debris removal from privately-owned land following a natural disaster. It is funded through Congressional supplemental appropriations.

# DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

- The damage must be so costly that Federal assistance is or will be required to return the land to productive agricultural use or to provide emergency water for livestock.
- The ECP provides emergency cost share funding (up to 75% federal share) and technical assistance for farmers and ranchers to remove debris (other than animal carcasses).

### Animal, Plant and Health Inspection Service (APHIS)

- APHIS has two programs under which it can provide debris removal assistance:
  - Veterinary Services (VS) program authorized by Animal Health Protection Act (7 U.S.C. 8301–8317) which provides for removal and burial of diseased animal carcasses.
  - Plant Protection and Quarantine (PPQ) program authorized by Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772). This program manages issues related to the health of plant resources. Primary objective is to regulate and monitor in order to reduce the risk of introduction and spread of invasive species, including planning, surveillance, quick detection, containment, and eradication.
- Both public and private lands are eligible under these programs which provide assistance to Federal, State, tribes, local jurisdictions, and private landowners to manage animal and plant health by collecting and providing information, conducting or supporting treatments, providing technical assistance for planning and program implementation (removal).

### Environmental Protection Agency (EPA)

- EPA's primary authorities related to debris removal fall into two categories: (1) authorities related to cleaning up debris that is mixed with or contains oil or hazardous materials; and (2) authorities related to establishing standards for proper management of debris (hazardous and non-hazardous). EPA generally does not remove non-hazardous debris after emergencies/disasters.
- Under the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA (also known as Superfund), and the Clean Water Act, EPA and the United States Coast Guard (USCG) have the authority to respond to actual or potential discharges of oil and actual or potential discharges of hazardous substances, and to actual or potential discharges of pollutants and contaminants that may present an imminent and substantial danger to the public health or welfare.

# DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

- EPA has responsibility for responses in the inland zone and USCG has responsibility for responses in the coastal zone. The delineation between the inland and coastal zone is determined by mutual agreement by the EPA and USCG, and the geographic boundaries are indicated in Area Contingency Plans.
- EPA and USCG carry out these responsibilities under implementing regulations known as the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and USCG pre-designate Federal On-Scene Coordinators (FOSCs) to direct and coordinate response actions.
- Response actions may include containment, stabilization, decontamination, collection (e.g., orphan tanks and drums), and disposal. Debris may be mixed with, or contain, oil or hazardous materials that are subject to these response authorities.
- CERCLA requires that the State in which the site is located fund 10% of remedial action costs, with the other 90% drawn from the Superfund. However, where the potentially responsible party is a political subdivision of a State, the State must agree to fund 50% of the remedial action costs, with the other 50% drawn from the Superfund.
- The Resource Conservation and Recovery Act established a framework for Federal, State, and local cooperation in controlling the management of hazardous and non-hazardous solid waste. The EPA role is to establish minimum regulatory standards that are, in most cases, implemented by the States and to provide technical assistance. EPA administers other laws as well that may impact the management of debris (e.g., Clean Air Act requirements that apply to asbestos-containing debris). Again, some of these programs may be delegated to the States.
- FEMA may mission assign the EPA through the United States Army Corps of Engineers to dispose of household hazardous waste following a major disaster declaration from the President.

## Department of Transportation

### Federal Highway Administration (FHWA)

- The Emergency Relief (or ER) program is authorized in Title 23, United States Code, Section 125, from the Highway Trust Fund, and supports repair or reconstruction of Federal-aid highways and roads on Federal lands which have suffered serious damage as a result of natural disasters or catastrophic failures from an external cause.
- Debris removal from Federal-aid roads is eligible for 100% reimbursement during the first 180 days following an emergency event that qualifies and is approved for the ER program.

## DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

- The ER program is funded \$100 million in annual authorizations. If the annual authorization is expended, FHWA will reimburse eligible costs when ER funds become available.
- The State must incur a cost of at least \$700,000 statewide to qualify for ER assistance. The cost of individual projects (sites) must be \$5,000.
- It is the responsibility of individual States to request ER funds for assistance in the cost of necessary repair of Federal-aid highways damaged by natural disasters or catastrophic failures.

### Department of Commerce

#### National Oceanic and Atmospheric Administration (NOAA)

- The Coastal and Geodetic Survey Act of 1947 and the Hydrographic Services Improvement Acts of 1998, 2002, authorize NOAA to be directly involved in programs to assess and remove hazards and debris. NOAA does not fund debris removal.
- NOAA's Office of Coastal Survey is responsible for surveying and charting the nation's waters and coast, and has been heavily involved in hydro-surveying using side-scan and multi-beam sonar to identify hazards and debris and dangers to navigation along the Gulf Coast for the last three years.

  
\_\_\_\_\_  
David Garratt  
Acting Director of Recovery  
Federal Emergency Management Agency

1/27/07  
Date