

MEMORANDUM OF UNDERSTANDING
Among
Department of Homeland Security's Federal
Emergency Management Agency, Environmental
Protection Agency and U.S. Army Corps of Engineers
For
Contaminated Debris Management

I. INTRODUCTION

A. Parties: The Parties to this Memorandum of Understanding (MOU) are the Department of Homeland Security's Federal Emergency Management Agency (DHS/FEMA), the U.S. Environmental Protection Agency (EPA), and the U.S. Army Corps of Engineers (USACE).

B. The National Response Framework (NRF) currently addresses the contaminated debris mission through both Emergency Support Function 3 – Public Works and Engineering (ESF-3) and Emergency Support Function 10 – Oil and Hazardous Materials (ESF-10). The language in the ESF-3 Annex to the NRF states that the contaminated debris mission will be a joint effort among ESF-3, ESF-10 and DHS/FEMA. The scope of work outlined below is for contaminated debris missions as opposed to “ordinary” debris missions. The Parties recognize that successful response and recovery from a contaminated debris event will require the collaborative and coordinated efforts of all three agencies.

C. For the purposes of this MOU, “contaminated debris” means debris that is generated from a blast or explosion associated with a chemical, biological, radiological or nuclear (CBRN) threat agent.

II. PURPOSE

A. This MOU is intended to more clearly define the leadership and support roles and responsibilities of the Parties engaged in the contaminated debris mission and ensure that the mission is properly managed and coordinated through the mission assignment process. Included in this effort are prompt advance and collaborative preparedness and planning activities for the Parties based on the roles agreed to herein.

B. This MOU will clarify and further explain the specific roles and responsibilities of the lead agencies for the Emergency Support Functions (ESFs) listed in the Annexes to the

NRF, and provide guidance to the Parties regarding the development and assignment of contaminated debris management missions under the Stafford Act.

III. SCOPE

A. The scope of this MOU is *contaminated debris* incidents that are major disasters or emergencies declared by the President under the authority of the Stafford Act.

B. The scope of this MOU is intended to outline roles and responsibilities of the Parties to manage *contaminated debris* that is generated from a blast or explosion associated with a chemical, biological, radiological or nuclear (CBRN) threat agent, resulting in a contaminated debris field. Examples of incidents that are expected to generate such a contaminated debris field include a radiological dispersal device, improvised nuclear device, and an explosion involving a chemical or biological weapon.

C. Contamination that is generated from other types of oil, hazardous material and non-explosive CBRN incidents (e.g., anthrax) is managed by ESF-10 and is outside the scope of this MOU. Further, this MOU will not address “ordinary” debris, such as general construction debris that is generated by a man-made or natural disaster, even if it contains hazardous materials inherent to building construction (e.g., asbestos, paint). Such debris may be created by an explosion or blast, such as an improvised explosive device, that is not associated with a CBRN weapon. This type of debris mission is led by ESF-3, and supported by ESF-10 as outlined in the ESF-3 Annex to the NRF.

D. This MOU does not supplement or alter the Parties’ legal, statutory or regulatory authorities to respond to and manage the release or threat of release of hazardous substances, pollutants or contaminants into the environment during non-Stafford Act events.

IV. LEGAL AUTHORITIES

A. Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§5170a, 5170b, and 5192, as amended;

B. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9601, et seq.;

C. National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR 300, et seq.; and

D. Antideficiency Act, 31 U.S.C. §§1341 and 1342.

V. ROLES AND RESPONSIBILITIES

The ESF-3 Annex to the NRF states that the management of contaminated debris will be a joint effort among ESF-3, ESF-10 and DHS/FEMA. Given the complexity of the contaminated debris mission, it is necessary to clearly define lead and support agency roles to ensure that each agency involved is adequately prepared to perform their roles and responsibilities under this MOU. In an effort to simplify and align statutory authorities, technical expertise, capabilities, and resources, and to streamline administrative processes (i.e., mission assignment tasking and funding streams), the Parties expect to have the following roles and responsibilities for the contaminated debris mission. The Parties further intend to engage in a cooperative and collaborative effort across all contaminated debris mission areas.

A. Lead Agency Roles and Responsibilities

1. ESF-10 – Oil and Hazardous Materials

EPA is the lead agency for ESF-10 with responsibility for hazardous materials and oil response activities, including the coordination and management of contaminated debris. These activities may include:

- a. Actions to prevent, minimize, or mitigate the release of oil or hazardous materials;
- b. Actions to detect and assess the extent of contamination;
- c. Actions to stabilize the release of oil or hazardous materials and prevent the spread of contamination;
- d. Analysis and implementation of options and cleanup decisions for the protection of public health and the environment, including decontamination of contaminated structures; and
- e. Managing waste storage, treatment, transportation and disposal.

DHS/FEMA expects to issue a mission assignment(s) to ESF-10 for these contaminated debris tasks. ESF-10 may assign sub-tasks to support agencies, such as USACE, for activities listed in Section V.B.2 of this MOU.

EPA intends to act consistent with existing statutory and regulatory authorities that apply to contaminated debris, including the authorities given to the Federal On-Scene Coordinator (FOSC) under applicable sections of CERCLA and the NCP. CERCLA is one of the statutes that provides EPA with authorities to respond to the release or threat of release of hazardous substances, pollutants, or contaminants into the environment. The scope of hazardous substances, pollutants or contaminants includes chemical, biological or radiological substances whether released accidentally or intentionally. The NCP is the

Federal regulation that provides the framework for EPA and the U.S. Coast Guard to manage response actions. These authorities would apply to contamination in the debris zone and outside the debris zone of a contaminated debris incident and may be exercised by EPA. These authorities also include the ability for EPA to monitor others who perform actions to mitigate releases of hazardous materials. EPA plans to integrate and manage the contaminated debris mission in support of its overall hazardous materials response effort under ESF-10.

2. ESF-3 – Public Works and Engineering

USACE is the lead agency for ESF-3, with responsibility for the following contaminated debris management activities:

a. Emergency Clearing: ESF-3 – Public Works and Engineering expects to be the primary ESF for clearing contaminated debris from roads and other infrastructure during the emergency phase to facilitate life saving and other emergency response activities. The scope of this action is expected to be limited to moving the contaminated debris to create safe egress and ingress corridors for emergency personnel and/or the public.

b. Structural Instability: ESF-3 expects to take actions to evaluate structural instability threats posed by damaged infrastructure. This infrastructure may be contaminated with CBRN agents. ESF-3 may employ temporary stabilization measures or take other actions as necessary to address structural instability concerns.

c. Demolition: ESF-3 expects to perform demolitions after a determination is made that a building is unstable and creates an imminent hazard to workers and/or after ESF-10, in conjunction with other appropriate federal, state and local authorities, makes a determination that contaminated buildings or infrastructure cannot be decontaminated, and that demolition is the desired clean up approach. ESF-3 should perform demolitions in consultation with DHS/FEMA and EPA.

Mission assignments for the tasks listed above are expected to be issued to ESF-3. These activities should be conducted in coordination with DHS/FEMA, EPA and ESF-10. ESF-3 may assign subtasks to support agencies, such as EPA, for activities listed in Section V.B.1 of this MOU.

B. Support Agency Roles and Responsibilities

The contaminated debris mission calls for the synthesis of technical and management experience, expertise and capabilities of both EPA and USACE, as well as other support agencies. EPA serves as a support agency to ESF-3, and USACE serves as a support agency to ESF-10. The Parties acknowledge that during a contaminated debris incident, some activities may be sub-tasked from the ESF lead agency to a support agency,

pursuant to an ESF Mission Assignment Sub-tasking Request Form or similar document containing the same information. To facilitate the planning and preparedness efforts of the Parties, a discussion of the support roles and possible sub-tasking assignments are outlined below for EPA and USACE. Although EPA may sub-mission assign to USACE the tasks identified in Section V.B.2 below, the decisions on which sub-tasks will be issued may be based on the type of CBRN agent involved, the size and scale of the incident, the amount and kind of debris generated and whether the lead ESF has the expertise, capability and resources to adequately manage the mission without support agency involvement.

1. Environmental Protection Agency

ESF-3 may sub-task activities to EPA that may include, but are not limited to, the following:

- a. Provide technical assistance during the assessment and stabilization of damaged and potentially contaminated infrastructure;
- b. Provide technical assistance and consultation on demolition strategies.

2. U.S. Army Corps of Engineers

ESF-10 may sub-task activities to USACE that may include, but are not limited to, the following:

- a. Storm Water Management: Control and management of contaminated runoff and/or wastewater;
- b. Contaminated Debris Characterization: Sampling and analysis of contaminated debris for waste characterization;
- c. Contaminated Debris Removal and Staging: Removal of contaminated debris from the blast zone to a staging site;
- d. Contaminated Debris Treatment, Transportation, and Disposal: Treatment, transportation and disposal of contaminated debris; and
- e. Contaminated Soil: Removal of highly contaminated soils under the debris zone to reduce potential exposure or continued impact to the subsurface.

VI. COORDINATION PROCEDURES

A. Management of a contaminated debris mission calls for close coordination and collaboration among EPA, USACE and DHS/FEMA, as well as other Federal, state and local agencies. This coordination is expected to occur in two phases. The first phase consists of interagency planning and preparedness activities prior to an event. The second phase consists of interagency coordination of response and recovery activities during an event.

B. Coordination during the pre-event phase is expected to be accomplished through the Emergency Support Function Leaders Group (ESFLG). ESF leaders plan to assign staff to work on contaminated debris issues and develop integrated plans and procedures for the contaminated debris mission.

C. Coordination during an actual contaminated debris event is expected to occur at the field, regional and national level. Field, regional and national coordination procedures may be outlined further in a Pre-Scripted Mission Assignment(s), Standard Operating Procedure, contaminated debris planning documents, or coordination documents. These documents are expected to incorporate the roles and responsibilities outlined in this MOU. Field coordination is expected to be consistent with the National Incident Management System (NIMS) and the Incident Command System. Such field coordination may involve the co-location of USACE and EPA response infrastructure within an Incident Command Post, and the exchange of Liaison Officers (LOs) and Technical Specialists (TS) at the Incident Command Post, Recovery and Area Field Offices, and Joint Field Office levels. In addition, further coordination of the contaminated debris mission is expected to occur through the establishment of a Contaminated Debris Task Force (CDTF) within the JFO during an actual incident. When activated, the CDTF provides technical and management advisory support to the Federal Coordinating Officer and the JFO leadership. National level coordination is expected to occur through the ESFLG and the senior agency officials or LOs assigned to the JFO or National Response Coordination Center.

VII. POINTS OF CONTACT

The following are the points of contact for each Party:

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VIII. FUNDING AND RESOURCES

As required by the Antideficiency Act, 31 U.S.C. 1341 and 1342, all commitments made by EPA, DHS/FEMA, and USACE in this MOU are subject to the availability of appropriated funds and budget priorities. Nothing in this MOU, in and of itself, obligates EPA, DHS/FEMA or USACE to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations. Any transaction involving transfers of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

IX. NO PRIVATE RIGHT OF ACTION

This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against EPA, DHS/FEMA or USACE, their officers or employees, or any other person. This MOU does not direct or apply to any person outside of EPA, DHS/FEMA and USACE.

X. EFFECTIVE DATE

The term of this MOU is effective upon signature by all Parties.

XI. MODIFICATION

This MOU may be modified upon the mutual written consent of the Parties.

XII. TERMINATION

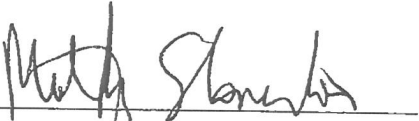
The terms of this MOU, as modified with the consent of all Parties, will remain in effect until terminated. Any Party may, upon 60 days written notice to the other Parties, terminate their involvement in this MOU.

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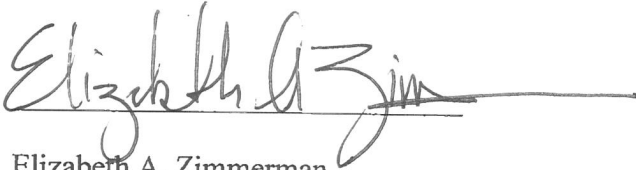
XIII. SIGNATURES



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