

**MEMORANDUM OF UNDERSTANDING
TO COORDINATE CRIMINAL INVESTIGATION, ENFORCEMENT,
AND ENVIRONMENTAL RESPONSE**

Authority

1. This Memorandum of Understanding (MOU) is consistent with and is entered into to facilitate activities undertaken pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan (the National Contingency Plan or NCP), 40 CFR Part 300 (including § 300.160 (c)); Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. §9605; and Section 311 of the Clean Water Act (CWA), as amended, 33 U.S.C. §1321, and other authorities. This MOU is also consistent with and does not supersede any other interagency agreements, including but not limited to, the United States Government Interagency Domestic Terrorism Concept of Operations Plan (CONPLAN).¹

Purpose

2. The signatory federal agencies and departments enter into this MOU setting out common priorities and actions to coordinate the activities of federal law enforcement, criminal investigation, and other federal investigation and law enforcement personnel (collectively referred to as investigative/enforcement personnel) and environmental responders in situations in which both investigative/enforcement personnel and environmental responders are likely to be involved. The principles set forth in this MOU will apply regardless of whether investigative/enforcement personnel or environmental responders are on the scene first.
3. The signatory federal agencies and departments acknowledge that, where consistent with applicable requirements and guidelines of the signatory agencies, cooperation and coordination among environmental responders and investigative/enforcement personnel at scenes to which they both respond can positively benefit the overall response and investigative efforts. The signatories also affirm their collective interest in ensuring that the environmental responders and investigative/enforcement personnel are able to discharge their respective duties, consistent with the priorities and procedures identified in this MOU and the authorities outlined in paragraph one.
4. Nothing herein shall preclude signatory agencies or departments from entering into more detailed agreements or understandings with other federal agencies or departments or state or local governments. Signatory agencies and departments agree to incorporate this MOU, as appropriate, into Area Contingency Plans (ACPs), Incident Command System/Unified

¹ Electronic copies of this document can be obtained from <http://www.fema.gov/r-n-r/conplan/> or <http://www.fbi.gov/publications/conplan/conplan.pdf>.

Command (ICS/UC) or other response management system documents, guidance, and training.

Protection of the Public is the Highest Priority

5. The signatory agencies and departments acknowledge and agree that the protection of public health and safety is their highest priority, as provided in the authorities cited in paragraph one. While every public action involves a balancing of competing interests and must be viewed in context, the signatory agencies and departments agree that, in the event of a conflict which cannot otherwise be reconciled between collection of forensic evidence and law enforcement, on the one hand, and emergency and environmental site response (including securing the scene from criminal hazards) on the other, protection of public health and safety is paramount.

Reciprocal Notice of Agencies Present at the Site

6. In any situation in which, based upon the facts available, both investigative/enforcement personnel and environmental responders are likely to be involved, both the investigative/enforcement personnel and the environmental responders shall, at the earliest appropriate time, but preferably no later than arrival at the site, advise each other of their presence.
7. Before initiating any on-scene criminal investigative activities for an incident where environmental response activities are already underway, the investigative/enforcement personnel shall report to the incident command post and provide notice of their presence to the Federal On-Scene Coordinator (FOSC) and/or Local Incident Commander. This obligation does not apply to investigative/enforcement personnel engaged in an undercover capacity (e.g., DEA-led clandestine drug lab raids, or where the FOSC or any other federal environmental responder is the subject of investigation).

Protection of Response and Law Enforcement Personnel

8. The signatory agencies and departments acknowledge and agree that the health and safety of both environmental response and investigative/enforcement personnel is imperative to assure full and uninterrupted achievement of each agency's and department's responsibilities. Human health and safety requirements for operations involving hazardous substances exist independent of this MOU. The signatory agencies and departments acknowledge their responsibility to ensure that all personnel on-site are appropriately qualified under such requirements. In instances in which investigative/enforcement personnel elect not to collect evidence, the FOSC or his/her designee may assist the investigative/enforcement effort by collecting and/or preserving evidence as requested and where practicable.

General Provisions

9. To meet the requirements and needs of environmental response and investigation/law enforcement, the signatory agencies and departments agree to coordinate on-scene investigative efforts and response, when possible. Additionally, mutual exchange of information on the hazards, in-place engineering controls, administrative controls, and personal protective equipment shall be addressed.
10. The requirements of this MOU shall remain in effect as long as both the environmental response and criminal investigative case remain open. In the event that the case has been closed and subsequently re-opened, the reciprocal notice requirements shall be re-established in accordance with this MOU.
11. Nothing in this MOU changes existing legal requirements, plans, or agreements, including the requirement that the release or spill of hazardous substances, pollutants, or contaminants be reported to the National Response Center at 800-424-8802.
12. This MOU shall not be used to obligate or commit funds or require the transfer of funds not otherwise required by applicable requirements or guidelines.
13. Nothing in this MOU creates any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies or departments, its officers, or any person.
14. An agency or department that elects to enter into the MOU must enter into the entire agreement; it cannot enter into only selected provisions. Each signatory agency or department may, however, sign the MOU on a separate signature page in a form and manner consistent with its own practices and requirements. This MOU becomes effective as to each federal agency or department entering into it upon receipt by that agency or department of a copy of the executed signature pages of two or more federal agencies or departments. This MOU will remain in effect indefinitely unless terminated upon the written mutual consent of all parties. Any party may withdraw from the MOU upon 60 days advance written notice to all other parties. The text of the MOU can be modified only upon the written mutual consent of all parties. All modifications must be attached to the MOU.

**SIGNATURE PAGE FOR THE
MEMORANDUM OF UNDERSTANDING
TO COORDINATE CRIMINAL INVESTIGATION,
ENFORCEMENT, AND ENVIRONMENTAL RESPONSE**

U.S. DEPARTMENT OF JUSTICE

John A. McCroff Date: *April 8, 2003*
Title: *Attorney General*