
40 C.F.R. § 300.305

Phase II—Preliminary assessment and initiation of action.

- (a) The OSC is responsible for promptly initiating a preliminary assessment.
- (b) The preliminary assessment shall be conducted using available information, supplemented where necessary and possible by an on-scene inspection. The OSC shall undertake actions to:
 - (1) Evaluate the magnitude and severity of the discharge or threat to public health or welfare of the United States or the environment;
 - (2) Assess the feasibility of removal; and
 - (3) To the extent practicable, identify potentially responsible parties.
- (c) Where practicable, the framework for the response management structure is a system (e.g., a unified command system), that brings together the functions of the federal government, the state government, and the responsible party to achieve an effective and efficient response, where the OSC maintains authority.
- (d) Except in a case when the OSC is required to direct the response to a discharge that may pose a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the OSC may allow the responsible party to voluntarily and promptly perform removal actions, provided the OSC determines such actions will ensure an effective and immediate removal of the discharge or mitigation or prevention of a substantial threat of a discharge. If the responsible party does conduct the removal, the OSC shall ensure adequate surveillance over whatever actions are initiated. If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC should, to the extent practicable under the circumstances, so advise the responsible party. If the responsible party does not respond properly the OSC shall take appropriate response actions and should notify the responsible party of the potential liability for federal response costs incurred by the OSC pursuant to the OPA and CWA. Where practicable, continuing efforts should be made to encourage response by responsible parties.

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