

1994 MOU: Sec. of Interior, Sec. of Transportation, and Administrator of the EPA on EO 12777

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(d)(3), and 2(e)(3) of E.O. 12777 assigned to DOI spill prevention 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 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 USC 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 nontransportation-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 deepwater 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 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 this purpose of considering exceptions or modifications to this agreement. This MOU may be terminated only with the mutual consent of all parties.

Bruce Babbitt, Secretary of the Interior, November 8, 1993

Carol M. Browner, Administrator, Environmental Protection Agency, February 3, 1994

Federico Pena, Secretary of Transportation, December 14, 1993