

## OSC Personal Liability under the FTCA

In 1988, the FTCA was amended to provide that (1) the FTCA is the exclusive vehicle for common law tort claims arising from actions taken by federal employees within the scope of their employment, and (2) the OSC will face possible personal liability for injury or death of a volunteer only where the OSC is not acting within the scope of their office or employment. This amendment did not change the fact that the OSC is not free to knowingly violate procedures required by law, but a mistake in implementing the procedures does not in and of itself create personal liability. An OSC is personally only where they acted in a willfully negligent manner, outside the bounds of the scope of employment.

In accordance with the guidelines of the NCP, the OSC is responsible to provide for the health and safety of all workers, and to ensure that all spill cleanup personnel are qualified to perform assigned tasks.



## OSHA Hazardous Waste Operations and Emergency Response Standards

OSHA regulations require specific initial training of workers prior to their engagement in hazardous waste operations or emergency response that could cause exposure to safety and health hazards. Persons completing appropriate training are to be given written certification; those who are certified and have no proper experience are prohibited from engaging in these operations. The level of training may vary with the worker's job function and responsibilities.

Abbreviated training is acceptable in some circumstances.

## **Oil Spill Response** in the Region IV Coastal Zone, contact the U.S. Coast Guard Marine Safety Units or Sectors

Sector NC SC 252-247-4501	Sector Charleston, SC 843-724-7600
MSU Savannah, GA 912-652-4353	Sec Jacksonville, FL 904-564-7500
Sector Miami, FL 305-732-0160	Sector St. Pete, FL 813-228-2189
Sector Mobile, AL 251-441-5720	

In the Region IV Inland Zone,  
contact the U.S. Environmental  
Protection Agency:  
404-562-8700

Inland Zone U.S. Coast Guard Offices are:	
MSU Huntington, WV 800-253-7465	Sector Ohio Valley 800-253-7465
MSU Paducah, KY 502-442-1621	Sector Lower Miss 901-544-3912

State Pollution Response Contacts are:  
North Carolina  
919-733-3867

Georgia  
404-656-4300

Alabama  
334-242-4378

Tennessee  
800-258-3300

South Carolina  
888-481-0125

Florida  
850-413-9911

Mississippi  
800-222-6362

Kentucky  
800-928-2380

# Use of Volunteers at Oil Spill Cleanup



Document prepared by: Region IV  
Regional Response Team  
RRT IV Co-chairs:  
U.S. Coast Guard 305-536-5651  
U.S. EPA 404-562-8721

For more informational pamphlets concerning various  
subjects go to the RRT IV Web Site at [www.nrt.org](http://www.nrt.org)

---

## **Oil or Chemical Spill Notification**

Call the National Response Center at  
800-424-8802

---

## The Use of Volunteers

Contamination of waters, beaches, shorelines, and wildlife after oil spills is the subject of increasing public concern. In many areas, members of the local communities have demonstrated their concern by arriving at the sites of oil spills and volunteering to participate in efforts to clean up affected areas. The volunteers often arrive in large numbers and are usually untrained in oil spill response and clean up.

The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) specifies that a designated federal On-Scene Coordinator (OSC) coordinate and direct federal activities at the site of certain response and removal actions, including the way in which volunteers will be used.



### Recommended Use of Gratuitous Workers and Volunteers

The NCP requires the OSC to identify uses of volunteers during response actions in ways which should generally not involve physical removal or remedial activities. Suggested alternative duties are as follows:

- Wildlife Cleanup
- Beach Patrol / Notification of Injured Wildlife
- Construction
- Crowd Control
- Administrative / Logistical Work
- Community Liaison
- Public Relations

## National Contingency Plan Provisions

The NCP establishes that an OSC is responsible for directing or coordinating hazardous waste or emergency response operations in accordance with the plan. While the NCP only specifically addresses the use of “volunteers”, in section 3000.185c, in carrying out the plan, it can be interpreted to provide general direction and guidance for an OSC’s receipt and use of gratuitous services.

Prior to making any decision regarding gratuitous workers, the OSC must carefully clarify that to the extent to which people arriving at the site of an oil cleanup are being directed or performing tasks, no compensation will be paid, nor should it be expected. The OSC should properly record this agreement. The following sections of the NCP are applicable and provide some guidance in this regard:

- Section 300.120: On-Scene Coordinators and Remedial Project Managers: General Responsibilities;
- Section 300.150: Worker Health and Safety; and
- Section 300.185: Non-governmental Participation.

### Volunteer versus Gratuitous Services

The expectation of compensation is the distinguishing factor between “volunteer services” and “gratuitous service.” A gratuitous service is provided without any expectation of compensation, while a volunteer service may be offered with the expectation of some type of payment in return.

Federal law contains two important prohibitions regarding governmental use of voluntary services. First, it bans government officers and employees from accepting voluntary services for the government except for certain emergencies. Second, it bans government officers and employees from employing personal services in excess of that authorized by law defined under 31 US Code 1342. The purpose of the statutory prohibition is to avoid situations that might

generate future claims for compensation which might be in excess of a Federal agency’s funds.



Neither the National Contingency Plan (NCP) nor CERCLA provide authority to accept volunteer services. As such, an OSC can accept “volunteer” services only to the extent that the services are provided by another agency possessing the statutory authority to do so, or to the extent that the services are determined to be gratuitous. In the latter situation, the OSC is free to accept such services since there is no statutory prohibition which precludes this use. The distinction between individuals providing volunteer services and those providing gratuitous services is important primarily in determining the type of governmental liability of injury to the individuals and accountability for harms caused by the individuals.

### Liability for Injury to Volunteers

Where the OSC is directing, using, or controlling volunteers, governmental liability for the health and safety of the volunteers is contingent upon such issues as the level of supervision and control exercised by the OSC over the activities of the volunteer, and the status of the individual as either a volunteer or a gratuitous provider of services. Governmental liability may arise under two separate authorities, the Federal Employees Compensation Act (FECA), or the Federal Tort Claims Act (FTCA). Personal liability against the OSC may be asserted under theories of common law or for violations of federal statutes under the Constitution of the United States. The OSC may face personal liability to the volunteer where the harm or injury was caused by OSC actions conducted outside the scope of authority.