

have been or are likely to have been adversely affected by the discharge or release;

(3) The quantity and concentration of the discharged oil or released hazardous substance is sufficient to potentially cause injury, as that term is used in this part, to those natural resources;

(4) Data sufficient to pursue an assessment are readily available or likely to be obtained at reasonable cost; and

(5) Response actions, if any, carried out or planned do not or will not sufficiently remedy the injury to natural resources without further action.

(f) *Coordination.* (1) In a situation where response activity is planned or underway at a particular site, assessment activity shall be coordinated with the lead agency consistent with the NCP.

(2) Whenever, as part of a response action under the NCP, a preliminary assessment or an OSC Report is to be, or has been, prepared for the site, the authorized official should consult with the lead agency under the NCP, as necessary, and to the extent possible use information or materials gathered for the preliminary assessment or OSC Report, unless doing so would unnecessarily delay the preassessment screen.

(3) Where a preliminary assessment or an OSC Report does not exist or does not contain the information described in this section, that additional information may be gathered.

(4) If the natural resource trustee already has a process similar to the preassessment screen, and the requirements of the preassessment screen can be satisfied by that process, the processes may be combined to avoid duplication.

(g) *Preassessment phase costs.* (1) The following categories of reasonable and necessary costs may be incurred in the preassessment phase of the damage assessment:

(i) Release detection and identification costs;

(ii) Trustee identification and notification costs;

(iii) Potentially injured resource identification costs;

(iv) Initial sampling, data collection, and evaluation costs;

(v) Site characterization and preassessment screen costs; and

(vi) Any other preassessment costs for activities authorized by §§ 11.20 through 11.25 of this part.

(2) The reasonable and necessary costs for these categories shall be limited to those costs incurred by the authorized official for, and specifically allocable to, site-specific efforts taken during the preassessment phase for assessment of damages to natural resources for which the agency or Indian tribe is acting as trustee. Such costs shall be supported by appropriate records and documentation and shall not reflect regular activities performed by the agency or Indian tribe in management of the natural resource. Activities undertaken as part of the preassessment phase shall be taken in a manner that is cost-effective, as that phrase is used in this part.

[51 FR 27725, Aug. 1, 1986, as amended at 53 FR 5173, Feb. 22, 1988]

**§ 11.24 Preassessment screen—information on the site.**

(a) *Information on the site and on the discharge or release.* The authorized official shall obtain and review readily available information concerning:

(1) The time, quantity, duration, and frequency of the discharge or release;

(2) The name of the hazardous substance, as provided for in Table 302.4—List of Hazardous Substances and Reportable Quantities, 40 CFR 302.4;

(3) The history of the current and past use of the site identified as the source of the discharge of oil or release of a hazardous substance;

(4) Relevant operations occurring at or near the site;

(5) Additional oil or hazardous substances potentially discharged or released from the site; and

(6) Potentially responsible parties.

(b) *Damages excluded from liability under CERCLA.* (1) The authorized official shall determine whether the damages:

(i) Resulting from the discharge or release were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement or other comparable environmental analysis, that the decision to grant the permit

## § 11.25

or license authorizes such commitment of natural resources, and that the facility or project was otherwise operating within the terms of its permit or license, so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe; or

(ii) And the release of a hazardous substance from which such damages resulted have occurred wholly before enactment of CERCLA; or

(iii) Resulted from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135-135k; or

(iv) Resulted from any other federally permitted release, as defined in section 101(10) of CERCLA; or

(v) Resulting from the release or threatened release of recycled oil from a service station dealer described in section 107(a)(3) or (4) of CERCLA if such recycled oil is not mixed with any other hazardous substance and is stored, treated, transported or otherwise managed in compliance with regulations or standards promulgated pursuant to section 3014 of the Solid Waste Disposal Act and other applicable authorities.

(2) An assessment under this part shall not be continued for potential injuries meeting one or more of the criteria described in paragraph (b)(1) of this section, which are exceptions to liability provided in sections 107(f), (i), and (j) and 114(c) of CERCLA.

(c) *Damages excluded from liability under the CWA.* (1) The authorized official shall determine whether the discharge meets one or more of the exclusions provided in section 311 (a)(2) or (b)(3) of the CWA.

(2) An assessment under this part shall not be continued for potential injuries from discharges meeting one or more of the CWA exclusions provided for in paragraph (c)(1) of this section.

[51 FR 27725, Aug. 1, 1986, as amended at 52 FR 9095, Mar. 20, 1987; 53 FR 5173, Feb. 22, 1988]

## 43 CFR Subtitle A (10-1-03 Edition)

### § 11.25 Preassessment screen—preliminary identification of resources potentially at risk.

(a) *Preliminary identification of pathways.* (1) The authorized official shall make a preliminary identification of potential exposure pathways to facilitate identification of resources at risk.

(2) Factors to be considered in this determination should include, as appropriate, the circumstances of the discharge or release, the characteristics of the terrain or body of water involved, weather conditions, and the known physical, chemical, and toxicological properties of the oil or hazardous substance.

(3) Pathways to be considered shall include, as appropriate, direct contact, surface water, ground water, air, food chains, and particulate movement.

(b) *Exposed areas.* An estimate of areas where exposure or effects may have occurred or are likely to occur shall be made. This estimate shall identify:

(1) Areas where it has been or can be observed that the oil or hazardous substance has spread;

(2) Areas to which the oil or hazardous substance has likely spread through pathways; and

(3) Areas of indirect effect, where no oil or hazardous substance has spread, but where biological populations may have been affected as a result of animals moving into or through the site.

(c) *Exposed water estimates.* The area of ground water or surface water that may be or has been exposed may be estimated by using the methods described in appendix I of this part.

(d) *Estimates of concentrations.* An estimate of the concentrations of oil or a hazardous substance in those areas of potential exposure shall be developed.

(e) *Potentially affected resources.* (1) Based upon the estimate of the areas of potential exposure, and the estimate of concentrations in those areas, the authorized official shall identify natural resources for which he may assert trusteeship that are potentially affected by the discharge or release. This preliminary identification should be used to direct further investigations, but it is not intended to preclude consideration of other resources later found to be affected.