

TECHNICAL
FIELD GUIDANCE

**SPILL REPORTING AND INITIAL
NOTIFICATION REQUIREMENTS**

NOTES

Spill Reporting and Initial Notification Requirements

GUIDANCE SUMMARY AT-A-GLANCE

- Reporting spills is a crucial first step in the response process.
- You should understand the spill reporting requirements to be able to inform the spillers of their responsibilities.
- Several different state, local, and federal laws and regulations require spillers to report petroleum and hazardous materials spills.
- The state and federal reporting requirements are summarized in Exhibit 1.1-1.
- Petroleum spills must be reported to DEC unless they meet all of the following criteria:
 - The spill is known to be less than 5 gallons; and
 - The spill is contained and under the control of the spiller; and
 - The spill has not and will not reach the State's water or any land; and
 - The spill is cleaned up within 2 hours of discovery.

All reportable petroleum spills and most hazardous materials spills must be reported to DEC hotline (1-800-457-7362) within New York State; and (1-518 457-7362) from outside New York State. For spills not deemed reportable, it is strongly recommended that the facts concerning the incident be documented by the spiller and a record maintained for one year.

- Inform the spiller to report the spill to other federal or local authorities, if required.
- Report yourself those spills for which you are unable to locate the responsible spiller.
- Make note of other agencies' emergency response telephone numbers in case you require their on-scene assistance, or if the response is their responsibility and not BSPR's.

NOTES

1.1.1 Notification Requirements for Oil Spills and Hazardous Material Spills

Spillers are required under state law and under certain local and federal laws to report spills. These various requirements, summarized in Exhibit 1.1-1, often overlap; that is, a particular spill might be required to be reported under several laws or regulations and to several authorities. Under state law, all petroleum and most hazardous material spills must be reported to DEC Hotline (1-800-457-7362), within New York State, and to 1-518-457-7362 from outside New York State. Prompt reporting by spillers allows for a quick response, which may reduce the likelihood of any adverse impact to human health and the environment. You will often have to inform spillers of their responsibilities.

Although the spiller is responsible for reporting spills, other persons with knowledge of a spill, leak, or discharge is required to report the incident (see Appendices A and B). You will often have to inform spillers of their responsibilities. You may also have to report spills yourself in situations where the spiller is not known or cannot be located. However, it is the legal responsibility of the spiller to report spills to both state and other authorities.

BSPR personnel also are responsible for notifying other response agencies when the expertise or assistance of other agencies is needed. For example, the local fire department should be notified of spills that pose a potential explosion and/or fire hazard. If such a hazard is detected and the fire department has not been notified, call for their assistance immediately. Fire departments are trained and equipped to respond to these situations; you should not proceed with your response until the fire/safety hazard is eliminated. For more information on interagency coordination in emergency situations see Part 1, Section 3, Emergency Response.

Another important responsibility is notifying health department officials when a drinking water supply is found to be contaminated as a result of a spill. It will be the health department's responsibility to advise you on the health risk associated with any contamination.

Exhibits 1.1-1 and 1.1-2 list the state and federal requirements to report petroleum and hazardous substance spills, respectively. The charts describe the type of material covered, the applicable act or regulation, the agency that must be notified, what must be reported, and the person responsible for reporting. New York state also has a emergency notification network for spill situations (e.g., major chemical releases) that escalate beyond the capabilities of local and regional response agencies/authorities to provide adequate response. The New York State Emergency Management Office (SEMO) coordinates emergency response activities among local, state, and federal government organizations in these cases.

Exhibit 1.1-1

State and Federal Reporting Requirements for Petroleum Spills, Leaks, and Discharges

Materials Covered	Act or Regulation	Agency to Notify	What Must Be Reported and When	Who Must Report
Petroleum from any source	Navigation Law Article 12; 17 NYCRR 32.3 and 32.4	DEC Hotline 1-800-457-7362	<p>The notification of a discharge must be immediate, but in no case later than two hours after discharge.</p> <ol style="list-style-type: none"> 1. Name of person making report and his relationship to any person which might be responsible for causing the discharge. 2. Time and date of discharge. 3. Probable source of discharge. 4. The location of the discharge, both geographic and with respect to bodies of water. 5. Type of petroleum discharges. 6. Possible health or fire hazards resulting from the discharge. 7. Amount of petroleum discharged. 8. All actions that are being taken to clean up and remove the discharge. 9. The personnel presently on the scene. 10. Other government agencies that have been or will be notified. 	Any person causing discharge of petroleum. Owner or person in actual or constructive control must notify DEC unless that person has adequate assurance that such notice has already been given.
All aboveground petroleum and underground storage facilities with a combined storage capacity of over 1100 gallons.	ECL §17-1007; 6 NYCRR §613.8	DEC Hotline 1-800-457-7362	<ol style="list-style-type: none"> 1. Report spill incident within two hours of discovery. 2. Also when results of any inventory, record, test, or inspection shows a facility is leaking, that fact must be reported within two hours of discovery. 	Any person with knowledge of a spill, leak, or discharge.
Petroleum contaminated with PCB.	Chemical Bulk Storage Act 6 NYCRR Parts 595, 596, 597	DEC Hotline 1-800-457-7362	Releases of a reportable quantity of PCB oil.	Owner or person in actual or constructive possession or control of the substance, or a person in contractual relationship, who inspects, tests, or repairs for owner.

Exhibit 1.1-1

**State and Federal Reporting Requirements for Petroleum Spills, Leaks, and Discharges
(continued)**

Materials Covered	Act or Regulation	Agency to Notify	What Must Be Reported and When	Who Must Report
Any liquid (petroleum included) that if released would be likely to pollute lands or waters of the state.	ECL §17-1743	DEC Hotline 1-800-457-7362	Immediate notification that a spill, release, or discharge of any amount has occurred. Owner or person in actual or constructive possession or control of more than 1,100 gallons of the liquid.	
Petroleum Discharge in violation of §311(b)(3) of the Clean Water Act	40 CFR §110.10 (Clean Water Act)	<ol style="list-style-type: none"> 1. National Response Center (NRC) 1-800-424-8802. 2. If not possible to notify NRC, notify Coast Guard or predesignated on-scene coordinator. 3. If not possible to notify either 1 or 2, reports may be made immediately to nearest Coast Guard units, provided NRC notified as soon as possible. 	<p>Immediate notification as soon as there is knowledge of an oil discharge that violates water quality standards or causes sheen on navigable waters.</p> <p>Procedures for notice are set forth in 33 CFR Part 153, Subpart B, and in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300, Subpart E.</p>	Person in charge of vessel or on-shore or off-shore facility.
Petroleum, petroleum by-products or other dangerous liquid commodities that may create a hazardous or toxic condition spilled into navigable waters.	33 CFR 126.29 (Ports and Waters Safety Act)	Captain of the Port or District Commander	As soon as discharge occurs, owner or master of vessel must immediately report that a discharge has occurred.	Owner or master of vessel or owner or operator of the facility at which the discharge occurred.

Exhibit 1.1-1

**State and Federal Reporting Requirements for Petroleum Spills, Leaks, and Discharges
(continued)**

Materials Covered	Act or Regulation	Agency to Notify	What Must Be Reported and When	Who Must Report
Petroleum or hazardous substance from a vessel, on-shore or off-shore facility in violation of §311(b)(3) of the Clean Water Act.	33 CFR 153.203 (Clean Water Act)	<ol style="list-style-type: none"> 1. NRC U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593; 1-800-424-8802. 2. Where direct reporting not practicable, reports may be made to the Coast Guard (District Offices), the 3rd and 9th district of the EPA regional office at 26 Federal Plaza, NY, NY 10278; 1-201-548-8730. 3. Where none of the above is possible, may contact nearest Coast Guard unit, provided NRC notified as soon as possible. 	Any discharger shall immediately notify the NRC of such discharge.	Person in charge of vessel or facility.

Exhibit 1.1-2

State and Federal Reporting Requirements for Hazardous Substance Spills, Leaks, and Discharges

Materials Covered	Act or Regulation	Agency to Notify	What Must Be Reported and When	Who Must Report
Any hazardous substance pursuant to Article 37. Does not include petroleum.	Chemical Bulk Storage Act 6 NYCRR Parts 595, 596, 597; ECL 40-0113(d)	DEC Hotline 1-800-457-7362	Releases of a reportable quantity of a hazardous substance.	Owner or person in actual or constructive possession or control of the substance, or a person in contractual relationship, who inspects, tests, or repairs for owner.
Hazardous materials or substances as defined in 49 CFR §171.8 that are transported. (See federal reporting requirements.)	Transportation Law 14(f); 17 NYCRR 507.4(b)	Local fire department or police department or local municipality	<p>Immediate notification must be given of incident in which any of the following occurs as a direct result of a spill of hazardous materials:</p> <ol style="list-style-type: none"> 1. Person is killed. 2. Person receives injuries requiring hospitalization. 3. Estimated damage to carrier or other property exceeds \$50,000. 4. Fire, breakage, spillage, or suspected contamination due to radioactive materials. 5. Fire, breakage, spillage, or suspected contamination involving etiologic agents. 6. Situation is such that, in the judgment of the carrier, a continuing danger to life or property exists at the scene of the incident. 	All persons and carriers engaged in the transportation of hazardous materials.

Exhibit 1.1-2
State and Federal Reporting Requirements for Hazardous Substance Spills, Leaks, and Discharges
(continued)

Materials Covered	Act or Regulation	Agency to Notify	What Must Be Reported and When	Who Must Report
Hazardous materials (wastes included) that are transported, whose carrier is involved in an accident.	Department of Transportation Regulations 49 CFR 171.15; 17 NYCRR Part 924; 17 NYCRR Part 507	<ol style="list-style-type: none"> 1. U.S. Department of Transportation 1-800-424-8802 2. DEC Hotline 1-800-457-7362 3. Rail Carrier <u>On-Duty</u> 518-457-1046 <u>Off-Duty</u> 518-457-6164 4. Notify local police or fire department. 	<p>Notice should be given by telephone at the earliest practicable moment and should include:</p> <ol style="list-style-type: none"> 1. Name of reporter. 2. Name and address of carrier represented by reporter. 3. Phone number where reporter can be contacted. 4. Date, time, and location of incident. 5. The extent of injuries, if any. 6. Classification, name and quantity of hazardous materials involved, if available. 7. Type of incident and nature of hazardous material involved and whether a continuing danger to life exists at scene. 8. Each carrier making this report must also make the report required by §171.16. 	<p>Each carrier that transports hazardous materials involves in an accident that causes any of the following as a direct result:</p> <ol style="list-style-type: none"> 1. A person is killed 2. A person receives injuries requiring hospitalization 3. Estimated damage to carrier or other property exceeds \$50,000 4. Fire, breakage, spillage, suspected or otherwise involving radioactive material. 5. Fire, breakage, spillage, suspected contamination involving etiologic agents. 6. Situation is such that carrier thinks it should be reported in accordance with paragraph b.

Exhibit 1.1-2
State and Federal Reporting Requirements for Hazardous Substance Spills, Leaks, and Discharges
(continued)

Materials Covered	Act or Regulation	Agency to Notify	What Must Be Reported and When	Who Must Report
Reportable quantity of a hazardous substance into navigable waters or adjoining shorelines. Substances are listed in 40 CFR 302.4.	Department of Transportation Regulations 49 CFR §171.16 as authorized by the Hazardous Materials Transportation Act	U.S. Coast Guard National Response Center (NRC), 1-800-424-8802 or 1-202-267-2675	As soon as person in charge becomes aware of a spill incident, he must notify NRC and provide the following information: <ol style="list-style-type: none"> 1. The information required by 49 CFR §171.15 (see above). 2. Name of shipper of hazardous substance. 3. Quantity of hazardous substance discharged, if known. 4. If person in charge is incapacitated, carrier shall make the notification. 5. Estimate of quantity of hazardous substance removed from the scene and the manner of disposition of any unremoved hazardous substance shall be entered in Part (H) of the report required by 49 CFR 171.16 (see above). 	Person in charge of aircraft, vessel, transport vehicle, or facility. Must inform NRC directly, or indirectly through carrier.
Reportable quantity of a hazardous substance from vessel, on-shore or off-shore facility. Substances and requirements specified in 40 CFR §117.3.	40 CFR §117.21 as authorized under the FWPCA	NRC 1-800-424-8802. If not practicable report may be made to the Coast Guard (3rd or 9th Districts) District Offices or to EPA, designated On-Scene Coordinator, Region II, 26 Federal Plaza, NY, NY 10278; 1-201-548-8730	Immediate notification is required.	Person in charge of vessel, or on-shore or off-shore facility

**Exhibit 1.1-2
State and Federal Reporting Requirements for Hazardous Substance Spills, Leaks, and Discharges
(continued)**

Materials Covered	Act or Regulation	Agency to Notify	What Must Be Reported and When	Who Must Report
<p>Facilities where a hazardous chemical is produced, used, or stored, and there is a reportable quantity of any extremely hazardous substance as set out in Appendix A to 40 CFR 355 or a CERCLA hazardous substance as specified in 40 CFR 302.4. (This section does not apply to a release that does not go beyond the facility, that emanates from a facility that is federally permitted, is continuous as defined under §103(f) of CERCLA or to any release exempt from CERCLA §103(a) reporting under §101(22) of CERCLA.)</p>	<p>40 CFR 355.40 (SARA)</p> <p>Releases of CERCLA Hazardous Substances are subject to release reporting requirements of CERCLA §103, codified at 40 CFR Part 302, in addition to being subject to the requirements of this Part.</p>	<p>Community emergency coordinator for the local emergency planning committee of any area likely to be affected and the State Emergency Response Commission of any state likely to be affected by the release. If there is no local emergency planning commission notification shall be made to relevant local emergency response personnel.</p>	<p>Immediately notify agencies at left and provide the following information when available:</p> <ol style="list-style-type: none"> 1. Chemical name or identity of any substance involved in the release. 2. Indication of whether the substance is an extremely hazardous substance. 3. An estimate of the quantity released. 4. Time and duration of release. 5. Medium or media into which the release occurred. 6. Known health risks associated with emergency and where appropriate advice regarding medical attention for those exposed. 7. Proper precautions/actions that should be taken, including evacuation. 8. Names and telephone numbers of person to be contacted for further information. <p>As soon as practicable after release, followup notification by providing the following information:</p> <ol style="list-style-type: none"> 1. Actions taken to respond to and contain the release. 2. Health risks. 3. Advice on medical attention for exposed individuals. 	<p>Owner or operator of facility</p>

Exhibit 1.1-2
State and Federal Reporting Requirements for Hazardous Substance Spills, Leaks, and Discharges
(continued)

Materials Covered	Act or Regulation	Agency to Notify	What Must Be Reported and When	Who Must Report
Hazardous liquids transported in pipelines, a release of which results in any circumstances as set out in 195.50(a) through (f). Also any incident that results in circumstances listed in 195.52(g).	49 CFR 195.50, 195.52 and 195.54 (Hazardous Liquid Pipeline Safety Act).	NRC, 1-800-424-8802	<p>Notice must be given at the earliest practicable moment and the following information provided:</p> <ol style="list-style-type: none"> 1. Name and address of the operator. 2. Name and telephone number of the reporter. 3. Location of the failure. 4. The time of the failure. 5. The fatalities and personal injuries, if any. 6. All other significant facts known by the operator that are relevant to the cause of the failure or extent of the damages. 	Operator of system.
Hazardous wastes in transport	40 CFR §263.30(a) (RCRA)	<ol style="list-style-type: none"> 1. Local authorities 2. If required by 49 CFR 171.15, notify the NRC at 1-800-424-8802 or 1-202-426-2675 3. Report in writing to Director of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590 	<p>Notification must be immediate.</p> <p>For discharge of hazardous waste by air, rail, highway, or water, the transporter must:</p> <ol style="list-style-type: none"> 1. Give notice as in 49 CFR 161.15 (if applicable). 2. Report in writing as in 49 CFR 171.16. <p>Wastes transporter (bulk shipment) must give same notice as required by 33 CFR 153.20.</p>	Transporter by air, rail, highway, or water.

Exhibit 1.1-2
State and Federal Reporting Requirements for Hazardous Substance Spills, Leaks, and Discharges
(continued)

Materials Covered	Act or Regulation	Agency to Notify	What Must Be Reported and When	Who Must Report
Vinyl Chloride from any manual vent valve, or polyvinyl chloride plants	Clean Air Act 40 CFR 61.64	Administrator of EPA	<p>Within 10 days of any discharge from any manual vent valve, report must be made, in writing, and the following information provided:</p> <ol style="list-style-type: none"> 1. Source, nature and cause of the discharge 2. Date and time of the discharge 3. Approximate total vinyl chloride loss during discharge 4. Method used for determining loss 5. Action taken to prevent the discharge 6. Measures adopted to prevent future discharges. 	Owner or operator of plant.
Radioactive Materials	6 NYCRR §380.7	Commissioner of DEC	<ol style="list-style-type: none"> 1. Notify immediately by telephone when concentration, averaged over a 24-hour period, exceeds or threatens to exceed 5000 times the limits set forth in Schedule 2 of 380.9 (in uncontrolled areas). 2. Notify within 24 hours by telephone when concentration, averaged over 24- hour period, exceeds or threatens to exceed 500 times the limits set forth in Schedule 2 above (in uncontrolled areas). 3. Report within 30 days the concentration and quantity of radioactive material involved, the cause of the discharge, and corrective steps taken or planned to ensure no recurrence of the discharge. 	Operator of the radiation installation.

Exhibit 1.1-2
State and Federal Reporting Requirements for Hazardous Substance Spills, Leaks, and Discharges
(continued)

Materials Covered	Act or Regulation	Agency to Notify	What Must Be Reported and When	Who Must Report
Low Level radioactive wastes in transport. Any suspected or actual uncontrolled releases.	6 NYCRR 381.16 ECL §27-0305 Waste Transporter Permits	DEC and Department of Health	Immediate notification.	Transporter

TECHNICAL
FIELD GUIDANCE

**SPILL REPORTING AND INITIAL NOTIFICATION
ENFORCEMENT OF SPILLER RESPONSIBILITY**

NOTES

Spill Reporting and Initial Notification - Enforcement of Spiller Responsibility

GUIDANCE SUMMARY-AT-A-GLANCE

Use the "Notification Procedures Checklist" (Exhibit 1.1-3) to document conversations with the responsible party or potentially responsible party (PRP/RP) concerning his or her clean-up responsibilities.

The steps to follow when you inform the PRP/RP of his or her legal responsibility are:

- Give your name and identify yourself as a DEC employee;
- Inform them that they have been identified as the party responsible for the spill;
- Inform PRP/Rps of their liability for all clean-up and removal costs. (If necessary, cite Section 181 of the Navigation Law);
- Ask PRP/Rps "point blank" if they will accept responsibility for the cleanup; and
- If the PRP/RP does not accept responsibility, or does not admit to being the PRP/RP, inform him or her that DEC will conduct the cleanup and send the bill to whoever is the PRP/RP. Also inform them that a DEC-conducted cleanup could be more costly than a PRP/RP-conducted cleanup, and that the PRP/RP could face interest charges and penalties for refusing to clean up the spill.

If the PRP/RP accepts responsibility for the cleanup:

- (1) Send the PRP/RP a "Spiller Responsibility Letter" (Exhibit 1.1-5) and an "Acceptance of Financial Responsibility Form" (Exhibit 1.1-6) and
- (2) Send the PRP/RP an "Option Letter," which should outline the options available to the PRP/RP to clean up the spill. See Exhibit 1.1-4 for a summary of how and when to use these forms and what they may include.

NOTES

1.1.2 Spill Reporting and Initial Notification - Enforcement of Spiller Responsibility

This section provides guidance on those steps you take to inform responsible parties or potentially responsible parties (PRP/Rps) or spillers of their responsibility under state law for cleaning up spills. This guidance applies to all contacts (by phone, by mail, or in person) you have with Rps throughout the response process concerning their fulfillment of this legal responsibility. The possible consequences of an RP's refusal or inability to conduct the spill response are also discussed.

1. State Law and Policy

Under Article 12 of the Navigation Law and Article 71 of the Environmental Conservation law (ECL), those parties responsible for a petroleum release are liable for all costs associated with cleaning up the spill as well as third party damages (see Introduction-A for more information). Section 181 of the Navigation Law states:

Any person who has discharged petroleum shall be strictly liable, without regard to fault, for all cleanup and removal costs and all direct damages, no matter by whom sustained as defined in this section.

There are two ways by which PRP/RPs can pay for the costs associated with cleanups. First, the PRP/RP can reimburse the state for site investigation, clean-up, and remediation costs incurred by the State Oil Spill Fund or federal Leaking Underground Storage Tank (LUST) Trust Fund. Second, the PRP/RP can assume full responsibility for the cleanup from the beginning and bear all costs throughout the clean-up process. It is DEC's policy to make every effort to have PRP/RPs pay for cleanups from the outset.¹

To achieve PRP/RP-directed and PRP/RP-financed cleanups, your responsibilities are to: (1) identify the PRP/RP(s), (2) inform them of their legal responsibilities for the spill, and (3) ensure that they carry out these responsibilities. All investigations of spills and PRP/RPs should be pursued vigorously and without prejudice. Use to your advantage the argument that having the PRP/RP assume responsibility for clean-up costs benefits both DEC and the spiller. It saves DEC the expense of cost-recovery procedures. It also allows the PRP/RP to be more involved in clean-up decisions (e.g., choosing their clean-up contractors) and, more significantly, it usually results in **lower clean-up costs. Because the PRP/RP is responsible for all indirect costs incurred if DEC conducts the cleanup, the spiller will pay for the DEC contractor's clean-up work, as well as the supervision costs incurred by DEC, any third-party claims associated with the spill, and any punitive fines levied.**

¹ Spillers are not only responsible for assuming the costs of a cleanup, but also can be subject to a \$25,000 per day fine for not paying the clean-up costs (among other violations). The Navigation Law provides for these penalties in Section 192, which states:

Any person who knowingly gives or causes to be given any false information as a part of, or in response to, any claim made pursuant to this article for cleanup and removal costs, direct or indirect damages resulting from a discharge, or who otherwise violates any of the provisions of this article or any rule promulgated thereunder or who fails to comply with any duty created by this article shall be liable to a penalty of not more than twenty-five thousand dollars for each offense in court of competent jurisdiction. If the violation is of a continuing nature each day during which it continues shall constitute an additional, separate, and distinct offense. (emphasis added)

NOTES

2. Notification Process

Part 1, Section 4, of this manual discusses the process of identifying the PRP/RP as part of the spill investigation for a particular site. Once you identify the PRP/RP, follow the guidance provided below for informing the PRP/RP of his or her responsibilities for spill cleanup. If you are uncertain about who the PRP/RP is, apply the procedures outlined below with all suspected RPs until the responsible party or parties are identified.

a. Informing RPs of Their Responsibility at the Spill Scene

It is important to inform PRP/RPs of their legal responsibility to clean up a spill as soon as possible. When you arrive at a spill site, you should immediately inform the representative of any PRP/RP of their liability under the Navigation Law and the Environmental Conservation Law. In doing so, follow the steps covered in the "Notification Procedures Checklist" (Exhibit 1.1-3).

Document completion of the notification steps, and identify your contact(s).

Although you should be firm and direct in informing the PRP/RP of their responsibility, you should make every attempt to avoid an adversarial relationship with the RP. The full cooperation of the PRP/RP will result in a more efficient and effective cleanup.

b. Informing Spillers of Their Responsibility in Writing

You should send three different letters to the PRP/RP to inform them of their responsibility (see Exhibit 1.1-4, "Notification Forms Summary"). If a site response was initiated and you are able to confirm the spill visually, the "Spiller Responsibility Letter" (Exhibit 1.1-5) along with an "Acceptance of Financial Responsibility Form" (Exhibit 1.1-6) should be sent as soon as possible. In addition, an "Option Letter" that informs the PRP/RP of their possible options for addressing a spill should be sent. These letters should be kept as part of the Corrective Action Plan (CAP) (see Part 1, Section 5, "Corrective Action Plans.")

**Exhibit 1.1-3
Notification Procedures Checklist**

Completed	Step	Date	Contact(s)
_____	1. Give your name and identify yourself as a DEC employee.		
_____	2. Inform the PRP/RP that he/she has been identified as the party responsible for the spill.		
_____	3. Inform PRP/RPs of their responsibility to pay for all clean-up costs. (As necessary, cite Section 181 of the Navigation Law or Article 71 of the ECL.)		
_____	4. Ask PRP/RPs "point blank" if they will accept responsibility for the cleanup.		
	Response: _____ _____ _____ _____		
_____	5. If the PRP/RP does not accept responsibility, or does not admit to being the spiller, inform him/her that DEC will conduct the cleanup and send the bill to whoever is the spiller.		
_____	6. If the PRP/RP does not accept responsibility also inform him or her that a DEC-conducted cleanup could be more costly than a spiller-conducted cleanup, and that the spiller could face interest charges and a fine for refusing to pay for the billed clean-up costs.		

Exhibit 1-A-4

**Notification Forms Summary
(Send Forms by Certified Mail)**

Notification Form	When and How to Use	Information to be Included
Spiller Responsibility Letter	Send by certified mail to PRP/RP for confirmed spill.	<ul style="list-style-type: none"># Spill location;# Spiller's responsibility under the Navigation Law;# Penalties that can be levied if the spiller does not cooperate; and# Deadline for spiller to begin containment and removal of the spill.
Acceptance of Spiller Responsibility Form	Send by certified mail to PRP/RP for confirmed spill.	<ul style="list-style-type: none"># Request for spiller's signature acknowledging his or her acceptance of responsibility for the spill cleanup.
Option Letter	Send by certified mail to PRP/RP for confirmed or suspected release (e.g., failed tightness test).	<ul style="list-style-type: none"># Spill number;# Date spill was discovered or reported;# Exact location of the spill;# Authority of Article 12 of the Navigation Act; and# Penalties for noncompliance.

Exhibit 1.1-5

Spiller Responsibility Letter

[Date]

[Addressee]

[Address]

Dear []:

This is to inform you that as a result of investigation by our Department, we consider you responsible for Petroleum Spill Number _____, dated _____, at _____. Under Article 12 of the Navigation Law, Section 192, any person who discharges petroleum without a permit and fails to promptly clean up such prohibited discharge may be subject to a penalty of up to \$25,000 a day.

Containment and removal of this spill must be initiated within _____ hours.

Your failure to initiate timely spill cleanup and removal, in addition to the penalty stated above, will result in your being billed for all actual costs incurred by New York State as set forth in Section 181 of the Navigation Law. These costs include cleanup and removal, all direct and indirect damages, including damages incurred by third parties.

Sincerely,

Regional Spill Engineer
Region

Exhibit 1.1-6
Acceptance of Spiller Responsibility Letter

[Date]

SPILL # _____

ACCEPTANCE OF FINANCIAL RESPONSIBILITY

_____, hereby assumes responsibility for containment and
(Name of Company and Person)

cleanup of _____ discharged from _____
(Substance) (Source)

on _____, and recognizes that the determination of the adequacy and propriety of
(Date)

the containment and cleanup operation continues to rest with the New York State
Department of Environmental Conservation On-Scene Coordinator.

(Authorized Signature and Title)

(Name and Title Printed)

(Address of Company)

(Date and Time)

(Witness)

NOTES

The "Spiller Responsibility Letter" informs spillers of their responsibility under the Navigation Law and explains the penalties that can be levied if the spiller does not cooperate. It should be sent to the spiller or suspected spiller as soon as a petroleum spill has been confirmed. The letter notifies the spiller that he or she is required to initiate containment and removal of the spill within a period of time you specify.

There are at least three factors you should consider when specifying a deadline in this letter:

- # The size and nature of the spill;
- # The proximity of the spill to, or its possible effects on, water supplies (surface or ground water), nearby homes and other structures, and/or sensitive environmental areas; and The possible environmental, safety, and/or human health effects of delaying containment and removal.

The "Acceptance of Spiller Responsibility Form" requires the spiller's signature acknowledging his or her responsibility for containment and cleanup of the spill. This form and the "Spiller Responsibility Letter" should be sent by certified mail.

The "Option Letter" outlines the possible options available to the PRP/RP for cleanup of the spill. The contents of this letter can vary somewhat depending on how the release was discovered (e.g., through a complaint or a failed tightness test), the extent and type of spill, and the policies and procedures of your regional office. There is, however, some information that should appear in every "Option Letter." All "Option Letters" should contain the following: spill number, date the spill was discovered, and exact location of the spill. In addition, the letter should cite the response authority provided DEC by Article 12 of the Navigation Act and describe the penalties for noncompliance.

Each "Option Letter" should outline clearly the options open to the PRP/RP to address the spill and the information you wish submitted, and may also specify certain deadlines for taking action. However, it is up to you to determine the particular options, information requirements, and dates you include in the letter. Depending on the circumstances, you may list in your letter one or several options from which the PRP/RP can choose. For example, when an UST fails an initial tank test the following options could be included:

- # Conduct separate integrity tests on the piping and the tanks in order to verify the release source within the tank system.
- # Remove the "non-tight" tank and either remove and dispose of all contaminated soils, or install monitoring wells.

NOTES

- # Install monitoring wells and abandon the "non-tight" tank in-place.
- # Remove the tank within 30 days, according to the requirements for tank removal (outline these requirements in the letter).

The "Option Letter" should always be sent by certified mail. In addition, you should have the PRP/RP inform you as soon as possible about the option(s) he or she has chosen.

Several examples of possible "Option Letters" are included as Exhibits 1.1-7 through 1.1-12. These are provided as examples only; you should use "Option Letters" developed by your own office, or develop your own.

Exhibit 1.1-7 is a sample option letter to an PRP/RP for removal of contaminated soil from an UST release. Note that this option letter includes: (a) specific requirements for removal of the contaminated soil; (b) dates for when the removal must be completed, and (c) requirements for the PRP/RP to forward to DEC copies of the landfill disposal receipt and ample test results. The additional sample option letters apply to the following situations: when an UST has failed an initial tightness test (Exhibit 1.1-8), when an UST fails an isolation tank test (Exhibit 1.1-9), when an UST fails a Petro-tite Systems Test (Exhibit 1.1-10), and ground-water contamination cleanup (Exhibit 1.1-11).

3. Dealing with Uncooperative Spillers

There are generally two ways in which an PRP/RP may fail to fulfill his or her legal responsibilities for spill cleanup: (1) a PRP/RP may refuse from the beginning to accept responsibility, or (2) an PRP/RP may fail to conduct a cleanup in the manner, or in as timely a fashion, as agreed upon with the DEC. If a PRP/RP refuses to cooperate from the outset, try again to change the RP's mind. Send additional notices of spiller responsibility (Exhibit 1.1-12) and/or initiate phone conversations with PRP/RPs to inform them again of the consequences of not cooperating (i.e., higher clean-up costs and possible penalties). If a party claims not to be the PRP/RP, you should inform them of your reasons for believing they are the PRP/RP under the Navigation Law.

If a PRP/RP agrees to conduct and pay for the cleanup and then does not proceed in the manner agreed upon or as quickly as agreed upon, you should inform the PRP/RP immediately that you are dissatisfied with the progress of the cleanup and that DEC is considering taking it over. There are no hard-and-fast rules for deciding when you should take over a cleanup. If possible, you should always work toward having the PRP/RP continue the cleanup in the agreed-upon manner. Attempt to determine why the cleanup is not proceeding as planned and consider means of helping the PRP/RP-directed cleanup get back on track.

Exhibit 1.1-7

Sample Option Letter:
Soil Cleanup Spill

[Date]

[Addressee]

[Address]

Dear []:

This letter is to confirm your - (site meeting) (telephone conversation) with _____ of this Department on _____, (Name) (day) (date) (year) in regards to the above-mentioned spill site. This site involves _____ (explanation)

The following items were discussed and agreed upon:

1. All contaminated material must be removed and stored on site until it can be properly disposed of at a properly permitted landfill.
2. All contaminated material must be sampled for _____ (analyses). The results must be negative for the material to be considered non-hazardous oily debris. You must contact your selected sanitary landfill to verify the sample analyses that they require for disposal.
3. A hauler with a Part 364 permit must be used to haul the contaminated soil to your selected landfill.
4. Please notify this Department after the work is completed but prior to any backfilling of the spill area so that an inspection of the excavation may be made.
5. Please forward to us a copy of the landfill disposal receipt and the sample results.

A schedule for this work is required by _____ (day) (date) (year).

Cleanup must be performed by no later than _____ (day) (date) (year).

If you have any questions, please feel free to contact _____ (Name)

at 847-4590. Your cooperation will be appreciated.

Very truly yours,

Senior Sanitary Engineer

Exhibit 1.1-8

Sample Option Letter:
Initial Tank Failure

[Date]

[Addressee]

[Address]

Dear []:

This Department received notification on _____ that (a)
_____ (day) (date) (year)
_____ tank(s) failed its (their) tank test performed by
(gallons) (product stored)
_____. On _____, Mr. _____ of this Department
(contractor) (date) (name)
discussed with _____ that one of the following options must be done concerning this tank.
(person)

- OPTION 1:
1. The tank is to be immediately isolated from the piping and is to be retested. If the tank tests tight, it may remain in service.
 2. The lines are to be repaired, if necessary, and retested by a state-approved method. Exposed piping may be air tested.
 3. A copy of any test results are to be sent to this office.

- OPTION 2: If the tank fails the retest, or if you decide not to retest, the following must now be done:
1. All product must be immediately removed from the tank.
 2. The tank itself must be removed within thirty days. A Petroleum Bulk Storage form must be submitted to this Department prior to tank removal.
 3. The interior surface of the tank must be cleaned, and all sludge and residue generated by this process must be properly disposed. The tank must be cut open to allow for this work and to ensure proper ventilation of the tank interior.
 4. All safety precautions regarding the opening, cleaning and entering of the tank must be followed. The interior atmosphere of the tank may be explosive and proper procedures must be followed.
 5. Once the tank has been cleaned out, it may be disposed as scrap.

Mr. _____ must be notified when you have a firm date for retesting or removal. Please note, we must be present when this tank is removed to determine if any groundwater or soil contamination exists. If groundwater or soil contamination is found, further remedial work will be required.

If you have any questions, please contact _____ at 847-4590. Your cooperation will be appreciated.

Sincerely,

[]

Exhibit 1.1-9

Sample Option Letter:
Retest Failure, Tank Removal

[Date]

[Addressee]

[Address]

Dear []:

On _____, a _____ gallon _____, underground store storage tank at the
(day) (date) (year) (#) (material)
above-mentioned address failed a system tank test. On _____, this tank failed an isolation tank test.
(day) (date) (year)

Since the tank failed the retest, the following must now be done:

1. All product must be immediately removed from the tank.
2. The tank itself must be removed within thirty days. A Petroleum Bulk Storage form (enclosed) must be submitted to this Department prior to tank removal.
3. The interior surface of the tank must be cleaned, and all sludge and residue generated by this process must be properly disposed. The tank must be cut open to allow for this work and to ensure proper ventilation of the tank interior.
4. All safety precautions regarding the opening, cleaning and entering of the tank must be followed. The interior atmosphere of the tank may be explosive and proper procedures must be followed.
5. Once the tank has been cleaned out, it may be disposed as scrap.

_____ of this Department must be notified when you have a firm
(Name)

date for removal. We must be present when this tank is removed to determine if any groundwater or soil contamination exists. If groundwater or soil contamination is found, further remedial work will be required.

For your use, enclosed is a list of contractors that are known by this Department to do this type of work. This list is by no means complete. Any contractor may be used by you for this work.

If you have any questions, please feel free to call _____ at 847-4590.
(Name)

Your cooperation will be appreciated.

Sincerely,

[]

Exhibit 1.1-10

Sample Option Letter:
Failed Tank Test

[Date]

CERTIFIED - RETURN RECEIPT REQUESTED

[Addressee]

[Address]

RE: Spill No.

Gentlemen:

This office has been informed by _____ (Name) that _____ (tank) failed a Petrotite systems test. In accordance with Article 12 of the New York State Navigation Law, I must determine if there has been any harm to the lands or the groundwater of the State. In order for me to make this determination, you have three options:

1. Prove that it was not a leaking tank by removing all the piping from the tank and separately Petrotite test the tank. If the tank passes the Petrotite test, it is a piping leak. The tank may then be abandoned or the piping can be repaired, attached to the tank, and the system Petrotite tested.
2. Excavate and remove the tank in the presence of a representative from this office so that an inspection of the tank and the soil can be made. If the tank is sound, and there is no evidence of product loss, nothing further need be done. If there is a problem, proceed as in 3 below.
3. Abandon the tank in-place and install several four (4) inch diameter PVC site wells extending five (5) feet into the groundwater with a screen length of ten (10) feet, with slot size of .020 inches. The exact location and number of wells will be determined by a representative from this office. These wells will be checked for a period of twelve months by New York State, and if there is no evidence of product for that period, the spill will be removed from our listing. If free or dissolved product appears, cleanup must begin immediately.

If cleanup does not begin by _____ (Date) by the responsible party, the State will begin the cleanup and bill the responsible party.

Sincerely,

[]

Exhibit 1.1-11

Sample Option Letter:
Ground-water Cleanup

[Date]

[Addressee]

[Address]

Dear []:

This letter is to confirm your (site meeting) (telephone conversation) with (Name) of this Department on (day) (date) (year). Groundwater at this spill site is contaminated with (free floating oil) (dissolved oil components). The following items were discussed and agreed upon:

1. (#) additional four-inch monitoring wells will be installed at the agreed upon locations. A sketch of a typical monitoring well is enclosed for your use.
2. One recovery well will be installed to recover oil product. Groundwater must be pumped to depress the groundwater table. The groundwater must be pumped to an oil-water separator tank. Accumulated oil may be recovered from the well by bailing or by a second pump. A second type of recovery well pumps both oil and water to a separator tank. Oil from the tank is then recovered. You should check with your contractor to determine the best method for the recovery well. Groundwater must be pumped to depress the groundwater table.
3. The discharge water must be sampled for (Contaminates). Dependent upon the sampling results, it may be discharged with a SPDES permit to (Name). The water must at all times be sheenless. An air stripper or a carbon filter may be necessary for the discharge water.
4. All collected oil must be properly disposed. Copies of receipts indicating the disposal site must be forwarded to this office.

It was also agreed that these actions be completed by (Date). Should you have any questions, please do not hesitate to contact (Name) at 847-4590. Your cooperation will be appreciated.

Sincerely,

[]

Exhibit 1.1-12

Sample Option Letter:
Soil Disposal, Soil Still On Site

[Date]

[Addressee]

[Address]

Dear []:

A recent inspection by (Name) of this office indicated that the contaminated soil at your facility still remains on site. We are requesting this soil be removed by (day) (date) (year) to an acceptable landfill. Please send a copy of the disposal receipt to this office.

If you cannot remove the soil by that date, please contact this office immediately. If you do not contact this office and the soil still remains on site past (Date) , DEC will have the soil removed from your site. You will then be billed for the costs of removal and disposal as well any relevant penalties.

If you have any questions, please feel free to contact (Name) at 847-4590. Your cooperation will be appreciated.

Very truly yours,

Senior Sanitary Engineer

NOTES

If all efforts to encourage a PRP/RP to continue the cleanup fail, send a certified letter (Exhibit 1.1-13) notifying them that their actions have been unsatisfactory and that DEC will assume responsibility for the cleanup. This letter again informs the PRP/RP of his or her liability for all costs incurred by DEC during its cleanup.

Exhibit 1.1-13

Unsatisfactory Cleanup Notice Letter

[Date]

CERTIFIED MAIL

SPILL #

[Addressee]

[Address]

Dear Sir:

My letter of (Date) notified you of New York State's interest in a pollution incident for which you are presently considered responsible.

You are hereby given notice that your actions to remove the pollutant and mitigate its effects have been evaluated as unsatisfactory. Effective (Date), the New York State Department of Environmental Conservation will conduct all cleanup activities under the authority of Article 12 of the Navigation Law. Removal will be effected in accordance with the regulations of the Department of Environmental Conservation. You will be billed for all actual costs incurred by New York State as set forth in Section 181 of the Navigation Law, as well as interest and penalties.

Should you require further information concerning this matter, contact: (Name)

Sincerely,

[]

Received and Acknowledged

Time

Date

**TECHNICAL
FIELD GUIDANCE**

**SPILL REPORTING AND INITIAL NOTIFICATIONS -
ACCESS AND RIGHT-OF-ENTRY**

NOTES

Spill Reporting and Initial Notifications - Access and Right-of-Entry

GUIDANCE SUMMARY AT-A-GLANCE

- # Section 178 of the Navigation Law gives you the authority to enter private property to investigate or clean up a suspected spill.
- # In general, you should inform the property owner of your right to enter onto private property and obtain consent from the owner. This consent can be either written or verbal.
- # Detailed information and procedures for access and right-of-entry is considered confidential for spill responders. This information is contained in Appendix L, and is marked confidential.

NOTES

1.1.3 Access and Right-of-Entry

This section addresses the right of NYSDEC personnel to enter private property on which a spill has occurred or is suspected, for the purpose of investigating, containing, and/or cleaning up the spill. Detailed information and procedures of access and right-of-entry are considered confidential. Therefore, this information can be found in Appendix L, including your legal rights to enter property and the procedures to follow to ensure that no charges of trespassing are brought against the Department.

1. State Law and Policy

You have the authority, under the Navigation Law, to enter property to investigate or clean up a real or suspected spill. Specifically, Section 178 of the Navigation Law states:

The department is hereby authorized to enter and inspect any property or premises for the purpose of inspecting facilities and investigating either actual or suspected sources of discharges or violation of this article or any rule or regulations promulgated pursuant to this article. The department is further authorized to enter on property or premises in order to assist in the cleanup or removal of the discharge. Any information relating to secret processes or methods of manufacture shall be kept confidential.

In any emergency or non-emergency, you must possess information supporting a reasonable belief to suspect that a spill has occurred or is occurring, or that the spill is impacting the premises for which access is sought. A reasonable belief may be based on a report of a spill or visual observation. For example, if a gasoline station operator reports an unexpected loss of product from his underground storage tanks that are located near private household wells, you might want to investigate those wells and check the water.

Although you have the authority to enter the premises, *it is always advisable to obtain the consent of the property owner or his or her agent before entering the property.* This consent can be either written or verbal. Obtaining this consent may help avoid civil or criminal charges for trespass being logged. In cases where the owner/agent is not available or not ascertainable, entry should be made.