

October 2018 Spill Management Team Scoping Meetings Summary and Notes

California Department of Fish and Wildlife
Office of Spill Prevention and Response (OSPR)

Background

On October 9 and 15, 2018, the Office of Spill Prevention and Response (OSPR) held two Scoping Sessions in the Sacramento and Los Angeles areas to solicit input from industry stakeholders on draft regulations to implement the Spill Management Team (SMT) Certification Program, as required by California Assembly Bill 1197. The meetings were split into two sessions, aimed at in-house and external SMTs, after attendees of scoping meetings held in February 2018 suggested that separate meetings for in-house and external SMTs would facilitate more efficient and productive discussion of the impacts of these regulations on their operations. Accordingly, the morning segments were designated for representatives of in-house SMTs, and afternoon sessions were geared toward external, contracted SMTs. Several of those attending both scoping meetings attended both sessions; since there is considerable overlap of in-house and contracted SMT resources at drills and spills, representatives of each group were interested in impacts on the other. The format of separate sessions with mixed attendance promoted discussion and understanding of both perspectives. This document summarizes these discussions, and is organized by topic rather than by session.

General Comments and Responses

- What is an SMT in the context of the proposed regulations?
 - The statute defines an SMT as “personnel and associated equipment that staff the organizational structure for managing some or all aspects of response, containment, and cleanup of a spill, utilizing an incident command or unified command structure.”
 - Some industry representatives reported that the term “SMT” refers to personnel resources that cascade in to supplement or replace the “initial response team,” and sought clarity about the focus of the regulations. OSPR intends to target the first 36-48 hours of a response, ensuring that initial responders and cascading personnel are qualified to respond.
 - The statute requires contingency plan holders to specify a SMT that is capable of executing a response to the plan’s reasonable worst case scenario (RWCS) volume.
- Why do the draft regulations amend the definition of a Qualified Individual (QI)?
 - The draft regulations amended the definition to note that QIs often offer SMT services; however, most industry representatives felt that the QI and SMT functions should remain separate.
- Why do the draft regulations omit the Operations Section Chief (OSC) from the list of required SMT personnel – was this an oversight?
 - At the February 2018 SMT Scoping Meetings, and other meetings with industry, many industry representatives stated that they would depend on their OSRO to fulfill the OSC role in early stages of a response. At the October Scoping Meetings, this notion was roundly rejected by the industry representatives in attendance. OSPR will be adding the OSC position into forthcoming draft regulations.

Required Timeframes for On-Scene Personnel and Meeting Objectives: Comments and Responses

- The draft regulations require qualified personnel to be on-scene within 6-8 hours. It is not possible to meet these requirements, as many of the best responders are outside of California.
 - OSPR does not intend to set requirements that are not attainable. We will consider extending the on-scene requirements to set timeframes that are both achievable and in line with our intent to advance preparedness in California.
 - Many industry representatives suggested that the regulations account for cascading in personnel resources after the first several hours; OSPR is considering this option.
- The on-scene timeframes for personnel and objectives are confusing. For example, how can the Planning objective be met within 4 hours when the Planning Section Chief is not required to be on-scene until 6 hours? And where are the objectives described?
 - The objectives correspond to OSPR's existing Marine and Inland Drills and Exercises regulations (Sections 820.01(e, f) and 820.02 (f, g, h)); see OSPR's Regulations web page for the full text. Some of these objectives share titles with SMT positions; OSPR will try to make this more explicit in forthcoming drafts.
- The tier-based on-scene requirements in the draft regulations are uniform across response planning areas, but vessel and facility (pipelines, rail) operations span geographic areas. Will OSPR consider adopting risk-based timeframe requirements, analogous to distinctions between High Volume Ports and Facility Transfer Areas for OSRO on-scene requirements?
 - OSPR will consider variable timeframes that take into account frequency based risk; other factors that contribute to risk, such as the sensitivity of potentially affected resources, may also be considered.
- The on-scene requirements in the draft regulations seem to be performance standards. Will plan holders be in violation of the on-scene requirements if personnel cannot arrive on-scene within the specified timeframes due to circumstances beyond their control?
 - The timeframes are planning standards. SMTs should plan for routine obstacles to meeting the on-scene requirements, but SMTs will not be considered in violation of timeframe requirements in the event that extraordinary circumstances prevent personnel from arriving within the specified timeframes. The second draft of the regulations will include an exigencies statement to make this more clear.

Training Requirements: Comments and Responses

- Training requirements are onerous, and do not consider on-the-job training and experience. Will OSPR be reconsidering these requirements?
 - OSPR is open to reconsidering the curricula outlined in the draft regulations, but requirements must be specific, and refer to established standards, to pass review by the Office of Administrative Law (OAL). We have received some specific feedback on training requirements, and we continue to welcome feedback.
 - Documented on-the-job training and spill experience will likely be considered; OSPR intends to address this in the second round of draft regulations.

- The draft regulations do not seem to contain guidelines for how teams should maintain training. Is this an oversight?
 - The draft regulations require SMT personnel to participate in an OSPR exercise once each year to maintain their training. However, we realize that this requirement could be difficult for some teams, and that it reinforces an implied emphasis on individuals.
 - OSPR intends to address training maintenance more explicitly in the second round of draft regulations.

Certification, Drilling, and Compliance: Comments and Responses

- Can SMTs use out-of-state or international exercises for certification? Will SMT certification and re-certification exercises result in more exercises for plan holders?
 - The statute requires OSPR to observe an SMT's performance at an actual spill or drill in California before issuing a certification. However, OSPR will not require SMTs to hold additional triennial exercises to obtain certification, and may issue provisional certifications that take into account recent RWCS exercises, in addition to other criteria.
 - OSPR's goal is to advance preparedness in California, not to hold more exercises for exercises' sake. OSPR is considering means other than traditional tabletop/functional exercises as bases for certification or re-certification, such as unannounced discussion-based exercises in which SMTs demonstrate their abilities to mobilize resources.
 - It is possible that SMTs named in contingency plans that cover multiple facilities or span geographic regions might be required to demonstrate their abilities to mobilize to applicable areas of responsibility.
- The draft regulations seem to focus on individual SMT personnel and their qualifications. Will plan holders be in violation of the regulations if SMT members who attend a drill or spill differ from those listed in the plan?
 - OSPR wants to certify teams rather than individuals, and we do not plan to define certified SMTs as lists of individuals who comprise them. However, teams are made up of individuals. If all or part of an SMT experiences failures at a drill or spill, this might indicate weaknesses in the program.
 - OSPR recognizes that the draft regulations appear to focus on individuals more than was intended, and we plan to clarify this in the second round of draft regulations.
- The draft regulations require SMTs to notify the Administrator in advance of significant changes in changes to personnel. This requirement seems difficult to attain, and would result in OSPR receiving excessive paperwork.
 - OSPR would consider a change in personnel to be significant only if it impacts the SMT's overall ability to meet the requirements outlined in the regulations.

Moving Forward

- Based on the feedback received at the Scoping Meetings and in writing, OSPR will hold another round of Scoping Meetings after completing a second draft of regulations. We are committed to developing regulations that will advance preparedness and are fit for purpose before entering the Formal Rulemaking Process.

- We have received suggestions to stand up an Industry Stakeholder Committee for the SMT regulations; we are considering this option.
- Revised Anticipated Timeline:
 - Second Draft of SMT Regulations – late February/early March 2019
 - Scoping Meetings – early April 2019, potentially the week of April 15
 - Initiate Formal Rulemaking – late Spring/early Summer 2019