

## **May 2019 Spill Management Team Scoping Meetings Summary and Notes**

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

### **Background**

On May 21, 23, and 29, 2019, the Office of Spill Prevention and Response (OSPR) held Scoping Meetings in the Sacramento area, Long Beach, and Bakersfield, to gather input from industry stakeholders on draft regulations describing the criteria and process for certifying Spill Management Teams (SMTs), as required by California Assembly Bill 1197. OSPR circulated a first draft of the regulatory package in September 2018, soliciting industry feedback at Scoping Meetings held in October 2018 and additional informal stakeholder meetings, as well as via written comments and suggested language. This input guided the development of the second draft, which incorporated mechanisms to better account for the diverse operations and business models employed by contingency plan holders and spill management teams. This document summarizes the discussions that took place at the May Scoping Meetings, arranged by topic.

### **Purpose and Relationship to Existing Regulations: Comments and Responses**

- The regulations are not necessary because contingency plan holders are already required to describe their SMTs and how they are trained and mobilized in plans that have been approved by OSPR.
  - OSPR's contingency plan regulations require plan holders to list spill management teams and their relevant qualifications and training, but they do not specify criteria for personnel qualifications, or the level of detail that plans should provide. Accordingly, plan holders interpret this directive differently; some provide lists of personnel and alternates, while others list a QI plus 1-2 additional personnel, or simply include a generic organizational chart. Some discuss the frequency and nature of spill response training, and others state that appropriate personnel receive some training. Because OSPR must certify SMTs in accordance with AB 1197, we must apply criteria or certification beyond what the contingency plan regulations currently require.
- These regulations seem to duplicate OSPR's Drills and Exercises program, since plan holders are already required to hold exercises each year. Will the SMT program replace Drills and Exercises?
  - AB 1197 requires contingency plan holders to identify SMTs capable of managing their reasonable worst case spill (RWCS) volumes, and instructs OSPR to adopt regulations describing criteria for certification, including personnel on-scene times and training requirements. These aspects of spill management teams' abilities are not currently covered in the Drills and Exercises program and must be addressed in the SMT regulations.
  - The SMT program will not replace the Drills and Exercises program, but the requirements will be streamlined when OSPR "harmonizes" regulations currently housed in various sections of Chapter 3, Subdivision 4 of the Fish and Game code into a cohesive set of regulations for OSPR's integrated statewide program.
- Must plan holders that have "blanket plans" that include multiple facilities identify a separate SMT for each facility?
  - If the same team would respond to each facility covered by the plan, the plan holder must only identify one certified SMT. Plan holders whose operations under a single plan cover

multiple area contingency or response planning areas must demonstrate the SMT's capability to arrive on-scene within the specified time frames to each area. The SMT must be certified to the Tier associated with the greatest RWCS volume listed in the plan(s) covered.

### **Training and Experience Requirements: Comments and Responses**

- Why does OSPR require training? Participation in training courses does not ensure competency; personnel can have all the training available and still not be functional in a position.
  - OSPR understands that participation in training courses cannot ensure qualification for a position, but the courses cover information that is integral for personnel to successfully fill their positions within the incident command system. Responders who were trained in their positions through “trial by fire” before incident command courses were established/available will be able to qualify through experience.
- The training is too prescriptive and extensive, and the courses are difficult to get into. The requirements are not achievable.
  - OSPR has incorporated mechanisms to give plan holders and SMTs flexibility, but this must be balanced by clear standards. The draft regulations provide three “tracks” for personnel to obtain qualifications: taking the listed courses, equivalent training, or experience in real incidents.
  - Although courses offered by agencies may have limited availability, there are several providers of training that teach ICS and NIMS All-Hazards courses, both scheduled and on-demand. The Office of the State Fire Marshal maintains a list of training providers, which includes both public and private training providers. The list is not comprehensive, and additional service providers can be found online.
  - Several industry representatives have obtained credentials to teach ICS/NIMS courses; OSPR encourages industry to consider expanding existing mutual aid capacities to include training.
- What does OSPR mean by “equivalent course?”
  - We are looking for courses that cover the same learning objectives as the listed courses, taught over similar time periods.
- Our personnel have lots of experience, but we do not document participation in responses, since it is our full-time job. How can we establish that our personnel are qualified without documentation of each response our personnel have staffed?
  - OSPR will be looking to see that the minimum qualifications are satisfied; this should not require an exhaustive list of each response in which SMT personnel have participated. Responders should have access to documentation supporting their participation (e.g., demobilization forms) in enough responses to cover the minimum experience required for their positions.
- OSPR is requiring experience in Type 2 spills for the Tier I experience track, but there are not enough Type 2 spills occurring for personnel to qualify, and many incidents are not officially typed. Will OSPR consider revising this specification?
  - OSPR is considering changing the reference to Type 2 to Type 3, which would make it easier for SMTs to qualify through experience.

- OSPR will accept experience gained in responses to incidents other than oil spills. If personnel wish to claim experience in incidents that are not officially typed, they can identify the appropriate incident types by consulting the incident typing characteristics listed in the US Coast Guard IMH (page 25-31 of the 2014 edition).
- Will OSPR allow a combination of training and experience to establish that personnel are qualified to fill ICS positions?
  - OSPR does not plan to do that at this time, but we will continue to assess appropriate mechanisms to increase options for SMTs to meet the training/experience requirements.
- The regulations require all cascading SMT personnel to fill their positions in California every three years, but there are not enough exercises to rotate all of them in, particularly for external SMTs that may draw from a wider range of personnel than in-house SMTs. Will OSPR relax this requirement?
  - OSPR included this requirement because some response functions are different in California than in other states, and the Drills and Exercises program has revealed these functions to be weak spots in large exercises with personnel from out of state. The three-year interval was selected because industry guidance documents on response training cite it as the maximum length of time that individuals can retain proficiency at complex skills without practicing them.
  - OSPR did not fully consider the implications of this requirement for SMTs that may have large stables of response personnel. We intended for at least the minimum number of personnel required for each ICS position to participate in California every three years, and we will consider requiring California-specific training rather than participation to alleviate this burden.
- Smaller companies that for in-house teams must cross-train staff in order to meet the requirements to have alternates to fill ICS positions. For these companies, training their in-house staff within 18 months of the regulations going into effect will be difficult.
  - OSPR is reviewing and adjusting the requirements to increase achievability while maintaining appropriate standards. We will share the updated requirements and schedule additional calls and/or meetings to solicit feedback on the forthcoming edits.
- Why do the regulations include HAZWOPER training? HAZWOPER is for employer/employee relationships and is not necessary for SMT personnel working in the incident command post. Also, why do the regulations cite the California statute rather than the federal code, which would be more applicable for personnel based outside of California?
  - In a response involving a unified command, personnel working in the response work for personnel who fill command and general staff positions, and as supervisors, command and general staff must have a level of training equal to personnel whose work they are supervising.
  - We will modify the language to cite the federal code or otherwise specify that any state's version of HAZWOPER regulations is acceptable, and we will consider simplifying the HAZWOPER requirements.

### **Processes for Application, Certification, Renewal: Comments and Responses**

- What is the purpose of the unannounced exercises referenced in the draft regulations? Will unannounced exercises be required for certification, and can a government-initiated unannounced exercise (GIUE) substitute?

- OSPR intends to use unannounced exercises to verify information provided by SMTs in their applications. For example, OSPR might present a scenario and ask SMTs how they would mobilize personnel to arrive on-scene. OSPR will not be requiring any mobilization of resources.
  - OSPR intends to verify SMT application content through unannounced exercises as well as announced training records reviews, but unannounced exercises will not be required for SMT certification.
  - The current model for Coast Guard-led GIUEs is not in line with the outcomes OSPR would be looking for in an SMT application verification exercise, but SMTs may earn credit for achieving objectives on the SMT checklist at unannounced exercises initiated by OSPR.
- Will the SMT objectives checklist be required at every annual plan holder exercise?
  - The objectives checklist must be completed every three years at an exercise testing the RWCS volumes associated with the SMT's certification, and it will not be required every year.
- The draft regulations state that certifications are good for three years, but this would pose problems with scheduling subsequent RWCS exercises within exactly three years, whereas the Drills and Exercises program goes by calendar year intervals. Will OSPR modify the duration of certification to reflect this?
  - Yes, OSPR will modify the language to state that certifications are valid until the end of the calendar year that falls three years from the year in which the certification was last reviewed.
- The regulations discuss modification of an SMT's certification if the SMT cannot provide services as certified. Will SMTs be able to request modifications to certifications to reflect greater capacity, such as expanding the areas where they offer services?
  - Yes, OSPR will include a request for modification. SMTs will be able request modification or renewal through indicating the appropriate option on the SMT application.
- If a plan holder with an in-house SMT acquires additional assets with greater RWCS volumes requiring a higher Tier SMT, will they have time to bring their SMT up to the increased training levels?
  - Yes, OSPR would apply the 18-month grace period currently included in the draft regulations to in-house SMTs needing to increase their certification levels.
- Will SMTs be able to apply for certification to provide partial provisioning of the SMT services outlined in the draft regulations, such as only the Initial team, or a subset of the cascading team?
  - Yes, OSPR intends to allow partial certifications so that plan holders can construct certified SMTs from a combination of their own personnel and one or more certified SMT service providers to cover the initial and cascading team requirements.

#### **Language Considerations: Comments and Responses**

- The draft regulations include personnel requirements for both initial and cascading personnel. Should the cascading personnel be from outside the region or state? Can SMTs draw from the same personnel for initial and cascading teams?

- OSPR received consistent feedback from industry that the on-scene and training requirements in the first draft of the regulations did not account for differences between local initial responders and the SMTs that cascade in to manage a spill after the first 12-24 hours. In the second draft, OSPR introduced the initial and cascading team concepts to allow more time for fully trained SMT personnel to arrive on-scene. We employed the terms “initial” and “cascading” used by industry, but our primary intent was to account for the reality that many plan holders rely on personnel from outside the state to manage spills of their RWCS volumes.
  - If the cascading team can arrive within 8 hours, they will have satisfied both the initial and cascading on-scene requirements, and the SMT does not need to list additional information about the initial team. We will work to make this clear in the design of the application form.
  - OSPR will compose a guidance document and/or include definitions for the terms “initial,” “cascading,” and other terms that were identified as confusing or problematic to clarify our intent in using the terms. We acknowledge that language choices are important, and we want to avoid conflicts with established terminology usage. We continue to welcome suggestions to language/terminology to help narrow the gap between interpretation and intent.
- Why is OSPR requiring SMTs to train personnel in positions like Liaison Officer (LOFR) or Public Information Officer (PIO) that would be filled by OSPR or other trustee agencies during a response?
  - The leads for those positions will likely be filled by OSPR or another agency, but these functions would need to be filled by the plan holder or their representative before agencies arrive and form a Unified Command, and the responsible party should have representatives within Liaison and the Joint Information Center under a Unified Command.
  - OSPR will change the terms used to “Assistant Liaison Officer” or other terms, as appropriate, to clarify this.
- Our company has contingency plans that fall into different Tiers, but we have one team that will respond to all our facilities. Will personnel qualified as Tier I be able to fill the positions as Tier III if there are courses listed for Tier III that are superseded by the Tier I requirements?
  - Yes, OSPR will include language specifying that individuals qualified at higher tiers are qualified in lower Tiers as well. For example, a Tier I PIO with position-specific PIO training need not demonstrate completion of the online NIMS Public Information Systems course required of a Tier III PIO.

### **Next Steps**

- OSPR will likely not hold another round of generalized Scoping Meetings, but we plan to hold “issue-based” meetings around topics identified as warranting significantly more discussion.
- We will circulate a draft SMT application in late summer 2019 to solicit feedback on functionality and clarity.
- We will solicit information on financial impacts of the regulations in late summer 2019
- We expect to enter formal rulemaking in Fall 2019
- Regulations will go into effect on the first day of the quarter following adoption of the regulations, likely either April 1 or July 1, 2020.

