

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

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

### **Background**

On September 10 and 12, 2019, the Office of Spill Prevention and Response (OSPR) held Scoping Meetings in Sacramento to gather input from industry stakeholders on draft regulations describing the criteria and process for Spill Management Team (SMT) certification, as required by California Assembly Bill 1197. OSPR circulated previous drafts in September 2018 and May 2019, subsequently holding Scoping Meetings in the Sacramento, Los Angeles/Long Beach, and Bakersfield areas to solicit feedback. Stakeholders have been encouraged to submit written feedback and suggested language throughout this informal process; OSPR has incorporated these comments into each successive draft. The third draft of the regulations and draft applications for SMT certification were distributed in August 2019, and the September Scoping Meetings focused on finalizing requirements for SMT certification and improving the workability of draft SMT applications. This document summarizes the questions and responses from the meetings, arranged by topic.

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

- Why do the regulations require SMT personnel to have ICS-400 and IS-800 or equivalents? These classes focus on Area Command and the National Response Framework, which is outside of the scope of what personnel managing an oil spill need to know.
  - IS-800 is one of the basic National Incident Management System (NIMS) courses, and it is a prerequisite for other required courses. ICS-400 is only required of Tier 1 Incident Commanders, who should understand how incident management structures and processes expand and adapt to increasingly complex incidents.
- Can SMT personnel who are using experience to demonstrate their qualifications rely on experience gained outside of California to meet the requirements?
  - Yes, the experience track allows SMT personnel to count experience managing incidents outside of California, as well as incidents other than oil spills.
- Will there be any accommodations for SMTs who lose trained personnel and need time for replacements to receive training to meet the requirements?
  - OSPR understands that employment in the oil industry is dynamic and turnover is inevitable. We expect SMTs to have procedures in place to train new staff to meet the standards outlined in the regulations. If SMTs lose enough personnel that they are not capable of performing at the level to which they are certified, they should notify OSPR what actions they are taking to address such shortfalls, such as entering into an agreement with another entity to fill gaps in required Incident Command System (ICS) positions while the SMT hires/trains new personnel.
- The regulations require Tier 1 and 2 SMTs to have fully qualified alternates for cascading response positions. If plan holders opt to assemble an SMT using their own cross-trained personnel, they may have difficulty meeting the training track requirement that cascading personnel fill their ICS positions in the lead role in an exercise testing the Reasonable Worst Case Spill (RWCS) volume listed in the plan. Will OSPR consider adjusting the requirements to make it easier for plan holders to cross-train personnel, given the three- year cycle of exercising RWCS volumes?

- OSPR does not want to discourage plan holders from staffing SMTs with their own personnel. We will allow alternates to use RWCS exercises where they filled deputy or assistant positions to fulfill the training requirements.
- How many personnel are required to participate in exercises in California every 3 years?
  - The minimum number of personnel required for SMTs in each Tier must participate in a California exercise every three years. Tier 1 SMTs must have 12 individuals to fill cascading response positions and alternate requirements, Tier 2 must have 10, and Tier 3 must have 8.
  - Initial response personnel are also required to participate in an exercise in California every three years. There may be overlap between personnel filling initial and cascading positions, so SMTs are responsible for ensuring that the minimum number of personnel drawn upon to fulfill requirements participate in a California exercise every three years.
- Can I call in my national team to manage a spill if they are not all certified? They might be needed 48-72 hours into the incident to backfill positions. If so, would I have to bring them into California for drills every 3 years?
  - If plan holders are relying on a national team to satisfy the minimum requirements for SMT resources, the national team personnel should be accounted for in the SMT's application for certification, and they must participate in an exercise in California once every three years.
  - If the plan holder would only rely on the national team to fill positions above and beyond the minimum requirements, they are not required to exercise in California. However, OSPR expects SMT personnel to be fully capable of integrating into a response in California, so it would be beneficial for SMTs to cycle personnel through exercises in California or state-specific training if they are likely to respond to spills in California.
- Will OSPR consider issuing waivers allowing uncertified personnel to fill ICS positions in the event of a large worst-case spill?
  - These regulations set forth minimum requirements for the number of qualified personnel who can arrive on scene to manage a spill. They are not intended to establish a system whereby each individual who may respond to a spill in California is required to have a certification. These are planning standards that outline the minimum amount of spill management personnel resources comprising a certified SMT, so it would not be necessary to issue waivers to allow individuals to fill ICS positions in a response.

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

- Why are there two applications for SMT certification instead of just one?
  - OSPR tried to account for contracted SMTs offering full or partial initial and/or cascading spill management services, as well as the different configurations of spill management resources that plan holders might employ to put together a full SMT. When we drafted one application with all available options, it was very long and included many sections that would not be applicable to various applicants. We thought this would be confusing, so we created two forms.
  - Our priority is to have applications that are clear and straightforward both for applicants and for OSPR to evaluate. We are open to any format that would help facilitate a smooth application review process.
- What does “Scheduled date for start of operations” on the Contracted SMT application mean?

- If an SMT is new to California, they should indicate when they intend to start offering services. This question would not be applicable to SMTs that are already operating in California. We will adjust the question to be more clear.
- Can previous exercises be considered for SMT certification?
  - OSPR looked at the possibility of granting certification based on past exercises, but this was not feasible for various reasons. Instead, we extended the length of provisional certification validity to the end of the third year after a provisional certification is granted so that plan holders will not have to hold additional RWCS exercises.
- If our company has multiple plans but we are only using one team, do we need to have RWCS exercises for each plan for the team to be fully certified?
  - If you have one team that can arrive on-scene to manage spills for each of the plans, the team would only need to have one certification exercise. OSPR would expect the SMT to rotate the contingency plans tested in certification renewal exercises.
- There seems to be considerable overlap between OSPR's Drills and Exercises objectives and the SMT objectives checklist. Why are there two separate lists of objectives for Drills and Exercises and SMTs?
  - OSPR's Drills and Exercises program is intended to test and refine industry and agency contingency plans, while the SMT program will ensure that qualified spill management personnel can arrive on scene and carry out essential tasks in the first ~24 hours of a spill. There are some aspects of the SMT objectives that are not fully captured in the Drills and Exercises objectives.
  - The two programs are similar, and OSPR expects that most SMTs will be certified through exercises that are part of the Drills and Exercises program. OSPR plans to integrate the lists over the next few years, as we harmonize the regulations associated with our marine and inland programs.
- The newest draft of the regulations includes objectives checklists with time frames of 6, 12, and 24 hours. Are SMTs expected to demonstrate all of these objectives during an exercise? If so, are we expected to have exercises that last 24 hours?
  - SMTs will need to perform all of the objectives on the checklist at an exercise in order to earn a full certification. However, we do not expect this to require unconventionally long exercises. Many of the objectives on the checklists, including those for which SMTs are given a full 24 hours to achieve, should be partially addressed ahead of time during exercise planning.
  - We expect to see that SMTs have processes in place that would facilitate their ability to attain the objectives within 24 hours in a real event; these capabilities will be assessed during the application review and verification process.
- Plan holders that build SMTs with some in-house staff and some contracted personnel may not know which positions they will need to contract for when filling out the application. How should they go about completing the application?
  - Plan holders should assess how they can configure their staff to fill the required ICS positions and alternates, given the 18-month grace period to train personnel to the appropriate qualifications. Any requirements for qualified personnel that cannot be met within that time frame should be supplemented with outside personnel.
  - If a plan holder later trains more personnel to fill ICS positions and no longer needs to rely on outside personnel to fulfill the required positions, the plan holder can file an application for revision to reflect the increased in-house capacity.

- OSPR’s contingency plan regulations already require plan holders to list spill management personnel and the training they receive. Since they must also supply this information on the SMT application, does this mean they will have to maintain this information in two places?
  - OSPR’s contingency plan regulations do 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. OSPR reviewed current contingency plans to assess whether they might already be providing enough detail to meet the training and personnel requirements described in the SMT regulations. They did not, so plan holders must submit this information on their applications.
  - OSPR wants to streamline compliance with our regulations as much as possible. Once plan holders have gathered information on their SMT program for the application, they are encouraged to incorporate this information into subsequent contingency plan updates. If the required information is contained in the plan, OSPR will allow plan holders to reference the precise location of the information on their application so that they do not have to maintain it in two locations.
  - The requirements for SMT personnel and training qualifications will be incorporated into the contingency plan regulations when OSPR’s regulations are harmonized.
- To receive credit for exercises that are part of the OSPR’s Drills and Exercises program, plan holders must submit requests for credit. After submitting application and holding a certification exercise, will SMTs need to submit request for credit?
  - OSPR will issue certifications to SMTs after review/verification of complete applications and upon their successful completion of a certification exercise. SMTs will not need to fill out additional paperwork to receive a certification or renewal of a certification.
- Is there some type of software to make the process of applying for and receiving a certification more efficient, such as the portal many plan holders use to submit their plans to CalEPA for the Aboveground Storage Tank program?
  - OSPR is interested in any methods to make this process easy for all parties and we are investigating the possibility of employing software to allow for direct submission of applications online.

**Language Considerations: Comments and Responses**

- Although the HAZWOPER requirements for cascading personnel were removed from the regulations, the language describing compliance with applicable safety regulations still seem to be prescribing particular training requirements. Can it be loosened up more?
  - We will continue to work with our legal department on the wording of this provision. The intent and language state that SMT personnel should be trained in accordance with laws as appropriate for their ICS positions. Suggestions for specific language are encouraged.
- Could the term “provisional” be changed to something else? The connotation is that SMTs with provisional certification are not in good standing with the requirements. Consider using “compliance period” or another more positive term.
  - We will look at changing the language around provisional certifications and will consider “compliance period” or other terms that may be suggested.

- Consider clarifying what is meant by “equipment” in the definitions of initial and cascading response personnel, and consider defining “in-house.”
  - We clarified “equipment” in the relevant section (§ 830.3), but we will look at modifying the definitions as well.
  - We will look at “in-house.” Please let us know if there are other terms that are confusing.

#### **Next Steps**

- We are requesting written feedback on the regulations and economic impacts be sent to OSPR by November 1, 2019.
- We will refine the applications for certification and send them to some stakeholders who have volunteered to be “test cases” for the application format in mid-October 2019.
- We anticipate completing the final draft of the regulations in November 2019.
- We will send the regulatory package to the Office of Administrative Law (OAL) in December 2019 for an informal pre-review. After receiving feedback from OAL, we will revise and submit the package for formal rulemaking in late winter/early spring 2020.
- The regulations will go into effect within 90 days after OAL approval, at the beginning of the next quarter. We expect the regulations to be approved in the third quarter 2020, and go into effect on October 1, 2020.