



CLYDE & CO

Putting It All Together – A Holistic Approach for the “Responsible Party”

Spill Prevention and Response
4 November 2014
Long Beach, CA

Joe Walsh
Clyde & Co US LLP

Observations:

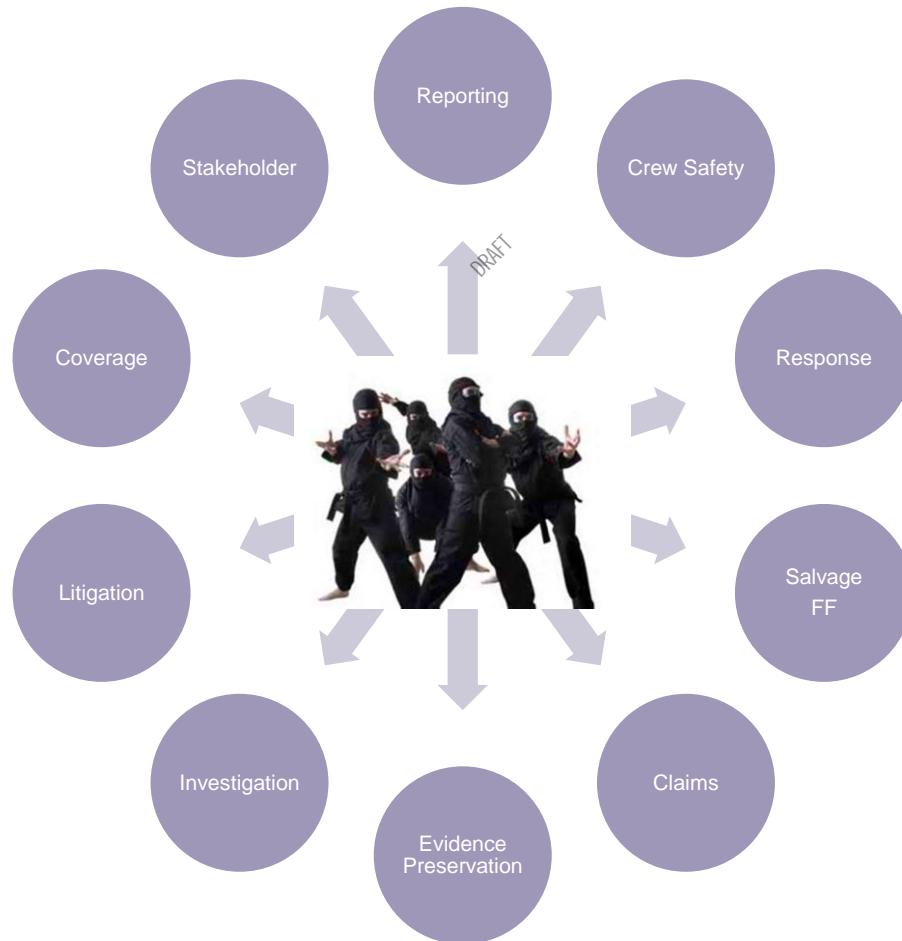
- ✓ **US Law/Policy is based on concept: “Polluter Pays”**
- ✓ **“Source” of a spill determines who is the RP**
- ✓ **Liability for a spill in the first instances is strict**
(negligence and culpability are irrelevant)
 - ❖ Removal Costs
 - ❖ Damages
- ✓ **The deck is stacked.**



Observations: Managing An Incident



Observations: Managing Chaos



Definitions: Incident Command System

Incident Command System- A standardized on-scene emergency management concept specifically designed to allow its user(s) to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries.

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U.S. Coast Guard
INCIDENT MANAGEMENT HANDBOOK
COMDTPUB P3120.17B
May 2014

Definitions: Unified Command

Unified Command- The UC is a structure that brings together the “ICs” of all major organizations that have jurisdictional authority for the incident to coordinate an effective response while carrying out their own organization’s jurisdictional responsibilities.

A UC links responding organizations to the incident and provides them a forum to make decisions together.

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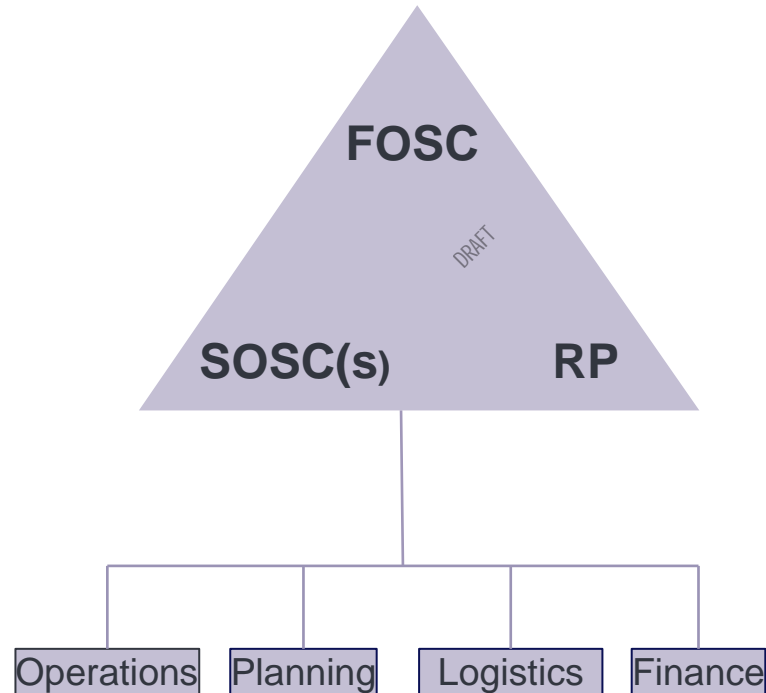
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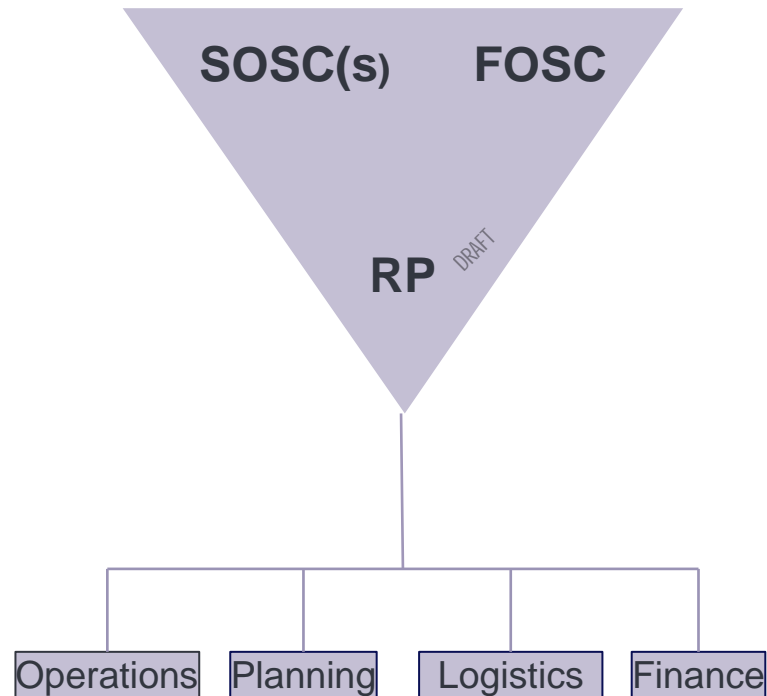


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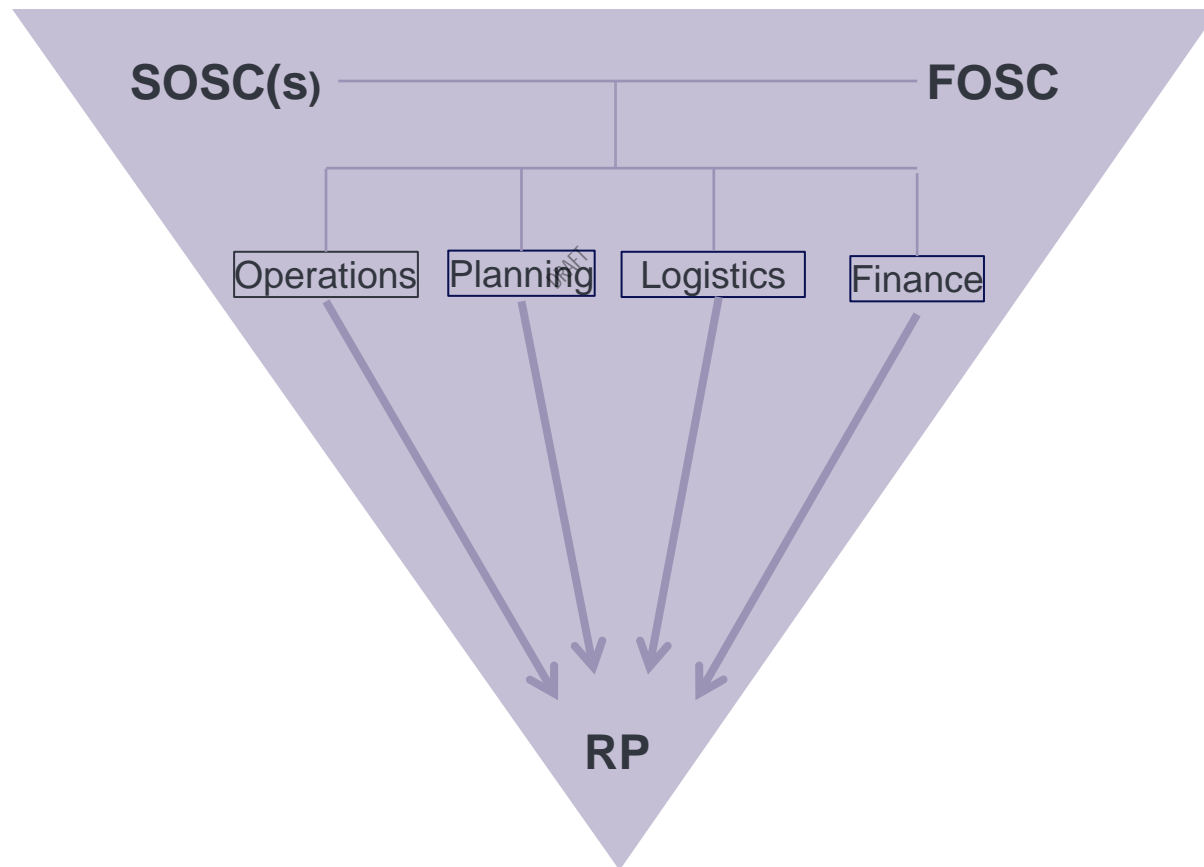
Players: Unified Command Structure



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Misperceptions:

Can you find the
the mistake?

1 2 3 4 5 6 7 8 9

Misperception: “Its All Covered by Insurance”

Controlled by Terms of Contract

Rules of the P&I Mutual Association

Controlled by Terms of Federal and State COFR

Constrained by “Insurable Interest”

Only Covered to \$1B

- Subject to terms of Pooling Agreement and Term of Excess Coverage
- For large claim, competing interests for response costs, damages, NRD, civil fines and penalties.

Willful Misconduct

Criminal Penalties?

Punitive Damages?



Misperception: RP should be (made) “more responsible”

Constrained by Insurance Terms, Policy or Club Rules

Constrained by Stakeholders including Shareholders, and regulating authorities (SEC, FTC, etc.)

Must adopt fair and reasonable approach to claims administration consistent with Insurers needs, NPFC standards, etc.

Should be able to properly document expenditures and necessity for potential contribution and/or indemnity claims against culpable 3rd parties

Should be able to act but be free from risk of fraudulent claims and invoicing.



Misperception: RP Should Not Be Able to Limit Liability



Chronicle / Michael Macce, File



Chronicle / Katy Raddatz, File



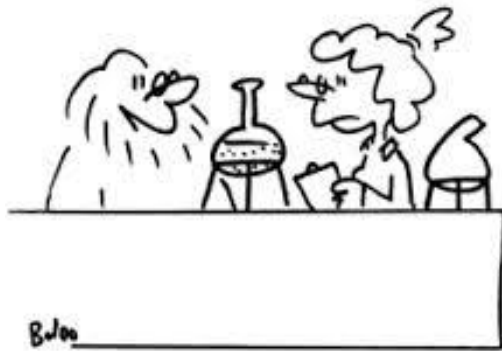
Misperception: RP Should Not Attempt to Limit Liability



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Misperception: NRD and NRDA Government Always Wears the White Hat

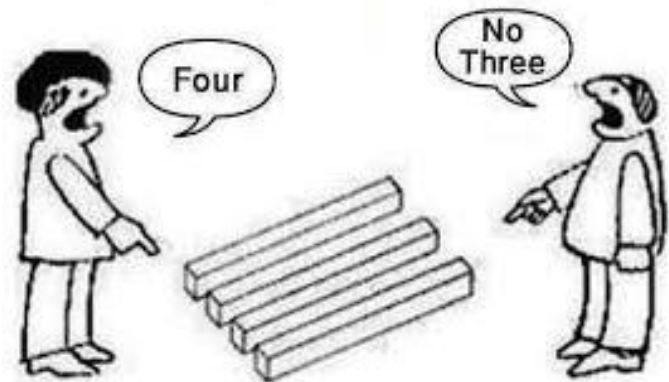


B.J. Lee

"Of course, the really big money is in junk science."



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Suggested Approaches:



Holistic Approach

- Relationships → trust → confidence → cooperation/collaboration
- Resist Vigilantism!
- Everyone has a job to do– find a means to allow them to do it
- No two incidents are the same; be creative and flexible
- Help find “business” reasons to justify expenditures
- No one wants to be the patsy–
- Try to leave the other guy a way out--

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