HazMat Spill Response at the Corner of TRP and OPA

2017 Tribal Lands & Environment Forum, Tulsa, OK
Don Hurst, TRP Manager, Colville Confederated Tribes
HazMat Spill Response at the Corner of TRP and OPA SR21 @ mp136.5, Colville Indian Reservation, WA
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Spill Response under the National Response System (NRS), Incident Command System (ICS) and Unified Command

- **National Response System:** the legal/regulatory mechanism used by the Federal government to manage response to oil & hazmat incidents in coordination with States & Tribes.
  - **Oil Pollution Act (OPA)** is CWA legislation governing oil spills to navigable waters;
  - **CERCLA (Superfund)** is governing legislation for responses to hazmat releases.
Spill Response under the National Response System (NRS), Incident Command System (ICS) and Unified Command (Cont.)

- **Incident Command System:** The comprehensive management system for managing spill response under NRS.

- **Unified Command:** The decision-making group within ICS that determines spill response objectives and priorities.
The Role of On-Scene Coordinator (OSC) within Unified Command

Governments and Responsible party make consensus-based response decisions within Unified Command regarding overall incident objectives and the incident action plan.

*If consensus is not achievable, the Federal On-Scene Coordinator (FOSC) has the final decision-making authority including the option of federalizing the response effort.*
The Role of Tribal On-Scene Coordinator (TOSC) within Unified Command

The role of the TOSC is to ensure that Tribal needs, priorities, and concerns are reflected in the incident objectives and decision-making of Unified Command. Tribes with jurisdictional authority, adequate training, and ability to commit full time to the response are ensured a role in Unified Command as TOSC.
Who Pays for $pill Response$?

Ultimately, the Spiller (Responsible Party) is required to pay all valid costs associated with the response. In the short term, the FOSC can reimburse the costs of other government agencies through Pollution Removal Funding Authorization (PRFA) if the government representative is assigned to work on the response under Unified Command.
NW Area Contingency Plan,
“...unified command may incorporate TOSCs as appropriate.”
How is “appropriate” decided?

- “Should an incident occur on the tribal land/water holdings they have the opportunity to actively participate in UC...”
- “If an impacted local tribe or government would like to participate in UC...”
- “...incidents on tribal lands of federally recognized Indian Tribes.”
- “...Tribal resources impacted or threatened to be impacted by release.”
- “Tribe with jurisdictional authority or functional responsibility under law or ordinance for incident.”
- “Tribes that have an area of responsibility affected by incident or response.”
Within Unified Command, A Tribal On-Scene Coordinator without Tribal cleanup regulations is _________________.

1. A lever without a fulcrum
2. A gun without bullets
3. A day without sunshine
4. All of the above
Department’s Powers and Duties

(a) The Department may exercise the following powers in addition to any other powers granted by Tribal or federal law:

(1) Investigate, provide for investigating, or require potentially liable persons to investigate, any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the Department’s authorized employees, agents, or contractors may enter upon any property and conduct investigations. The Department shall give reasonable notice before entering property unless an emergency prevents such notice. The Department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the Department deems necessary;

(2) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under section 4-16-4(a), subpart (1) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the Department’s authorized employees, agents, or contractors may enter upon property. The Department shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the Department shall give preference to permanent solutions to the maximum extent practicable, and shall provide for, or require adequate monitoring to ensure the effectiveness of the remedial action.

(3) Retain contractors and consultants to assist the Department in carrying out investigations and remedial actions;

(d) The Department may, in its sole discretion, seek to recover all costs and expenses that it may incur as part of investigations in carrying out its duties under the HSCA from any person determined by the Department to be a liable party in accordance with Chapter 4-16-1, and work related to determining sediment clean up levels (SCLs);

(Amended 8/7/14, Resolution 2014-511, Certified 8/21/14)
Hazardous Substance Control Act (HSCA)

4-16-11 Cleanup Standards
(a) Surface water, groundwater, soil and sediment cleanup standards: The cleanup standards enforced by the Department shall be those set forth in the State of Washington "Model Toxics Control Act" or, where the Tribe has adopted more stringent standards as set forth in Appendix A, Appendix B, and Appendix C to this Chapter, the cleanup standards enforced by the Department shall be those standards set forth in Appendix A, Appendix B, and Appendix C which are incorporated in full herein by this reference.

4-16-6 Enforcement
(a) With respect to any release, or threatened release, for which the Department does not conduct or contract for conducting remedial action and for which the Department believes remedial action is in the public interest, the Department shall issue orders or agreed orders requiring potentially liable persons to provide the remedial action. Any liable person who refuses, without sufficient cause, to comply with an order or agreed order of the Department is liable in an action brought by the Department for:

(1) Up to three times the amount of any costs incurred by the Department as a result of the party’s refusal to comply; and

(2) A civil fine of up to twenty five thousand ($25,000) dollars for each day the party refuses to comply.

4-16-7 Judicial Review
(a) The Department’s investigative and remedial decisions under sections 4-16-4 and 4-16-4 and its decisions regarding liable persons under section 4-16-5 shall be reviewable exclusively in Tribal Court, unless a suit has been filed by the Department in another court of competent jurisdiction, and only at the following times:

(1) In a cost recovery suit under section 4-16-(b);

(2) In a suit by the Department to enforce an order or an agreed order, or to seek a civil fine under this Chapter; and

(3) In a suit by the Department to compel investigative or remedial action.

(b) In all such matters where judicial review is sought, the court shall uphold the Department’s action unless such action was arbitrary and capricious.

(Amended 8/7/14, Resolution 2014-511, Certified 8/21/14)

(Amended 6/7/02, Resolution 2007-342)
Geographic Response Plans (GRPs)

GRPs are site-specific spill response plans tailored to a specific beach, shore, or water way and are developed to minimize impact on sensitive areas threatened by the spill.

- Pre-identify sensitive natural, cultural or significant economic resources,
- Provide direction to be implemented without delay by responders to contain the spill and recover it off the surface of the water.
Geographic Response Plans (GRPs), Washington State
Preparation for NRS Spill Response: Opportunities to Build Capacity and Relationships

The Confederated Tribes of the Colville Reservation

Comprehensive Emergency Management Plan

March 2014

Project Manager: Chris McCuen, Commander, EMS, Fire and Rescue, CCT
(609)634-3448

Prepared by: R.L. August, Office of Public Safety, CCT
(702)672-4811

WORKSHOP/MEETING

Emergency Spill Response Concerns and Capabilities, Boundary Waters of the Colville Indian Reservation, WA

Date: October 20th, 2016
9:00 am - 2:00 pm

Location: 2nd Floor Conference Room 3-1
Lucy R. Covington Tribal Government Building
21 Colville St.
Revelstoke, WA 99135

AGENDA:
9:00 – 9:10 Opening Remarks: Patti Bailey, CCT ETD
9:10 – 9:30 Introductions & ISCA Overview: Don Hunt, CCT ETD
9:30 – 10:00 CDC Overview of CCT Comprehensive Emergency Management Plan:
Edythe Moore, CCT ETD
Randy Augen, CCT EMS

10:00 – 10:15 Overview of BNSF: Railway rail safety issues and response capacity, interactions with the State on Geographic Response Plans
Quwah Spencer, BNSF

10:45 – 11:00 KFR/OmniTRIX Hazardous Materials Emergency Response Plan, training, resources, and pre-qualified hazmat contractor base
Ken Rose, KFR/OmniTRIX

11:15 – 12:15 Lunch provided by Burlington Northern Santa Fe Railway

Kip Silver, Able Cleanup Technologies, Inc

12:45 – 1:30 EPA spill response capacity and limitations, NWAC, and UC CR Boundary Waters Area
Dave Rees, EPA Region 10 On Scene Coordinator

1:30 – 1:50 WA ECP spill response capacities, limitations, and GRPs; CR Boundary Waters Area
Mike Irwin, ECP Spill Program, Preparedness

1:50 – 2:00 Closing Remarks: Don Hunt, CCT ETD
Preparation for NRS Spill Response as TOSC: “Recommended”* Training

- FEMA ICS 100: Introduction to the Incident Command System
- FEMA ICS 200: ICS for Single Resources and Initial Action Incidents
- FEMA ICS 300: Intermediate ICS for Expanding Incidents
- FEMA ICS 400: Advanced ICS for Command & General Staff – Complex Incidents
- FEMA ICS 700: Introduction to the National Incident Management System
- FEMA ICS 800: Introduction to National Response Framework

* Northwest Area Committee/Regional Response Team, Tribal and Local On-Scene Coordinators (LOSC/TOSC), July 2015.
Preparation for NRS Spill Response as TOSC: “Required” Training

- OSHA: Hazardous Waste Operations and Emergency Response 24-hr (HAZWOPER)
Alternative Approaches to Meeting Prerequisite Training for TOSC
Alternative Approaches to Meeting Prerequisite Training for TOSCA
Don Hurst, Tribal Response Program Manager
Office of Environmental Trust, Colville Confederated Tribes
don.hurst@colvilletribes.com
509 634 2421