

# What's the Difference?

## The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) vs. the National Response Framework (NRF)



SERC/TERC Meeting  
January 28, 2020





# Agenda

- National Oil and Hazardous Substances Pollution Contingency Plan (NCP)
  - Legal Authority to Respond
  - National Response System
  - Funding Mechanisms
- What is an On-Scene Coordinator (OSC)?
  - NCP Response: Oil Spills and HazMat Releases
  - NRF Response: Natural Disasters and Terrorism
- Don't Confuse Oil and HAZMAT with a Disaster
  - Case Study: Duchesne Oilfield Dumping Incident

# National Oil and Hazardous Substances Pollution Contingency Plan (NCP)

A Brief Overview of  
Legal Authorities  
and the National  
Response System





# Legal Authority to Respond

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- Clean Water Act (CWA) as amended by the Oil Pollution Act of 1990 (OPA)
- Emergency Planning and Community Right-to-Know Act (EPCRA), which amended CERCLA
- Regulation: National Oil and Hazardous Substances Pollution Contingency Plan (NCP)



# Important Legal Definitions - Removal

- So, what is a removal action?
  - Removing the threat of/actual discharge to water (OPA) or the release of hazardous substances (CERCLA) to the environment necessitating a response action in 6 months or less to protect public health and welfare or the environment
- Removal, not Remedial:
  - Not a long-term clean-up, not driven by extensive process
- CERCLA §104 versus CERCLA §120
  - §104 – Government lead removal action
  - §120 – Only applies to Preliminary Assessments and Remedial Actions – not removals
- Clean Water Act § 311(c)
  - Legal authority for all federal oil response
  - No mention of Remedial Process...Removal only





# NCP Authorities by Incident Type

## Oil Discharges

- Only EPA and USCG have Federal Response Authority for Oil
- Removal Only

### Authority:

- Clean Water Act
- Oil Pollution Act of 1990

## Hazardous Substances Releases

- Emergency
  - EPA, USCG, DoD, DoE
- Non-Emergency
  - Above, plus any federal agency on their property/jurisdiction (BLM, USFS, etc.)

### Authority:

- CERCLA

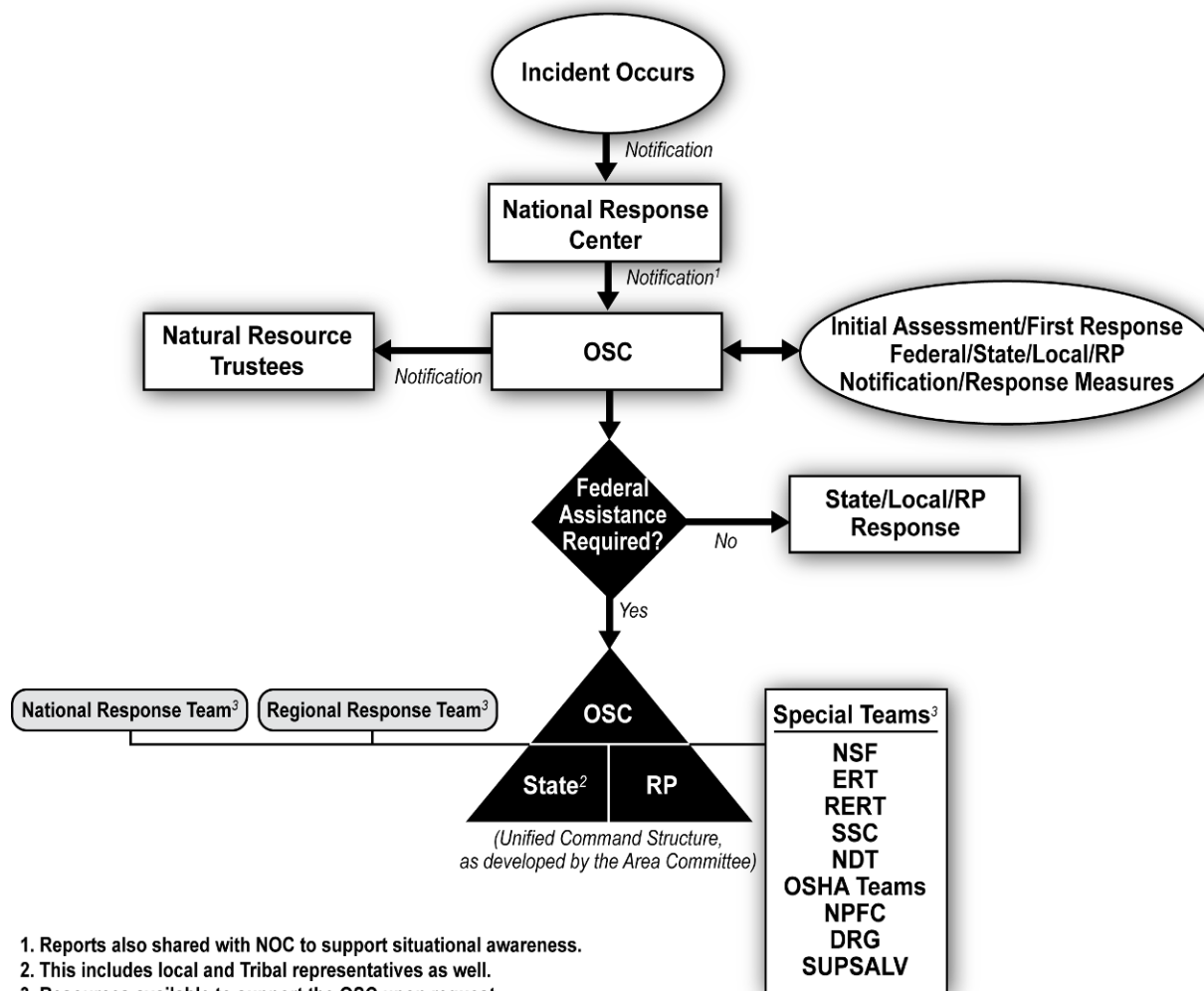


# National Response System Overview

- Federal Regulation (40 CFR 300)
- Organizational Structure and Procedures for Federal Oil and Hazardous Substance Response
- This is ESF10 for National Response Framework (NRF)
- National Response System Components:
  - National Response Team (NRT)
  - 13 Regional Response Teams (RRTs)
  - National Response Center (NRC)
  - Special Teams
  - Federal On-Scene Coordinators (OSCs)
  - Area Committees
  - State/Local Governments
  - Joint Response Teams with Canada and Mexico
  - Regulated Industry

# National Response System (NRS)

- 40 CFR §300.100





# National Response Center (NRC)

- Receives all reports of releases involving oil and hazardous substances including, infrastructure security breaches, suspicious activities, and terrorist related events involving hazardous substances & oil that trigger federal notification requirements

**Approximately 30,000 incident notifications each year**

- Notifies Federal and State OSCs of incident
- Notifies DHS/NOC & EPA/USCG Headquarters
- Preparedness role – supports NRS planning activities



# NRS Funding Mechanisms

## Oil Spills

- Clean Water Act, as amended by the Oil Pollution Act of 1990
- Oil Spill Liability Trust Fund (OSLTF)
- USCG National Pollution Funds Center (NPFC)



## Hazardous Substances

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- The "Superfund"
- EPA Office of Solid Waste and Emergency Response (OSWER)



# Oil Spill Liability Trust Fund

- Tax on Oil Production/Import
- OSLTF Emergency Fund established to provide funding for:
  - Emergency response actions to protect public health, safety and environment
  - Natural Resource Damage Assessments (NRDA) initiation
  - Compensation for claimants who demonstrate that oil pollution caused damages



- As authorized by the OPA, uses of the OSLTF include:
  - Response costs incurred by the USCG or EPA
  - State access for response activities
  - Payments to federal, state, and Indian tribe trustees to conduct natural resource damage assessments and restorations
  - Payment of claims for uncompensated response costs and damages
  - Research and development
  - Other specific appropriations

# The “Superfund”

- Not so “super” anymore – Congressional Allocation
- Can be accessed in three ways:
  - Federal OSC
  - Claims Process
    - Claims can be submitted by individuals or states
    - Response actions must be preauthorized for reimbursement
  - Local Government Reimbursement (LGR) program



# What is an On-Scene Coordinator?

## A Brief Overview of Legal Authorities and Capabilities







# What is an On-Scene Coordinator?

- National Oil and Hazardous Substances Contingency Plan (NCP) 40 CFR 300 spells out role and authorities of OSCs.
- Predesignated official responsible for coordinating and directing response under Subpart D (Oil) and/or removal actions under Subpart E (Hazardous Substances) of the NCP. (40 CFR 300.5)
- Responsible for federal response efforts and for coordinating all other efforts at the scene of a discharge or release of oil, pollutant/contaminant, or hazardous substance. (40CFR300.105)
- There are ~45 USCG OSCs (Coastal Zone) and ~250 EPA OSCs (Inland Zone) nationwide with diverse technical/tactical backgrounds
- OSCs have Federal Warrant Authority for at least \$250,000, are trained as Federal Contracting Officers, and have contractors on standby 24/7/365 – Similar to a FEMA FCO



# What is an O

Funding





# Legal Obligations of an OSC

- Direct Response Operations {300.135(a)}
- Coordinate with Other Agencies {300.135(d)}
- Notify the Governor {300.405(e)}
- Notify and Consult with Natural Resource Trustees {300.135(j)(1) & (2)}
- Initiate Site Evaluation Promptly {300.410(b)}
- Initiate Response ASAP {300.415(b)(3)}
- Ensure Proper Waste Disposal {300.440}
- As requested, submit OSC reports to RRT and/or NRT {NCP 300.415(m)}
- Comply with ARARs {NCP 300.415(j)}



# Privileges of an OSC under CERCLA

- No permits required {NCP 300.400(e)}
- Review/Approve Public Information {NCP 300.415(n)(1)}
- Direct response operations and coordinate all other efforts on-scene {NCP 300.135(a)}
- Emergency discharge authority
  - NPDS authority given to OSCs in emergencies under the provisions of 40CFR122.3(d) for decon water or firefighting runoff



# The NRF-NCP Relationship

- The National Response System (OSCs, RRTs, NRT, etc.) responds under the NCP on daily basis for more “routine” oil and hazardous materials incidents
- When DHS leads incident under NRF, NRS assets are activated under NRF Emergency Support Function (ESF) #10 – Oil and Hazardous Materials Response Annex



# Don't Confuse Oil and HAZMAT Incidents with a "Disaster"

Duchesne Oilfield Dumping Incident  
Duchesne, UT  
September 24 – October 6, 2010  
NRC Report 955263  
FPN E10814







# Spill Discovery

- Discovered by local resident on recreation path
- Nearby water filling station for oil production
- FD and Emergency Management notified on 9/24/2010 at 1:30 PM
- Emergency Manager (EM) notified UDEQ and was given a list of OSROs to contact for support
- EM ordered OSRO to mobilize and respond under verbal contract
- UDEQ, TriCounty Health Department, & Ute Tribe representatives on-scene to size-up incident
- Sheriff finds evidence of “midnight dumping” of “up to 80bbbls of produced water and oil” at ramp



**Starvation  
Reservoir**

**To Upper  
Stillwater  
Reservoir  
(35 Miles)**

**To Green  
River  
(44 Miles)**

**Impacted Areas:  
Strawberry ~ 1 mile  
Duchesne ~ 3 miles**

**Duchesne River  
25 CFS**

**Strawberry River  
135 CFS**



















# Notification to EPA

- UDEQ eMail to EPA Region 8 RRC
  - Saturday, 9/25/2010 @ 9:26 AM
  - “Debris, including petroleum products,”
  - “dumped [from truck] into [Strawberry River],”
  - “staying in clumps and not [mobile],”
  - “although booms placed to contain the spill.”
- TCHD call to National Response Center
  - Monday, 9/27/2010 @ 2:30 PM
  - “~20 bbls of crude oil dumped into Strawberry River”
  - “impacting 4 mi of Strawberry and Duchesne Rivers”
  - “OSRO on-scene, but EPA help/resources needed.”
  - EPA OSC Dispatched to Incident @ 3:05 PM



# EPA Initial Response Actions

- Initial assessment of impacted river segments confirmed impacted areas and oil properties
- Convened UC meeting and worked to prioritize/right-size OSRO oil recovery efforts
- Consulted DOI regarding natural resource implications of reduced flows in Duchesne River
- Met with BIA and Ute Tribe about their concerns
- Considered mobilizing EPA contractors to subcontract with OSROs
- Instead initiated discussions with USCG for novel funding mechanism to bail out county EM
- Stopped short of “ratification” for initial costs





# Removal Effort

- Involved primarily physical/mechanical collection of clumps of oil and oiled substrate by crews
- Focused on working from impacted Duchesne River toward spill site to expedite restoring flows
- Extensive SCAT effort along impacted areas by UDEQ, County, TCHD, EPA and Ute Tribe
- Worked closely with Central Utah Water Conservancy District to “flush” rivers
- Recovered ~10-12 bbls of crude oil during 10 days of response, which cost almost \$500k
- County negotiated contract/invoice with OSRO













# Lessons Learned & Recommendations

- Utilize NRC as “one call” phone number for Oil and HazMat spills; legally enforce compliance
- Cleaning up spills is our business; developing novel contracting mechanisms isn’t
- Discourage independent initiative and educate EMs about the inherent liability in spill response that is inconsistent with the NCP
- Conduct outreach in oil production areas, emphasizing costs/benefits of compliance
- Reinvigorate sACP updating and exercises in all nine Region 8 sACPs, beginning with Green River, Colorado River, and Missouri River



# Questions?

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