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Equiva Services LLC (part of the Shell, Texaco, Saudi Aramco alliance) appreciates the opportunity to comment on the Preparedness for Response Exercise Program (PREP). Equiva Services provides emergency response management services for oil spills, releases of hazardous substances, and other types of emergencies involving alliance vessels or facilities.

We commend the Coast Guard and other participating Federal agencies for continuing to engage in activities to improve PREP. We are keenly interested in these ongoing activities to improve the system for either the regulators or the regulated community, and we appreciate the Coast Guard's commitment to engaging the regulated community in this regard.

As a whole, we continue to believe PREP is an excellent program. This joint cooperative effort among the Federal agencies and the regulated community has been of significant help in improving the Nation's oil spill preparedness posture. Overall, we believe we are better prepared to work cooperatively to respond to, and mitigate the effects of, oil spills. Thus, our basic comments are that:

- (1) PREP is well-founded and doesn't need significant "fixing"; but,
- (2) several issues bear special attention.

Most importantly, we continue to see evidence that PREP is slowly deteriorating from a national program into diverging regional programs with increasing inconsistency in exercise approach driven more by the local offices/districts/field units and individual FOSCs of the Federal OPA agencies than by the national guidelines.

We strongly support the NSCC's comment and concurrence regarding topic # 23 on page 11, that "...PREP emphasizes the need for government/industry cooperative assessment of response capabilities. While we recognize the need for the government to provide regulatory oversight as well, oversight programs should not hamper the cooperative spirit and intent of the original guidelines." Further, we support the notion that "...Government and industry should be more interested in the lessons learned from exercises and in cooperative implementation of substantive lessons learned rather than focusing on how many exercises should be required..." and, we suggest, the exercises should not "test", nor focus on, how fast boom can be physically transported to a spill site.

In accord with our suggestion, above, we strongly disagree with the NSCC assertion regarding topic # 24 on pages 12-13 that "...containment boom and the means to deploy and anchor that boom must be at the spill site within one hour." Careful analysis of the logic in the Attachment will lead the reader to the conclusion that both the USCG and EPA, at various organizational levels, err in requiring (or interpreting) that, during a response or a drill, certain resources MUST be on scene within an hour of notification. We contend in our analysis that USCG and EPA OPA regulations require that OPA plan-holders must *plan* to have certain resources available and *plan* to have those resources on scene within specified times...and, those resources must include boom that must be *planned* to be on scene within an hour. Our contention is reinforced by the definition of "Timely" noted in the 2001 Draft Revisions to the PREP Guidelines, pg 327, which states (emphasis supplied): "As a general rule, the **regulatory planning standard** is containment

equipment (e.g., boom) on scene within one hour of notification and recovery equipment on scene within two hours. Therefore, in a government-initiated unannounced exercise, a plan holder should be able to initiate simulated cleanup within approximately two hours of exercise commencement.” The first sentence states that equipment arrival time on scene is a planning standard; the second sentence affirms this by suggesting that cleanup would begin within approximately two hours (“approximately” denotes that the planning standard might not be met because of conditions which can not be forecast...traffic, weather, etc.).

Any interpretation contrary to our analysis turns a strongly-stated USCG and EPA planning standard into a performance standard and turns resource transportation during a drill or response into an unsafe and unjustifiable race against the stopwatch.

We further both agree and disagree with the NSCC assertion in the same topic area that “...these response planning standards are established in the regulatory regimes implemented by each of the individual agencies and are outside the purview of the PREP program.” We agree that these are planning standards (see Attachment); but, we disagree that the planning standards are outside the purview of PREP. The 2001 Draft Revisions to the PREP Guidelines bring the USCG and EPA regulations within the purview (i.e., “within the range of...concern...”, Webster’s, 1993) of PREP by defining (pgs 1-8 to 1-9) “Timely - (as used in relation to CG and EPA government-initiated unannounced exercise programs) containment boom and the means to deploy and anchor that boom at the spill site within one hour of detection of the spill, recovery devices and storage capacity at the spill site within 2 hours and other mitigating equipment within timeframes specified in the applicable regulations”. Since “timely” is not defined by the regulations, the PREP definition will most certainly be used by the regulators in interpreting what is “timely” in relation to PREP drills...drills that will satisfy the regulatory requirements that are based strictly on planning standards. Our understanding of this is further reinforced by the NSCC assertion on page 14 (topic # 29) of the PREP Workshop Comments that the “...exercise objectives include ‘timely’ deployment of equipment specified in each agency’s response planning regulations.

As a result, we strongly recommend that the USCG and EPA issue guidance that definitively removes the possibility for an erroneous and dangerous interpretation that response equipment be transported to, and arrive at, the scene of a drill or response within any specific timeframe.

Finally, we support the comment regarding topic # 24 on pages 11-12 that objective numbering be changed “...so that sub-objectives can be easily identified, eliminate or modify objectives which only apply to facility plan holders, and reconcile differences in description of response management system concepts between the National Oil and Hazardous Substances Contingency Plan (NCP) and the Field Operations Guide (FOG) published by the USCG.” We know, from ongoing experience, that differences in language between/among regulations and/or guidance documents only increase the likelihood of varying interpretations by the USCG, EPA, et al, and, thus, increase the difficulty Responsible Parties have in trying to comply with requests or demands (that are often not well-founded in the regulations nor guidance documents) by government agency field personnel during drills or actual responses.

We are pleased to continue working with the USCG and other Federal agencies to resolve any issues that threaten to fragment, disrupt, or otherwise deflate PREP or any other part of the national response program. If you have any questions, please contact Jim Clow (281-874-4742) of my staff.

Sincerely,

R. L. Jacoby
Director, Business Integration and Crisis Management

Attachment (1) Equiva Services' Comments

ATTACHMENT (1)

TOPICS 1 – 23

We generally concur with the NSCC's interpretation of, and recommendations regarding, the PREP Workshop Comments for these topics.

TOPICS 23, 27, 29

In our previously-submitted comments (13 SEP 2000), we noted our concern that:

- *EPA V expects equipment to be deployed within 1 hour.*

The regulations for Marine Transportation-Related Facilities for both EPA and USCG facilities state that spill containment boom and a means to deploy it must be on scene within one hour of the incident. Neither the regs nor PREP require that the equipment be deployed within one hour.

A facility owner or operator must have:

USCG: "...at least 200 feet of containment boom and the means of deploying and anchoring the boom available at the spill site within 1 hour of the detection of a spill to respond to the average most probable discharge."

EPA: "...one thousand feet of containment boom (or, for complexes with marine transfer components, 1,000 feet of containment boom or two times the length of the largest vessel that regularly conducts oil transfers to or from the facility, whichever is greater), and a means of deploying it within 1 hour of the discovery of a discharge."

After further, in-depth review of the USCG and EPA regulations, we offer the below analysis of the USCG NSFCC response to comments the USCG received regarding the AUGUST 2000 PREP WORKSHOP. This analysis supports our contention that both the USCG and EPA err in requiring (or interpreting) that, during a response or a drill, response resources MUST be on scene within certain timeframes.

Page 12 of the USCG NSCC Response contains the following paragraph:

"One commentator requested clarification of the intent of PREP related to EPA and USCG government-initiated unannounced exercises. Specifically, does timely response to an average most probable discharge exercise mean that the equipment needs to be on scene within one hour or deployed and operating within one hour? The commentator was concerned that it would be difficult, if not impossible for planholders to have equipment operating in one hour. If planholders cannot possibly achieve the response planning standards then maybe the standards are unfair or inappropriate."

The NSCC reply to this comment is:

"In accordance with both CG and EPA response plan regulations, containment boom and the means to deploy and anchor that boom must be at the spill site within one hour. Oil recovery devices and storage capacity must be at the spill site within 2 hours. The regulation does not prescribe a time by which deployment must be completed. However, for exercise purposes a reasonable person can expect that boom deployment would commence upon arrival and would be completed approximately coincident with the arrival of skimmers and storage capacity so that recovery operations should begin within 2 hours of notification. Note that these response planning standards are established in the regulatory regimes implemented by each of the individual agencies and are outside the purview of the PREP program."

We strongly disagree with the NSCC assertion that the CG and EPA regs *require* boom "at the spill site within one hour" (of spill discovery). Both the intent and the letter of the regulations differ significantly from the NSCC assertion. Ineluctably, planning standards are not meant to be tested as performance standards, otherwise they would be written as performance standards. 33 CFR 154 is so infused with planning standards that any other interpretation of the listed requirements as being performance standards is illogical.

Listed below are most, but not all, of the 33 CFR 154 references to planning standards, performance standards, and related requirements/guidelines. Included in the listings are our comments which reinforce the planning standard concept that both EPA and the USCG misread.

PREP

According to the PREP objectives for Vessels, MTR Facilities, and EPA-Regulated Facilities, Government-Initiated Unannounced Drills conducted by either the USCG or EPA require only that the response is (1) demonstrated to be timely, (2) conducted with an adequate amount of equipment for the scenario, and (3) properly conducted.

USCG REGULATIONS

33 CFR 154.1010: Purpose "This subpart establishes oil spill response plan requirements for all marine transportation-related (MTR) facilities...These requirements specify criteria to be used during the planning process to determine the appropriate response resources. **The specific criteria for response resources and their arrival times are not performance standards.** The criteria are based on a set of assumptions that may not exist during an actual oil spill incident." (emphasis supplied).

The above "Purpose" paragraph is critical because it **overlays all the requirements that follow in Subpart F** - Response Plans for Oil Facilities, governing all response resources and their arrival times by the principle that they are NOT performance standards. Further, the set of assumptions "that may not exist during an actual oil spill incident" will also not exist during an oil spill drill. In each case, the assumptions are still planning standards and NOT performance standards, and the specific criteria for response resources and their arrival times are not "testable" as performance standards.

This interpretation is strongly reinforced in Appendix C to Part 154 – Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans. Subparagraph 2.6 of Appendix C states:

“The requirements of subparts F, G, H and I of this part establish response resource mobilization and response times. The distance of the facility from the storage location of the response resources must be used to determine whether the resources can arrive on scene within the stated time. A facility owner or operator shall include the time for notification, mobilization, and travel time of response resources identified to meet the maximum most probable discharge and Tier 1 worst case discharge response time requirements. For subparts F and G, tier 2 and 3 response resources must be notified and mobilized as necessary to meet the requirements for arrival on scene in accordance with Secs. 154.1045 or 154.1047 of subpart F, or Sec. 154.1135 of subpart G, as appropriate.”

It is critical to understanding the entire regulation that **distance** be the focus in determining and verifying that resources “can” (not shall nor must) arrive on scene. “Can”, as used in the regulation, means “be made possible or probable by circumstances” or be “designed to” or “be able to” (Webster, 1993).

Further, subparagraph 2.6 does not suggest that (1) any response resources should be subjected to stopwatch scrutiny, nor (2) that the planning standard should be evaluated as a performance standard. It does not suggest that any process, other than verifying the specified parameters (i.e., distance from the facility to resource storage site; travel time based on the 35 MPH, or other, speed standard; etc.) be used to evaluate response resource availability. The USCG drafters must have obviously recognized that:

- resource availability does not equate to resource transportation; and, since the planning assumptions might not exist during a response or drill
- subjecting the physical transportation of response resources to the scrutiny of a stopwatch was a dangerous test that would provide no added value to either a drill nor an actual response.

33 CFR 154.1225(d): “Response resources identified in a response plan under paragraph (c) of this section **must be capable of commencing an effective response** within the times specified in this paragraph for the applicable operating area...”

This is a planning standard, and the resources must be capable of commencing response based on the planning distances noted previously. A performance standard would state “...**must** (or shall) commence an effective response within the times specified...”. Further, we contend that once a call is made to activate the resources, the response has commenced. When the resources actually arrive on scene is predicated on the environmental conditions that exist at that time and which can not be forecast nor tested (as in a spill response or drill). In other words, physical transportation of resources can be set up (planned for) but arrival times on scene will vary, depending on actual conditions that can not be forecast with certainty.

33CFR154.1228 “Methods of ensuring the availability of response resources by contract or other approved means.

(a) When required in this subpart, **the availability of response resources must be ensured** by the following methods:

(1) The identification of an **oil spill removal organization with specified equipment and personnel available within stipulated response times** in specified geographic areas. The organization must provide written consent to being identified in the plan;

(2) A document which---

(i) Identifies the **personnel, equipment, and services capable of being provided by the oil spill removal organization** within stipulated response times in the specified geographic areas;

(ii) Sets out the parties' acknowledgment that **the oil spill removal organization intends to commit the resources** in the event of a response;

(iii) Permits the Coast Guard to **verify the availability of the identified response resources through tests, inspections, and drills**;

(iv) Is referenced in the response plan;

(3) Active membership in a local or regional oil spill removal organization that has identified specified **personnel and equipment required under this subpart that are available to respond (sic) to a discharge within stipulated response times** in the specified geographic areas;

(4) Certification by the facility owner or operator that **specified personnel and equipment** required under this subpart are owned, operated, or under the direct control of the facility owner or operator, and **are available within stipulated response times** in the specified geographic areas;
or

(5) A written contractual agreement with an oil spill removal organization. The agreement must identify and ensure the **availability of specified personnel and equipment** required under this subpart within stipulated response times in the specified geographic areas.

(b) The contracts and documents required in paragraph (a) of this section must be retained at the facility and must be produced for review upon request by the COTP.”

This subpart specifies only planning standards, NOT performance standards. While we agree that the *availability* of response resources MUST be ensured by some form of documentation, the arrival on scene of these resources within stipulated timeframes is governed by the phrases:

- “...capable of being provided...”
- “...intends to commit the resources...”
- “...are available to respond...”
- “...are available within stipulated times...”, etc.

If these were intended to be performance standards, the text would state:

- “...identifies the personnel, equipment, and services that **must be provided** by the oil spill removal organization, and which **must be on scene** within stipulated response times...”
- “...that the oil spill removal organization **must** commit the resources...”
- “...personnel and equipment required under this subpart **must** respond to a discharge within stipulated response times...”
 - “...**must** be available within stipulated response times...”.

33 CFR 154.1035 “Specific requirements for facilities that could reasonably be expected to cause **significant and substantial harm** to the environment.

(iv) This subsection must **identify the oil spill removal organizations and the spill management team to:**

(A) **Be capable of providing the following response resources:**

(1) Equipment and supplies to meet the requirements of Secs. 154.1045, 154.1047 or subparts H or I of this part, as appropriate; and...”

Sec. 154.1045 states:

“(c) **The response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must identify response resources that are available, by contract or other approved means** as described in Sec. 154.1028(a)(1)(4), to respond to the facility's average most probable discharge. **The response resources must include, at a minimum--**

(1) **1,000 feet of containment boom** or two times the length of the largest vessel that regularly conducts petroleum oil transfers to or from the facility, whichever is greater, **and the means of deploying and anchoring the boom available at the spill site** within 1 hour of the detection of a spill; and...”

In other words, for a facility that could be expected to cause significant and substantial harm (the worst potential), the FRP must identify resources that are available by contract including boom and the means of deploying the boom within one hour of spill detection. This does not say the boom has to be on site, but that it must be identified, contracted, and positioned at a distance such that it can be available at the spill site within one hour. Interpreting this to mean the boom must be on site within one hour:

(1) runs counter to the planning standard principle so often and strongly established elsewhere in these regs,

(2) doesn't correlate with the requirements to:

“be **capable of being** at the spill site”,

“identify resources that are **available by contract**”,

“positioned **such that they can arrive** at the scene”,

or

“are **available to respond within specified times**”,

etc., and

(3) could result in an unsafe race against the clock, (and/or weather, traffic, visibility or other limiting conditions on spill day or drill day) by the facility or OSRO attempting to deliver boom within one hour.

33 CFR 154.1040 “Specific requirements for facilities that could reasonably be expected to cause **substantial harm** to the environment.

(a) The owner or operator of a facility that, under Sec. 154.1015, could reasonably be expected to cause substantial harm to the environment, shall submit a response plan that meets the requirements of Sec. 154.1035, except as modified by this section.

(b) The facility's response activities section of the response plan need not list the facility or corporate organizational structure that will be used to manage the response as required by Sec. 154.1035(b)(3)(iii).

(c) The owner or operator of a facility must ensure the **availability of response resources required to be identified in Sec. 154.1035(b)(3)(iv) by contract or other approved means** described in Sec. 154.1028.

(d) **A facility owner or operator must have at least 200 feet of containment boom and the means of deploying and anchoring the boom available at the spill site within 1 hour of the detection of a spill to respond to the average most probable discharge** in lieu of the quantity of containment boom specified in Sec. 154.1045(c)(1). Based on site-specific or facility-specific information, the COTP may specify that additional quantities of containment boom are available within one hour. In addition, there must be adequate sorbent material for initial response to an average most probable discharge. If the facility is a fixed facility, the containment boom and sorbent material must be located at the facility.”

In other words, the FRP must identify resources that are available by contract including boom and the means of deploying the boom within one hour of spill detection. This does not say the boom has to be on site, but that it must be identified, contracted, and positioned at a distance such that it can be available at the spill site within one hour. Interpreting this to mean the boom must be on site within one hour:

(2) runs counter to the planning standard principle so often and strongly established elsewhere in these regs,

(2) doesn't correlate with the requirements to:

“be **capable of being** at the spill site”,

“identify resources that are **available by contract**”,

“positioned **such that they can arrive at the scene**”, or

“are **available to respond within specified times**”, etc., and

(3) could result in an unsafe race against the clock, (and/or weather, traffic, visibility or other limiting conditions on spill day or drill day) by the facility or OSRO attempting to deliver boom within one hour.

We contend that interpreting this to be an outright performance standard is contrary not only to the stated purpose of the regulation 33 CFR 154.1010, but is also contrary to 33 CFR 154.1045, as explained below, and all the other references noted herein.

It is also illogical, given that the requirements for a “significant and substantial harm” facility (noted above) are less stringent than this out-of-character performance standard for a “substantial harm” facility. We strongly recommend this requirement be revised to bring it in line with the purpose of this regulation...

33 CFR 154.1045 “Response plan development and evaluation criteria for facilities that handle, store, or transport Group I through Group IV petroleum oils.

(a) The owner or operator of a facility that handles, stores, or transports Group I through Group IV petroleum oils shall use the criteria in this section to evaluate response resources identified in the response plan for the specified operating environment.”

In other words, these criteria are to be used by the O/O to evaluate whether the resources identified in the FRP are located such that they can be delivered on scene within prescribed times.

“(1) The criteria in Table 1 of appendix C of this part are to be used solely for identification of appropriate equipment in a response plan. These criteria reflect conditions used for planning purposes to select mechanical response equipment and are not conditions that would limit response actions or affect normal facility operations.

(2) The response resources must be evaluated considering limitations for the COTP zones in which the facility operates, including but not limited to--

- (i) Ice conditions;
- (ii) Debris;
- (iii) Temperature ranges;
- (iv) Weather-related visibility; and
- (v) Other appropriate environmental conditions as determined by the COTP.

(3) The COTP may reclassify a specific body of water or location within the COTP zone. Any reclassifications will be identified by the COTP in the applicable ACP. Reclassifications may be to--

- (i) A more stringent operating environment if the prevailing wave conditions exceed the significant wave height criteria during more than 35 percent of the year; or
- (ii) A less stringent operating environment if the prevailing wave conditions do not exceed the significant wave height criteria for the less stringent operating environment during more than 35 percent of the year.

(b) Response equipment must--

- (1) Meet or exceed the operating criteria listed in Table 1 of appendix C of this part;
- (2) Function in the applicable operating environment; and
- (3) Be appropriate for the petroleum oil carried.

(c) The response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must identify response resources that are available, by contract or other approved means as described in Sec. 154.1028(a)(1)(4), to respond to the facility's average most probable discharge. The response resources must include, at a minimum--

- (1) 1,000 feet of containment boom or two times the length of the largest vessel that regularly conducts petroleum oil transfers to or from the facility, whichever is greater, and the means of deploying and anchoring the boom available at the spill site within 1 hour of the detection of a spill; and...

In other words, the FRP must identify resources that are available by contract including boom and the means of deploying the boom within one hour of spill detection. This does not say the boom has to be on site, but that it must be identified, contracted, and positioned at a distance such that it can be available at the spill site within one hour. Interpreting this to mean the boom must be on site within one hour:

- (3) runs counter to the planning standard principle so often and strongly established elsewhere in these regs,

- (2) doesn't correlate with the requirements to:
 - “be **capable of being at the spill site**”,
 - “**identify resources that are available by contract**”,
 - “**positioned such that they can arrive at the scene**”, or
 - “**are available to respond within specified times**”, etc., and
- (3) could result in an unsafe race against the clock, (and/or weather, traffic, visibility or other limiting conditions on spill day or drill day) by the facility or OSRO attempting to deliver boom within one hour.

We contend that interpreting this to be an outright performance standard is contrary not only to the stated purpose of the regulation 33 CFR 154.1010, but is also contrary to 33 CFR 154.1045.

“(2) Oil recovery devices and recovered oil storage capacity **capable of being at the spill site** within 2 hours of the discovery of a petroleum oil discharge from a facility.

(d) The response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must **identify response resources that are available**, by contract or other approved means as described in Sec. 154.1028(a)(1)(4), to respond to a discharge up to the facility's maximum most probable discharge volume.

(1) The response **resources must include sufficient containment boom, oil recovery devices, and storage capacity** for any recovery of up to the maximum most probable discharge planning volume, as contained in appendix C.

(2) The response resources must be appropriate for each group of petroleum oil identified in Sec. 154.1020 that is handled, stored, or transported by the facility.

(3) **These response resources must be positioned such that they can arrive at the scene of a discharge within the following specified times:**

(i) The equipment identified in paragraphs (c)(1) and (c)(2) of this section or in Sec.154.1040(d) must arrive within the times specified in those paragraphs or that section, as appropriate.”

This subparagraph (i) is contrary to the governing subparagraph (3). The governing subparagraph correctly states that the resources must be positioned “such that they can arrive at the scene” (planning standard). Contrary to the logic of the planning standard, subparagraph (i) attempts to create a performance standard within the planning standard by stating the equipment “must arrive”. This is not in consonance with the stated purpose of the regulation and should be changed to reflect that the resources must be positioned such that they can arrive. The subparagraph should state: “(3) These response resources must be positioned such that they can arrive at the scene of a discharge within the specified times identified in paragraphs (c)(1) and (c)(2) of this section or in Sec.154.1040(d).”

“(ii) In higher volume port areas and the Great Lakes, response **resources must be capable of arriving on scene** within 6 hours of the discovery of an petroleum oil discharge from a facility.

(iii) In all other locations, response **resources must be capable of arriving on scene** within 12 hours of the discovery of a petroleum oil discharge from a facility.”

“(e) The response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must **identify the response resources that are available, by contract** or other

approved means as described in Sec. 154.1028(a)(1)(4), to respond to the worst case discharge volume of petroleum oil to the maximum extent practicable.

(1) The location of these response resources must be suitable to meet the response times identified in paragraph (f) of this section for the applicable geographic area(s) of operation and response tier.

(2) The response resources must be appropriate for--

(i) The volume of the facility's worst case discharge;

(ii) Group(s) of petroleum oil as identified in Sec. 154.1020 that are handled, stored, or transported by the facility; and

(iii) The geographic area(s) in which the facility operates.

(3) The response resources must include sufficient boom, oil recovery devices, and storage capacity to recover the worst case discharge planning volumes.”

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“(f) Response equipment identified in a response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must be capable of arriving on scene within the times specified in this paragraph for the applicable response tier in a higher volume port area, Great Lakes, and in other areas.”

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. .

“(g) For the purposes of arranging for response resources for a facility that handles, stores, or transports Group I through Group IV petroleum oils, by contract or other approved means as described in Sec. 154.1028(a)(1)-(4), response equipment identified for Tier 1 plan credit must be capable of being mobilized and en route to the scene of a discharge within 2 hours of notification. The notification procedures identified in the plan must provide for notification and authorization of mobilization of identified Tier 1 response resources--

(1) Either directly or through the qualified individual; and

(2) Within 30 minutes of a discovery of a discharge or substantial threat of discharge.

(h) Response resources identified for Tier 2 and Tier 3 plan credit must be capable of arriving on scene within the time specified for the applicable tier.”

33 CFR 154.1055 “Exercises.

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. .

(b) A facility owner or operator shall participate in unannounced exercises, as directed by the COTP. The objectives of the unannounced exercises will be to test notifications and equipment deployment for response to the average most probable discharge. After participating in an unannounced exercise directed by a COTP, the owner or operator will not be required to participate in another COTP initiated unannounced exercise for at least 3 years from the date of the exercise.”

In keeping with the stated purpose of these regulations, testing notifications and equipment deployment should not be based on stopwatch timing of the exercise. The FRP itself is not based on performance standards and drills should be conducted and evaluated such that they reflect the required planning standards...not any perceived nor mis-stated performance standards. For an incident response team to become effective, it must be trained the way it intends to respond, and then it must respond the way it has been trained. Stopwatch-

type timing of any drill/response actions will lead to expectations by responders and regulators alike that safety is secondary to “beating the clock”. Any “tests” should be devised such that they allow regulators to use subjective, reasoned judgement in determining whether activation of the FRP has been satisfactory, based on conditions surrounding the drill, and based on the planning standards.

33 CFR 154.1225 “Response plan development and evaluation criteria for facilities that handle, store, or transport animal fats and vegetable oils.

(c) The owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils must identify the response resources that are available by contract or other means as described in Sec. 154.1228(a). The equipment identified in a response plan must include--

(1) Containment boom, sorbent boom, or other methods for containing oil floating on the surface or to protect shorelines from impact;

(2) Oil recovery devices appropriate for the type of animal fats or vegetable oils handled; and

(3) Other appropriate equipment necessary to respond to a discharge involving the type of oil handled.

(d) Response resources identified in a response plan under paragraph (c) of this section must be capable of commencing an effective on-scene response within the times specified in this paragraph.”

Again, the resources must be capable of commencing a response within the timeframes specified. This is a planning standard, based on distance and average travel times, and is not testable with a stopwatch as a performance standard.

33 CFR 154.1228 “Methods of ensuring the availability of response resources by contract or other approved means.

(a) When required in this subpart, the availability of response resources must be ensured by the following methods:

(1) The identification of an oil spill removal organization specified equipment and personnel available within stipulated response times in specified geographic areas. The organization must provide written consent to being identified in the plan;

(2) A document which---

(i) Identifies the personnel, equipment, and services capable of being provided by the oil spill removal organization within stipulated response times in the specified geographic areas;

(ii) Sets out the parties' acknowledgment that the oil spill removal organization intends to commit the resources in the event of a response;

(iii) Permits the Coast Guard to verify the availability of the identified response resources through tests, inspections, and drills;”

The resources must be ensured by a placeholder who identifies (in the FRP) an OSRO that agrees, by contract, that it has resources capable of being provided within the stipulated times and that it intends to commit those resources in the event of a response. This is, again, a planning standard.

The CG is allowed to verify the availability of these identified resources through tests, inspections, and drills. But, putting a stopwatch on any activated resources

to verify they can be physically transported rapidly, make all the traffic lights, not hit any pedestrians, and get on scene within a specified time turns the planning standard into a performance standard that adds no value to a drill nor to a response.

Verifying the AVAILABILITY of the resources does not equate to verifying the actual time necessary, on any given day, to activate and transport those resources to a specific location within the planning standard timeframe. Verifying the availability of the resources to the planning standard level is a paper exercise to verify all the planning distances, equations, math, logic, and contractual agreements are valid. Verifying the ability of an OSRO or plan-holder to provide those resources on spill day or drill day in accordance with the planning standard requires subjective observation, reasoning, and judgement...not objective testing...not a stopwatch.

Activating the requisite resources within a specific timeframe is paramount, because not a second should be wasted in the first moments, minutes, and hours of a response. But, once activated, all bets should be off as to when (by stopwatch) the resources actually arrive on scene...since arrival times are based on planning distances and nothing more. Once a call is made to activate the resources, the response has commenced. When the resources arrive on scene is predicated on the environmental conditions that exist at that time and which can not be forecast nor tested (as in a drill). Getting the resources on scene within a reasonable timeframe makes eminent sense, but, pushing the safety envelope with a stopwatch is unwise and dangerous.

“3) Active membership in a local or regional oil spill removal organization that has identified specified personnel and equipment required under this subpart that are available to response (sic) to a discharge within stipulated response times in the specified geographic areas;

(4) Certification by the facility owner or operator that specified personnel and equipment required under this subpart are owned, operated, or under the direct control of the facility owner or operator, and are available within stipulated response times in the specified geographic areas; or

(5) A written contractual agreement with an oil spill removal organization. The agreement must identify and ensure the availability of specified personnel and equipment required under this subpart within stipulated response times in the specified geographic areas.”

This is, again, a planning standard.

33 CFR 154.1310 “Purpose and applicability.

This subpart establishes oil spill response planning requirements for an owner or operator of a facility that handles, stores, or transports other non-petroleum oils. The requirements of this subpart are intended for use in developing response plans and identifying response resources during the planning process. They are not performance standards.”

Again, this is more reinforcement that these are all planning standards, not performance standards. Ineluctably, planning standards are not meant to be tested as performance standards; otherwise, they would be written as performance standards (which would be contrary to the stated purpose of these regulations).

33 CFR 154 Appendix C “Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans

1.1 The purpose of this appendix is to describe the procedures for identifying response resources to meet the requirements of subpart F of this part. These guidelines will be used by the facility owner or operator in preparing the response plan and by the Captain of the Port (COTP) when reviewing them. Response resources identified in subparts H and I of this part should be selected using the guidelines in section 2 and Table 1 of this appendix.”

These are guidelines which, according to Webster (1993), are “an indication or outline of future policy or conduct.” Again, according to Webster, indication means a signal, sign, or suggestion.” Thus, these are not hard and fast rules but, rather, are akin to planning standards and not testable in a tangible sense.

“2.6 The requirements of subparts F, G, H and I of this part establish response resource mobilization and response times. The distance of the facility from the storage location of the response resources must be used to determine whether the resources can arrive on scene within the stated time. A facility owner or operator shall include the time for notification, mobilization, and travel time of response resources identified to meet the maximum most probable discharge and Tier 1 worst case discharge response time requirements. For subparts F and G, tier 2 and 3 response resources must be notified and mobilized as necessary to meet the requirements for arrival on scene in accordance with Secs. 154.1045 or 154.1047 of subpart F, or Sec. 154.1135 of subpart G, as appropriate. An on water speed of 5 knots and a land speed of 35 miles per hour is assumed unless the facility owner or operator can demonstrate otherwise.”

This is strong planning standard language: the DISTANCE of the facility from the storage location MUST be used to determine whether resources can arrive on scene within the state time...NOT A STOPWATCH. Thus, physical transportation of the resources in a real response or a drill should not end up as a de facto driving test (or race against the clock) by the facility nor OSRO to deliver the resources on scene within 60 minutes. The planning standard language noted in the “purpose” section of the regulations recognizes the inherent safety and environmental conditions that may preclude the equipment from arriving on scene within any exact timeframe...and “on scene” may not even be at the facility...it may be downstream ten miles or somewhere else unrelated to the distance identified in the planning standard.

GOVERNMENT-INITIATED UNANNOUNCED EXERCISE FACILITY/VESSEL WORKBOOK

PG. 6 Establishing Performance Expectations

“The length of the exercise is limited by the PREP Guidelines to four hours. The maximum benefit for participants can only be achieved by clearly defining the scope of the exercise and establishing performance expectations.

The planning standards outlined in 33 CFR 154.1010 and 33 CFR 155.1010 clearly state that these are not response times and that these criteria may not exist during an actual oil spill

incident. During the unannounced exercise, it is important to evaluate all aspects of the response. Key to a successful exercise is the timely first aid containment and control of the spilled oil. This containment should be performed by the OSROs identified in the response plan and/or facility's/vessel's personnel in concert with appropriate notifications to the QI and SMT. Subsequent notifications to the Coast Guard, state authorities, etc., also need to be made as soon as practicable. **In most cases, as soon as practicable does not equate to the planning standards outlined in the regulation.** As a benchmark, the exercise management team should review the actions and **determine if the results are consistent with the intent of the planning standards.** The opinions of the exercise management team will form the basis of the determination of issuing credit for the exercise or for denying credit for the exercise.”

Without question, the planning standards are intended to be used by the planholder to identify response resources within specific distances from the facility such that they can be brought to the spill scene within prescribed times...based on the notification and travel criteria. Planning standards are not intended to be physically tested for veracity; the “test” is whether the notification and driving distance times work in the equations required by the regulations. Planning standards, if tested by putting a stopwatch on the time from notification to delivery of resources on scene, become, de facto, performance standards...clearly contravening the intent of the planning standard language and the stated purpose of the FRP/VRP regulations. The correct use of the regulatory requirements is summed up in the above sentence: “(a)s a benchmark, the exercise management team should review the actions and determine if the **results are consistent with the intent** of the planning standards.”

PG. 13 Section 3. Evaluation & Reporting

“For example, if the notification process was delayed because the facility/ vessel operator could not reach the OSRO or did not have the current phone number of the state agency, then the recommended action might be: update the phone list with current numbers and determine a better method for notifying the OSRO. **If the OSRO did not reach the facility until two hours after the notification, but a major traffic incident occurred (sic), blocking the only access into the area of the facility/vessel, this should be noted. They did not meet the planning standard of reaching the facility/ vessel within one hour, but there was a valid explanation.** Conversely, if the OSRO was not contacted until an hour after the start of the exercise, and it took another hour to reach the facility/ vessel, then the facility/ vessel did not meet the planning standards.”

This paragraph shows the USCG's misunderstanding of the difference between planning standards and performance standards. In the rush to objectively, rather than subjectively, evaluate a drill, the USCG puts a stopwatch on the OSRO to determine if the proper resources are physically transported to the scene within a specific time-frame. The action of timing the transportation is NOT a test of the planning standard; it IS turning the planning standard into a performance standard...again, clearly contravening the planning standard language and stated purpose of the FRP/VRP regulations.

In order to evaluate on-scene response time, the evaluator must use subjective reasoning, as above in the major traffic accident scenario. And, NOT CONVERSELY, but similarly, the evaluator must also use subjective reasoning in evaluating the second scenario in which the OSRO is not contacted until an hour

after startex. This is CLEARLY not timely nor acceptable, and should be so noted by the evaluator.

Obviously, subjective evaluation requires an evaluator who has the requisite training and experience to understand the regulations, notification and activation process, traffic and weather conditions, and other factors which may impact the delivery of resources on scene. We believe the USCG would not want to unwittingly force a plan-holder nor OSRO into making an unsafe decision nor committing an unsafe act because of the specter of the stopwatch ticking away.

TOPICS 24 – 26, 28, 30 – 35

We generally concur with the NSCC's interpretation of, and recommendations regarding, the PREP Workshop Comments for these topics.