

# MONEY WELL SPENT OR MONEY JUST SPENT? THE NEED FOR INTEGRATED COST ACCOUNTING DURING SPILL RESPONSE<sup>1</sup>

Daniel F. Sheehan  
Director, National Pollution Funds Center  
U.S. Coast Guard  
Washington, D.C.

**ABSTRACT:** *Responding to a significant oil spill is a logistical and organizational challenge for both the public and private sector. Significant organizational improvements have occurred as a result of the Oil Pollution Act of 1990 (OPA 90). One of the challenges that continues to exist is the ability to keep track of both physical and fiscal resources. Many large oil companies and other organizations have plans in place that are capable of spending resources at a rate in excess of \$5 million per day. Federal expenditures and commitments during a large spill could easily approximate the same amount. The task of keeping track of both public and private expenditures could be facilitated if there were preagreement on the need for format, detail, and frequency of summary accounting data. The hypothesis is that this would help control resource management and create a disciplined environment within the construct of the unified command structure.*

Robert Frost wrote the following in a poem titled "The Hardship of Accounting":

Never ask of money  
Where the spender thinks it went.  
Nobody was ever meant  
to remember or invent  
What he did with every cent.

I submit that Mr. Frost never dealt with the myriad laws, regulations, and financial practices that are specifically focused on accounting for every cent the spender spent. The costs of responding to oil spills are ultimately always accounted for; however, where the money was meant to be spent and what it was ultimately spent on is often the subject of controversy. The controversy unfortunately most often occurs well after the spill response is over; after the responders have gone home, the accountants and the attorneys begin to reconstruct the event on a financial basis.

The Oil Pollution Act of 1990 (OPA 90) reinforced the philosophy that the "polluter pays," and it added that "the polluter pays with certainty and timeliness." OPA 90 increased the limits of liability and the scope of damages that are compensable as the result of an oil spill. The establishment of the Oil Spill Liability Trust Fund (OSLTF) provides assurance to the federal on-scene coordinator (FOSC) and the impacted public that there are federal funds available to provide for response as well as to compensate those that are damaged by the spill within the limits prescribed by law and regulation. Monies expended from the OSLTF are expected to be recovered where there is an identifiable responsible party (RP) to the limit of the RP's liability. The federal and RP responses to oil spills are inextricably linked, not only because of the joint goal of minimizing damage through a coordinated and aggressive response, but

1. The views presented in this paper are those of the author and do not necessarily reflect those of the U.S. Coast Guard.

also because of the financial interrelationships of the parties. There are clearly response scenarios where RPs and FOSCs will operate side by side to mitigate damage.

## Impact of the incident command system (ICS)

The incident command system provides the platform and structure on which the oil spill response organization should be built. ICS, which was pioneered by the fire service, has proven its worth and flexibility in a multitude of applications for disaster and other emergency responses. The inclusion of a "finance" cell or element was in recognition that there needs to be a coordinated capability that centrally provides for the ability to fund purchases, contracts, and services on an increasing scale. Centralizing the function also facilitates financial record keeping.

In the majority of instances where ICS is used, the funds that permit the finance section to perform its functions are derived from the following discrete sources:

- Scenario 1: Purely governmental response; Federal, state, municipality.
- Scenario 2: Intragovernmental response; Federal, state(s), municipality(ies).
- Scenario 3: Private sector funds
- Scenario 4: Public/private sector response

The fourth scenario is the one that is principally unique to oil spill response; there is federal leadership, and potentially all of the components of the other three scenarios are represented. The private sector principals are represented in an OPA 90 spill by the responsible party and its subordinate elements. Those elements consist of their protection and indemnification clubs, oil spill response organizations (OSROs), their subcontractors, cargo owners, claims adjudication companies, and the RP's COFR guarantors (this is not an inclusive list).

All of these entities can be simultaneously spending money on goods, services, and the multitude of other purchases necessary to effect a removal in accordance with the national contingency plan (NCP).

## What difference does it make?

The answer certainly depends on where you sit and what role you are playing in the response. However, there is a necessary financial linkage that may impact the conduct and prosecution of removal operations.

When an oil spill or the substantial threat of an oil spill occurs, RPs are required by OPA 90 to pay for all removal costs and damages caused by the spill, subject to the RP's limits of liability prescribed in OPA 90.

This can potentially impact the interaction between the elements in the response in the following manner.

An RP has to make a series of decisions that can be affected by the amount of monies that are spent during and after a response. There are three primary components of costs that can contribute toward meeting and satisfying an RP's limit of liability:

- A Removal costs
- B Damages
- C Subset of damages (natural resource damage assessments and natural resource damage costs)

Because the statute of limitations on claims for OPA 90 damages is 3 years from the end of the spill response, an RP may not know the extent of the total costs of a spill for many years. The RP that has limited financial resources and is approaching its limit of liability will need to know when that point is so that, if the spill response is going to continue after the RP's funds are going to be exhausted, the FOOSC can take over the total spill response in a seamless manner.

To know when the limit is being approached, the RP needs to know not only its own costs but also the costs that are expended by the other constituent elements of the response effort. Such a system does not exist today. To define what such a system should look like, it is necessary to examine the potential actions of the constituent parts. Toward that end, I would like to examine some of the principal roles, and I do so with some specific caveats and assumptions about a hypothetical response to a major spill. The first is that the spill response was a model of command, control, and cooperation and that all removal actions taken were (1) coordinated with the FOOSC and (2) in concert with the national contingency plan. The reasons for the caveats are illustrative of other problems and challenges that continue to be of concern to the NPFC but that are symptomatic of a larger challenge that is beyond the scope of this paper. However, they do reduce the variables that need to be addressed and will help focus on the financial issues.

### The federal perspective

The federal perspective concerning billing and accounting for costs is based on the requirements in OPA 90 that the polluter be charged for all costs up to its limits of liability. This necessitates the collection of data from all federal entities that have expended resources during the spill cleanup, which can take the following form:

- Collection and consolidation of federal agencies that have responded for monitoring and removal, which includes personnel and equipment
- Federal contract costs for removal: private contractors, other federal agencies, and state and local agencies
- Funds expended for initiation of natural resource damage assessments

### The responsible party (RP)

The RP probably faces one of the biggest challenges in terms of not only responding to the spill but also in keeping track of costs. The RP, if conducting a coordinated effective response, may be operating on several fronts with multiple needs to keep track of costs expended.

- Removal activities: primary contractors, logistical services, salvage efforts
- Claims adjudication: initiation of claim-processing organization, advertisement and solicitation of claims, processing and payment of claims

These endeavors become more complex as the size and scope of the spill increase. The RP and his or her management team that is respond-

ing to the spill face a dual challenge. First, the overall removal efforts must be coordinated with the FOOSC to ensure that plans and the implementation of those plans are conducted in accordance with the NCP. Additionally, if the spill has spread, multiple diverse sites may need removal action. The logistics may be difficult, and this increases the difficulty of keeping track of and accounting for personnel and equipment at various sites. These tasks are clearly challenging during the course of the spill, but they are exceedingly difficult to reconstruct in a postspill environment.

### States and municipalities

In almost every spill there will be either real or potential impacts on a state, multiple states, and/or their municipalities. The area contingency planning (ACP) process prescribed in OPA 90 includes states and municipalities in the response planning process. There are two principal ways that a state or municipality can be compensated for its expenditures during a spill response under the control of an FOOSC.

1. Pollution funding response authorizations (PFRAs). These are agreements that are made between the FOOSC and the state or municipality to effect actions that are consistent with the NCP. These normally would be accounted for by the FOOSC; however, the daily costs of the efforts should be fed to the FOOSC.
2. Claims. OPA 90 permits states and municipalities to submit claims for damages due to a spill, such as:
  - a. Loss of revenue. If the spill closed a park or other revenue-generating entity, a claim can be submitted.
  - b. Increased cost of services. A state or municipality may have incurred additional costs in conjunction with the spill, such as requiring overtime for police to close or patrol a beach during cleanup.

### Proposal

A number of steps can be taken to provide comprehensive financial information in both the small and major oil spill.

**First.** A major step forward is the establishment of "universal nomenclature and cost documentation formats." This could be accomplished through either a formal mechanism such as ASTM or through a formal partnership with representatives of the marine pollution response industry. The NPFC has a number of proposed forms and formats that it currently uses within the federal community. These are contained in the NPFC's "User's Reference Guide." Figure 1 is provided as an example for illustration purposes.

**Second.** A variety of spill response management systems are in various stages of development and completion. Each of these systems should use a standard financial accounting and reporting package that is capable of receiving a variety of reports on a daily basis and that can continuously log input and generate reports.

**Third.** The Coast Guard should consider the following in its development and implementation of the incident command system:

1. Development of a standard set of support tools and processes to facilitate management and control of medium to major spills.
2. The standard set should include command, control, and communications modules that are capable of the following:
  - a. Continuous time log entry of reports that have been input and external and internal communications.
  - b. Ability to import both graphical and numerical databases.
  - c. Separate but interlinked modules for primary elements in the ICS.
  - d. External, but linked to the primary system, there should be a subordinate process to keep track of forces both public and private that are deployed in the prosecution of the spill response.
3. Upon notification of a spill that may possibly require the employment of an ICS, an initial response team (IRT) will be deployed, which will be tasked with the following:

DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG-5136E (01-93)	<b>POLLUTION INCIDENT DAILY RESOURCE REPORT</b>	GOVERNMENT SHORT FORM (RCN-16451-1)
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FPN/CERCLA NUMBER _____	DATE _____
PARENT UNIT _____	OSC/REP/LEAD TRUSTEE SIGNATURE _____

PERSONNEL						
NAME (LAST, FIRST)	PAY GRADE	DUTY	HOURS	STANDARD RATE	TOTAL	OFFICE USE

Total Cost This Date: \_\_\_\_\_

EQUIPMENT							
ITEM DESCRIPTION	RATE BASIS	#UNITS	RATE/UNIT	RATE CHARGE	NON-RATE CHARGE	TOTAL	OFFICE USE

Total Cost This Date: \_\_\_\_\_

PURCHASES/EXPENDABLES			
Were any purchase orders completed?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If yes, how many: _____
If yes, are they attached?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If yes, how many: _____
If no, complete information below			
DESCRIPTION OF ITEM	PURCHASE ORDER NUMBER	COST	OFFICE USE

Total Cost This Date: \_\_\_\_\_

TRAVEL ORDERS				
Were travel orders issued?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If yes, how many: _____	
If yes, are copies attached?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If no, complete below information	
Are the liquidated travel claims attached?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If yes, how many: _____	
If no, submit when liquidated				
NAME (LAST, FIRST)	TRAVEL ORDER NO.	ISSUED BY	EST. COST	OFFICE USE

Estimated Total Travel Cost: \_\_\_\_\_

CONTRACTORS		
Are contractor services authorized for this date?	YES <input type="checkbox"/>	NO <input type="checkbox"/> If yes, list contractors hired
NAME	P.O./CONTRACT NUMBER	OFFICE USE

OTHER FEDERAL/STATE/LOCAL AGENCIES INVOLVED (FOR OSC or Lead Trustee Use)		
Were agencies authorized to act?	YES <input type="checkbox"/>	NO <input type="checkbox"/> If yes, list other agencies and attach copy of authorization
NAME	AGREEMENT NUMBER	OFFICE USE

(LOCAL REPRODUCTION)

Figure 1. Pollution Incident Daily Resource Report (continued on next page)

## **H. POLLUTION INCIDENT DAILY RESOURCE REPORT – CG-5136E-1 CONTRACTOR PERSONNEL**

This form should be completed for contractor personnel costs incurred for each day of removal activity.

### **How to complete form:**

1. **FPN/CERCLA Number:** The FPN or CERCLA case number assigned to the incident.
2. **Date:** Report the date costs were incurred.
3. **Contractor:** Name of contractor; indicate if supporting documentation is attached.

### **Contractor Personnel**

Provide the following information for each individual.

4. **CLIN:** The applicable contract line item number.
5. **Name:** First and last names of contract personnel involved in removal activity.
6. **Job Description:** What was the employee's job (i.e., supervisor, equipment operator, laborer)? This may require an abbreviation to be entered.
7. **Hours Employed:** The starting and ending times during which the personnel were performing removal activities.
8. **Total Hours:** Hours spent performing removal duty.
9. **Hourly Rate:** The hourly rate of pay for personnel.
10. **Rate Charge:** The number of hours multiplied by the hourly rate of pay.
11. **Per Diem:** Per diem costs incurred by the personnel. This assumes that a flat rate per diem is authorized by the contract. Otherwise, per diem costs should be documented as other expenses on the CG-5136E-3 form.
12. **Total Cost:** The sum of the Rate Charge and the Per Diem costs.
13. **Total Personnel Costs For This Date:** The sum of the amount entered in the Total column.
14. **Contractor's Certification:** Contractor's certification of the validity of the information presented.
15. **FOSC/Trustee Signature:** Certification by the FOSC/Lead Trustee. The FOSC certifies that personnel listed were authorized for the date reported. The FOSC does not certify contract rates or costs.

Figure 1. (continued)

- a. Deploying and installing the package suite of equipment.
  - b. Overlaying and establishing the interconnectivity and command and control system.
  - c. Providing constant maintenance, monitoring, and backup for the system.
4. Continuing to exercise the system during announced and unannounced exercises.

### **Summary**

Substantial improvements were brought about in the National Oil Spill Response System by the implementation of the Oil Pollution Act of 1990. However, much remains to be accomplished, and the task of "keeping track of the money" can clearly tie the total system together to achieve one of the major goals of OPA 90: "continuous improvement" of the nation's method and system of responding to oil spills.