

MANAGING EMERGENCY RESPONSE CONTRACTORS IN THE 21ST CENTURY A “BEST IN CLASS” APPROACH

*J. Fritz Kin, CSP, CET, CHMM
Manager, Emergency Preparedness
Marathon Ashland Petroleum LLC*

Introduction

There have been many changes during the evolution of the emergency response contractor since the introduction of the Oil Pollution Act of 1990 (OPA '90). Managing these contract resources is a challenge facing every responsible company in the United States. Marathon Ashland Petroleum LLC (MAP) has recognized the changes and has faced the challenges by developing a comprehensive program for managing these highly valued spill response resources.

This paper will outline MAP's innovative Contractor Management Program which has set it apart from its peers. Elements of the program include:

- Aggressive contract administration;
- Contractor pre-qualification screening;
- Pre-negotiated contract response rates;
- MAP Sponsored Emergency Responder Conference;
- Comprehensive auditing of all Oil Spill Removal Organizations (OSRO) and most other emergency response contractors;
- Post-response contractor critique & follow-up;
- Contracting of emergency response contractors for on-going maintenance work.

Aggressive contract administration

After the Marathon Oil Company and Ashland Petroleum Company joint venture in 1998, the new MAP Emergency Preparedness Group (EPG) and Purchasing & Commercial Services (P&CS) began to evaluate the state of affairs regarding emergency response contracts with emergency responders and OSRO's. It became apparent that neither parent company had done much in this area for some time, so a decision was made to evaluate the current contract documents to determine if new contracts should be developed. Another important element of the process was the dedication of an Emergency Response Coordinator in the P&CS organization. This new position allowed for the dedication of time and resources to work through the process of evaluating who MAP currently had contracted for emergency services, the status of the contract and the strategy for moving the process forward. After evaluating the then-current list of OSRO's, the P&CS Emergency Response Coordinator worked closely with the corporate law organization to develop a suite of contracts that better reflected the work performed under those contracts.

Emergency response contract. This contract, typically a 5-year term, is used for emergency environmental response services and for large catastrophic environmental releases and environmental related work.

Waste service & recycling contract. This document, typically a 5-year term, is used for the transportation, treatment, recycling, storage and disposal of hazardous, non-hazardous and special wastes.

Environmental service contract. This document is typically a 5-year term contract used for environmental-related services including, but not limited to assessment, remediation and small spill response (MAP level I and level II).

During the legal review of the new contracts, the P&CS Emergency Response Coordinator, working with MAP operations evaluated the OSRO coverage requirements and response times as allowed under the guideline in the OPA '90. The evaluation identified some gaps in the coverage and response times of currently contracted OSRO resources. P&CS, working with operations, closed the gaps by seeking out competent contractors who not only met the MAP contract requirements, but also met the response time requirements in OPA '90.

Upon completion of the contract development process, new contracts were sent to all of the OSRO's that MAP had listed in their Facility Response Plans. At the present time, the P&CS Emergency Response Coordinator is completing some contracts that were delayed as a result of OSRO legal review, but the process has been successful in ensuring that each OSRO has been evaluated and is working under the most appropriate contract for the services provided.

Contractor pre-qualification screening

The first step in initiating a contract with a company under consideration for emergency response work for MAP is completion of a contractor safety questionnaire and verification of appropriate insurance coverage. Working with operations' Safety Professionals, MAP has developed a comprehensive health, safety and training questionnaire. The focus of this evaluation is to determine if the contractor has the appropriate health and safety programs for the scope of work identified in the contract. Special emphasis is placed on high hazard operations such as confined space entry procedures, hot work procedures and employee Hazardous Waste Operations and Emergency Response (HAZWOPER) training.

Another important aspect of the evaluation and screening process is a review of the contractors' accident and injury history, including the OSHA Recordable Injury Rate, OSHA Lost Time Injury Rate, employee fatalities and the Worker Compensation Experience Modification Rate. MAP has established minimum standards for these categories that are used during the evaluation process. MAP also requests information on recent OSHA investigation and citation experience. Together this information helps the Safety Professional determine whether or not the contractor meets the standards for working on MAP projects.

Pre-negotiated contract response rates

Upon completion and approval of the Contractor Health & Safety questionnaire, the P&CS Emergency Response Coordinator initiates the contracting process. This involves sending out duplicate copies of the appropriate contract for contractor review and approval. It is common for emergency response contractors to have varying rates for services based upon a number of elements, including the phase of the response, emergency versus non-emergency response, degree of hazard of the work and expertise of the response personnel.

These rates for services are reflected in a form often called the "rate sheet". The "rate sheet" is returned to MAP with the signed contract. The P&CS Emergency Response Coordinator reviews the rate sheet to determine if it is reasonable and customary for the services covered by the contract. If it is determined that the rates are excessive, the Emergency Response Coordinator meets with a representative from the contractor to negotiate the services and costs covered by the rate sheet.

Negotiated items often include:

- Daily versus hourly rates;
- Weekly rates;
- Monthly rates;
- Equipment rates;
- Subcontract pass through rates;
- Contractor Management rates;
- Emergency versus non-emergency response rates;
- Expense & Per Diem.

MAP sponsored emergency responder conference

In early 2001, MAP's Emergency Preparedness Group and the P&CS Emergency Response Coordinator met to discuss the current state of affairs with emergency and OSRO contractors. There had been many contractor mergers, office closings and consolidations. In light of these changes, it was determined that a meeting with contractors would be beneficial to communicate MAP response expectations and to understand the contractor's expectations during and after a response. With MAP management support the first annual Emergency Responder Conference was scheduled for June of 2001.

MAP's president kicked off the conference with a message of thanks and gratitude for contractor efforts when responding to MAP incidents. The remainder of the conference agenda included topics on MAP's Corporate Emergency Response Team structure, Incident Command System basics, Response Management System and overall coordination of MAP's Spill Management Team and emergency and OSRO contractors. Contractor expectations were also a main focus of this first conference.

These expectations included:

- Use of flame resistant garments at hydrocarbon release incidents;
- Use of calibrated air monitoring instruments;
- Availability of HAZWOPER trained personnel;
- Use of appropriate equipment for flammable hydrocarbons;
- Availability of other appropriate Personal Protective Equipment when responding to flammable hydrocarbon releases;
- Adequate supervision of response personnel;
- Daily accounting and submission of contractor expenses.

The P&CS Emergency Response Coordinator spoke to the group about the required contracting efforts and their importance to MAP. In addition to the general discussion of contractor expectations, the Emergency Response Coordinator also discussed the importance of having current rate sheets submitted to avoid confusion and payment delays when the contractor is asked to respond to an emergency incident. The importance and use of the daily accounting of contractor costs was also emphasized so confusion and potential problems could be avoided during a response.

The training portion of the conference was concluded with a keynote address from a United States Coast Guard (USCG) Captain with many years of response experience. The Captain reviewed the USCG expectations for both the responsible party, in this case MAP, and the emergency and OSRO contractors responding to an emergency event. A review of the proposed USCG Response to Hazardous Substance regulations and a question and answer session concluded the Captain's presentation.

The conference agenda included a teambuilding activity and dinner. The MAP Corporate Emergency Response Team (CERT) team members were seated with contractor representatives so relationships and friendships could be fostered in a non-emergency environment. The response to the conference was positive with many contractors expressing appreciation for the opportunity to get to know MAP and their response expectations. The MAP emergency response personnel were also pleased with the opportunity to get to know the contractors and to better understand their response capabilities and limitations.

Comprehensive auditing of OSRO's

The Facility Response Plans (FRP) that MAP is required to prepare and submit to regulatory agencies has requirements to identify the resources, equipment and personnel, that a given contractor has in a certain geographic region or office location. MAP personnel preparing FRP's struggle to determine if the resources identified by the OSRO and other emergency response contractors are accurate. Recognizing the importance of this information, MAP identified and engaged an internal auditor to verify and conduct field audits of the contractor equipment.

The initial MAP audit format was developed following the USCG OSRO audit guidelines. Upon completion of the audit format and forms, the MAP auditor conducted audits of contractors that were listed in the Marine Organization's Vessel Response Plans (VRP). The marine response contractors were selected for the initial audits because of the sensitivities of the marine environment in which the MAP fleet operates. Additionally, since the fleet is essentially a "moving target", it is

vitaly important to ensure that all areas of the river system have adequate response contractor coverage. The auditor also makes certain that the contractors have the resources that are reflected by their OSRO rating or on the resource lists that they provide with the contract.

The OSRO contractor auditing program has evolved since its inception. Annually the MAP auditor develops a list of audits that will be conducted during the year. The list is based on a plan to audit all Maximum Most Probable and Worst Case Discharge contractors every three years. In addition to scheduled audits, the MAP auditor also conducts audits on newly identified OSRO and emergency response contractors.

The OSRO contractor auditing program has been successful on many levels. The primary objective of verifying contractor resources has proven to be beneficial in the facility and vessel response planning process. In addition, the relationships that have formed between the MAP auditor and the contractor representatives have proven valuable during actual response operations, as-well-as other information gathering and tactical planning efforts that MAP has undertaken. The combination of the OSRO contractor auditing program and the Emergency Responder Conference has solidified the relationship that MAP maintains with all of their emergency response contractors. This relationship is an integral aspect of the MAP emergency preparedness and response program.

Post response contractor critique & follow-up

It doesn't seem to matter how much pre-planning has been conducted before an event occurs. Conflicts, both large and small, almost always arise at some point during the emergency or post-emergency phase of the incident. MAP has identified two Emergency Support Group representatives who serve as the Contractor Liaison, working in the Logistics Section during an actual emergency response. The primary purpose of the Contractor Liaison is to work through any issues that and prevent them from becoming bigger problems during and after the response.

In addition to the Contractor Liaison, MAP has implemented a Post Response Contractor Critique and Follow-up. After a response it is not unusual for contractors or company representatives to talk about what went well and what did not. Some of the primary complaints from the contractors include:

- Did not understand the MAP response structure;
- Received direction from too many MAP personnel;
- Pressure from MAP for daily costs;
- Confusion on overall response goals;
- Billing questions during and after the response.

It is realistic to expect that there will be conflicts given the chaotic nature of emergency response operations. The Post

Response Critique process was developed to assess the weaknesses in the response on the part of both parties. This formalized process gives the contractor, as well as MAP, a forum to air grievances or provide positive feedback on the response. This is a new element in the Contractor Management Program so it has not yet been determined if it will be successful. At minimum, the critique should provide insight into the ongoing relationship between MAP and its OSRO and emergency response contractors.

Use of emergency response contractors for ongoing maintenance & cleaning

In meetings with OSRO and emergency response contractors, a common theme is the desire to provide the contractors with the opportunity to perform routine maintenance and cleaning work at MAP facilities. The Contractor's argument is that they need consistent work that assists them with daily and monthly cash flow. MAP's P&CS department has developed relationships with contractors who specialize in mechanical and facility cleaning and maintenance. As a result, Core Contracts were established with competitive pricing, which although beneficial to MAP, makes it difficult for other non-core contractors to competitively bid on the ongoing cleaning and maintenance work. Recognizing the contractor's needs, EPG encourages the use of OSRO and emergency response contractors for cleaning and maintenance activities to help ensure that those resources are in business and available in the event an incident occurs.

Twelve years after the implementation of OPA '90, the effects are beginning to be seen as the frequency and severity of oil spills have been reduced. For oil companies like MAP, this is the result of efforts on many levels. Better planning and diligence by operations has effectively helped to reduce and eliminate environmental incidents. However, the potential for spills still exists. Responsible companies handling petroleum hydrocarbons must ensure that they are able to respond aggressively with internal and contract resources to handle any situation. Although this responsibility is required by regulatory agencies and demanded by the public, MAP goes the extra mile to ensure that effective response capabilities are identified and ready to respond.

Taking on this responsibility, MAP has developed an effective approach to the management of its OSRO and emergency response contractors. Through the planning process required by facility and vessel response plan, MAP has identified a network of qualified contractors who will be on the front lines in the event of spill or release. Diligent management and oversight of this valuable resource will pay dividends for any company that must implement their spill response program. It has for MAP.

