

# HOW RESPONSE CONTRACTORS ARE REMAINING VIGILANT AND VIABLE DESPITE THE DOWNWARD TREND IN OIL SPILLS

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**ABSTRACT:** *The number of oil spills occurring in U.S. waters from vessels and facilities has decreased steadily over the past several years, and professional oil spill response contractors have found themselves in the position of bolstering and/or securing other lines of work to ensure they remain vigilant, viable, and ready to respond when and where needed. Coupled with a down economy, spill contractors – like other businesses – are making tough decisions on how to do more with less, while maintaining the same level of readiness expected of them from their clients – which includes the oil and maritime industries, along with local, state and federal government. While the regulatory mechanisms are in place to exercise contractor resources between spill events, they are not enforced or utilized enough. Of equal importance is ensuring that the response contractor is compensated for deploying its resources during these drill scenarios. This paper will discuss the measures private sector response contractors are taking to ensure they remain ready to respond, other business lines they are pursuing, and how the regulatory authorities can assist in maintaining the national protection and readiness provided by the private sector response community. It will also discuss how the private sector response community can assist with the national Homeland Defense initiatives, most notably mitigation services for terrorist actions that ultimately impact the environment.*

## Discussion

As mentioned in the above abstract, the number of spills occurring in the U.S. from vessels and facilities has declined dramatically over the past several years. To underscore this statement, the following table – entitled “Table 1: Oil Spill Statistics” – was compiled using data from the U.S. Coast Guard’s oil spill compendium<sup>1</sup>, which contains data and graphics through the year 2000:

From this data, we may conclude that the preparedness and prevention requirements set forth by the Oil Pollution Act of 1990 (“OPA ’90”) have worked very well. On the other hand, this national decline could inadvertently threaten the economic viability of private sector response entities, thereby creating a potentially significant erosion of a vital national resource. Both public and private sector entities that need to plan for – and respond to – oil and hazardous materials spills rely upon the professional, experienced resources and equipment of the private sector response community. Beyond the confines of an actual

spill, however, the resources brought to bear by the private sector responder are seldom exercised or utilized by these entities.

Of course, the means to exercise response resources beyond actual spill situations are readily available. The Preparedness for Response Exercise Program (“PREP”) was developed by the federal government partly to complement plan development, and to insure that the plans drafted were tested at least minimally every year and completely once every three years. The PREP was intended to include both tabletop exercises as well as equipment deployment exercises. If followed and enforced, the PREP would continually enhance response plans by identifying areas of improvement through tabletop and field exercises while directing needed revenue to the private sector responders since they would be reimbursed for deploying their resources during such drills. As we observe it today, this program seems limited primarily to tabletop exercises since plan holders often view equipment deployment exercises as being too expensive.

Through rigorous enforcement of the PREP, federal regulators would be able to determine if the plan holder has provided for adequate resources to comply with the requirements of OPA 90, while at the same time fully evaluating the national response capability. This would in turn provide a solid platform for the additional training of contractor personnel, exercising equipment, testing plans and result in more realistic evaluations of response plans. When the PREP was introduced, it was presented as a 3-year cycle that would completely exercise the contingency plan of the plan holder. The overall goal of the PREP is to ensure that the contingency plans are continually improved and that they can stand up to the rigors of a real spill.

Additionally, the increased activity would provide a revenue source that would financially support spill contractors. This would in turn enable them to keep trained and seasoned personnel available, and to replace older response resources and to purchase new and improved resources as may be proposed in a declining spill market.

Beyond the oil spill response arena, the capabilities of the private sector response community, their equipment and personnel can provide vital resources in the National Arsenal necessary to assure Homeland Security. Unfortunately, these resources have been largely ignored in homeland security initiatives as the legislative and funding focus has been primarily on bolstering the response capability of the public sector.

The private sector response community is highly trained and experienced in working with hazardous materials in dangerous environments, and as professionals in this business, they respond

**Table 1. Oil Spill Statistics.**

Statistic	1990	2000	% Difference
Number of spills from tank ships	249	111	55.4% decrease
Number of spills from tank barges	457	229	49.9% decrease
Number of spills from facilities	2,287	1,054	53.9% decrease
Volume (gallons) of oil spilled from tank ships	4,977,251	608,176	87.8% decrease
Volume (gallons) of oil spilled from tank barges	992,025	133,540	86.5% decrease
Volume (gallons) of oil spilled from facilities	1,059,302	311,604	70.6% decrease
Volume (gallons) of oil spilled from all sources	7,915,007	1,431,370	81.9% decrease

**Table 2. SCAA Survey Results**

	Number of Contractors	Number of Available Personnel
Total Number of companies responding to survey	111	6265
Total Number of Responding Contractors Capable of Level C Response	111	6265
Total Number of Responding Contractors Capable of Level B Response	105	6217
Total Number of Responding Contractors Capable of Level A Response	93	6015
Total Number of Responding Contractors Capable of Biohazard Response	82	5751
Total Number of Responding Contractors That Have Responded to Anthrax Scares	63	1497+ responses
Total Number of Responding Contractors Capable of Response to Radioactive Materials	35	3341

to such incidents on an average of 3-5 days per week. This continuity of responding regularly to hazardous material incidents begets a more experienced and equipped response team than can be offered by local police, fire, or other public HAZMAT response team.

To provide a better understanding of the resources the private sector can bring to bear to assist with first response efforts, the following table – entitled “Table 2: SCAA Survey Results” – illustrates the results of a recent survey<sup>ii</sup> conducted by the Spill Control Association of America (“SCAA”) – an association that represents independent pollution spill response companies across the United States – regarding the capabilities of private sector first responders across the country:

SCAA has been working diligently to ensure that the agencies tasked with consequence management following a Weapons of Mass Destruction (“WMD”) event are aware of the capabilities of the private sector response community. This effort is undertaken with the ultimate goal of these agencies calling upon the private sector responders to participate in drills and training exercises that will undoubtedly occur, and for which these responders would receive compensation.

The private sector response community has responded to thousands of anthrax scares, and was involved in the clean up of anthrax in Washington DC and New York in the days following the terrorist acts September 11. They have provided their professionally trained crews to assist with the clean up of legionnaires disease, botulism, and other biohazards. These resources have also been utilized to clean up the aftermath of airline crashes, train wrecks, and other vehicular accidents.

As you can see, the private sector response community is already prepared for the most part to respond to the consequences of a deployed weapon of mass destruction. Much of the training needed for a safe and effective response to a hazardous material release is also applicable to responding to many of the weapons of mass destruction, and the personal protective equipment requirements are nearly identical. Nonetheless, these responders could benefit greatly from additional WMD-related training, and

could also procure additional WMD-related response equipment, if funding was available to them for these things.

In the wake of 9/11, the billions of dollars allocated to homeland defense and homeland security have been directed primarily toward the public sector. From federal agencies to state agencies to local responders (e.g., police, fire, community HAZMAT teams, etc.), all are benefiting greatly from the funding they have received for this purpose. They are training their personnel and procuring new response equipment, in many ways duplicating the capabilities of the private sector response community.

Unfortunately, the capabilities of the private sector response community to assist with WMD consequence management have been largely ignored. While the Spill Control Association of America (SCAA) has been working diligently for the last few years to educate the federal government on the capabilities that are available from private sector response entities, it remains an uphill battle and progress is very slow.

Inclusion of the private sector responders in homeland defense and homeland security initiatives would presumably result in these responders receiving funding to help with training, equipment procurement, and participation in area response exercises. At the same time, it would help maintain the viability of this vital national asset.

Naturally, response contractors can't rely solely on regulatory enforcement or inclusion in upcoming homeland security initiatives for a source of funding to assist in maintaining response readiness. Nor can they rely on responding to oil spills or other emergency response actions to fund their efforts. In order to maintain a ready to respond posture, the private sector response community has looked beyond the realm of emergency response to oil spills to more specialized services to generate the revenue needed to retain a professionally trained and experienced work force, along with state-of-the-art response equipment.

Many contractors are equipped to provide non-emergency industrial services – such as tank cleaning, power washing and water blasting, waste transportation – and routinely market and

provide these services on a daily basis. While this type work typically yields a low profit margin, it keeps resources gainfully employed and operating between spill response efforts.

Another line of work response contractors have focused on recently is addressing the problem of black mold. The public at large is becoming more aware of the short and long term health risks posed by black mold, and many response contractors have been able to market and provide remedial services to assist with this increasingly prevalent environmental concern.

The clean up of spilled mercury has also emerged as a specialty to which response contractors have been able to market their services. Many utility companies have found that during the replacement of older gas meters in private residences, mercury was inadvertently spilled. These utility companies are now being tasked with ensuring that homes within which gas meters were replaced are free of mercury. Private sector response contractors have been instrumental in assisting with air monitoring and mercury clean up actions when needed.

Some contractors have even begun manufacturing and distributing their own line of absorbent products. While I understand that this type of activity does not typically yield a high profit margin, it does help to keep workers employed in a down economy.

## Conclusion

So where do we – as a community of professional responders – go from here to help insure that the viability of the private sector response community is maintained in despite the downward trend in oil spills? Following are some specific suggestions in this regard:

The U.S. Coast Guard and U.S. Environmental Protection Agency must increase their respective enforcement of the PREP, putting the onus of exercising response resources where it belongs – on the planholder. This will help foster an environment wherein the relationships between the responder, planholder, and regulators are further developed and refined, while providing a source of funding to the responders to help maintain their viability and readiness.

The Coast Guard should educate plan holders and plan reviewers on the purpose and proper use of the information provided via the OSRO Classification Program. Part of this process should include a discourse on the planholders inherent responsibility to verify response resources and response capability. We believe that many plan holders are under the false impression that the Coast Guard - through the OSRO Classification Program - has evaluated, inspected and tested a given OSRO's response capability, and therefore believe that they are not required to verify response resources.

Future increases in mechanical recovery capacity requirements and/or other spill technologies (e.g., dispersants, *in situ* burning, etc.) for response should only be made after PREP and/or other spill response exercises demonstrate that such a need actually exists. Response contractors cannot afford the additional burden of purchasing new equipment, particularly when their existing inventory is not being fully exercised.

The resources of the private sector need to be recognized by federal planners and policy makers as a national asset.

Department of Defense planners and policy makers alike to not appear to have incorporated the private sector response capabilities into their mix of national assets to combat Weapons of Mass Destruction. At the same time, Congressional hearings seem to have focused on federal, state, and local capabilities without exploring the utilization of private sector responders that have been the foundation of the successful implementation of OPA '90. While SCAA has been working tirelessly to be sure that lawmakers and the agencies tasked with homeland security and defense are aware of the capabilities of the private sector for WMD response, it is at best an uphill battle. Personnel in the federal government that are involved in WMD-related response planning can assist our industry in this regard by directing associations like SCAA to the right organization and level within the Departments of Defense, Transportation, Treasury, Energy, Homeland Defense, Federal Emergency Management Agency, Centers for Disease Control and others that have responsibilities in this area. Moreover, these assets need to be included in any training and/or response exercises that are developed and initiated as a part of the national homeland defense strategy. This also includes the participation of the private sector in organizational briefings, and for possible testimony before appropriate hearings conducted by various congressional committees.

In short, the private sector response community will do what it has done for many years – look for ways to survive in a dwindling market. It is my hope that state and federal regulators do not overlook the importance of our industry in protecting the environment, and will help maintain its viability through more vigilant legislative enforcement. Moreover, legislators and federal agencies tasked with protecting the environment – whether from oil and hazardous materials spills or weapons of mass destruction – must remain cognizant of the capabilities of the private sector response community, and consider them for inclusion in pending or future legislative initiatives.

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<sup>i</sup>The oil spill compendium document is entitled “Pollution Incidents In and Around U.S. Waters – A Spill/Release Compendium: 1969-2000”. It is available on line at <http://www.uscg.mil/hq/g-m/nmc/response/stats/aa.htm>. For the purpose of this paper, data from 1990 through 2000 was evaluated. Through its review of the compendium data, the Coast Guard concludes that there has been a downward trend in the volume of spills in U.S. waters since 1973, that there was significantly less oil spilled in the later years of the report than in the earlier years, and that the decline in oil spill volume represents the combined effects of an increasingly effective campaign of prevention and preparedness to protect U.S. coastal waters from oil pollution.

<sup>ii</sup>SCAA surveyed more than 328 response companies across the U.S., of which 111 responded. The listing of response companies surveyed was derived by combining listings of Basic Ordering Agreement (“BOA”) contractors in both the Pacific and Atlantic areas; response contractors listed in each U.S. state on the web site [www.cleanupoil.com](http://www.cleanupoil.com); response contractor listings from “The International Oil Spill Control Directory”; and the membership of the Spill Control Association of America. The survey was last updated in the Spring of 2002.

