



ACCIDENT RESPONSE AND AFTERMATH

“What happens when it’s
your turn for a bad day.”

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PERSPECTIVE

- “All hazmat incidents will end regardless of what you do.”
- The trick is not getting yourself or others killed or injured in the process.
- All of us can be overwhelmed by an incident. Know when to back up, get people out of the way, and call for help.

RESPONSE GENERAL PRINCIPLES

- **When a release or spill occurs, the first line of defense is provided by:**
 - the company responsible for the release,
 - its response contractors,
 - local fire and police departments, and
 - other local emergency response personnel
- **Railroads can be responsive, but it takes time.**
- **Facilities only occasionally have this capacity.**
- **Money is a problem for local governments.**

LOCAL GOVERNMENT REIMBURSEMENT PROGRAM

- EPA may reimburse local governments under CERCLA
 - hazardous substance release or threat of release
 - not oil or fuels
 - must have attempted cost recovery
 - State statute or CERCLA
 - only temporary emergency measures – remediation not covered
 - maximum of \$25,000
 - responsible party is not eligible

IOWA STATE STATUTES

- **455B.386 Notification of Spills**
 - A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the department, police and sheriff not later than six hours after a release
 - Civil penalty of not more than \$1,000
- **455B.387 Removal of hazardous substances.**
 - When a hazardous condition exists, the director may remove the hazardous substance, unless such removal will be properly and promptly accomplished by the responsible party
- **455B.388 Injunctions and emergency orders.**
 - If an emergency exists affecting or likely to affect the public health, the director may issue any order necessary to terminate the emergency without notice and without hearing
- **455B.392 Liability for cleanup costs. (More later)**
 - The responsible party is “strictly liable” for the reasonable cleanup costs if they fail to perform cleanup and the reasonable costs incurred to evacuate people from the area
 - If the failure is willful, the person is liable for punitive damages to triple the cleanup costs

CURIOUS THINGS ABOUT IOWA

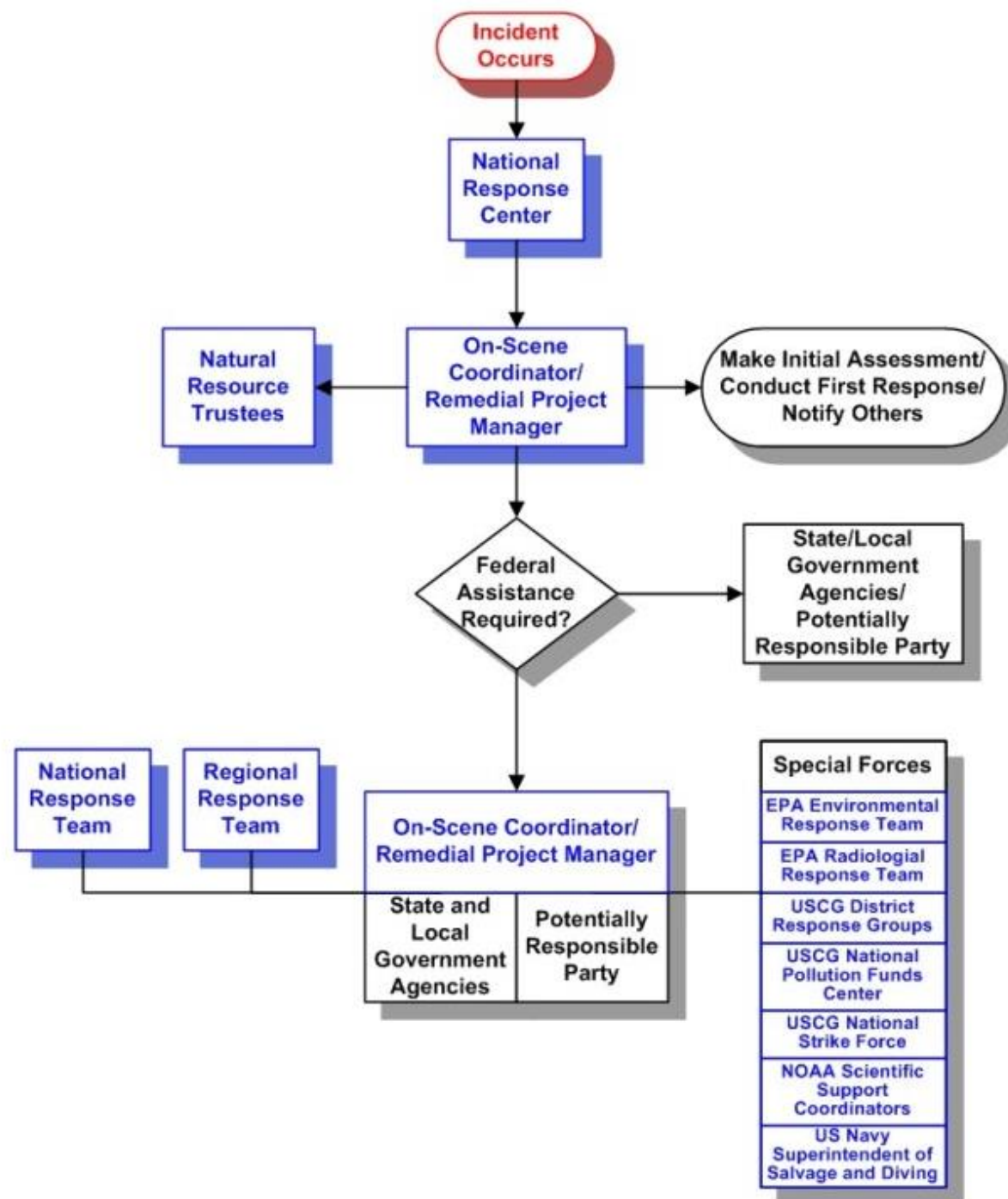
- Many States provide a statutory basis for local actions and even define incident command protocols – not Iowa.
 - In Iowa many cities and counties do this by ordinance.
- In most states failure to provide notice is also a crime – not Iowa.
- Exemptions to Chapter 455B for things regulated by the state fire marshal, and secretary of agriculture.
- Lots of exemptions to liability for cleanup costs that don't exist in other states. It's not really "strict". (More later)
- A hazardous substance is not released if confined and expected to stay confined to property controlled by the responsible person.

HOW DO YOU GET MEANINGFUL HELP?

- Responsible parties are supposed to call the National Response Center (NRC).
- NRC immediately notifies EPA or U.S. Coast Guard On-Scene Coordinator (OSC)
- OSC will check on the local response and monitors the situation
- Federal involvement is possible when:
 - If the responsible party is unknown or not cooperative;
 - If the spill is beyond the capacity of the responders to manage; or
 - For oil spills, if the incident presents a substantial threat to public health
- As a practical matter, local responders can call the EPA OSC and talk about the situation.
 - 24-Hr: (913) 281-0991 in Region 7

OSC KEY RESPONSIBILITIES

- **Assessment**
 - evaluating the spill, potential hazards, the resources needed, and the ability of the responsible party or local authorities to handle the incident
- **Monitoring**
 - can be conducted at the site or from the office if the situation appears to be under control
- **Response Assistance**
 - if federal assistance is required, the OSC will obtain needed resources such as personnel and equipment – contracts are in place – cost recovery
 - OSC may request additional support, additional contractors, technical support from EPA's Special Teams, or Scientific Support Coordinators from EPA or other Federal agencies
- **Evaluation**
 - the OSC is required to file a summary report that outlines the actions taken to remedy the spill and the level of assistance provided by local, state, and federal agencies



MANY OTHERS MAY SHOW UP

- **FBI, EPA, ATF, DOT, CISA, CSB, OSHA**
 - All have independent statutory responsibilities
 - The Federal Agencies will respect incident command
- **State & Local Law Enforcement, Environmental, Public Health, Coroner**
 - May not respect incident command
- **Private hazmat response companies**
 - Typically good at respecting incident command
- **Responsible parties**
 - Sometimes useful but often not familiar with incident command
- **Insurance investigators**
 - Not really your friend

COST RECOVERY

- 455B.392 Liability for cleanup costs.
 1. a. A person having control over a hazardous substance is strictly liable to the state or a political subdivision for all of the following:
 - (1) The reasonable cleanup costs incurred by the state or its political subdivisions or the agents of the state or a political subdivision as a result of the failure of the person to clean up a hazardous substance involved in a hazardous condition caused by that person. **(Unique and limiting)**
 - (2) The reasonable costs incurred by the state or its political subdivisions or the agents of the state or a political subdivision to evacuate people from the area threatened by a hazardous condition caused by the person. **(Unique)**
 - (3) The reasonable damages to the state for the injury to, destruction of, or loss of natural resources resulting from a hazardous condition caused by that person including the costs of assessing the injury, destruction, or loss.
 - (4) The excessive and extraordinary cost incurred by the state or its political subdivisions or the agents of the state or a political subdivision in responding at and to the scene of a hazardous condition caused by that person. **(Unique)**

COST RECOVERY ELEMENTS

- “Person having control over a hazardous substance” means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance the release of which creates a hazardous condition, including bailees, carriers, and any other person in control of a hazardous substance when a hazardous condition occurs,
 - Does not necessarily include the property owner.
- “Hazardous condition” means any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state, or into the atmosphere, which creates an immediate or potential danger to the public health or safety or to the environment.

“REASONABLE CLEANUP COSTS”

“Cleanup costs” means costs incurred by the state or its political subdivisions or the agents of the state or a political subdivision in the prevention or mitigation of damages from a hazardous condition or the cleanup of a hazardous substance involved in a hazardous condition.

“Cleanup” means actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance.

Preventing the spill or mitigating damages are different from cleanup.

COST RECOVERY UNDER CERCLA

Parties may recover cleanup costs for a release of hazardous substance.

Includes investigation and some attorneys' fees.

Costs must be reasonable and necessary under the NCP.

Four classes of people are potentially liable:

Owner/operator of the site now.

Owner/operator of the site when the release occurred.

Person who “arranged” for the substance to be there.

Person who transported the substance.

Strict, joint and several liability. Act of War is only meaningful defense.

EPA CLEANUP

- EPA can and will perform both short-term and long-term cleanup.
- Perform or order responsible parties to conduct “removal” actions.
 - It’s not necessary to list the area as a “superfund” site.
 - If a responsible party fails to comply with an order subject to treble damages.
 - Recover costs from the same classes of responsible parties.
- Stabilize the site – not perform a total cleanup.
- Not subject to State permitting or environmental standards.
- Scope and quality of cleanup cannot be challenged in court.

CIVIL AND CRIMINAL PROCEEDINGS

- **Civil damages claims against responsible parties will proceed in state or federal court independent of cleanup.**
- **Criminal proceedings are not filed quickly. Normally the prosecutors wait to understand the full consequences of the event.**
 - **Kitchen sink charging. The investigation process itself often results in charges for misleading investigators.**
- **CSB, OSHA and other investigations also proceed independently.**
 - **CSB investigation cannot be used in civil litigation.**
- **A company that has an accident will be buried in litigation.**

QUESTIONS

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