

FAQs on Transboundary Issues

United States-Canada Inland Response to Hazardous Material Accidents

INTRODUCTION

The purpose of this document is to answer the frequently asked questions (FAQs) concerning emergency response to hazardous material accidents along the inland border between the United States and Canada. These questions are based on the issues initially identified by the National Response Team (NRT) Response Committee's Subcommittee on Transboundary Issues and have been presented previously as issues in the *14-Points Document* (EPA, October 1994). As indicated in the present document's title, the focus is on issues pertaining to hazardous material accidents along the inland border between the United States and Canada. Separate FAQ documents are being prepared for oil spills, for the marine boundary, and for the United States-Mexico border. Each question included in this report has been phrased to elicit a practical response that people along the border can use in their emergency response efforts.

QUESTION #1: *What are the unique problems and issues that can arise for U.S. responders during a cross-border chemical emergency response in Canada?*

ANSWER:

U.S. responders could face a variety of unique problems and issues in planning for and actually responding to a chemical emergency in Canada. Many of the more significant problems and issues, until recently considered unresolved, have now been addressed and the answers are included in this FAQ document. The information contained in these question and answer sets can be used by U.S. responders to minimize and altogether avoid cross-border emergency response problems or delays.

The problems and issues included in this FAQ document are grouped into particular issue categories. The following table presents the 11 issue categories along with examples of some of the key problems and issues that correspond to each category. Also, the number for the question and answer for each example is provided.

Category	Examples of Specific Major Problems and Issues
Coordination	C Assuring involvement of First Nations/Indian Tribes living along the United States-Canada border in response planning efforts. (See question 3) C Disagreement (between the two countries) regarding resolution strategies. (See question 7)
Border Crossing	C The need to carry a list of all equipment in order to cross the border expeditiously. (See question 8)
Communication	C A potential language barrier between U.S. responders and people of the province of Quebec could lead to communication problems. (See question 12)
Training	C Equivalency of emergency response training standards between the United States and Canada. (See question 15)
Equipment	C Incompatible response equipment because Canada uses the Metric system and the United States uses the English measurement system. (See question 17)
Funding and Reimbursement	C Who is responsible for making reimbursement of U.S. responders happen. (See question 18)
Hazardous Materials	C Only general issues. (See question 20)
Radioactivity	C Only general issues. (See question 21)
Informing the Public	C Guidelines for coordinating with Canada the dissemination of information to the press and public. (See question 22)
Insurance and Liability	C Workers' compensation for U.S. responders injured in Canada. (See question 23) C The threat of personal liability lawsuits. (See question 24)

QUESTION #2: As a U.S. response coordinator, what joint contingency plans between the United States and Canada should be considered during a cross-border chemical accident?

ANSWER:

There are several documents that U.S. response coordinators who could potentially be involved in responding to a cross-border chemical accident should read and understand.

- C First, the response and coordination mechanisms outlined in the *United States-Canada Joint Inland Pollution Contingency Plan* (the Inland Plan), signed in July 1994, establishes a cooperative strategy for preparing for and responding to accidental and unauthorized releases of hazardous substances along the entire shared inland border. The Inland Plan is applicable to situations where a release causes or could cause damage to the environment along the border and poses a threat to public health, property, or welfare. The Inland Plan also may be activated when only one country is affected by a polluting incident, but the incident is of sufficient size to require assistance from the other country. The Inland Plan does not address radiological incidents. To review the Inland Plan, visit the EPA/CEPPO web site at: <http://www.epa.gov/swercepp/ip-bopr.htm#canada>.
- C Second, the Inland Plan provides for five Regional Annexes that specifically define the jurisdiction, roles, and response procedures for regulatory and support agencies within five specific regions along the border. One Annex has been completed to date; the others are under development and are expected to be completed shortly. Until the corresponding Regional Annex is completed, the U.S. responders in those regions should use the Inland Plan and their own Regional Contingency Plan during a cross-border chemical accident. The abbreviated titles of the Regional Annexes, the corresponding portion of the border covered, and the plan development status of each Regional Annex are listed below.

Annex Title	Corresponding Region	Availability Status
CANUSWEST	Combined border of the Yukon Territory and British Columbia (Canada) and Washington, Idaho, Montana, and Alaska (U.S. EPA Regions 8 & 10)	Currently Available (published June 1998; available at http://www.epa.gov/swercepp/ip-bopr.htm#canada)
CANUSPLAIN	Combined border of Alberta, Saskatchewan, and Manitoba (Canada) and Minnesota, Montana, and North Dakota (U.S. EPA Regions 5 & 8)	Not yet available
CANUSCENT	Border of Ontario (Canada) and New York, Michigan, and Minnesota (U.S. EPA Regions 2 & 5)	Not yet available
CANUSQUE	Border of Quebec (Canada) and New Hampshire, Vermont, Maine and New York (U.S. EPA Regions 1 & 2)	Not yet available
CANUSEAST	Border of New Brunswick (Canada) and Maine (U.S. EPA Region 1)	Not yet available

- C Finally, in some cases, local jurisdictions on either side of the United States-Canada border have developed joint hazardous material response plans. U.S. responders should check with their EPA Region to determine if such plans have been developed and to receive a copy.

Category: COORDINATION

QUESTION #3: *As the coordinator for writing one of the five Regional Annexes to the Inland Joint Contingency Plan, which federal, state, and local agencies, Indian Tribes/First Nations, and other groups should I include as part of the workgroup?*

ANSWER:

The preparation of the Regional Annexes to the Inland Joint Contingency Plan should be a collaborative effort between federal, state/provincial, and local agencies from the United States and Canada. Each country has a Regional Joint Response Team (RJRT) that is responsible for the development, maintenance, and effective implementation of the Regional Annex. In addition, the International Joint Advisory Team (IJAT) is responsible for the maintenance, promotion, and coordination of the Regional Annex at the national level in both countries. Members of both the RJRT and IJAT from both countries make up the workgroup members who participate in the preparation and maintenance of the Regional Annexes along with the appropriate provincial, state, Indian Tribe/First Nation, and local agencies. The following U.S. agencies should be included in the RJRT or the IJAT and should be encouraged to participate in the preparation of the Regional Annexes:

- | | |
|--|---|
| C U.S. Environmental Protection Agency, Regional Office(s) | C U.S. Department of Transportation |
| C U.S. Coast Guard | C Federal Emergency Management Agency |
| C U.S. Department of Agriculture | C Food and Drug Administration |
| C U.S. Department of Commerce | C General Services Administration |
| C U.S. Department of Defense | C Nuclear Regulatory Commission |
| C U.S. Department of Energy | C Department of Ecology (for the appropriate states) |
| C U.S. Department of Health and Human Services | C Division of Emergency Management (for the appropriate counties) |
| C U.S. Department of the Interior | C Native American Tribe(s) |
| C U.S. Department of Justice | |
| C U.S. Department of Labor | |
| C U.S. Department of State | |

The following Canadian agencies should be included in the RJRT or the IJAT and should be encouraged to participate in the preparation of the Regional Annexes:

- | | |
|---|--|
| C Environment Canada | C National Defense Canada (Emergency Preparedness Canada) |
| C Agriculture and Agri-Food Canada | C National Energy Board (Atomic Energy Control Board) |
| C Fisheries and Oceans Canada (Habitat Protection and Canadian Coast Guard) | C Natural Resources Canada |
| C Foreign Affairs and International Trade | C Office of the Privy Council |
| C Health Canada | C Public Works and Government Services |
| C Heritage Canada (Canadian Parks) | C Revenue Canada |
| C Indian and Northern Affairs Canada | C Transport Canada |
| C Justice Canada | C Ministry of Environment, Lands and Parks (for the appropriate provinces) |

- C Provincial Emergency Program
- C Aboriginal People Representatives

It is important to note that in addition to the above-mentioned federal authorities from the United States and Canada, Indian Tribe/First Nation, state, provincial, and local representatives must be included in the workgroup to achieve success. State and provincial officials (especially experts) bring to the process their knowledge of local issues and challenges and must be kept informed of the workgroup's progress.

Category: COORDINATION

QUESTION #4: *As a U.S. response coordinator, what efforts should I be involved with that foster interagency planning for and coordination during cross-border chemical emergency situations?*

ANSWER:

U.S. response coordinators should review the Inland Plan and the appropriate Regional Annexes carefully and, when necessary, provide up-to-date information to the appropriate EPA Regional Office. It may also be helpful to contact a few of the Canadian coordinators listed in the appropriate Regional Annex to begin establishing a working relationship and to exchange relevant information.

Initial responsibility for responding to a cross-border chemical emergency belongs to the local authorities (unless otherwise identified by the federal government). Therefore, local responders should work within their jurisdiction and with their Canadian counterparts to establish specific response mechanisms for joint local response efforts. The five Regional Annexes to the *United States-Canada Joint Inland Pollution Contingency Plan* (the Inland Plan, see answer to previous question) define additional coordinated and integrated response to accidental and unauthorized releases of hazardous materials on either side of the United States-Canada border. According to the Inland Plan, Regional Joint Response Teams (RJRTs) are responsible for developing, maintaining, and implementing the five Regional Annexes to the Inland Plan. The RJRTs will include representatives from Canadian Regional Environmental Emergencies Team (REET) for the Atlantic, Quebec, Ontario, Prairie and Northern, Pacific and Yukon regions, and from the U.S. Regional Response Teams for EPA Regions 1 (Boston), 2 (New York City), 5 (Chicago), 8 (Denver), and 10 (Seattle). During a chemical incident, the RJRT does not have operational control over the Federal On-Scene Coordinator (FOSC) but, rather, is the regional body responsible for providing advice and support to the FOSC.

QUESTION #5: *Are there any particular procedures I should follow when responding to a cross-border emergency that involves either an Indian Tribe/First Nation community, an area commonly used by Indian Tribes/First Nations for hunting, or a site with religious significance?*

ANSWER:

There are no general response procedures across the United States-Canada border that apply to all Indian Tribes or First Nations. It is U.S. EPA's policy to operate under a government-to-government relationship with Indian Tribes and to carry out response activities in a manner consistent with Indian policies, the Region's agreements with Indian Tribes, and EPA enforcement policies.

At the Local Level

Therefore, local U.S. response coordinators should investigate what Indian Tribe or First Nation territories or areas are nearby and attempt to determine if there are any specific procedures that responders should follow when responding to a cross-border chemical accident within these areas. This information could be obtained by contacting either the U.S. Bureau of Indian Affairs (within the Department of Interior) or the analogous Canadian First Nation agency, or the appropriate Indian Tribe or First Nation representatives in either the United States or Canada. U.S. response coordinators should contact the appropriate Indian Tribe or First Nation representative prior to entering their respective territory to respond to an accident. Thus, it is helpful to develop and maintain a contact list of Indian Tribe or First Nation representatives and to include them, if appropriate, in your local response planning efforts.

At the Regional Level

Transboundary contingency plans have been divided into five regions along the United States-Canada border. The following five Regional Annexes guide response efforts that involve either an Indian Tribe or First Nation.

CANUSWEST

According to CANUSWEST, U.S. EPA must first consult with tribal governments to the greatest extent practicable prior to taking actions that affect Indian Tribes (located in the United States) and their resources. As stated earlier, it is U.S. EPA's policy to operate under a government-to-government relationship with Indian Tribes and to carry out response activities in a manner consistent with Indian policies, the Region's agreements with Indian Tribes, and EPA enforcement policies. In fact, during the preparation of CANUSWEST, EPA and other organizations solicited input from all potentially affected Indian Tribes (specifically, from Indian Tribes in the states of Oregon, Washington, Idaho, and Montana).

CANUSPLAIN

[Information will be added when this Regional Annex is completed.]

CANUSCENT

[Information will be added when this Regional Annex is completed.]

CANUSQUE

[Information will be added when this Regional Annex is completed.]

CANUSEAST

[Information will be added when this Regional Annex is completed.]

Category: COORDINATION

QUESTION #6: *Who will be designated as the on-scene coordinator in those cases when a hazardous substance release occurs along the border or originates in Canada but the hazardous substance threatens U.S. territory?*

ANSWER:

The *United States-Canada Joint Inland Pollution Contingency Plan* and the Regional Annexes describe particular steps that U.S. and Canadian officials must take when responding to a near-border or cross-border hazardous substance release. One of the first steps is for each country to designate a Federal On-Scene Coordinator (FOSC). Each FOSC will provide advice, assistance, and support to the local, state, territorial or provincial incident commander and will lead and direct the response operations in his/her country when the polluting incident is under federal jurisdiction or is beyond local, state, territorial, or provincial capabilities.

For example, in CANUSWEST (which includes the combined border of the Yukon Territory and British Columbia with U.S. EPA Regions 8 and 10), the system used to manage an incident will include a joint United States-Canada Unified Command Structure. When activated, the Unified Command Structure will include On-Scene Coordinators designated by the United States, Canada, the State, the Province, local authorities, and/or Aboriginal peoples. The FOSC for the United States will be designated by EPA to coordinate and direct responses to hazardous substance releases in the United States. Canada does not have a similar authority, but Environment Canada or other federal lead agencies will be referred to as FOSC. Members of the joint United States-Canada Unified Command Structure are supposed to reach a consensus to make decisions. However, if consensus cannot be reached, the U.S. and Canadian organizations in the Unified Command Structure will operate under their respective legislative mandates and standard operating procedures to make final decisions related to activities in their respective countries. Note that the Unified Command Structure would only apply during activation of CANUSWEST; it is unclear what system would be used to manage an incident along the rest of the border area. For the time being, the general procedures in the Inland Plan should be followed along with the procedures in the appropriate Regional Contingency Plan.

Category: COORDINATION

QUESTION #7: *If during a joint response I have a disagreement with Canadian officials, how do I resolve the disagreement?*

ANSWER:

There are no established mechanisms to resolve joint response disagreements. However, to prevent potential harm to the general public and damage to the environment and private/public property in either country, it is strongly recommended that both U.S. responders and Canadian officials attempt to reach a mutually acceptable solution to any disagreement. In those cases where an agreement cannot be reached,

U.S. and Canadian responders or response teams should then operate under their respective legislative mandates and standard operating procedures for responding to an emergency in each of their respective countries.

Category: BORDER CROSSING

QUESTION #8: *As a U.S. responder called upon to respond to a hazmat emergency in Canada, will Revenue Canada-Customs Branch and the Canadian Department of Employment and Immigration allow me and my vehicle to enter Canada rapidly without requiring inspections, fees, or other restrictions? After the emergency is over, will U.S. Immigration and Customs allow me and my vehicle to re-enter the United States rapidly without inspections, fees, or other restrictions?*

ANSWER:

General procedures for ingress and egress between the U.S. and Canada are presented below. Responders should note that these procedures will be followed as time and circumstances allow. In certain cases, one or both countries may waive or expedite certain steps in the process (e.g., a U.S. responder stopping at U.S. Customs upon exiting the U.S.) if such action could significantly aid the response effort.

Exiting the United States

When exiting the United States, U.S. responders should not encounter any difficulties. However, several steps should be followed at this point in order to avoid difficulties when returning to the United States:

- C Carry some form of identification that certifies U.S. citizenship (e.g., driver's license or passport).
- C Carry two copies of the equipment list (including serial numbers and monetary value).
- C Stop at U.S. Customs prior to departure to get the equipment list stamped (this will assist when re-importing equipment back to the United States).

Entering and Exiting Canada

When entering and exiting Canada during an emergency, Revenue Canada-Customs Branch and the Canadian Department of Employment and Immigration should follow the provisions in the Canadian Immigration Act, Section 19(1)(j), which allows U.S. emergency response personnel to obtain visitor status when responding to an emergency. Visitor status makes obtaining employment authorization unnecessary. To cross the border, U.S. responders must carry proof of U.S. citizenship (e.g., driver's license or passport). During a cross-border incident in which there are no Canadian Employment and Immigration officers present at the border crossing, Canadian customs officers may grant U.S. responders temporary authority to work in Canada during the emergency.

Regarding transboundary movement of U.S. emergency response equipment, Revenue Canada will waive all custom duties (fees) and taxes on U.S. emergency response equipment.¹ Time permitting, U.S. responders will most likely be given importation permits for their emergency equipment, but any imported goods that are not consumed or destroyed during the emergency must return to the United States. To

¹ Revenue Canada Memorandum D8-1-6, *Goods for Emergency Use Remission Order*.

expedite the transport of emergency equipment across the Canadian border, drivers of the U.S. emergency response vehicles should adhere to the following:

- C Present the equipment list (previously stamped by U.S. Customs) to Revenue Canada-Customs Branch for clearance approval. If any problem arises, ask to speak to a senior officer (usually a superintendent).
- C Report to Revenue Canada-Customs Branch when leaving Canada so that the temporary admission permits can be canceled.

Re-entering the United States

Re-entry into the United States after a cross-border emergency is controlled by U.S. Customs, U.S. Immigration, and the U.S. Department of Agriculture (USDA). Customs and Immigration may require certain documents or forms of identification, so U.S. responders are advised to contact their local customs and immigration official to discuss any requirements. Also, many potential re-entry difficulties can be avoided if:

- C The previously discussed steps concerning exiting the United States and entering and exiting Canada (see above) are followed.
- C The Officer in Charge at the Plant Protection and Quarantine Office at the point of entry has been notified before arrival.
- C The response equipment used during the response has been properly decontaminated. USDA requires that all soil, animal contamination, and plant debris be cleaned from the response equipment upon return to the United States.

Finally, all U.S. responders should review the appropriate Regional Annex (see Question #2) to obtain information on border crossing stations and to determine if either the U.S. Customs or the Revenue Canada-Customs Branch have any unique border-crossing procedures.

Category: BORDER CROSSING

QUESTION #9: *As a U.S. citizen evacuee, will I be allowed by the Canadian Department of Employment and Immigration to rapidly enter Canada in the case of a hazmat emergency on the U.S. side of the border?*

ANSWER:

Based on current immigration policies between the United States and Canada, which allow for efficient border crossing, U.S. citizen evacuees should not encounter difficulties when attempting to rapidly enter Canada to escape dangers associated with a hazmat emergency on the U.S. side of the border. However, in order to prevent border crossing delays, U.S. citizens evacuees of all ages should carry with them some form of identification that certifies U.S. citizenship (e.g., driver's license or passport).

As background, the United States and Canada have both signed the *United States-Canada Agreement on Emergency Planning*. This agreement, signed in April 1986, states that both governments will use their best efforts to allow the entrance of evacuees into their respective territories and movement across the shared border when such movement will facilitate civil emergency operations by both countries.

QUESTION #10: *As a U.S. responder, how will I be notified of an emergency or potential emergency on the Canadian side of the border that may affect my community?*

ANSWER:

Due to the high level of regional and local variability, there is no single, all-encompassing notification pathway from Canada to U.S. responders. U.S. responders could be contacted through a variety of notification mechanisms (e.g., cellular telephone, short-wave radio) by a variety of agencies (e.g., local fire department, federal Environment Canada).

If a cross-border emergency response plan is in place for a specific city/county/region, or if a good working relationship simply has been established with Canadian emergency response personnel, notification will probably come from local or provincial Canadian officials via a telephone call. The Canadian officials notifying U.S. responders may either be representing a city, a province, or a federal Canadian Agency, such as Environment Canada.

At the national level, the U.S. National Response Center (NRC) is the primary contact for Canadian officials when a cross-border emergency could affect the United States, as stipulated in the Inland Joint Contingency Plan. The NRC will then contact the appropriate EPA officials. CANUSWEST, for example, stipulates that any release or threat of release occurring in Canada having the potential to affect U.S. communities must be reported to the Provincial Emergency Program (Canada). The Provincial Emergency Program, in turn, will contact Environment Canada who will then contact U.S. EPA Region 10 (or the Provincial Emergency Program may contact U.S. EPA Region 10 directly). U.S. EPA Region 10 will then notify the potentially affected communities directly, if for some reason they are not already aware of the situation. Local communities usually are the first to know about any chemical emergency simply due to their proximity to the situation. Therefore, they should establish their own notification procedures to expedite notification of a chemical emergency to local responders, the surrounding community, and regional or national agencies.

QUESTION #11: *When I enter Canada to respond to an emergency, what radio frequency should I use to communicate with my Canadian counterparts? What other means of communication are available?*

ANSWER:

There is no official radio frequency to be used along the entire United States-Canada border for communication between U.S. and Canadian emergency response agencies. Regional, state, and local responders should determine during the planning process the best means to communicate during a cross-border incident. Local U.S. responders should consider using cellular phones to communicate with their Canadian counterparts during an emergency. Another option is to carry extra radios (approximately 20) during a cross-border emergency response and lend them to foreign counterparts. Providing radios would guarantee full communication for the duration of the emergency response. Response teams would also have to develop procedures for retrieving any shared equipment.

Category: COMMUNICATION

QUESTION #12: *If I enter a French-speaking Canadian province to respond to an emergency, how will I communicate with Canadian officials who speak only French?*

ANSWER:

Given that both English and French are official languages in Canada, it is very likely that communication in English will be possible between Canadian officials and U.S. responders. However, emergency responders and planners should identify during the planning process whether language will be an issue during a response and, if so, ensure that provisions for a translator are made in the plan. In the rare case of a language barrier, a possible option is to have a bilingual translator on the emergency response team. If there are no bilingual members present on the emergency response team, bilingual volunteers who are not normally part of the emergency response team could serve as translators.

Category: COMMUNICATION

QUESTION #13: *As a U.S. responder entering Canada, how can I find out more information on international treaties, laws, and agreements that apply to me?*

ANSWER:

The U.S. EPA Chemical Emergency Preparedness and Prevention Office has posted on its Internet website (<http://www.epa.gov/swercepp/ip-bopr.htm#canada>) the *United States-Canada Joint Inland Pollution Contingency Plan* and *Regional Annex I: CANUSWEST*. Additional information on relevant laws and agreements is posted on the Environment Canada Internet website (<http://www.ec.gc.ca/envhome.html>) and the Emergency Preparedness Canada Internet website (<http://www.epc-pcc.gc.ca/>).

Category: COMMUNICATION

QUESTION #14: *As a U.S. responder working in Canada during an emergency response, will my Canadian counterparts have CAMEO, ALOHA, and MARPLOT? Will these programs and their databases be in English or French?*

ANSWER:

As background, CAMEO (Computer-Aided Management of Emergency Operations) is a set of software tools helpful in planning for and responding to chemical accidents and managing information collected under the U.S. Emergency Planning and Community Right-to-Know Act and other facility data. ALOHA (Aerial Locations of Hazardous Atmospheres) is an air dispersion model that allows the user to estimate the characteristics of a chemical release and map the distribution of an airborne contaminant based on actual atmospheric and release conditions. MARPLOT (Mapping Application for Response, Planning, and Local Operations Tasks) helps create, view, and modify maps quickly and easily. It provides object and layer searching, reads multiple maps automatically, and links objects on computer maps to data in other programs. The maps, however, are only for the U.S. side of the border.

Within Canada, only the province of Quebec currently has access to CAMEO, ALOHA, and MARPLOT in French. These programs have been translated into French by emergency responders in Quebec.

Category: TRAINING

QUESTION #15: *As a U.S. responder, what training standards should I follow in order to be prepared for responding to a hazmat emergency in Canada?*

ANSWER:

Currently, there is no binational training standard for United States-Canada joint emergency response. However, it is very likely that U.S. responders who are trained to their jurisdictional provisions will meet Canadian federal and provincial requirements. Within the United States, laws and regulations establish specific standards for worker safety and for workers involved in hazardous substance and oil spill response. U.S. responders must comply with state (if applicable) and Occupational Safety and Health Administration's (OSHA) Hazardous Waste Operations and Emergency Response (29 CFR 1910.120) training requirements. In Canada, there are no specific federal hazardous substance and oil spill worker safety standards; instead, there are only general worker safety minimum standards.

To avoid delays, U.S. responders should be prepared to provide documentation of their training to appropriate Canadian officials.

Category: TRAINING

QUESTION #16: *What joint training opportunities are available to help responders on both sides of the border prepare for a joint response?*

ANSWER:

Due to budget constraints and changing priorities over the past several years, there have been few federally or state funded joint response training opportunities for responders from both sides of the border. To obtain more information on cross-border training events, U.S. responders should contact the appropriate U.S. EPA Regional Office.

U.S. response coordinators are also encouraged to contact their Canadian counterparts and develop local training events on their own. It is recommended that prior to conducting local training exercises, U.S. response coordinators obtain approval from appropriate state emergency response agencies and U.S. EPA Regional Offices.

Category: EQUIPMENT

QUESTION #17: *As an emergency response coordinator who could be asked to assist with emergency response in Canada, what should I be doing to ensure that my emergency response equipment will be compatible with Canadian equipment?*

ANSWER:

Equipment incompatibility is a common occurrence because U.S. emergency response equipment generally is designed with the English system of measurement, whereas Canadian emergency response equipment generally is designed with the metric system. U.S. emergency response teams at all levels (i.e., federal, state, and local government response personnel, as well as their contractors) should coordinate with

their Canadian counterparts to purchase equipment that will make U.S. emergency equipment compatible with Canadian emergency equipment. For example, special joiners that link U.S. and Canadian fire hoses are essential for successful joint emergency responses.

Category: FUNDING AND REIMBURSEMENT

QUESTION #18: *Who pays me (a U.S. responder) while I participate in a cross-border emergency response in Canada? How does the entity that pays me get reimbursed after the emergency is over?*

ANSWER:

During a cross-border emergency, it is anticipated that U.S. responders will continue to be paid by their current employers (e.g., EPA Regional Office, state agency, local fire department). After the emergency is over, each employer will seek reimbursement as outlined in the paragraphs below.

The United States generally maintains a “polluter pays” policy, which means that the responsible party is liable for reimbursing emergency responders for the cost of emergency response (42 United States Code 9608). After participating in a cross-border emergency response, employers, or a person designated by the employer such as the On-Scene Coordinator (OSC), should first contact the responsible party to negotiate reimbursement.

Currently, the U.S. federal government has not established a special fund to reimburse U.S. emergency responders (public or private) for work carried out in Canada. However, under certain circumstances, U.S. federal emergency response trust funds from either the U.S. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund) or the Oil Pollution Act (OPA) may be available. These funds are available for spills in the United States when no party accepts responsibility or the responsible party is unwilling to pay. Such funds also may be available for U.S. response activities in Canada under the same circumstances, but only if the spill threatens the United States.

Under CERCLA specifically, EPA can pursue cost recovery against the responsible party for emergency response and cleanup costs incurred; any money recovered is deposited back into the fund. In addition, local governments can apply for reimbursement of their uncompensated cleanup costs under EPA’s Local Government Reimbursement (LGR) program. While these entities may apply for reimbursement under CERCLA for eligible response activities in Canada, it is important to note that Canadian emergency responders will not be reimbursed under CERCLA for their response activities.

Thus, obtaining reimbursement from federal funds (via U.S. agencies) for a hazardous substance or oil spill that occurs in Canada is dependent on the medium affected by the spill (water, land, or air), the type of spill (oil or other hazardous substance), and whether the spill actually threatens U.S. waters, land, or air. For more information on the funds available through CERCLA and OPA, please see EPA’s Internet site at <http://www.epa.gov/superfund/programs/er/nrs> or <http://www.epa.gov/oilspill/oilfund.htm>.

In summary, employers or OSCs have the following options to fund reimbursements for cross-border emergency response incidents:

- C Receive reimbursement from the responsible party.
- C Obtain U.S. federal funds from either CERCLA or OPA trust funds (only pursue OPA funds if the spill threatens U.S. waters).

- C Request funds or assistance from the Canadian federal government if a spill is caused by a company owned by a Canadian national who is unwilling to pay for clean-up costs. It is recommended that employers or OSCs seek guidance from the U.S. federal government prior to pursuing this option in order to use proper diplomatic channels.

Employers should recognize that reimbursement and recovery of costs may require significant amounts of time, and are typically handled on a case-by-case basis.

Category: FUNDING AND REIMBURSEMENT

QUESTION #19: *As a cross-border hazmat response team coordinator, what funding sources are available to me for planning activities?*

ANSWER:

At this time, no consistent source of funding exists to support cross-border planning and preparedness programs in the United States. U.S. local emergency response coordinators in need of funding for planning and preparedness programs should consider the following options:

- C Apply for federal funding. The federal government offers limited funding, in the form of grants, for emergency preparedness and planning efforts and activities. Emergency responders should contact their state and/or regional EPA office for details.
- C Publicize your program to local officials and city residents to attract attention and possibly additional funding. By informing appropriate parties about the important role that emergency response teams play, especially during cross-border emergencies, local officials may be more inclined to fund planning activities.
- C Request municipal funds.
- C Encourage local leaders to establish cross-border emergency response funds that are funded jointly by the regions in the United States and Canada.
- C Solicit funding from local businesses that have operations in Canada. Although there are no official requirements to donate funds, many businesses recognize the benefits they receive from emergency planning and may offer funding.

Category: HAZARDOUS MATERIALS

QUESTION #20: *If a hazardous substances spill occurs in Canada and I (a U.S. responder) am called upon to transport hazardous materials through Canada or back across the U.S. border for disposal or treatment, what regulations or requirements apply to me?*

ANSWER:

United States-Canada Agreement on the Transboundary Movement of Hazardous Waste

U.S. responders, coordinators, and waste transporters should be aware that the *United States-Canada Agreement on the Transboundary Movement of Hazardous Waste*, signed in 1986, sets forth the

administrative conditions for the export, import, and transportation of hazardous waste between both countries, ensures that the waste is handled safely, and requires that the waste be shipped to facilities that are authorized by the importing jurisdiction. For example:

- C The agreement stipulates that Canada must notify U.S. EPA prior to shipping the wastes into the United States. The U.S. EPA can then indicate whether it objects to the proposed shipment.
- C Also, shipments of hazardous waste must be accompanied by proper manifests in order to verify compliance with the Agreement and with other domestic regulations.

Therefore, it is recommended that U.S. responders, coordinators, and waste transporters contact the appropriate Regional EPA Office prior to transporting hazardous materials across the border into U.S. territory. It is important to note that the shipment notification and approval process, as required by the Agreement, can take some time and that approval is not guaranteed. According to the Agreement, U.S. EPA has up to 30 days to review Canada's hazardous material shipment request, alter the conditions, if necessary, and then respond. To obtain a copy of the agreement, visit Environment Canada's Transboundary Movement Division Internet website (http://www.ec.gc.ca/tmd/fact_a.htm).

Transportation of Hazardous Materials Through Canada

While in Canada, U.S. responders must comply with Canadian regulations pertaining to the transportation and import/export of hazardous wastes. These regulations apply from the time a hazardous waste exits a facility to the time it exits Canada. Transportation and import/export of hazardous wastes in Canada is governed by the following:

- C *Canada's Export and Import of Hazardous Wastes (EIHW)* regulations developed as part of The Canadian Environmental Protection Act of 1988. Briefly, these regulations require Canadian exporters/importers/carriers of hazardous wastes to:
 - Obtain explicit authorization to transport hazardous waste through Canada
 - Obtain environmental impairment insurance, third-party liability insurance, and other insurance types, as necessary
 - Carry a completed waste manifest for all waste shipments
 - Notify and gain approval from the appropriate Hazardous Waste Authority (as provided in the List of Hazardous Waste Authorities) of the proposed export (or import) of hazardous waste prior to initiating the shipment

For general information on Canada's EIHW regulations, visit Environment Canada's Transboundary Movement Division Internet website (<http://www.ec.gc.ca/tmd>). To obtain a copy of the EIHW regulations, visit the Department of Justice Canada's Internet website (<http://canada.justice.gc.ca/FTP/EN/Laws/>) and type "Export and Import of Hazardous Wastes" in the document search engine.

- C Canada's *Federal Transportation of Dangerous Goods Act (TDGA)* and regulations, which require Canadian exporters/importers/carriers of hazardous wastes to:
 - Comply with specific waste containment regulations
 - Use the necessary placards and/or safety symbols
 - Comply with other prescribed safety requirements

For general information on Canada's TDGA, visit Environment Canada's Transboundary Movement Division Internet website (<http://www.ec.gc.ca/tmd>). To obtain a copy of the TDGA regulations,

visit the Department of Justice Canada's Internet website (<http://canada.justice.gc.ca/FTP/EN/Laws/>) and type "Transportation of Dangerous Goods Act" in the document search engine.

Transportation of Hazardous Materials Into and Through the United States

Upon arrival at the border-crossing station, additional regulations apply, which include the following:

- C Importation/certification rules under the U.S. Toxic Substances Control Act (TSCA) (19 CFR Sections 12.118 through 12.127 and 127.28)
- C Waste importation requirements under the U.S. Resource Conservation and Recovery Act (RCRA) (40 CFR Section 260.60 and Section 254.12)

Once in the United States, the transportation and disposal of hazardous waste must be performed in accordance with applicable U.S. Department of Transportation (DOT) and U.S. EPA regulations. At a minimum, a Hazardous Waste Manifest must be obtained and any applicable transportation, documentation, marking, packaging, and highway requirements must be followed. See the U.S. DOT Internet web site at <http://hazmat.dot.gov/rules.htm> for further details on hazmat transportation rules and regulations. Additionally, consult the U.S. EPA Internet web site at <http://www.epa.gov/osw/> for information on hazardous waste transport and disposal.

Category: RADIOACTIVITY

QUESTION #21: *What steps do I follow to prepare for and respond to a radiological incident in Canada that may affect the United States?*

ANSWER:

U.S. planners and responders should follow the *United States-Canada Joint Radiological Emergency Response Plan* (JRERP) signed in July 1996. Copies of this joint plan can be obtained from either the author, Dr. Frederick Fietz, at (202) 646-3583 or purchased from (202) 634-3273 (document #ACN9609120273). The JRERP is the key contingency planning document for both the United States and Canada and is activated in the event of a cross-border radiological incident. In general, the JRERP establishes the basis for cooperative measures to deal effectively with a potential or actual peacetime radiological event and was developed to complement existing national, provincial, and state emergency plans. The JRERP relies heavily on, and frequently defers to, the United States and Canadian federal radiological plans which are listed below:

- C *United States Federal Radiological Emergency Response Plan* (FRERP). Available at the Nuclear Regulatory Commission's Internet website (<http://www.nrc.gov/NRC/AEOD/ER/FRERP/part03.html>).
- C *Canada Federal Nuclear Emergency Plan* (FNEP), draft, December 1997. The lead agency for this plan is Health Canada. Copies can be obtained from the Canada National Environmental Emergencies Center at (819) 997-8938.

Although these two federal radiological plans neither focus on transboundary events nor provide specific directions for responders, they do provide comprehensive directions regarding agency coordination procedures at the federal level. Also, responders should note that in cases of conflict or inconsistencies between countries and plans, the U.S. FRERP and the Canadian FNEP take precedence over the JRERP.

QUESTION #22: *As an emergency response coordinator involved in a joint response, how do I disseminate information to the public and to the press? How do I coordinate this process with Canadian officials?*

ANSWER:

According to CANUSWEST, U.S. responders involved in media and press relations should attempt to follow the information dissemination procedures described in the *Joint Information Center (JIC) Manual - Roles and Responsibilities for Major Oil Spill Incidents*. This manual was prepared by the Pacific Northwest Oil Spill Public Affairs Group in 1993 and, even though the procedures described in this manual were originally developed for responses to marine oil spills, the manual provides helpful guidelines for coordinating with Canadian officials and for handling press releases and relations for inland cross-border responses or emergencies. Currently, this document exists in draft form as a series of 35 separate documents; eventually a single, unified document will be developed. Contact EPA Region 10 for a copy. Note that the answer to this question may change as subsequent Regional Annexes are developed, although it is anticipated that all Annexes will contain similar baseline procedures for informing the public.

In addition to regional manuals, the following national-level JIC manuals provide useful guidance:

- *Joint Information Center Manual*, draft, version 2.2 (revised October 1998), developed for the National Response Team by the U.S. Coast Guard. Contact the U.S. Coast Guard at (252) 331-6000 for a copy.
- *FEMA Emergency Information Field Guide (condensed)*, April 1997. Contact the FEMA publications center at 1-800-480-2520 for a copy.

Category: INSURANCE AND LIABILITY

QUESTION #23: *As a U.S. responder in Canada, if I am injured during a cross-border response will I be eligible for workers' compensation benefits?*

ANSWER:

Most likely, yes. Generally, workers' compensation applies to injuries that occur while working in the course and scope of employment regardless of location, including transportation to and from the location of employment. However, other conditions may affect eligibility for workers' compensation. To be safe, it is a good idea to check with each state individually to see how they address extraterritorial coverage under workers' compensation laws. The table below provides examples of relevant workers' compensation provisions from states along the United States-Canada border.²

² Source: Donald S. Malecki, Ronald C. Horn, Eric A. Wiening, and Arthur Flitner, *Commercial Liability Insurance and Risk Management*, 3rd edition, 1996.

State	Citation	Relevant Provisions
Alaska	Title 23, Labor and Workers' Compensation, Section 23.30.011	Provides for extraterritorial coverage for employees whose employment is principally located in Alaska or who were hired in Alaska.
Washington, Idaho, Wisconsin, North Dakota, New Hampshire	Washington Revised Code (RCW 51.12.120); Idaho Statutes (Title 72, Chapter 2, Section 217); Wisconsin Statutes, Chapter 102.03(5); North Dakota Century Code, Chapter 65-08-01; New Hampshire Statutes, Title 23, Chapter 281, §281-A:12(I)	Provisions virtually identical to Alaska's.
Ohio	Ohio Revised Code, Title 41, Chapter 23, at §4123.54; Ohio Administrative Code Section 4123-17-23	Recognizes that employees' duties may take them out of state, but no statutory language addressing extraterritorial coverage has been located.
Montana	Chapter 71, Montana Code Annotated	Workers' Compensation Act extends coverage to workers who temporarily leave the state incidental to employment (§39-71-402). Montana law also authorizes the governor to enter into a reciprocal agreement for application of workers' compensation laws to workers temporarily engaged in work in any Canadian province (§39-71-426).
Idaho	Title 72, Chapter 2, Section 222	Provisions virtually identical to Montana's.
Minnesota	Minnesota Statutes, Chapter 176.041(2) and (3)	Provides extraterritorial coverage to workers injured outside of Minnesota if they regularly perform their primary employment duties within the state or if the out-of-state employment is temporary (including employees transferred to Canada).
Michigan	Michigan Compiled Laws, Chapter 418, Section 845.	Provides for extraterritorial coverage.
Vermont	Vermont Statutes, Title 21, Chapter 9, §619	Extends coverage to injuries occurring outside of the State.
Maine	Maine Workers' Compensation Act, Title 39A §113(1)(F)	Although the law refers to extraterritorial provisions covering employees temporarily working in other states, the specific language could not be located in the law.
New York	The New York Workers' Compensation law, Article 2 Section 13(b)	Recognizes that persons injured outside of the State may be entitled to workers' compensation or benefits, but specific language on extraterritorial coverage has not been located. If there is a conflict between an insurance policy and the law, the insurance policy will conform to the law; policies are automatically amended when laws change.

QUESTION #24: *If during an emergency response in Canada I injure a person or damage property, will I be subject to Canadian personal liability lawsuits (or equivalent)?*

ANSWER:

Yes. Responders operating in Canada will be subject to jurisdiction and liability under the laws of Canada and its provinces. Sovereign immunity, which may protect public sector responders in the United States of America, and statutory responder immunity cannot be assumed to extend extraterritorially.³

Regional On-Scene Coordinators are covered by the federal government to operate in Canada (Source: NRT Subcommittee on Transboundary Issues). Depending on the activities of U.S. responders, different types of liability coverage would be appropriate, including general liability coverage for operations, “completed operations” coverage, auto liability coverage, and/or professional liability coverage.

Commercial general liability (CGL) policies that cover bodily injury and property damage liability due to the operations (e.g., hazmat response) of an insured generally include Canada in the coverage territory. See Donald S. Malecki and Arthur L. Flitner, *Commercial General Liability: Claims Made and Occurrence Forms*, 6th edition (1997). The standard form for “completed operations” coverage (i.e., liability due to defects in the work completed by the hazmat responder) also includes Canada in its coverage territory (see Donald S. Malecki, Ronald C. Horn, Eric A. Wining, and Arthur L. Flitner, *Commercial Liability Insurance and Risk Management*, 3rd edition (1996)). The standard form for business auto insurance, which can be extended to include liability coverage for mobile equipment while being carried or towed by an automobile, also includes Canada in the coverage territory (Source: Malecki, et al. (1997)).

There are over 220 private property and casualty insurers offering commercial liability coverage in Canada, including Canadian, American, and other foreign-owned insurance companies (Source: Insurance Bureau of Canada). The Insurance Bureau of Canada’s standard liability forms define policy territory to include both Canada and the United States of America (Source: Gordon Hilliker, *Liability Insurance Law in Canada*, 2nd ed., 1996)).

³ Basis for answer: Responders operating in foreign nations will be subject to jurisdiction and liability as prescribed by each foreign country. Responder immunity provisions in Canada comparable to those in the U.S. Oil Pollution Act (OPA) of 1990 have not been identified (Source: U.S. Department of Justice, Memorandum “Re: Guidance Document on Transboundary Incidents,” (Nov. 2, 1995)). Extraterritorial application of U.S. law is the exception, not the rule, under the “Foley Doctrine” (Source: John N. Hanson, Paul E. Hagen, and Kathleen Rogers, “The Application of the United States Hazardous Waste Cleanup Laws in the Canada-U.S. Context,” 18 *Canada-United States Law Journal* (1992)). See also U.S. EPA, Office of General Counsel, memorandum “Re: Performance by EPA or EPA Contractors of Response Work in Mexico (August 15, 1996).) All U.S. coastal states and a few inland states reportedly have enacted responder immunity laws comparable to OPA (Source: Jonathan K. Waldron, Marine Spill Response Corporation, “Impediments to Cross-Boundary Oil Spill Response Along United States Borders,” 1995 Oil Spill Conference). The OPA responder immunity does not cover actions involving gross negligence or willful misconduct, or for personal injury or wrongful death. DOJ listed the following jurisdictions that share a border with Canada as having enacted responder immunity statutes: all of the coastal states (e.g., Alaska, Washington), Indiana, Michigan, Minnesota, and Ohio (Source: U.S. Department of Justice, memorandum “Re: Guidance Document on Transboundary Incidents,” (Nov. 2, 1995)).

QUESTION #25: *Will my emergency response equipment (e.g., vehicles) continue to be insured while I respond to a hazmat emergency in Canada?*

ANSWER:

Many state agencies “self-insure” against the risk of damage to their vehicles and equipment. This means that they will absorb any losses due to damage to their emergency response equipment regardless of location. Where a state or local agency buys insurance coverage for damage to their equipment, much depends on the language of the policy, although generally such coverage does extend to Canada.⁴

⁴ Basis for answer: Traditional insurance policies covering property (e.g., construction equipment) being transported over land and in temporary storage usually define the policy territory to include the U.S.A. and Canada. Commercial auto coverage policies for damage to owned property also apply to accidents or losses in both the U.S.A. and Canada (Source: *Agents’ and Brokers’ Insurance Examination Preparation Manual: Property and Casualty Insurance for the States of Idaho, Montana, New Mexico, Utah, and Wyoming (1980)*). Coverage of damage to autos insured under the ISO standard auto insurance form includes Canada in the coverage territory (Source: Donald S. Malecki et al., *Commercial Liability Insurance and Risk Management*, 3rd edition, 1996).