



Transportation of Dangerous Goods



Guide for Cross-Border Emergency Response



© Her Majesty the Queen in Right of Canada, represented by the Minister of Transport, 2017.

Cette publication est aussi disponible en français sous le titre *Guide pour les interventions d'urgence transfrontières*.

TP15365E

PRINT

Catalogue No. T86-36/2017

ISBN 978-0-660-20336-2

PDF

Catalogue No. T86-36/2017E-PDF

ISBN 978-0-660-09865-4

All rights reserved. No part of this publication may be copied, reproduced, translated, altered, revised or reduced to any electronic medium or machine-readable form, or be used in any other manner than as provided, without prior written consent from:

Executive Director, Compliance and Response Branch

Transportation of Dangerous Goods Directorate

Transport Canada

Tower C, Place de Ville, 9th floor

330 Sparks Street

Ottawa, ON K1A 0N5

(613) 998-6540

DISCLAIMER

Transport Canada and the organizations and persons involved in producing this publication disclaim making or giving any warranties or representations, expressed or implied, including with respect to fitness, intended purpose, use or merchantability and/or correctness or accuracy of the content of the information presented in this document. This is a general publication and not advice for specific situations. It remains the responsibility of the user of the publication to determine its suitability for the particular purpose intended, and to use the information provided in the publication in a manner appropriate to that purpose, and to consult with qualified professionals.

Notwithstanding the above or any other provisions in this publication or any applicable statutory provisions, Transport Canada and the organizations and the persons involved in producing this publication shall not be liable to the user for special or consequential damages or damage for loss of use arising directly or indirectly from the use of this publication. In using this document, the user accepts any legal liability or responsibility whatsoever for the consequences of its use or misuse.

ACKNOWLEDGEMENTS

This and previous editions of the *Guide for Cross-Border Emergency Response* were made possible with the valuable contributions of many public and private sector individuals in Canada and the United States who share the common goal of improving cross-border response. Member companies of the Canadian Chemical Producers' Association and the American Chemistry Council initiated development of the first draft of the guide. The Major Industrial Accidents Council of Canada (MIACC) updated and published the first edition in 1997. The Canadian Association of Fire Chiefs – Partnerships toward Safer Communities Program updated and published the second edition in 1999. In 2005 ownership of the guide was transferred to Transport Canada who undertook to revise and update the guide and make it available to the general public in both official languages. In 2017, the guide was revised, updated and its title was changed from Cross-Border Emergency Response Guide to Guide for Cross-Border Emergency Response to reduce confounding it with the Emergency Response Guidebook (ERG).

REQUEST FOR COMMENTS

This product is an attempt to compile information to assist industry and public sector responders in responding to cross-border incidents or spills. Although it was developed through several years of discussion and input from both public and private sector organizations, there will be areas that require further deliberation and refinement. For this reason, we invite users of this guide to provide their comments which will be taken into consideration for future editions.

Comments can be sent in writing to:

Executive Director, Compliance and Response Branch
Transportation of Dangerous Goods Directorate
Transport Canada
Tower C, Place de Ville, 9th floor
330 Sparks Street
Ottawa, ON K1A 0N5

TABLE OF CONTENTS

1	INTRODUCTION	1
1.1	Purpose of the guide	1
1.2	Scope of the guide	1
2	CROSS-BORDER RESPONSE AGREEMENTS AND OTHER DOCUMENTS	3
2.1	Canada – U.S. Joint Inland Pollution Contingency Plan	3
2.2	Canada – U.S. Joint Marine Pollution Contingency Plan	4
2.3	Goods for Emergency Use Remission Order	5
2.4	Canada – U.S. Agreement concerning the Transboundary Movement of Hazardous Waste	5
2.5	Canada – U.S. Agreement on Emergency Management Cooperation	6
2.6	<i>Immigration and Refugee Protection Act of Canada</i>	6
2.7	U.S. Immigration and Nationality Act	7
2.8	Compendium of U.S. – Canada Emergency Management Assistance Mechanisms	7
2.9	Security Agreements	8
3	RESPONDING FROM THE UNITED STATES INTO CANADA	9
3.1	General Summary	9
3.2	Notification and Reporting	10
3.3	Cross-Border Movement of Response Equipment and Materials	11
3.4	Cross-Border Movement of Response Personnel	13
3.5	Responder Training Requirements	15
3.6	Liability and Insurance Issues	15
3.7	Occupational Health and Safety Legislation	17
3.8	Language Considerations	18
3.9	Security Provisions	18
3.10	Inadmissibility	18
4	RESPONDING FROM CANADA INTO THE UNITED STATES	19
4.1	General Summary	19
4.2	Notification and Reporting	20
4.3	Cross-Border Movement of Response Equipment and Materials	20
4.4	Cross-Border Movement of Response Personnel	21
4.5	Responder Training Requirements	22
4.6	Liability and Insurance Issues	23
4.7	Occupational Health and Safety Regulations	24
4.8	Language Considerations	24
4.9	Security Provisions	24
4.10	Inadmissibility	25
5	MUTUAL AID RESPONSE PLANS	26
5.1	Contacts	26
6	EMERGENCY RESPONSE CONTRACTORS	27
6.1	Contacts	27
7	RESPONDING INTO MEXICO	28
7.1	Contacts	28
8	EMERGENCY RESPONSE GUIDEBOOK	29
8.1	Contacts	29

1 INTRODUCTION

1.1 Purpose of the guide

Over the past decades, the public has become increasingly interested in incidents involving dangerous chemicals. This heightened awareness of the potential impact of chemical incidents has led to a growing demand for higher safety standards from both government and industry.

In recent years, regulators have responded by formulating additional rules to promote safety and improved responsiveness in the event of an incident. The Chemistry Industry Association of Canada (CIAC), for its part, placed a renewed emphasis on its corporate mandate to provide Responsible Care®, a commitment to sustainability by encouraging initiatives to improve health, safety and environmental performance, not only in the production, storage, distribution, transportation and disposal of chemicals, but also to improve security and its effective response to chemical mishaps.

In designing response systems for chemical incidents, industry and governments have had to take global influences into account. The *Free Trade Agreement* (FTA) between Canada and the United States, which was then superseded by the *North American Free Trade Agreement* (NAFTA) between Canada, the United States and Mexico encourages and facilitates cross-border movement of commercial goods.

The public demand for higher response standards, the liberalized movement of goods across borders and the growing tendency of multi-national companies to operate in a North American context has led to the more frequent use of foreign-based emergency response teams. These teams may offer more rapid, efficient and effective emergency responses under specific circumstances.

Organizations who operate under cross-border plans must, however, perform more extensive pre-incident planning than the planning required for domestic-based emergency response teams.

Organizations need to be familiar with:

- The tools available to them that would aid in getting their equipment and personnel across the border in an emergency when time is of the essence;
- The rules and restrictions related to such matters as training, liability and insurance, that may apply to their personnel and equipment in the country in which they are responding; and
- The potential changes to any rules and restrictions that may arise from security concerns or that may make crossing the border more complex.

It is the responsibility of the individual responders to prepare in advance of an emergency situation. Because local authorities may not be fully aware of what applies and what does not apply during emergency incidents, responders are urged to engage in an active dialogue with appropriate authorities in advance of a required emergency response to minimize confusion and misunderstanding.

This guide has been developed to provide general guidance to those who may be considering developing or using cross-border emergency response services. It is intended primarily for the use of both public and private emergency response planners as an aid to pre-incident planning, not as a working tool for hands-on responders.

1.2 Scope of the guide

The *Guide for Cross-Border Emergency Response* applies to emergencies involving the movement of all products by all modes of transport – air, road, rail and marine – from the United States into Canada and from Canada into the United States. The guide also applies to trans-shipments or “bridge traffic” which include movements of products through another country while in transit from the country of origin to a destination in the same country (e.g., passing through Canada when transporting products by road from Montana to Alaska). Some limited information is also provided regarding response into Mexico.

The guide applies to products whether or not they are classified as dangerous goods or hazardous materials. There is an emphasis, however, on products regulated as dangerous goods or hazardous materials (including hazardous waste), especially if they require emergency response plans as a condition of shipment. For example, in Canada, certain dangerous goods require an Emergency Response Assistance Plan (ERAP) approved by Transport Canada as a condition of shipment or importation.

Although the guide is concerned primarily with response to hazardous material incidents across the international border between Canada and the United States, much of the contents also applies to other natural and technological emergencies where the international border is involved. While many topics are covered in the guide, it is not an exhaustive resource for all possible issues and considerations. Some issues, such as associated costs, reimbursement measures and the willingness to part with resources, mainly for public organizations, are not covered. These should still be considered when developing response plans.

Pre-incident planning to ensure response capability is a component of a broader disaster/emergency management program. The guide does not provide guidance on how to develop and implement this broader emergency management program. The following, however, is a general checklist of what needs to be done in developing a program that relies in any way on cross-border capabilities:

- Assign responsibility for developing, maintaining and documenting the cross-border response plan;
- Identify products, modes of shipment and container types;
- Identify geographic areas where shipments are outside of the country of origin;
- Ensure equipment compatibility with regional equipment;
- Identify and make copies of regulations and cross-border agreements that deal with the specific products, modes of transport and locations;
- Identify trained responders equipped to respond to the products, means of containment and mode of transport combinations;
- Develop incident management, communication and response procedures and functional roles and responsibilities to manage the response;
- Identify border crossings to be used by responders and review border crossing procedures for responders and their equipment with border officials; and
- Establish procedures to validate the effectiveness of the plan with a program of regularly scheduled tests, exercises and periodic assessments.

Further information on the topic can be found in documents such as the National Fire Protection Association (NFPA) 1600 *Standard on Disaster/Emergency Management and Business Continuity Programs*. NFPA 1600 provides guidance on developing and documenting hazard/risk-based plans that meet the requirements of applicable regulations. It also includes documented procedures aimed at ensuring that plans have adequate resource and communication capability and trained responders have capability to effectively manage all aspects of a response to an emergency incident. Another relevant standard in Canada is CSA Z731-03 (R2014) – *Emergency Preparedness and Response*, which establishes the minimum criteria for effective emergency preparedness and response.

The *Emergency Management Framework for Canada*¹ and the *National Response Framework*² (NRF) in the United States are examples of broad emergency management/response frameworks which dictate the collaborative approaches between different levels of government and communities to resolve large scale incidents. These frameworks rely on adaptability and flexibility in order to be applicable to a variety of different scenarios.

1 www.publicsafety.gc.ca/cnt/rsrscs/pblctns/mrgnc-mngmnt-frmwrk/index-eng.aspx

2 www.fema.gov/media-library/assets/documents/117791

2 CROSS-BORDER RESPONSE AGREEMENTS AND OTHER DOCUMENTS

2.1 Canada – U.S. Joint Inland Pollution Contingency Plan

2.1.1 Scope

The *Joint Inland Pollution Contingency Plan*³ is aimed at developing a coordinated and integrated response to land pollution incidents between the governments of Canada and the United States. Each country is encouraged to implement long-term procedures granting special customs and immigration clearances for response personnel and equipment.

2.1.2 Contacts

United States

Office of Emergency Management (OEM)
Environmental Protection Agency (EPA)
5104A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
(202) 564-8600

www.epa.gov/aboutepa/about-office-land-and-emergency-management#oem

EPA contacts in regions bordering Canada

Region 1

New England, bordering New Brunswick and Quebec
U.S. EPA – Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912
(617) 918-1111

Region 2

New York, bordering Quebec and Ontario
U.S. EPA – Region 2
290 Broadway
New York, NY 10007-1866
(212) 637-3660

Region 5

Michigan/Minnesota, bordering Ontario and Manitoba
U.S. EPA – Region 5
77 W. Jackson Boulevard
Chicago, IL 60604-3590
(312) 353-2000

³ www.epa.gov/emergency-response/us-canada-joint-inland-pollution-contingency-plan

Region 8

N. Dakota/Montana, bordering Manitoba, Saskatchewan, Alberta, and British Columbia
U.S. EPA – Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
(800) 424-8802

Region 10

Idaho/Washington/Alaska, bordering British Columbia and Yukon
U.S. EPA – Region 10
1200 6th Avenue (ECL-116)
Seattle, WA 98101
(206) 553-1200

Canada

Environment and Climate Change Canada (ECCC)
Public Inquiries Centre
7th Floor, Fontaine Building
200 Sacré-Coeur Boulevard
Gatineau, QC K1A 0H3
(819) 938-3860

ec.enviroinfo.ec@canada.ca
www.ec.gc.ca/ee-ue

2.2 Canada – U.S. Joint Marine Pollution Contingency Plan

2.2.1 Scope

The *Canada/U.S. Joint Marine Pollution Contingency Plan*⁴ creates a joint response structure to marine pollution incidents for United States and Canadian on-scene coordinators. The *Joint Marine Plan* calls for each country to grant special customs and immigration clearances for response personnel and equipment and is supplemented by annexes. These annexes of the *Plan* include border-crossing procedures for each of five identified regions: Atlantic border (CANUSLANT), Great Lakes Border (CANUSLAK), Pacific Border (CANUSPAC), Dixon Inlet Border (CANUSDIX) and Beaufort Sea (CANUSNORTH). Specific procedures, including a checklist, for each region can be found in the respective documents.

2.2.2 Contacts

United States

Office of Incident Management & Preparedness
U.S. Coast Guard Headquarters
2703 Martin Luther King Jr. Avenue, SE
Washington, D.C. 20593-7000
(202) 372-2097
www.uscg.mil

Canada

Canadian Coast Guard
Fisheries and Oceans Canada
200 Kent Street
Ottawa, ON K1A 0E6
(613) 993-0999
www.ccg-gcc.gc.ca

⁴ www.dfo-mpo.gc.ca/Library/343409.pdf

2.3 Goods for Emergency Use Remission Order

2.3.1 Scope

The *Goods for Emergency Use Remission Order*⁵ authorizes the Canada Border Services Agency to allow goods to cross the border duty-free during an emergency. Additional guidelines and general information can be found under the *Administration of Temporary Importation Regulations*, Memorandum D8-1-1.⁶

The U.S. Environmental Protection Agency, Environment and Climate Change Canada, and the Canadian and U.S. Coast Guards can be reached 24 hours a day and may be able to facilitate the movement of goods across borders during an environmental emergency.

Sectoral or provincial agreements may also exist because of the number of crossings. Companies intending to cross the border should check with their municipal, state and/or provincial authorities to determine if such an agreement exists.

2.3.2 Contacts

For additional information on Canadian customs regulations, contact:

Canada Border Services Agency
National Border Operations Centre
Operational Preparedness and Response Division
Emergency Management
300 Slater Street, 8th Floor
Ottawa, Ontario K1A 0L8

(613) 954-5188 (8:00 – 16:00 weekdays)

(613) 960-6001 (16:00 – 8:00 weekdays and weekends)

Commercial_Operations-Operations_Commerciales@cbsa-asfc.gc.ca
www.cbsa-asfc.gc.ca

2.4 Canada – U.S. Agreement concerning the Transboundary Movement of Hazardous Waste

2.4.1 Scope

Waste may be required to be transported between each country to improve emergency response. The *Agreement Between the Government of Canada and the Government of the United States of America Concerning the Transboundary Movement of Hazardous Waste*⁷ sets out the administrative conditions for the export, import and transportation of hazardous waste between Canada and the United States. The *Agreement* sets out requirements for notification and tracking of transboundary movements as well as cooperation between parties.

In addition to the *Agreement*, the following documents should be reviewed:

- *Decision of the Council Concerning the Control of Transfrontier Movements of Wastes Destined For Recovery Operations*,⁸ Organisation for Economic Co-operation and Development (OECD), C(2001)107/ Final (as amended); and
- *Export and Import of Hazardous Wastes and Hazardous Recyclable Materials Regulations*,⁹ Environment and Climate Change Canada.

5 www.laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._768/page-1.html

6 www.cbsa-asfc.gc.ca/publications/dm-md/d8/d8-1-1-eng.html

7 www.ec.gc.ca/gdd-mw/default.asp?lang=en&n=C59BCC26-1

8 acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=221&Lang=en&Book=False

9 www.ec.gc.ca/lcpe-cepa/eng/regulations/detailReg.cfm?intReg=84

2.4.2 Contacts

United States

Office of Emergency Management (OEM)
Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue, N.W.
Mail Code: 5104A
Washington, D.C. 20460
(202) 564-8600

www.epa.gov/aboutepa/about-office-land-and-emergency-management#oem

Canada

Waste Reduction & Management Division
Environment and Climate Change Canada
(ECCC)
351 Street Joseph Blvd, 9th Floor
Gatineau, QC K1A 0H3
(844) 524-5295

ec.enviroinfo.ec@canada.ca
www.ec.gc.ca/lcpe-cepa/eng/regulations/

2.5 Canada – U.S. Agreement on Emergency Management Cooperation

2.5.1 Scope

*The Agreement Between the Government of Canada and the Government of United States of America on Emergency Management Cooperation*¹⁰ is designed to strengthen cooperation between Canada and the United States, encouraging a more effective response to peacetime emergencies. The *Agreement* sets out principles of cooperation and establishes a joint consultative group to foster comprehensive emergency planning and management.

2.5.2 Contacts

United States

Federal Emergency Management Agency (FEMA)
500 C Street S.W.
Washington, D.C. 20472
(202) 646-2500

www.fema.gov

Canada

Public Safety Canada
269 Laurier Avenue West
Ottawa, ON K1A 0P8
(613) 944-4875

www.publicsafety.gc.ca

2.6 Immigration and Refugee Protection Act of Canada

2.6.1 Scope

Paragraph 186(t) of the *Immigration and Refugee Protection Regulations*¹¹ provides for the entry into Canada without a work permit of persons who are providing emergency services, including medical services, to preserve life, property or the environment. Immigration officers at the appropriate ports of entry should be contacted in advance to commence the expedited process provided by the regulations. However, restrictions may apply (see Section 3.10 of this document for more information on inadmissibility).

2.6.2 Contacts

Immigration, Refugees and Citizenship Canada
Information Call Centre
(888) 242-2100 (in Canada only)

www.cic.gc.ca

¹⁰ www.treaty-accord.gc.ca/text-texte.aspx?id=105173

¹¹ laws-lois.justice.gc.ca/eng/regulations/sor-2002-227/

2.7 U.S. Immigration and Nationality Act

2.7.1 Scope

As per Clause 212(d)(5)(A) of the *U.S. Immigration and Nationality Act*,¹² Customs and Border Protection has the authority, on a case-by-case basis, to permit otherwise inadmissible aliens into the country for a temporary period for urgent humanitarian reasons or significant public benefit. This is an extraordinary measure that is rarely used and should not be relied upon as a simple way of crossing the border and circumventing normal procedures.

2.7.2 Contacts

U.S. Customs and Border Protection
(877) 227-5511 (in the U.S.) or (202) 325-8000 (elsewhere)

<http://www.cbp.gov>

2.8 Compendium of U.S. – Canada Emergency Management Assistance Mechanisms

2.8.1 Scope

The *Compendium of U.S. – Canada Emergency Management Assistance Mechanisms*¹³ is intended to raise awareness of national-level acts, agreements, frameworks, etc., for emergency preparedness, response and communications, and recovery. It is also intended to facilitate communication, coordination, and the movement of Federal-to-Federal assistance resources. The *Compendium* was published by Public Safety Canada and the U.S. Department of Homeland Security and provides a broad picture of Canada and U.S. policy and regulatory frameworks in the area of emergency response. Most of the documents listed in this section of the guide are included in the *Compendium*, but presented in a different manner. The *Compendium* includes additional documentation that could be complimentary to this guide.

2.8.2 Contacts

Canada

Public Safety Canada
269 Laurier Avenue West
Ottawa, ON K1A 0P8
(613) 944-4875

www.publicsafety.gc.ca

United States

Department of Homeland Security
(202) 282-8000

www.dhs.gov

¹² www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-2006/0-0-0-2364.html#0-0-0-2759

¹³ www.publicsafety.gc.ca/cnt/rsrscs/pblctns/cmpndm-ntdstts-cnd-2016/index-en.aspx

2.9 Security Agreements

There are currently no security agreements that pertain directly to emergency responders. General provisions to increase border security, however, may have an impact on a responder's ability to cross the border under certain circumstances. Responders transporting dangerous goods require a hazmat endorsement on their Commercial Driver's License (CDL) in the United States. To obtain a CDL hazmat endorsement, a security clearance including a fingerprint and criminal history check is currently required.

There are no specific legal requirements presently in place in Canada with respect to security matters as they relate to the response to transportation emergencies involving dangerous goods. Although the *Transportation of Dangerous Goods Act, 1992*¹⁴ does include security provisions under Section 27.1, most are not yet enforced by regulation. These measures cover a wide range of topics, including the need to have transportation security clearance for employees, be trained in security issues and prepare, submit for approval and implement security plans. If these provisions become enforced by regulation, they could have an impact on responders travelling from the United States to Canada. It is important for any responder who may become involved in cross-border response from the United States to Canada to verify the status of these security proposals and determine the possible impacts they may have at an operational level. Additional information respecting proposed amendments to the *Transportation of Dangerous Goods Act, 1992* and the *Transportation of Dangerous Goods Regulations* can be found on Transport Canada's Transportation of Dangerous Goods Directorate website.¹⁵

¹⁴ www.lois-laws.justice.gc.ca/eng/acts/T-19.01/

¹⁵ www.tc.gc.ca/tdg

3 RESPONDING FROM THE UNITED STATES INTO CANADA

3.1 General Summary

Cross-Border Response Matrix

EMERGENCY DECLARED by public official	EMERGENCY NOT DECLARED by public official	NON-EMERGENCY (e.g., tank car or truck repair) (no threat of product release)
Immigration agreements exist to permit movement of personnel.	Immigration agreements exist to facilitate response. Pre-incident liaison with local officials strongly recommended.	Immigration agreements in place may apply under certain circumstances.
Customs agreements exist to permit movement of goods.	Customs agreements exist to facilitate response. Pre-incident liaison with local officials strongly recommended.	No customs agreements in place.
Training: Must comply with applicable Canadian regulations (TDG, WHMIS).	Training: Must comply with applicable Canadian regulations (TDG, WHMIS).	Training: Must comply with applicable Canadian regulations (TDG, WHMIS).

Under customs and immigration regulations, manpower and equipment from the United States can be used to respond to an emergency in Canada. Standard customs and immigration regulations, however, can prevent the cross-border movement of personnel and equipment to perform work without special authorization. Local border services officials may even lack familiarity with emergency response provisions due to their infrequent use. For these reasons, it is important that emergency response plans outline the required specific procedures and encourage interaction with Canada Border Services Agency (CBSA) officials and their involvement in training and exercises before the need to respond.

Companies planning to cross the border as part of a response team should become familiar with the specific regulations concerning the type of response they plan to provide for all geographic areas that they could potentially be called to serve. In addition to the exemptions, which facilitate the response, there are regulatory requirements that must be considered related to such matters as notification and reporting, cross-border movement of equipment, materials and personnel, responder training, liability and insurance.

3.2 Notification and Reporting

Generally, the person having the charge, management or control of the products involved in an incident (usually the carrier or the site owner) would be responsible for notifying authorities in accordance with the applicable regulations. The following subsections provide context of the applicable regulations for different scenarios.

3.2.1 Dangerous Good or Hazardous Material Incident

If a chemical incident occurs, it is important to know which authorities to notify. Pursuant to the *Transportation of Dangerous Goods Regulations*,¹⁶ generally, the local authorities must be informed of releases or anticipated releases of dangerous goods that endanger, or could endanger, public safety. Under certain circumstances, a *Release or Anticipated Release Report* may be required to be made to other federal agencies. Provincial legislation also requires that the incident be reported to appropriate authorities (Transport, Environment) of the province in which the incident occurs. This often applies to a wider range of goods than those regulated by the *Transportation of Dangerous Goods Regulations*.

For dangerous goods incidents, when a *Release or Anticipated Release Report* is required, a *30-Day Follow-up Report* must be provided in writing to the Director General, Transportation of Dangerous Goods Directorate, by the person, or the person's employer, who made the initial report. This report must be submitted within thirty days after the day on which the *Release or Anticipated Release Report* was made. Section 8.7 of the *Transportation of Dangerous Goods Regulations* describes the information that must be included in the report.

Transport Canada's Canadian Transport Emergency Centre's (CANUTEC) main role is to provide advice and assistance during emergencies. CANUTEC can also provide advice regarding reporting requirements as per the *Transportation of Dangerous Goods Regulations*.

During an emergency, CANUTEC can be reached 24 hours a day at (888) CANUTEC, collect at (613) 996-6666 or, in Canada only, cellular *666. In a non-emergency situation, CANUTEC can be reached at:

CANUTEC
Transport Canada
Tower C, Place de Ville, 14th Floor, Office 1415
330 Sparks Street
Ottawa, ON K1A 0N5
(613) 992-4624 (24-hour information line)

canutec@tc.gc.ca
www.tc.gc.ca/canutec

¹⁶ www.tc.gc.ca/eng/tdg/clear-menu-497.htm

3.2.2 Marine Incidents Involving Dangerous Goods, Harmful Substances or Marine Pollutants

For marine incidents involving dangerous goods, harmful substances, or marine pollutants, an additional report must be made as quickly as possible to a pollution prevention officer or steamship inspector, as defined by the *Canada Shipping Act*.¹⁷

A Transport Canada publication entitled TP 9834, *Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances and/or Marine Pollutants* is available from Transport Canada's Marine Safety Publications website¹⁸ or from:

Marine Safety and Security
Transport Canada
330 Sparks Street
Ottawa, ON K1A 0N5
(855) 859-3123 (Toll Free) or (613) 991-3135

marinesafety-securitemaritime@tc.gc.ca

3.2.3 Environmental Incidents

Information about reporting requirements for other harmful substances and for environmental incidents can be obtained from:

Environment and Climate Change Canada (ECCC)
Public Inquiries Centre
7th floor, Fontaine Building
200 Sacré-Coeur Boulevard
Gatineau, QC K1A 0H3
(819) 938-3860

ec.enviroinfo.ec@canada.ca

www.ec.gc.ca/ee-ue

In relation to an environmental emergency or polluting incident, Environment and Climate Change Canada's National Environmental Emergencies Centre (NEEC) can be contacted at:

National Environmental Emergencies Centre (NEEC)
Environment and Climate Change Canada (ECCC)
105 McGill Street
Montreal, QC H2Y 2E7
(866) 283-2333

www.ec.gc.ca/ee-ue

3.3 Cross-Border Movement of Response Equipment and Materials

Customs and excise regulations govern the movement of goods between Canada and the United States. Consequently, in addition to reporting requirements, customs and immigration officials at the ports of entry into Canada should be notified of any chemical incidents where a cross-border response is expected. The Customs and Immigration officials at the ports of entry should be provided with a contact person from a municipal, provincial or federal authority that can confirm that an emergency currently exists. Although agreements exist to facilitate the cross-border movement of goods during emergency situations, restricted or prohibited goods such as firearms cannot cross the border without proper documentation. Ensuring that practical and clearly understood arrangements are in place will allow American response resources to engage in emergency response in Canada with a minimum of delay.

¹⁷ www.tc.gc.ca/eng/acts-regulations/acts-2001c26.htm

¹⁸ www.tc.gc.ca/eng/marinesafety/tp-menu-515.htm

3.3.1 Use of American Equipment for Emergency Response in Canada

To effect the movement of equipment into Canada, the *Goods for Emergency Use Remission Order*¹⁹ outlines the conditions under which goods for emergency use can be temporarily imported into the country without paying taxes under the *Excise Tax Act*.²⁰ An “emergency” is defined in the *Order* as an “urgent and critical situation of a temporary nature that is of such proportions or nature as to exceed the capacity or authority of a province or municipality to deal with it”. The urgent and critical situation must be caused by an actual or imminent identified situation that includes incidents or pollution, and acts of sabotage or terrorism that result or may result in danger to public safety, social disruption or a breakdown in the flow of essential goods, services or resources. Thus it is possible to import equipment to avert an imminent emergency. The *Order* requires that any goods so imported, and not consumed or destroyed during the emergency, be exported when no longer needed.

Under Section 2 of the *Order*, the term “goods” is not specifically defined; however, goods are considered items of commercial or non-commercial value. The term does not include response personnel.

The *Memorandum D8-1-1 of Administration of Temporary Importation Regulations*,²¹ provides circumstances under which certain goods may be temporarily imported duty-free. The *Memorandum* also lists guidelines and general information on the forms to be completed for importing these goods. Sections 24, 65 and 92 through 95 pertain specifically to the temporary importation of emergency response equipment during emergency situations.

At the port of entry where the goods must be reported, a simple log describing the goods in general terms will be made, without a security deposit, on a Temporary Admission Permit (Canada Customs Form E29B).²² It can be filled out online but must be provided to the inspecting Customs officer in hard copy. Additional information on how to complete the form is available on CBSA’s website.²³ The issuance of this permit can be made at the time of importation or after the fact, depending on the circumstances. This record can be cancelled whenever an official or responsible person involved provides evidence that the goods were expended or destroyed in resolving the emergency or were exported from Canada.

When goods are brought into Canada, where customs officers or Royal Canadian Mounted Police are not in attendance, a record kept by a responsible individual will be accepted for the purpose of completing the Temporary Admission Permit form. This individual can be a representative of the provincial government or an individual with the responsibility of directing the emergency counter measures.

The following procedure is recommended:

1. Customs Border Services at the port of entry should be contacted as soon as possible to inform them that emergency goods will be entering.
2. The driver of the vehicle/vessel/aircraft transporting goods to Canada must carry two copies of the equipment list which includes serial numbers and monetary value.
3. It is advisable to stop at U.S. Customs prior to departure to get a copy of the list stamped. This will assist when re-importing the goods to the United States. U.S. Customs has indicated that form 4455 will have to be completed (it should be completed ahead of time to expedite entry). The contractor’s equipment list can be appended to this form.
4. Present the list to Canada Customs for clearance approval. Should problems arise, ask to speak to a Senior Officer (usually a Superintendent).
5. Report to Canada Customs when leaving Canada so that temporary admission permits can be cancelled.

19 www.laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._768/page-1.html

20 www.laws-lois.justice.gc.ca/eng/acts/E-15/

21 www.cbsa-asfc.gc.ca/publications/dm-md/d8/d8-1-1-eng.html

22 www.cbsa-asfc.gc.ca/publications/forms-formulaires/e29b.pdf

23 www.cbsa.gc.ca/publications/dm-md/d8/d8-1-4-eng.html

To expedite such procedures and ensure that there are no undue impediments to the importation of equipment, responsible agencies must coordinate their actions with field customs officials. Contact information for these purposes is available in Appendix C²⁴ of the *Administration of Temporary Importation Regulations*.

3.3.2 Use of American Vessels for Emergency Response in Canada

With respect to assisting vessels in danger, the *United States Wreckers Act*²⁵ (a Canadian Act) allows American vessels to salvage any property wrecked without reference to the customs or coasting laws of Canada. American vessels may also aid and assist any vessels wrecked, disabled or in distress, in the waters contiguous to the United States, provided that the existing reciprocal privilege with respect to Canadian vessels in the United States remains in force.

Under Paragraph 3(2)(e) of the *Coasting Trade Act*,²⁶ foreign ships or non-duty paid ships can carry goods from one place in Canada to any other place in Canada, without a licence, but with the approval of a pollution prevention officer, provided they are involved in activities related to a marine pollution emergency or to a risk of such an emergency. Therefore, under these circumstances, American vessels are permitted to conduct pollution response operations in Canadian waters contiguous to the United States.

3.3.3 Contacts

For additional information on Canadian customs regulations, contact:

Canada Border Services Agency
National Borders Operations Centre
Operational Preparedness and Response Division
Emergency Management
300 Slater Street, 8th Floor
Ottawa, Ontario K1A 0L8
(613) 954-5188 (8:00–16:00 weekdays)
(613) 960-6001 (16:00–8:00 weekdays and weekends)

Commercial_Operations-Operations_Commerciales@cbsa-asfc.gc.ca
www.cbsa-asfc.gc.ca

3.4 Cross-Border Movement of Response Personnel

The rules governing whether or not a U.S. citizen can work in Canada are found in the Canadian federal *Immigration and Refugee Protection Act*²⁷ and Regulations.²⁸ Two sections of NAFTA also have implications for an American company's employees. Unless an emergency exists, there are significant restrictions.

Because of agreements between Canada and the United States, emergency response personnel from the United States can enter Canada without special documentation or permits. This is facilitated by Paragraph 186(t) of the *Immigration and Refugee Protection Regulations* which provides that a foreign national may work in Canada without a work permit if they are providing emergency services, including medical services, for the protection or preservation of life, property or the environment.

Border authorities have recommended that they be notified by telephone that an emergency response team is crossing the border and its expected time of arrival. It is also recommended to have a provincial, municipal or federal authority involved with the emergency contact border officials to confirm that an emergency situation exists. Entry into Canada will be facilitated if the response team can provide a signed

²⁴ www.cbsa-asfc.gc.ca/publications/dm-md/d8/d8-1-1-eng.html#a37

²⁵ www.laws.justice.gc.ca/eng/acts/U-3/FullText.html

²⁶ www.laws-lois.justice.gc.ca/eng/acts/C-33.3/

²⁷ www.laws.justice.gc.ca/eng/acts/i-2.5/

²⁸ www.laws-lois.justice.gc.ca/eng/regulations/sor-2002-227/

letter from a Canadian authority confirming the nature of the emergency, identifying the names of the persons needing entry into Canada and providing a contact person that Immigration Canada can contact should they have any questions (see Section 3.3 of this document for more detailed information).

To facilitate crossing the border, it is recommended that emergency service personnel have the following documents upon their arrival:²⁹

1. A copy of the requesting company letter on company letterhead, including:
 - Requesting company's name/address;
 - Company's icon/logo;
 - Reason for requesting company to help requesting company; and
 - Requesting company's 24-hour contact number.
2. Completed roster of all individuals that will be present, including the following information:
 - Birth date;
 - Valid identification – passport number (preferred) or valid enhanced driver's licence or proof of citizenship; and
 - Valid vehicle licence plate number.

To expedite the process further, this documentation can be sent to CBSA before departure to allow much of the pre-screening process to occur before arrival at the port. Documentation can be sent to CBSA's Headquarters or Operations Centre which will then disseminate the information to the appropriate port of entry. The use of NEXUS cards can also facilitate entry into the country by decreasing screening time for individuals that have cards. Despite this exemption, other factors could prevent response personnel from crossing the border (see Section 3.10 for more information on inadmissibility).

3.4.1 Possible Scenarios

(1) A U.S. Citizen wants to enter Canada to fix a problem on a tank car or truck to allow continued shipment; however, the incident is not classified as an emergency:

Under Canada's *Immigration and Refugee Protection Act*, the U.S. Citizen probably needs a work permit. The U.S. Citizen would otherwise be denied access because Canadian mechanics or technicians could perform the work. However, if the work requires specialized skills, the employee may be able to enter pursuant to NAFTA's intra-company transferee³⁰ rules.

(2) A U.S. citizen wants to enter Canada to respond to an emergency:

According to Paragraph 186(t) of Canada's *Immigration and Refugee Protection Regulations*, American personnel can usually enter Canada without employment authorization if they are rendering medical emergencies or other services for the preservation of life, property or the environment. Consequently, American response personnel should be able to enter the country without a work permit.

3.4.2 Contacts

The following contacts can help readers obtain additional information about the relevant sections of the *Immigration and Refugee Protection Act* and Regulations:

Immigration, Refugees and Citizenship Canada
Information Call Centre
(888) 242-2100 (in Canada only)

www.cic.gc.ca

²⁹ www.cbsa-asfc.gc.ca/import/esrp-psru-eng.html

³⁰ www.cic.gc.ca/english/resources/tools/temp/work/opinion/transferees/requirements.asp

For additional information on Canadian customs regulations, contact:

Canada Border Services Agency
National Borders Operations Centre
Operational Preparedness and Response Division
Emergency Management
300 Slater Street, 8th Floor
Ottawa, Ontario K1A 0L8
(613) 954-5188 (8:00 – 16:00 weekdays)
(613) 960-6001 (16:00 – 8:00 weekdays and weekends)

Commercial_Operations-Operations_Commerciales@cbsa-asfc.gc.ca
www.cbsa-asfc.gc.ca

3.5 Responder Training Requirements

In Canada, any person who handles, offers for transport or transports dangerous goods must be adequately trained and hold a valid training certificate or perform those activities in the presence and under the direct supervision of a person who is trained and who holds a valid training certificate. Part 6 of the *Transportation of Dangerous Goods Regulations* contains the requirements as to what constitutes adequate training, who issues the training certificate, how long a training certificate is valid and when a training certificate must be produced for verification by an inspector. It also addresses the training requirements for foreign carriers.

3.6 Liability and Insurance Issues

3.6.1 Presence at an Incident Site

In the United States, the shipper's presence at the site of a transportation incident is not legally required. This is also the case in Canada, however an organization which has filed an emergency response assistance plan (ERAP) may be required to have a representative on site in order to effectively respond to an incident when the ERAP is activated.

3.6.2 Liability

Liability for damage caused during a response effort generally involves the conduct of the emergency response team at an incident site. Under Canadian common law (civil code in the province of Quebec), responders can be found liable for negligence, nuisance (wrongful interference), or trespass (wrongful entry onto private property). Several statutes also impose liability on response teams, and are discussed below.

3.6.2.1 Responder Liability – Statutory

The following federal and provincial laws are just some of the statutes in Canada that may impose liability on a responder:

Fisheries Act:³¹ This federal legislation imposes civil liability on those who deposit a “deleterious [harmful] substance” in waters frequented by fish, who have the “charge, management or control” of the substance, or who “cause or contribute to the causation” of the deposit in question. If found liable, defendants may have to pay cleanup costs, and any lost income incurred by fishermen.

Canadian Environmental Protection Act (CEPA):³² Part 7, Division 3 of CEPA deals specifically with disposal at sea. It is a criminal offense to carry out ocean dumping without a permit and the offender can, upon conviction, be subject to a fine or imprisonment, and can also be obligated to repay the federal government for costs incurred in remedying or mitigating the damage. Part 8 of CEPA deals with environmental matters related to emergencies and includes requirements for prevention, preparedness, response and recovery regarding emergencies involving released substances.

³¹ www.laws-lois.justice.gc.ca/eng/acts/f-14/

³² www.laws-lois.justice.gc.ca/eng/acts/C-15.31/index.html

Canada Shipping Act (CSA):³³ The owner of a ship is liable for pollution damage.

Transportation of Dangerous Goods Act, 1992: This federal act applies if “dangerous goods” are used and transported by an organization responding to an incident. If there is a discharge, emission or escape of a dangerous substance, the federal government may be able to recover the costs and expenses of cleanup against the persons responsible. The onus is on the person who transports the dangerous goods to establish that he or she took all reasonable measures to comply with the Act and its Regulations.

In certain circumstances, the *Transportation of Dangerous Goods Act, 1992* can provide personal liability protection to persons directed to take certain remedial actions at the time of transportation of dangerous goods incidents. Therefore, emergency response teams, whether they are based in Canada or come from the United States to do a response on Canadian ground, may not be personally liable, either civilly or criminally in respect of any act or omission in the course of complying with an inspector’s direction or doing any reasonable thing incidental to it, unless it is shown that the act or omission was made in bad faith or negligence. The same applies to any person who responds using an applicable emergency response assistance plan and informs the Canadian Emergency Transport Centre of their response. Section 40 of the Act also states that a person shall not be found guilty of an offence if it is established that the person took all reasonable measures to comply with the Act or to prevent commission of the offence.

3.6.3 Reducing Liability

Limited immunity from liability is available to private responders under the *Transportation of Dangerous Goods Act, 1992*, and to Crown employees under the *Crown Liability and Proceedings Act*. Outside of statutory immunity, there are steps that can be taken to minimize liability.

In relation to product spills:

- Use every means available to immediately limit, contain and clean up the spill in a safe manner.
- Do everything that may be required by law or any government agency to prevent, eliminate or improve all adverse effects resulting from the spill.
- Contact the owner, agent, proprietor, and/or occupier of any premises affected by the spill.
- Immediately contact by telephone a responsible person in the organization where the product was loaded or the 24-hour emergency number shown on shipping documents, if these numbers are available.
- Follow documented instructions for handling and reporting product spills.
- Immediately report the incident to any authorities required by law to be notified.
- Document and maintain personal records of all events and conditions leading up to and causing the incident and any statements made by anyone involved with the incident (carrier responsibility).

In relation to insurance:

- The carrier should report the incident to the owner of the vehicle and the owner or agent of the product in transit as soon as possible.
- The owner of the vehicle and the owner or agent of the product in transit must report the incident to their insurance agents, brokers or adjusters immediately after the occurrence of the incident.
- The carrier must be available to report and document details of the incident to the claims adjuster as indicated by the owner of the vehicle and the owner or agent of the product in transit as specified by the owners or agents.

³³ www.laws-lois.justice.gc.ca/eng/acts/C-10.15/

3.7 Occupational Health and Safety Legislation

Canada does not have federal legislation similar to 29 CFR §1910.120 *Hazardous Waste Operations and Emergency Response (HAZWOPER)*, which regulates the type of training that emergency response personnel should have. Instead, Canadian requirements are regulated at both the provincial and federal levels.

The federal *Canada Labour Code* applies to organizations involved in international and interprovincial transportation as well as most Crown Corporations and federal undertakings and businesses (e.g., banks, telephone, federal government, etc.). Most industries in Canada fall under provincial jurisdiction, as do most first responders (fire, police, emergency medical services, etc.). An incident site that is on federal land could have both federally regulated workers and workers who are regulated under provincial or territorial health and safety regulations. Jurisdictional issues can be complex. United States-based contractors should follow the health and safety requirements that are most stringent where there is a conflict between jurisdictional requirements.

Questions regarding health and safety jurisdiction should be addressed to Employment and Social Development Canada's Labour Program. American emergency response personnel should become familiar with all the different requirements, as these vary from province to province.

The Workplace Hazardous Materials Information System (WHMIS) is a set of regulations that apply to all workers in Canada whether they fall under federal, provincial or territorial jurisdiction. From 2015 to 2018, WHMIS is undergoing a transition to fully incorporate the Globally Harmonized System of Classification and Labelling. This will allow the hazard classification and communication requirements of WHMIS to align with those used in the United States and by other Canadian trading partners. Health Canada is the government body responsible for WHMIS and can be contacted for additional information.

For the most part, American firefighters and public-sector hazardous materials team members will be guided by National Fire Protection Association (NFPA) standard 472 *Professional Competence of Responders to Hazardous Materials Incidents*. This standard relates to 29 CFR §1910.120 and the requirements outlined in 40 and 49 CFR. For industrial fire brigades, NFPA standards 600 *Facility Fire Brigades* and 1081 *Industrial Fire Brigade Member Professional Qualifications* apply and relate to 29 CFR §1910.156. Although the NFPA standards are not mandated for Canadian workers, the standards (with minor modifications) are widely supported by the fire service and many qualified response teams.

Providing that the safety officers at the cleanup and countermeasures sites have knowledge of the applicable requirements and standards, trained workers from both countries should have no difficulty defining and working within the safety requirements.

3.7.1 Contacts

Labour Program
Employment and Social Development Canada (ESDC)
165 Hôtel de Ville
Place du Portage, Phase II
10th Floor
Gatineau, QC K1A 0J2
(800) 641-4049

www.canada.ca/en/employment-social-development/corporate/portfolio/labour.html

Workplace Hazardous Materials Information System (WHMIS)
Health Canada
269 Laurier Avenue West, 7th floor (4903E)
Ottawa, ON K1A 0K9
(855) 407-2665

WHMIS_SIMDUT@hc-sc.gc.ca

www.canada.ca/en/health-canada/services/environmental-workplace-health/occupational-health-safety/workplace-hazardous-materials-information-system.html

3.8 Language Considerations

An important aspect of cross-border response that is often overlooked is the barrier that may be caused by the different languages spoken in the country where the response takes place. In relation to North America, the different languages encountered could be English, French or Spanish.

It is important to take the language issue into account in planning for cross-border response by ensuring, for instance, that one or more of the response team members is fluent in more than one language or by arranging access to interpreters on short notice.

3.9 Security Provisions

Although no specific security provisions pertaining to response from the United States into Canada have been identified at this time, the general security guidance provided in Section 2.7 and the inadmissibility criteria in Section 3.10 of this guide should be reviewed.

3.10 Inadmissibility

Entry into Canada requires proper documentation, such as a valid passport, resident card or NEXUS³⁴ card. A visa for U.S. citizen visitors is generally not required. Despite proper documentation, some people are inadmissible and they are not allowed to come to Canada. Many reasons can make a person inadmissible, such as:

- being a security risk;
- committing a human or international rights violations;
- being convicted of a crime, or committing an act outside Canada that would be a crime;
- having ties to organized crime;
- having serious health or financial problems;
- lying on an application or in an interview;
- not meeting the conditions in Canada's immigration law; or
- having a family member who is not allowed into Canada.

Canadian border agents are ultimately responsible for deciding who may enter the country. More information on inadmissibility can be found on Immigration, Refugee and Citizenship Canada's website.³⁵

3.10.1 Contacts

Canada Border Services Agency
Ottawa, ON K1A 0L8
(800) 461-9999 (in Canada), (204) 983-3500 or (506) 636-5064 (elsewhere)

contact@cbsa.gc.ca

Immigration, Refugees and Citizenship Canada
Information Call Centre
(888) 242-2100 (in Canada only)

www.cic.gc.ca

³⁴ www.cbsa-asfc.gc.ca/prog/nexus/menu-eng.html

³⁵ www.cic.gc.ca/english/information/inadmissibility/index.asp

4 RESPONDING FROM CANADA INTO THE UNITED STATES

4.1 General Summary

Cross-Border Response Matrix

EMERGENCY DECLARED by public official	EMERGENCY NOT DECLARED by public official	NON-EMERGENCY (e.g., tank car or truck repair) (no threat of product release)
Immigration agreements exist to permit movement of personnel.	Immigration agreements exist to facilitate response. Pre-incident liaison with local officials strongly recommended.	Immigration agreements in place may apply under certain circumstances.
Customs agreements exist to permit movement of goods.	Customs agreements exist to facilitate response. Pre-incident liaison with local officials strongly recommended.	No customs agreements in place.
Training: Must comply with all applicable U.S. and state regulations.	Training: Must comply with all applicable U.S. and state regulations.	Training: Must comply with all applicable U.S. and state regulations.

Under customs and immigration regulations, manpower and equipment from Canada can be used to respond to an emergency in the United States. Without special authorization, however, standard customs and immigration regulations can prevent the cross-border movement of personnel and equipment to perform work. Local Border Services officials may even lack familiarity with emergency response provisions due to their infrequent use. For these reasons, it is important that emergency response plans outline the specific procedures required and encourage interaction with Canadian Border Services Agency officials and their involvement in training and exercises before there is a need to respond.

Because potential problems and jurisdictional issues may be encountered during cross-border responses, mandatory response plans – such as those set out under the *Oil Pollution Act* (OPA) 90 Regulations – may prohibit reliance on foreign resources alone as part of a required response plan.

In addition to the exemptions, which can facilitate the response, there are regulatory requirements that must be considered related to such matters as notification and reporting, cross-border movement of equipment, materials and personnel, responder training, liability and insurance.

4.2 Notification and Reporting

In responding to an emergency incident, the proper regulatory agencies in the United States must be notified. Reporting is complex and normally must take place prior to the response.

The National Response Center is the sole federal point of contact for reporting oil and chemical spills and provides information on reporting requirements and procedures.

4.2.3 Contacts

National Response Center
2703 Martin Luther King Jr. Avenue, SE
Washington, D.C. 20593-7713
(800) 424-8802

NRC@uscg.mil
<http://nrc.uscg.mil>

In addition to American federal reporting requirements, the incident usually has to be reported to authorities in the State in which it occurs.

4.3 Cross-Border Movement of Response Equipment and Materials

United States customs and excise regulations govern the movement of goods between Canada and the United States.

4.3.1 Admission of Emergency Response Equipment without Entry or Payment of Duty

§ 1322(b), Subsections 2, 3 of Title 19, *United States Code*, provides that:

(b) The Secretary of the Treasury may provide by regulation or instruction for the admission, without entry and without the payment of duty or tax imposed upon or by reason of importation of:

“... ”

(2) fire-fighting and rescue and relief equipment and supplies for emergent temporary use in connection with conflagrations [great and destructive fires];

(3) rescue and relief equipment and supplies for emergent temporary use in connection with floods and other disasters.”

Pursuant to this section, U.S. customs regulations allow rescue and relief equipment into the country without entry or the payment of duty. The Customs Service has held that aircraft and vessels may, within the discretion of the appropriate district director, be entitled to exemption from entry and duties under 19 CFR § 10.107 if they are to be used on an “emergent temporary” basis for emergency spill cleanup. This holding may likewise be extended to other equipment necessary for an emergency spill cleanup.

Although rescue aircraft and vessels may be exempted from making a consumption entry, they are still required to make the aircraft or vessel entry under Part 122, or Part 4, of the *Customs Regulations*. Consequently, any vessel arriving in a United States port for emergency spill response must make an immediate report of arrival and vessel entry, whether it arrives from a foreign port or another American port. Such vessels must clear customs when bound for a foreign port or must have a permit to proceed from one American port to another.

Section 1117 of Pub. L. 104-324, *Use of Foreign Registry Oil Spill Response Vessels* (46 USC 12101)³⁶ allows the use of foreign vessels for oil spill response on an emergency and temporary basis if no U.S. flagged response vessels are available in a timely manner. The foreign ships can be used for the purpose of recovering, transporting and loading and unloading in a U.S. port oil discharged as a result of an oil spill. This section holds true as long as the foreign country accords the same privileges to vessels of the United States.

³⁶ www.congress.gov/104/plaws/publ324/PLAW-104publ324.pdf

4.4 Cross-Border Movement of Response Personnel

This section provides an overview of the U.S. Citizenship and Immigration Services (USCIS) rules that regulate when a Canadian company's employee can work in the United States. The intra-company transferee rules and the professional status provisions found in NAFTA are also discussed.

The *Immigration and Nationality Act* provides USCIS the responsibility for regulating the movement of people across the international borders of the U.S. This includes the ability to expedite the movement of emergency workers from Canada into the U.S., upon request from the U.S., to assist in responding to emergencies.

As per Clause 212(d)(5)(A) of the *U.S. Immigration and Nationality Act*,³⁷ Customs and Border Protection has the authority, on a case-by-case basis, to permit otherwise inadmissible aliens into the country for a temporary period for urgent humanitarian reasons or significant public benefit. This is an extraordinary measure that is rarely used and should not be relied upon as a simple way of crossing the border and circumventing normal procedures.

To help expedite the process, the U.S. Customs and Border Protection point of entry should be provided, in advance, with a list of personnel with proper identification containing the following information:

- Name
- Occupation
- Date of birth
- Citizenship
- Passport number
- Employee identification number
- Description of services to be provided
- Mobile phone number
- Emergency contact information

Additionally, emergency response personnel having NEXUS cards should be able to cross the border more rapidly due to decreased pre-screening requirements. It could be good practice to encourage employees to obtain a NEXUS card for these reasons.

In addition to these provisions, company employees should be aware of two USCIS rules concerning:

- Intracompany transferees (L-1 status);^{38,39} and
- Temporary business visitors (B-1 status).⁴⁰

Despite these procedures, other factors could prevent response personnel from crossing the border (see Section 4.10 for more information on inadmissibility).

4.4.2 Contacts

The Citizenship and Immigration Services website⁴¹ lists its field offices by state and city, including a map and detailed contact information.

United States Citizenship and Immigration Services (USCIS)
National Customer Service Center
(800) 375-5283

³⁷ www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-2006/0-0-0-2364.html#0-0-0-2759

³⁸ www.uscis.gov/working-united-states/temporary-workers/l-1a-intracompany-transferee-executive-or-manager

³⁹ www.uscis.gov/working-united-states/temporary-workers/l-1b-intracompany-transferee-specialized-knowledge

⁴⁰ www.uscis.gov/working-united-states/temporary-visitors-business/b-1-temporary-business-visitor

⁴¹ www.uscis.gov/

4.5 Responder Training Requirements

The United States has specific regulations detailing the training requirements that emergency response personnel must receive. All public and private sector personnel with a direct role in emergency management and response must be trained in the National Incident Management System (NIMS) and the Incident Command System (ICS) that meets current NIMS standards.

The agency that regulates worker protection is the Occupational Safety and Health Administration (OSHA). The United States Department of Transportation (DOT), Pipeline and Hazardous Materials Safety Administration (PHMSA) has the public responsibility for the safe and secure movement of hazardous materials by all transportation modes including pipeline. Individual States may have additional requirements.

Depending on the type of incident, different regulations apply. Here is a partial listing of relevant regulations and other resources:

Occupational Safety and Health Administration (OSHA)

29 CFR § 1910.120 Hazardous Waste Operations and Emergency Response (HAZWOPER)

- .132 Personal Protective Equipment General Requirements
- .134 Respiratory Protection
- .146 Confined Space
- .156 Fire Brigades
- .1200 Hazard Communication

U.S. Department of Transportation (DOT)

49 CFR § 172.600 Applicability and General Requirements

- .602 Emergency Response Information
- .604 Emergency Response Telephone Number
- .700 Purpose and Scope
- .701 Federal-State Relationship
- .702 Applicability and Responsibility for Training and Testing
- .704 Training Requirements (regulations governing marking, placarding, etc.)

National Incident Management System and Incident Command System resources:

www.fema.gov/national-incident-management-system

www.training.fema.gov/nims

4.5.1 Contacts

Hazardous materials and emergency response information is now available online from the Pipeline and Hazardous Materials Safety Administration (PHMSA),⁴² which enables users to receive information on hazardous materials rules and regulations, training, enforcement, publications and reports.

Occupational Safety and Health Administration (OSHA)

200 Constitution Avenue, N.W.

Washington, D.C. 20210

(202) 693-2000

www.osha.gov

National Response Center

2703 Martin Luther King Jr. Avenue, SE

Washington, D.C. 20593-7713

(800) 424-8802

NRC@uscg.mil

<http://nrc.uscg.mil>

⁴² www.phmsa.dot.gov/hazmat

4.6 Liability and Insurance Issues

4.6.1 Presence at an Incident Site

As a general rule, the shipper's presence at the site of an incident is not legally required in the United States. When the shipper is present, it is normally due to company policy or a request from the authorities or carrier.

4.6.2 Liability

Liability for emergency responders generally arises from their conduct at an incident site, which can include the following:

- Ordinary negligence – simple error or carelessness;
- Gross negligence – where the perpetrator should have known better; and
- Willful misconduct – total disregard for proper procedures and the safety of others or intentional conduct harming others.

4.6.3 Reducing Liability

Emergency responders can avoid or at least minimize liability at an incident site by confining their activity to providing technical advice and assistance within the Incident Command System; by acting within a mutual assistance arrangement; by adhering to Good Samaritan laws; or a combination of these things. Each is further discussed below.

4.6.3.1 Incident Command System

In the U.S., the Incident Command System places an individual in overall charge at an incident site. The identity of this person may vary from one place to another and may be dictated by local laws or ordinances, but typically it will be the local fire chief, police chief, Coast Guard commander or other public official, depending on the nature of the incident and applicable jurisdictions.

Normally, the shipper's role at an emergency incident is to provide technical advice and assistance to the incident commander. That can include hands-on assistance, but it should be done only with the concurrence of, and under the supervision of, the incident commander or the incident commander's designate.

4.6.3.2 Mutual Assistance

Mutual assistance arrangements, such as the Chlorine Emergency Plan⁴³ (CHLOREP), and others can limit a responder's liability by written agreement. Normally, the party receiving assistance agrees to hold the responder harmless (usually for negligence or gross negligence, but not willful misconduct) to the extent specified in the agreement.

4.6.3.3 Good Samaritan Laws

While there is no federal Good Samaritan law, these laws do exist in most states in the United States. They vary widely in type and extent of protection and are subject to change. Many apply only when a responder's assistance is specifically requested by a particular state official. If reliance is placed on any of these laws for liability protection, it would be wise to understand their requirements and limitations before committing a response team.

4.6.3.4 Insurance

A chemical company's existing liability coverage may protect it in the event of a cross-border response; however, each company would be well advised to check with its present insurance carrier on limitations or exclusions in its coverage.

⁴³ www.chlorineinstitute.org/emergency-preparedness/chlorep/

4.7 Occupational Health and Safety Regulations

The Occupational Safety and Health Administration (OSHA) maintains that foreign workers are required to obey American rules when working in the United States. OSHA also advises that there is no agreement with Employment and Social Development Canada's (ESDC) Labour Program to honour the other country's respective regulations. While American and Canadian worker safety rules are basically similar, there has been no formal study or comparison completed to highlight where differences exist.

4.8 Language Considerations

An important aspect of cross-border response that is often overlooked is the barrier that may be caused by the different languages spoken in the country where the response takes place. In relation to North America, the different languages encountered could be English, French or Spanish.

It is important to take the language issue into account in planning for cross-border response by ensuring, for instance, that one or more of the response team members is fluent in more than one language or by arranging access to interpreters on short notice.

4.9 Security Provisions

Although no specific security provisions pertaining to response from Canada into the United States have been identified at this time, the general security guidance provided in Section 2.7 and the inadmissibility criteria in Section 4.10 of this guide should be reviewed.

4.10 Inadmissibility

Entry to the United States requires proper documentation, such as a valid Canadian passport (permanent resident card) or NEXUS⁴⁴ card. Canadian citizens entering the United States do not generally require a visa, however, in some cases, such as for permanent residents, a visa may be required. Despite proper documentation, there are many reasons why someone could be denied entry into the United States, such as:

- Communicable diseases;
- Drug abuse;
- Criminal record; or
- Overstaying a previous period of admission to the United States.

Despite all requirements, the border agent is ultimately responsible for deciding who may enter the country.

4.10.1 Contacts

For more information, contact U.S. Customs and Border Protection:

U.S. Customs and Border Protection
(877) 227-5511 (in the U.S.) or (202) 325-8000 (elsewhere)

www.cbp.gov/contact

⁴⁴ www.cbsa-asfc.gc.ca/prog/nexus/menu-eng.html

5

MUTUAL AID RESPONSE PLANS

To alleviate some of the problems associated with cross-border response, use of industry mutual aid response organizations should be considered in developing cross-border response plans. To receive response through these organizations, companies may be required to join industry mutual aid programs such as the Chlorine Emergency Plan (CHLOREP),⁴⁵ which is maintained by members of the chlorine industry. Other industries have also developed similar mutual aid groups.

For mutual aid agreements involving public resources, three compacts have been developed to facilitate cross-border mutual aid. These three compacts are regional and include the International Emergency Management Assistance Compact⁴⁶ (IEMAC) between northeastern states and eastern Canadian provinces, the Northern Emergency Management Assistance Compact⁴⁷ (NEMAC) for the Central and Prairie regions of the United States and Canada, and the Pacific Northwest Emergency Management Arrangement⁴⁸ (PNEMA) between the western states and provinces. They can be contacted for pre-planning purposes and for more information on mutual aid agreements mainly at the state/province or municipal levels.

5.1 Contacts

For information on private sector mutual aid emergency organizations, contact:

Canada

CANUTEC

Transport Canada

Tower C, Place de Ville, 14th Floor, Office 1415

330 Sparks Street

Ottawa, ON K1A 0N5

(613) 992-4624 (24-hour information line)

canutec@tc.gc.ca

www.tc.gc.ca/canutec

United States

CHEMTREC®

1300 Wilson Blvd.

Arlington, VA 22209

(800) 262-8200 (in the U.S.) or (703) 741-5500 elsewhere

chemtrec@chemtrec.com

www.chemtrec.org

⁴⁵ www.chlorineinstitute.org/emergency-preparedness/chlorepl/

⁴⁶ www.iemg-gigu-web.org/mou-e.asp

⁴⁷ www.nemacweb.org/about/

⁴⁸ www.pbphpc.org/?page_id=10

6

EMERGENCY RESPONSE CONTRACTORS

Contract responders can provide valuable assistance in responding to hazardous substance incidents provided they are properly trained and equipped. If resident in the country where the incident occurred, they can also alleviate some of the problems associated with cross-border response.

In Canada, the Canadian Emergency Response Contractors' Alliance (CERCA) is an industry association comprised of stakeholders from all facets of the Canadian dangerous goods emergency response industry. The mission of CERCA is to foster the establishment of a sound emergency response network in Canada. Contact information on CERCA's contractor members can be found on CERCA's website.⁴⁹ Additionally, CANUTEC may be able to assist in providing information on emergency response contractors in Canada.

Emergency response contractors are subject to the same cross-border restrictions as private companies, so care must be taken to select a contractor that is knowledgeable about the implications of cross-border response. Not all contractors can respond to cross-border incidents.

6.1 Contacts

Canada

CANUTEC

Transport Canada

Tower C, Place de Ville, 14th Floor, Office 1415

330 Sparks Street

Ottawa, ON K1A 0N5

(613) 996-6666, *666 (cell phones in Canada) or (888) CANUTEC (24-hour emergency line)

(613) 992-4624 (24-hour information line)

canutec@tc.gc.ca

www.tc.gc.ca/canutec

⁴⁹ www.cerca-aceiu.ca/members/contractor-members

7

RESPONDING INTO MEXICO

The *Mexico-United States Joint Contingencies and Emergencies Plan for Preparedness and Response to Events Associated with Chemical Hazardous Substances in the Inland Border Area*⁵⁰ provides a mechanism for cooperation between Mexico and the United States when responding to a chemical hazardous substances contingency or emergency that poses a significant threat to both parties or that affects one party to such an extent as to justify warning the other party or asking for assistance.

7.1 Contacts

Office of Emergency Management (OEM)
Environmental Protection Agency (EPA)
5104A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
(202) 564-8600

www.epa.gov/aboutepa/about-office-land-and-emergency-management#oem

Federal Emergency Management Agency (FEMA)
500 C Street S.W.
Washington, D.C. 20472
(202) 646-2500

www.fema.gov

⁵⁰ www.epa.gov/border2020/mexico-united-states-joint-contingency-plan-2009

8

EMERGENCY RESPONSE GUIDEBOOK

The Emergency Response Guidebook (ERG) was developed jointly by Transport Canada, the U.S. Department of Transportation (DOT), the Secretariat of Transport and Communications of Mexico (SCT) and with the collaboration of CIQUIME (Centro de Información Química para Emergencias) of Argentina, for use by fire fighters, police, and other emergency services personnel who may be the first to arrive at the scene of a transportation incident involving dangerous goods. The ERG is reviewed, updated and published every four years.

The ERG is primarily a guide to aid first responders in quickly identifying the specific or generic hazards of the material(s) involved in the incident and protecting themselves and the general public during the initial response phase of the incident. This guidebook can assist responders in making initial decisions upon arriving at the scene of a dangerous goods incident. It should not be considered as a substitute for emergency response training, knowledge or sound judgement. The ERG does not address all possible circumstances that may be associated with a dangerous goods incident. It is primarily designed for use at a dangerous goods incident occurring on a highway or railroad, therefore, there may be limited value in its application at fixed facility locations.

8.1 Contacts

For more information, consult Transport Canada's⁵¹ or U.S. DOT's Pipeline & Hazardous Materials Safety Administration's (PHMSA)⁵² websites, or contact them directly:

Canada

CANUTEC
Transport Canada
Tower C, Place de Ville, 14th Floor, Office 1415
330 Sparks Street
Ottawa, ON K1A 0N5
(613) 992-4624 (24-hour information line)
canutec@tc.gc.ca

United States

Pipeline & Hazardous Materials Safety
Administration (PHMSA)
United States Department of Transportation (DOT)
400 7th Street S.W.
Washington, D.C. 20590
(202) 366-4900
phmsa.hmhazmatsafety@dot.gov

⁵¹ www.tc.gc.ca/eng/canutec/guide-menu-227.htm

⁵² www.phmsa.dot.gov/hazmat/outreach-training/erg

NOTES

