

The Lawyer's Role in a Company's Response to a Major Fire, Spill or Hazardous Materials Emergency

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§ 1.01. Introduction.

Many businesses which face the potential of a fire, spill, or hazardous materials emergency have developed procedures to respond quickly to a crisis, determine the cause of the incident, and take steps to avoid repetition. Emergency response plans often do an excellent job of addressing technical details. Less frequently, these plans incorporate legal considerations which can loom large in these situations. This article provides an overview of legal concerns that may be involved in any hazardous materials emergency.

§ 1.02. Notification.

In a crisis, a call to the fire department or other emergency responder is almost reflexive. It is less automatic to think about notifying regulatory agencies, insurers, or others who may have a legal or business reason to be advised of an incident.

[1]ÑRegulatory Agencies.

A wide range of statutory and regulatory provisions require the notification of federal, state and local authorities following a major fire, spill or hazardous materials release. Each agency has specific accident reporting requirements, and the penalties for failure to comply with these notification requirements may be significant. The general notification requirements for several federal regulatory agencies are discussed below to illustrate the variety of notification requirements and the penalties for non-reporting.

[a]ÑSafety Regulators.

The Occupational Safety and Health Act (OSHAct)⁽³⁾ requires an employer to report any fatal or multiple hospitalization accident.⁽⁴⁾

Effective May 2, 1994, employers are required to report verbally within eight hours of learning of any accident resulting in the death of one employee or the hospitalization of three or more employees. The report may be made in person at the area Occupational Safety and Health Administration (OSHA) office nearest the incident site, or by using the OSHA toll-free central telephone number.⁽⁵⁾

The employer also is required to maintain a record of each occupational injury or illness in accordance with OSHA Form No. 101 and to compile annually a summary of these injuries or illnesses.⁽⁶⁾

These records must be maintained for a minimum of five years.⁽⁷⁾

Failure to report or to maintain the records required under the OSHAct may result in the issuance of citations and assessment of penalties. Anyone convicted of falsification of a report may be fined up to \$10,000, and/or imprisoned for not more than six months.⁽⁸⁾