

Chapter 13**Plan for the Worst, Hope for the Best:
The Role of Legal Counsel on the Crisis
Management Team**

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§ 13.01. Introduction.¹

This chapter is written with the hope that it will stimulate internal review of your company’s policies and procedures in dealing with crisis situations, with special focus on the role of the legal department and outside counsel. This is written in the context of a company involved in the natural gas industry, and particularly business entities that are subject to regulation as either an interstate or intrastate pipeline company or a local distribution company. The basic principles, however, are applicable to most business entities. Any crisis management planning should be tailored to fit the specific operations of a client.

Initially, I conducted an informal survey of four major operators in the Appalachian Basin. My results, though not scientific, confirmed my general belief that the field and operational personnel and the Environmental Health and Safety Department (EHS) had in place written guidelines for responding to an emergency or crisis, but the in-house legal departments did not have any written, formalized plan. A written plan is not necessarily required, nor will in-house counsel be able to create a “one-size fits all” plan to deal

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with the myriad of variables and fact-specific situations that may arise. The consideration of a legal department plan, however, is consistent with the requirements typically placed on our clients.

Many of our corporate clients have statutes, regulations, industry standards or policy and procedure manuals which require or suggest the formal adoption of emergency plans. Thus, the operational and field personnel have policy and procedure manuals which include written criteria or checklists for how to respond in the event of a crisis. In addition, given the impact of negative media coverage, it is common for media relations managers to have some type of contact information and plan in place, however informal.

Outlined below are some of the common issues and procedures which have been formally addressed by field personnel or by EHS, followed by discussion of some of the issues which in my experience typically arise and must be confronted by the legal department or outside counsel when a crisis occurs.

§ 13.02. Operational Planning for a Crisis.

[1] — Legal or Regulatory Oversight and Requirements for an Emergency Plan.

Depending on the type of operation, the client may or may not be required to have an operational emergency plan subject to enforcement by a regulatory agency. Prime examples of operations required to have a formal, detailed emergency response plan are interstate natural gas pipelines and transporters of oil.² Even if a formal emergency or crisis plan is not required it is common for the Environmental Health and Safety Department to have adopted a plan which has the force of a company approved policy and procedure. In either case, in the aftermath of an emergency or crisis involving fatalities or injuries, or harm to the public or the environment, it is likely that numerous

² See, for example, 49 C.F.R. § 192.615 (requirements for emergency plans); 49 C.F.R. § 192.617 (“each operator shall establish procedures for analyzing accidents and failures”); 49 C.F.R. 130.31(a) (requirements for response plans for transporters of oil).