Chapter 17

Internal Investigations of Well Site Events:
Observations on Common Practical, Legal
and Ethical Issues

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§ 17.01. Introduction and Organization of the Chapter.
Well site emergencies are complex, multi-faceted events that require a range of skills, knowledge and experience to handle properly. So, too, are the investigations that follow those events. This chapter addresses some of the more common practical, legal and ethical issues faced by lawyers called on to handle Occupational Safety and Health Administration (OSHA) and internal company investigations of well site events.
Inasmuch as the proper handling of well site emergencies requires both technical and practical skills, this chapter provides legal information and practical advice relevant to planning for and conducting well event investigations. Section § 17.02 addresses the increasing OSHA oversight of drilling activities and OSHA site visits and investigations. Section § 17.03 addresses the application of the major privileges (attorney-client privilege, work product doctrine, and the self-critical analysis privilege) that may apply in the context of well event investigations, including an examination of the treatment of the different privileges within specific Appalachian Basin states. As discussed more below, privilege laws differ from state to state so it is critical that the lawyer understand the specific state’s privilege laws before conducting a well site investigation. Section § 17.04 discusses some of the more common ethical issues that may arise in the course of well event investigations. Section § 17.05 provides a basic, immediate plan of action for lawyers called on to conduct internal company investigations of well events. Section § 17.06 applies the legal and ethical issues raised in the initial sections of this chapter to this conduct of an investigation, highlighting how the various legal and ethical issues inform the internal investigation of a well site event.

No single chapter can address the myriad of issues that might arise in the investigation of a given well site emergency, and this chapter does not pretend to do so. Rather, it is the authors’ hope that this chapter will provide a basic framework for planning for and conducting thorough, thoughtful, and ethical investigations of well site events.

§ 17.02. Well Site Investigations under OSHA.

[1] — OSHA Has Increased Its Focus on the Oil and Gas Industry.

[a] — The OSHA Severe Violator Enforcement Program.

On February 11, 2015, OSHA designated oil and natural gas production and support activities of the gas industry as High-Emphasis Hazards under its Severe Violator Enforcement Program (SVEP):2

2 Memorandum from Thomas Galassi, Director of Enforcement Programs, on inclusion of Upstream Oil and Gas Hazards to the High-Emphasis Hazards in the Severe Violator