

## Chapter 17

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

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### Synopsis

§ 17.01.	<b>Introduction and Organization of the Chapter</b> .....	613
§ 17.02.	<b>Well Site Investigations under OSHA</b> .....	614
	[1] — OSHA Has Increased Its Focus on the Oil and Gas Industry .....	614
	[a] — The OSHA Severe Violator Enforcement Program .....	614
	[b] — Local and Regional Emphasis Programs .....	615
	[c] — OSHA Inspections May Occur at Any Time .....	616
	[2] — Prepare for OSHA Inspections .....	616
	[3] — Practical Tips for Handling an OSHA Inspection .....	618
§ 17.03.	<b>Know the Local Law Concerning Applicable Privileges: Overview of the Attorney-Client Privilege, Work-Product Doctrine, and Self-Critical Analysis Privilege</b> .....	621
	[1] — The Attorney-Client Privilege .....	622
	[a] — Who is the Client? .....	623
	[b] — The Control Group Test .....	623
	[c] — The Subject Matter Test .....	623
	[d] — Internal Investigations and the Predominant Purpose Test .....	624
	[e] — What Is and Is Not Protected by the Privilege .....	626
	[2] — The Work-Product Doctrine .....	627
	[3] — Self-Critical Analysis Privilege .....	630
	[4] — The Common Interest Privilege .....	631

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	[5] — Privilege Laws in the Appalachian Basin States .....	632
	[a] — Ohio: Attorney-Client Privilege .....	632
	[b] — Ohio: Work-Product Doctrine .....	633
	[c] — Ohio: Self-Critical Analysis Privilege .....	635
	[d] — Pennsylvania: Attorney-Client Privilege .....	636
	[e] — Pennsylvania: Work-Product Doctrine .....	637
	[f] — Pennsylvania: Self-Critical Analysis Privilege .....	637
	[g] — Kentucky: Attorney-Client Privilege .....	638
	[h] — Kentucky: Work-Product Doctrine .....	638
	[i] — Kentucky: Self-Critical Analysis Privilege .....	640
	[j] — West Virginia: Attorney-Client Privilege .....	640
	[k] — West Virginia: Work-Product Doctrine .....	641
	[l] — West Virginia: Self-Critical Analysis Privilege .....	642
	[m] — New York: Attorney-Client Privilege .....	643
	[n] — New York: Work-Product Doctrine .....	644
	[o] — New York: Self-Critical Analysis Privilege .....	645
<b>§ 17.04.</b>	<b>Conducting an Ethical Investigation .....</b>	<b>646</b>
	[1] — Lawyers Should Exercise Caution Before Handling Well Site Investigations .....	646
	[2] — Ethical Issues in Dealing with Witnesses and Third Parties .....	648
	[a] — Truthfulness in Statements to Others .....	648
	[b] — Communication with Persons Represented by Counsel .....	649
	[c] — Dealing with Unrepresented Persons .....	651
	[d] — Respecting the Rights of Third Persons .....	653
	[e] — Trial Publicity .....	653
	[f] — Lawyers as Witnesses .....	654
<b>§ 17.05.</b>	<b>Practical Tips for Conducting the Internal Investigation of a Well Site Event .....</b>	<b>656</b>
	[1] — There Is an Emergency — Now What? .....	656
	[a] — Who Needs to Know? .....	656
	[b] — Secure the Scene and Objects at Issue .....	658
	[c] — What Kind of Investigation Is Needed? .....	658
	[d] — Who Is Going to Conduct the Investigation? .....	658
	[2] — After You Decide Who Needs to Know, What Should You Tell Them? .....	661
	[3] — Remove the Decision Maker from the Investigation .....	662
	[4] — Make a Plan .....	662
	[a] — Identify the Law, Policies, Procedures and Issue .....	662
	[b] — Identify the People Who May Have Knowledge of the Facts and Key Documents .....	662

- [c] — Determine Who Will Do the Interviewing..... 663
- [d] — Determine Who Should Be Interviewed  
and in What Order ..... 663
- [e] — Identify Any Issues Related to Interviewing  
Specific Witnesses ..... 664
- [f] — Identify the Documents or Evidence that Will Be  
Shared with What Witness ..... 664
- § 17.06. Conducting the Investigation ..... 664**
  - [1] — Document the Scene and the Objects at Issue ..... 665
  - [2] — Interview Witnesses and Take Notes ..... 665
    - [a] — Consider Taking Recorded Statements ..... 666
    - [b] — Should You Take Written Statements and  
What Do You Put In It? ..... 667
    - [c] — Ask the Witness, “What Am I Missing?” ..... 667
    - [c] — Explain What Happens or May Happen Next ..... 667
    - [d] — Explain Possible Contact by Third Parties ..... 667
    - [e] — Confidentiality ..... 668
  - [3] — Identify and Preserve Required Documents  
and Things ..... 669
    - [a] — Documents Tell the Story ..... 669
    - [b] — Send a Legal Hold Email ..... 670
    - [c] — Be Prepared to Share ..... 671
    - [d] — The Investigator Must Determine What Exists  
and Should Be Reviewed ..... 672
    - [e] — Maintain the Documents Received ..... 672
    - [f] — What If Key Evidence Is Not Maintained? ..... 673
    - [g] — Document the Investigation ..... 673
  - [4] — Create a Report or Memorandum ..... 674
- § 17.07. Conclusion ..... 674**
- § 17.08. Appendices ..... 676**
  - [1] — Appendix A ..... 676
  - [2] — Appendix B ..... 678

**§ 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):<sup>2</sup>

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<sup>2</sup> 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