

INSIGHTS

New Spotlight on Spill Prevention and Emergency Response

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Two high-profile industrial accidents in the last year have focused public attention on compliance with often-overlooked federal standards for spill prevention and emergency response planning. As legislatures contemplate stricter standards and agencies dial up their enforcement, industrial facilities may wish to re-focus on fundamental regulatory risk-planning requirements. And recent polling indicates the public demands it.

Public Reactions to Recent Events

In April 2013, an ammonium nitrate explosion occurred at a fertilizer storage and distribution facility in West, Texas. In early January of this year, 7,500 gallons of a coal-cleaning chemical (MCHM) spilled into the Elk River near Charleston, West Virginia, leaving 300,000 residents without access to potable water. As one might expect, in the past month, a [poll conducted](#) by Hart Research Associates found that a majority of West Virginians would be more likely to support political candidates favoring strong regulations and enforcement. However, it is noteworthy that while 59 percent of poll respondents agreed that regulations could result in companies cutting jobs, nearly 9 out of 10 residents stated that they are “extremely concerned” about the chemical spill.

In addition to the poll respondents’ desire for increased regulation and enforcement by both state and federal agencies, legislative action is being undertaken in Washington, D.C. Sen. Joe Manchin (D-WV) is trying to advance a chemical storage regulatory bill in the U.S. Senate, co-sponsored with Sen. Jay Rockefeller (D-WV) and Senate Environment and Public Works Committee Chairman Barbara Boxer (D-CA).

Remember Key Regulatory Fundamentals: SPCC and EPCRA

What seems lost in the debate over increased regulation and enforcement is the importance of some of the most fundamental – but often underemphasized – environmental regulatory requirements relating to accident and spill prevention.

While regulators, policymakers, NGOs and elected officials debate the effectiveness of what at times can seem to be a complex web of requirements and, perhaps, regulatory gaps, companies would be wise to not merely wait for new requirements or direction from Washington, D.C. or the states. Risks are always present, whether from operational miscues, vandalism or Mother Nature, and agency enforcement efforts likely may increase, especially in response to high-profile incidents. In the wake of these recent industrial accidents, enforcement officials and plaintiffs lawyers may be more likely to question why a company didn’t revisit and reconfirm its

critical emergency prevention programs after seeing those efforts fail elsewhere.

In particular, robust execution of engineering-based and operations-focused Spill Prevention, Control, and Countermeasure (SPCC) and Emergency Planning and Community Right-To-Know Act (EPCRA) programs can make the difference between a contained release and a regional catastrophe.

While more mundane than the current debates over topics such as greenhouse gases and fracking chemicals disclosure, when carefully considered and properly implemented, EPCRA inventory and local coordination mandates and physical SPCC containment systems and practices offer the most immediate environmental protections for facilities operating near and in communities and precious natural resources. Significantly, these programs afford companies extraordinary latitude in how to manage their own affairs and work proactively with local response personnel.

For example, while a facility's general secondary containment system should perform in a manner that would capture discharges that may arise in typical failure scenarios, a facility's "sized" secondary containment system would be tailored to the actual containers on-site and their risks. When properly designed in accordance with the rule's requirements, the facility's SPCC Plan thus would take into account actual failure scenarios and offer site-specific protection against off-site impacts.

Likewise, the EPCRA reporting requirements help enable state and local officials to forge the appropriate response in the event of an emergency and thus potentially mitigate the harm that could result from a facility accident. Lack of information regarding the identification of on-site chemicals and their specific locations would only hamper the effectiveness of first responders and could lead to greater community impacts. While recent regulatory revisions and the issuance of guidance documents make clear EPA's increased focus on emergency planning and prevention, careful consideration of these agency materials reveal additional clarity for the regulated community and, in doing so, a roadmap for real risk reduction.

In the wake of the current media, legislative and regulatory spotlight, tailored, cost-effective, and privileged internal audits to proactively address accident preparedness questions may be merited now more than ever. Working in tandem with trusted technical consultants and experienced outside counsel, corporate environmental counsel and management may best serve the interests of their stakeholders by taking steps now to address risks and strengthen legal defenses in the event of accidents that are always questioned after the fact.

Note: Scott Sherman formerly served as the Associate Assistant Administrator for the Office of Solid Waste and Emergency Response (OSWER) at the U.S. Environmental Protection Agency, providing program management and policy direction for the Agency's emergency prevention, planning and response programs.