

Lessons from Assisting Clients During Emergency Situations

By Beth Gotthelf

What do you do when a client calls with a real-life emergency such as a fire, spill, or chemical release into the air? There is no playbook. This article provides you with some tips — contacting government officials, submitting written reports, contacting insurers, and getting appropriate permits.

My first emergency call happened when workers in a manufacturing plant mistakenly mixed two chemicals, causing a toxic cloud. Fortunately, the building was evacuated and there were no injuries. However, it was unclear when it would be safe to reenter. Emergency responders in white hazmat suits arrived as reporters watched every move. News of the toxic cloud was broadcast on all the local stations.

The plant owner wanted me to control the situation and calm the alarmists. Experts calculated how long it would take before the gases dissipated; still, fire and police personnel were hesitant to let anyone in. Being young and fearless, I set the example. After the calculated time, I walked into the plant without protective gear, proving it was safe.

A lot has changed since that first emergency in terms of science, regulations, and my experience. From a wide variety of emergencies over the years, I have learned

a few keys to advising clients in the unfortunate event of an emergency. The examples I provide are tailored to address the scenario of a plant emergency, but the lessons can be applied elsewhere.

Before the emergency

There are three steps to take *before* there is an emergency. Step one is ensuring your client's emergency plans are current and available in both electronic and hard-copy versions. Emergency plans are required under a variety of environmental regulations. For example, under the Resource Conservation and Recovery Act, 42 USC 6901 et seq., large-quantity generators of hazardous waste are required to have a contingency plan pursuant to 40 CFR 264, Subpart D. Facilities that ship hazardous materials in quantities that exceed U.S. Department of Transportation planning thresholds are required to prepare a site security plan under 49 CFR 172.802, Subpart I. Under the Clean Water Act, 33 USC 1251 et seq., a spill prevention, control, and countermeasure plan is required for facilities with petroleum products over certain thresholds. 40 CFR 112. The list goes on.

While electronic versions of plans are generally not required, they are highly recommended because grabbing a hard copy of the plan while a building is on fire or being evacuated is not always possible. Keeping the plan current is not only required, but important for first responders to know what chemicals they may encounter and where they are located. Plans must also contain current phone numbers of people to be alerted (including regulators) and contact information for an emergency contractor to remove waste created during the emergency.

Step two is familiarizing your client with their company's permit obligations. For example, I had a client whose air pollution control stack blew over in a storm. The company continued to operate despite the permit requirement for a stack. The company promptly hired a fabricator to make a new stack, which arrived for installation several months later. The day before the install, a state regulator arrived onsite for a routine surprise inspection, noted the stack was not in place, and issued a notice of violation. Additionally, the local prosecutor filed a criminal complaint against the plant manager and the company. That complaint

"Best Practices" is a regular column of the *Michigan Bar Journal*, edited by Gerard V. Mantese and Theresamarie Mantese for the Michigan Bar Journal Committee. To contribute an article, contact Mr. Mantese at gmantese@manteselaw.com.

Keeping the plan current is not only required, but important for first responders to know what chemicals they may encounter and where they are located.

weighed heavily on the plant manager, who thought he did everything right when promptly ordering the new stack.

Step three is making sure your client has trained employees on the emergency plan and permits. Advise your client to document training with a sign-in sheet that includes the employee's name, title, signature, and date. This training should be conducted annually.

In case of emergency

What happens when you get the emergency call? First, ask your client whether calls have been made to the appropriate regulators and, if applicable, emergency response contractor. Contacting the contractor is critical because once the regulator's emergency responders leave, the client will be faced with cleaning up the remaining material, which must be staged in a way to prevent further environmental impact. Your contractor will probably cost significantly less than a contractor hired and supervised by the government.

If you show up at the site, dress appropriately. My second emergency was a cyanide spill, and I had to discard my leather heels as I left the site. I learned my lesson and started keeping certified steel-toed shoes, plastic boots, safety glasses, and a hard hat in my car.

Make sure your client contacts their insurance carrier immediately. The policy probably requires it and the carrier will want to be on site as quickly as possible to assess the damage.

I recommend limiting access to only those who need to be on site and making sure they all follow safety rules. Limit photographs in confidential or sensitive areas to prevent disclosure of business secrets or violation of security rules.

Depending on the type and size of the emergency, your client could be contacted by the media. Local politicians may also want to tour the site or comment on the event without knowing all the facts. Be prepared to disseminate a one-page description of the company and its history. I have found it helpful to hire a public relations firm with experience in crisis com-

munications; these firms have developed relationships with reporters and can help get fair and accurate coverage. Often, the company president is not the best spokesperson. An example of what not to do comes from BP CEO Tony Hayward after the company's 2010 Gulf of Mexico oil spill. The public was already inflamed by the historic disaster when Hayward made his infamous remark, "I'd like my life back," which cost him his job and created a public relations nightmare for BP.

Communicate with emergency responders and regulators regularly. It will help in all aspects from remediation to press inquiries.

There will be a lot of questions on the extent of the damage to the building and whether your client can meet contract obligations. Your client will need to determine if production was impacted and, if so, to what extent. It may take some time to determine when production can resume, especially if equipment has been damaged and replacement parts need to be ordered. If the client has customer parts, the customer may want those parts returned or sent to another location. If the parts are damaged, the customer could look to your client for compensation. Your client will also need to see if the parts are now considered scrap and whether they are considered hazardous waste.

Competitors may reach out to your client's customers and offer to help until your client is up and running, respectful not to steal your business. Those competitors should treat your client as the competitor would like to be treated if it faced a similar emergency. Not all competitors are that ethical and helpful. You need to give good advice to the extent a competitor completes the work — determine who is asking for the work to be done (your client or your client's customer); whether there are confidentiality issues, especially with defense articles; and how the other company gets compensated (whether paid by your client or the customer, and at what price).

Permits! Remember the example above about the stack? Have the company check its permits to determine whether it must report the incident and whether it has taken the necessary corrective actions un-

der the permits. Your client may also need permits for remediation and repairs depending on the extent of damage. If a new process is required, wastewater and air permits for that line may need to be amended. If groundwater remediation systems or injections are needed, a discharge permit may be required.

Depending on the type of emergency, reports to regulators will be necessary. Some must be submitted five days after the incident, for example. Check the company's permits, regulations, and emergency plan for requirements. In the event of a spill, advise your client to update the section of the emergency plan listing prior spills to include the most recent incident.

Conclusion

Counsel your client to be sure their emergency plans are current and available electronically. Make sure your client is familiar with their permits. Suggest the client have a one-page description of the company. If an emergency occurs, follow the plan and contact the emergency contractor and insurer. Keep notes. Take pictures. Determine which permits need to be modified or whether new permits should be obtained. Communicate with regulators and submit on time.

It is hard to cover everything in a brief article, especially when so much depends on the type of emergency and extent of harm. Hopefully, this gives you a few things to consider if you get the call that an emergency event has occurred. And remember, dress appropriately for the emergency; try to save your shoes from disintegrating. ■

Beth Gotthelf is a shareholder at Butzel Long, where she is director of innovation and external relations, co-chair of the energy and sustainability practice, and co-chair of the aerospace and defense industry team. Gotthelf, who started her career in environmental law, brings a pragmatic and holistic approach to clients' issues by understanding their goals and helping them in reaching them using a variety of tools.