

RESPONDING TO A MAJOR ACCIDENT: SIX IMPORTANT ISSUES TO MANAGE



A major industrial accident such as a fire, explosion or toxic release can unfold rapidly. The first concern is for the safety of employees, contractors and the general public. Such events, however, also have immediate reputational, legal and business implications. To respond effectively, it is critical to prepare for the possibility of a major accident. The increasing criminalization of major accidents makes preparation doubly important.

In the aftermath of an accident, you must be prepared to manage the following six key issues:

1. Evidence Preservation.

Your company should have procedures in place for preserving electronic data and physical evidence, and for securing critical hard copy documents such as operator checklists, control room logs, incident command scribe notes, etc. Moreover, employees must understand the consequences of document destruction.

2. Interacting with the Investigating Agencies.

Designate single points of contact and dedicated legal support for all interactions with investigators, and understand in advance the process for requests for interviews and documents. Maintain control of and access to the incident site and don't be afraid to say "no," but recognize that there may be consequences.

3. Document Collection and Production.

During the investigation, insist that all document requests be in writing and establish and document your process for collection, review and production of documents. Each document should be reviewed for privilege and labeled, if appropriate, as Confidential Business Information or Sensitive Security Information, as well as Bates labeled. Documents should always be produced with cover letters and multiple copy sets should be maintained.

4. Employee Interviews.

Inform employees of their rights and your expectations. Let them know that whether to submit to an interview is their decision, but if they do agree to an interview emphasize that it's imperative to tell the truth. Ask your employees to respond only to the questions asked, and not speculate. Before signing a written statement-also optional-employees should read it carefully for accuracy and completeness. Employees must also understand that the company counsel does not represent them individually.

5. Site Preservation Agreement.

It is common for agencies to request an agreement regarding preservation of evidence and changes to the incident site. Carefully consider the proposed "exclusion" zone and make sure the agreement does not represent consent to the agency's jurisdiction over that area.

6. Manage Experts and Internal Investigations.

Establish internal teams to conduct your investigation, knowing that it is imperative to reinforce controls on both investigations with regard to document preparation and retention. Act as if everything that is written is discoverable.