

# Master the Disaster

## Interactions With Government

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## Government Interactions

- ▶ Notify Appropriate Government Agencies
- ▶ Cooperate with Government Response Activities
- ▶ File Follow Up Reports
- ▶ Respond to Government Inquiries



## Government Notification Issues in General

- ▶ Notify Those Who Can Help
- ▶ Notify Those Who Want to Know
- ▶ Many Notifications Require Specific Information
- ▶ Failure to Notify Carries Substantial Penalty
- ▶ Significant Legal Liability for Information You Provide

## Government Notification Dilemmas

- ▶ Different Facilities Have Unique Notification Issues
  - ✓ Petroleum Refinery
  - ✓ Hospital
- ▶ Different Events Require Different Notifications
  - ✓ Oil Spill in River
  - ✓ Possible Anthrax Letter
- ▶ A Crisis is a Poor Time to Research Who to Notify



## Disaster Reporting

- ▶ Those you know

- ✓ Police



- ✓ Fire Department

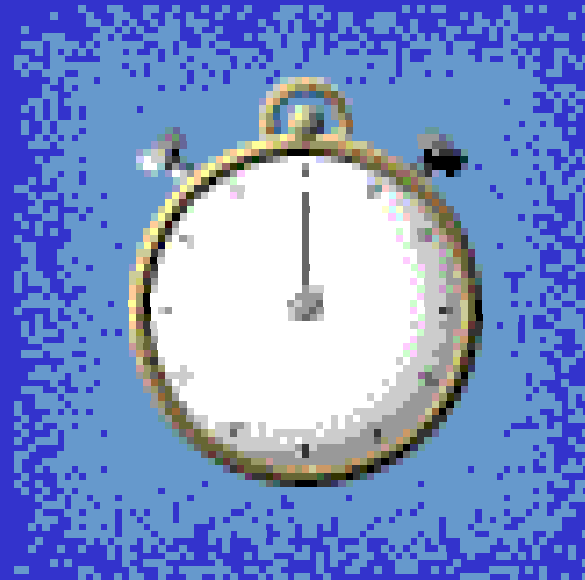


## Disaster Reporting

- ▶ Those You May Not Know
  - ✓ Department of Public Health
  - ✓ United States EPA
  - ✓ State EPA
  - ✓ Local Sewage Agency
  - ✓ U.S. Coast Guard
  - ✓ National Response Center
  - ✓ State Emergency Planning Agency
  - ✓ State Police
  - ✓ Local Emergency Planning Committee

## Immediate Reporting (The First 10 Minutes)

- ▶ Fire Department
- ▶ Police Department
- ▶ Health Department



## Fast Reporting (15 Minutes – 24 Hours)

- ▶ Federal Release Reporting – CERCLA-EPCRA
- ▶ Federal Spill Reporting – CWA
- ▶ Other Federal Reporting
- ▶ State Spill-Release Reporting Counterparts
- ▶ Local Government Reporting Requirements
- ▶ Any Reporting Mandated by Your Permits

These are Overlapping Reporting Requirements



## Federal Release Reporting – Theory

- ▶ If you release certain materials into the environment, you must notify appropriate government agencies so they may respond
- ▶ You must determine what and how much you have released
- ▶ One Pound Released May Trigger Reporting
- ▶ Reporting Time is Short - 30 minutes

## CERCLA-EPCRA Applicability

- ▶ You must report when:
  - ✓ The substance released is on the list of hazardous or extremely hazardous substances
  - ✓ The release went off-site
  - ✓ The release is not excluded under CERCLA-EPCRA reporting requirements
  - ✓ The release met or exceeded the reportable quantity for that substance within a 24-hour period

## CERCLA-EPCRA Notification

- ▶ The notice must contain the following information:
  - ✓ The chemical name or identity of any substance involved in the release.
  - ✓ An indication of whether the substance is on the list referred to in Section 302 (a).
  - ✓ An estimate of the quantity of any such substance that was released into the environment.
  - ✓ The time and duration of the release.
  - ✓ The medium or media into which the release occurred.

## CERCLA-EPCRA Notification (Cont.)

- ✓ Any known or anticipated acute chronic health risk associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.
  - ✓ Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).
  - ✓ The name and telephone number of the person or persons to be contacted for further information.
- ▶ EPCRA, Section 304 (b) (2), 42 U.S.C. § 11004 (b) (2).

## CERCLA-EPCRA Notification (Cont.)

- ▶ In addition, as soon as practical, follow-up notification must be given to the agencies containing information with respect to:
  - ✓ actions taken to respond to and contain the release.
  - ✓ any known or anticipated acute or chronic health risks associated with the release, and
  - ✓ where appropriate, advice regarding medical attention for exposed individuals.
  
- ▶ EPCRA, Section 304 (c), 42 U.S.C. § 11004 (c).

## Federal Spill Reporting -CWA

- ▶ The Clean Water Act's ("CWA") spill prohibition and reporting requirement applies to any discharge from a vessel or facility (onshore or offshore) to the nation's navigable waters of a harmful quantity of oil or a hazardous substance, unless the discharge is covered by an NPDES permit or permit application
- ▶ As soon as the person in charge of a vessel or facility learns of a reportable spill, that person must "immediately" notify federal authorities. The appropriate authorities include EPA, the Duty Officer at the Coast Guard's National Response Center in Washington, D.C., or "any federal agency concerned with water and environmental pollution or navigable waters."

## Other Federal Reporting

- ▶ The Solid Waste Disposal Act (SWDA), 42 U.S.C. §6901, regulates hazardous waste from "cradle to grave" and sets a framework for management of nonhazardous wastes. The SWDA mandates reporting of releases from underground storage tanks (USTs). 42 U.S.C. §6991b; 40 C.F.R. §280.50.
- ▶ Many Publicly traded companies or Financial Institutions will have notification or reporting obligations to government financial or securities agencies. Usually these have somewhat longer reporting times than 24 hours.

## Other Federal Reporting – SEC

- ▶ Securities and Exchange Commission states that every public company has an "obligation to make full and prompt announcements of material facts regarding the company's financial condition." Securities Act Release No. 5092.
- ▶ If the company determines that it has a duty to make an informal disclosure and the facts at issue are material, the company almost always must immediately make the disclosure.



## State Spill-Release Reporting Counterparts

- ▶ Illinois requires reporting in the event an incident involving a hazardous material if:
  - ✓ a member of the general public is killed;
  - ✓ a member of the general public receives injuries requiring hospitalization;
  - ✓ an authorized official of an emergency agency recommends evacuation of an area by the general public;
  - ✓ a motor vehicle has overturned on a public highway;
  - ✓ fire, breakage, release or suspected contamination occurs involving an etiologic agent; or
  - ✓ any release of oil which meets the reporting requirements in EPA regulations at 40 C.F.R §110.

## Local Government Notification

- ▶ You shall immediately notify the District, by telephone, in the event of any of the following occurrences:
  - ✓ b) an accidental or deliberate discharge without adequate pretreatment of any chemical, product, production residue or other waste into the sewerage system;
- ▶ Such notification shall be made within one hour of the person's becoming aware of the incident, by telephone, during normal business hours

Metropolitan Water Reclamation District of Greater Chicago,  
Sewage and Waste Control Ordinance

## Your Permit Reporting

- ▶ The Permittee shall promptly notify the Illinois EPA, Compliance Section of noncompliance with the permit requirements as follows, pursuant to Section 39.5(7)(f)(ii) of the Act. Reports shall describe the probable cause of such deviations, and any corrective actions or preventive measures taken.

## Federal Laws Mandate Certain Emergency Response Activities

- ▶ Section 112(r) of the Clean Air Act mandates certain emergency response activities at selected facilities. During a disaster these plans must be followed. Similar requirements are imposed by OSHA under Process Safety Management
- ▶ The Permittee shall promptly notify the Illinois EPA, Compliance Section of noncompliance with the permit requirements as follows, pursuant to Section 39.5(7)(f)(ii) of the Act. Reports shall describe the probable cause of such deviations, and any corrective actions or preventive measures taken.

## Follow Up Reports

- ▶ Most of the Reporting Obligations impose a duty to file a follow up report shortly after the incident (5 to 30 days), with much greater detail on the event and your actions
- ▶ There are a whole series of semi-annual, annual and bi-annual reports that must account for released materials.
- ▶ You usually have some time to prepare for and file these reports



## Interactions with Government

- ▶ Provide initial responders the information they need to perform their job
- ▶ Try to limit your statements to the facts, not speculation
- ▶ Recognize that everything you say to Government will be available to the public and the press
- ▶ If you don't know, say you don't know
- ▶ Try to maintain your trade secrets and business confidential information
- ▶ Never misstate the facts, it could land you in jail

## Do Not Provide False Information to Government

- ▶ Section 309 (c) (4) of the CWA, imposes criminal liability upon "[a]ny person who knowingly makes any false material statement, representation, or certification in any . . . report, plan, or other document filed or required to be maintained under [the Act]." Upon conviction, such a person is subject to a \$10,000 fine or imprisonment of not more than two years, or both.
- ▶ 18 U.S.C. §1001 generically imposes criminal liability for any knowing false statement or device used in connection with any matter within the jurisdiction of any department or agency of the United States. It carries a fine of up to \$10,000 or imprisonment of not more than five years, or both.

## SUMMARY

- ▶ Call those who can help first
- ▶ Call those who must know next
- ▶ Try to identify everyone who must be notified
- ▶ Provide initial responder the assistance they need
- ▶ Limit your comments to the facts
- ▶ Never lie to government

