

## **RESPONDING TO A SPILL**

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What could happen if you store hazardous materials at your plant or shop:

- An employee driving a forklift might back into a waste storage area and cause a spill.
- An aboveground storage tank might leak and discharge large quantities of fuel on the ground.
- A container in your outdoor waste storage area might leak after exposure to the elements.

How would you as a business owner or plant manager respond if faced with a spill of hazardous materials?

That will depend upon the materials involved and the location of the spill. If a spill occurs inside a plant building, you may notice it immediately. Other spills may be more difficult to detect. In some instances, you may first learn of a spill long after it has occurred. Anytime you are faced with a significant spill, especially one that has the potential to adversely affect the environment or public health, you should carefully consider your actions. In such cases, the law may direct how you should respond.

Most states in the Midwest have strict laws requiring the reporting of spills to environmental agencies. Generally these laws provide that all persons have a duty to notify the responsible state agency of a spill or a discharge of any material which, if not recovered, could cause pollution of waters of the state. The term "waters of the state" is broadly defined to include groundwater and surface waters, including lakes, rivers, creeks, ditches and even storm sewers that discharge to other bodies of water.

Because these state laws are so broadly worded, many spills may need to be reported, usually immediately or within a short period. Also, the person responsible for the spill is generally required to recover the spilled material as rapidly and thoroughly as possible and to take other actions to minimize surface and groundwater pollution.

A spill of any hazardous material can have serious consequences. If a material spills inside your building, you and your employees may be exposed to dangerous chemicals. If spilled material escapes from your building, nearby soils may be saturated with contaminants. Clean-up can be costly and time-consuming.

If a spilled substance moves off your property onto neighboring property, you have a legal duty to take action to recover the spilled material and repair any damage. A spill into a waterway that results in a fish kill can be particularly serious because state or federal authorities may seek to recover natural resources damages from you. If spilled materials cause harm on a neighbor's property, your neighbor could seek compensation from you based on a trespass, nuisance or negligence claim.

What might happen if you ignore the reporting requirements and hope that the problem simply goes away?

Some spilled materials may degrade naturally without causing significant harm. Spills of hazardous materials, such as solvents or petroleum products, however, may not go away unless cleaned up. Hazardous materials left on the ground may eventually drain to nearby surface waters or filter through surface soils to groundwater. Materials spilled on sandy soils may migrate quickly, contaminating nearby water supplies. You, your employees and your neighbors could be harmed.

Because spills can have serious, far-reaching consequences, someone else may discover and report the spill. For example, a third party may hire a consultant to conduct a Phase I Environmental Site Assessment to assess the environmental condition of nearby property and, in the course of this due diligence, discover a spill or release that originated on your property. State environmental authorities may be made aware of the condition. The clean-up order and other consequences that might result could be more expensive and time-consuming than they would have been if the spill had been properly reported and cleaned up. Also, failure to report a spill when required to do so by law can result in civil fines or penalties and, in some circumstances, criminal prosecution.

What should you do if a spill occurs? In a recent edition of its publication "Generator News," the Minnesota Pollution Control Agency (MPCA) advises companies which generate hazardous waste to respond to a spill in the following manner:

- **Evaluate the situation.** If there is any potential for danger, remove personnel at risk. Extinguish all sources of ignition.
  
- **Notify your company's emergency coordinator.**
  
- **Contain and clean up the spill.** If the environment around the spilled materials is safe, prevent any additional spillage and contain the hazardous materials with a dike of floor dry, sand, dirt, straw or hay bales. If the spill is small, shovel the contained material into a container. The recovered material must be treated, stored or disposed of in accordance with state and federal rules. Rapid containment can help reduce the severity of a spill, but remember to use caution – your safety and the safety of your employees should be your main concern. Persons doing clean-up or containment should wear proper protective equipment, based on the quantity and nature of the material spilled. At a minimum, clean-up personnel should wear washable boots, gloves and eye protectors.
  
- **Report the spill.** If the spill has the potential to harm human health or the environment (such as spills on the ground, in surface waters or going down a drain), notify the state's 24-Hour Emergency Response Unit and the fire department. In addition, report to the U.S. Environmental Protection Agency National Response Center (1-800-424-8802) with the following information.
  - a. name, address and U.S. EPA identification number of the company;
  - b. date, time and type of incident;
  - c. estimated quantity and disposition of recovered materials.

The MPCA also recommend that companies take the following specific steps to plan for emergencies;

- **Appoint an emergency coordinator** who will be on-site and on-call at all times. Designate an alternate emergency coordinator who can serve as a back-up.

- **Post emergency information near the telephone** including the name and phone number of emergency location of fire extinguishers, spill control equipment, fire alarms, and phone number of the fire department.

- **Train your employees** in waste handling and emergency response procedures.

- **Have the following equipment available** to use in an emergency: an easily accessible internal communications capable of alerting employees to an emergency, personal portable fire protection equipment such as fire extinguishers, water at adequate volume and pressure to supply fire protection, and a sink or shower for employees to rinse off any contamination.

Maintain and test your emergency equipment (sprinklers, fire extinguishers) according to manufacturer's instructions to ensure proper operation when there is an emergency.

- **Set up and follow procedures to minimize the possibility of accidents** which could threaten human health or the environment. Maintain adequate aisle space in work and storage areas to allow for evacuation if necessary, or for easy access to a ruptured or leaking drum. Keep hazardous waste drums well out of routes used by forklifts or other heavy equipment to avoid accidental damage.

- **Notify local authorities of your activities.** Provide police and fire departments and emergency response teams with building floor plans showing where hazardous materials are stored, a list of the types of hazardous materials stored in each area, identification of building entrances, possible evacuation routes and personnel working areas. Inform local hospitals of the properties of hazardous materials handled at your site, and the types of illnesses or injuries that might result from an accident involving your company's hazardous materials.

To obtain a copy of MPCA publications relating to emergency response procedures call 1-800-657-3864. Similar publications may be available from other state environmental agencies.

The telephone number for reporting spills for certain Midwestern states are listed in the accompanying table. Depending upon the material spilled, federal, state or local laws other than general spill reporting requirements may apply. To find out which laws apply or might apply to a spill on your property, you should consult an attorney. Your attorney may also be able to assist you with the spill response procedures.

In addition to state reporting requirements, there are also requirements that spills be reported to federal authorities. Releases of reportable quantities of hazardous substances must be reported under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA or "Superfund") to the National Response Center. Oil spills are regulated under the federal Oil Pollution Act of 1990 which requires that any quantity of oil that appears to have a potential of getting into a water supply (ground or surface water) needs to be reported immediately to the National Response Center.

Iowa	Iowa Department of Natural Resources. <i>24-hour</i> telephone number <b>(515) 281-8694</b> or Iowa Department of Public Safety <b>(515) 281-3231</b> , local police or sheriff's office.	Verbal report to be followed up by a written report to Iowa DNR.
Minnesota	Minnesota Pollution Control Agency via State Duty Officer; <i>24-hour</i> telephone numbers are <b>(651) 649-5451</b> or <b>1-800-422-0798</b> .	Petroleum spills over 5 gallons must be reported. Spills of all other chemicals or materials are reportable.
Nebraska	Nebraska Department of Environmental Quality <b>(402) 47104230</b> , during business hours, and to the Nebraska State Patrol <b>(402) 471-4545</b> at all other times.	Any releases of petroleum to surface waters are reportable. Petroleum releases of 25 gallons or more on the surface of the land must also be reported. Below ground releases of any quantity are reportable.
North Dakota	North Dakota Department of Health at <b>(701) 221-5210</b> or State Radio at <b>1-800-472-2121</b> .	
South Dakota	South Dakota Division of Emergency Management at <b>(605) 773-3231</b> ; <i>24-hour</i> line at <b>(605) 773-3296</b> .	Any spill or overflow of petroleum that exceeds 25 gallons, causes a sheen on the waters of the State or threatens these waters must be reported.
Wisconsin	Wisconsin Department of Emergency Government at <b>(609) 266-3232</b> .	A discharge of hazardous substances, including petroleum and hazardous waste, must be reported. WDNR District Offices will respond to reports of spills.

**Note:** The information provided herein is a summary of applicable requirements. Special reporting requirements may apply to spills of certain materials.

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This article provides general information only and is not intended to be legal advice or opinion on any specific facts, issues or circumstances. Readers with specific questions should consult their attorney.