

Managing environmental exposures amid rising natural disaster risks

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Natural catastrophes pose an increasing threat to businesses across the United States and, in particular, to industrial sites where one of the potential impacts is a pollution release with long-term ramifications. As natural catastrophes, from wildfires to flooding, become more frequent, organizations need to be well prepared and alert to the potential for complex environmental risks to arise.

Here are the ways organizations can manage their environmental exposures and reduce the likelihood of claims and legal action, as well as useful points on mitigating risk.

Create a plan — and follow it

Keeping an up-to-date emergency response plan outlining what to do in the event of severe weather events and associated environmental risk events is good business practice for industrial sites. Not all organizations have internal risk management resources to set these plans, so a good alternative is employing

environmental consultants to provide guidance on best practices and to assist in drafting and ensuring the plans are kept up to date.

At a minimum, the plans should include who to contact in the event of an emergency, including hazardous materials (HAZMAT) and emergency response vendors. Ensuring key vendor agreements are already in place helps to be ready ahead of an incident and saves time and effort spent on containing any pollution issues that may arise.

If or when the worst begins to unfold, it is important for the leadership team to be familiar with their plan and follow it. Not only does this approach help to mitigate loss, but the existence of and adherence to emergency response plans also demonstrates a company's high standard of care. Many companies may do "dry runs" or "desktop exercises" to regularly test the adequacy of their emergency plans and ensure they are adhering to both state and federal requirements.

Communicate with stakeholders

When an incident occurs that could pose an immediate threat to the environment, property or human life, it is important to communicate early and clearly with regulators, law enforcement and emergency responders, community stakeholders and insurers. If local officials lack confidence in an organization's ability to respond to an incident, they can — and often will — take control. This can result in significant financial and practical consequences. Timely communication can help avoid this situation.

Have a readily available list of contact names and numbers in easy-to-see locations for employees and clear lines of communication. Be in a position to answer questions accurately and completely regarding the chemicals or other materials that may be released into the environment, such as MSDS (material safety data sheets).

Working with insurers early on ensures a smoother coverage investigation and claims process down the line. Certain coverages may have strict reporting requirements that could limit or eliminate coverage if not adhered to. The policyholder should inform their broker of any change in circumstance that could affect future claims.

Anticipate litigation

Any incident that attracts media attention is also likely to attract the attention of regulatory and law enforcement officials as well as the plaintiff's bar. For severe incidents, it is best to deploy counsel as soon as possible, preferably with approval from the relevant insurers. Counsel can help by providing privileged legal advice from the outset, assisting the company to be in a position of strength to respond and manage claims that may arise. Coverage for these costs will depend on the wording of the policy and the attorney's tasks.

If a matter involves chemical emissions, for example, counsel can help coordinate the investigation from the beginning, working with outside experts to establish legally defensible air monitoring evidence. This approach will help

to unify and prepare for defense and keep certain information privileged. It is always worth remembering that the company and its employees should assume everything they say or do — even on personal devices — could be discovered in the course of investigatory or discovery activity following a pollution incident.

Finally, in some instances, a company may be able to argue that other third parties contributed to or were wholly responsible for a loss. This is another area where a lawyer's perspective can be helpful in identifying potentially liable parties and preserving key evidence. Insurers have a strong interest in assessing third-party responsibility given their rights of subrogation, but depending on the extent of the insured's applicable coverage, it may also be in their own interests to maximize those opportunities.

Transition to a long-term response mode

Work with initial vendors to transition out of the "emergency response" phase as soon as practicable, particularly if contractors retained by a third party or emergency responder are in control of the site. Emergency response services can be charged at a higher rate and may not be covered in full under a pollution policy, depending on its terms and conditions. The goal should be to stabilize the situation and get out of the reactive "emergency" mindset as quickly as possible. Doing so will enable companies to work with insurers and the environmental consulting team to develop a long-term plan for addressing any environmental liabilities, achieving regulatory closure, and getting back to normal operations.

Consider designating an individual to monitor the work of the vendors and work with the insurer to scale back any unnecessary or inefficiently deployed resources. Often, large teams respond to an emergency situation; however, once the initial response passes, the same number of personnel may not be necessary or helpful or may not be the best resources to help you resolve the incident in the long run.

Be proactive

In the wake of an incident that impacts others,

consider a proactive approach to settling smaller claims or other impacts resulting from the incident such as costs for temporary housing or evacuation. Counsel and the insurer can help develop a strategy to proactively resolve legitimate claims, building goodwill in the community and with regulators. Some pollution insurance policies provide additional coverages for reputational management and crisis response costs, which can help manage the public perception of the company's response to the incident.

Learn the right lessons

Even the most prepared company with the best of plans and execution can still experience

significant losses due to the sheer force and unpredictability of natural catastrophes and resultant environmental damage. Company leaders should work with their counsel, consultants and insurers to review an incident and assess how to mitigate the chances of any future reoccurrence and/or response should another incident occur.

Working with a specialist broker and insurer that understands the complexities of environmental liability risk helps organizations to prepare for and respond to an environmental crisis, and to mitigate the potential financial and reputational impact.



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