

Spill Preparedness in Transportation:

Containing Costs and Limiting Liability After Environmental Releases

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A transportation accident or emergency release that results in an environmental hazard is, for most businesses, an extraordinary occurrence. Yet every business needs to be prepared for such an event. Spills of hazardous materials, diesel fuel and other regulated substances are subject to a maze of environmental regulations. Nearly 30,000 federal, state and local jurisdictions across the U.S. require incident reports from spill generators. Shippers and transporters who are unprepared to handle spill emergencies quickly and comply with all reporting requirements can end up with major expenses for cleanup and disposal services, liability issues, and steep penalties for failing to file incident reports on time.

Reportable quantities vary from jurisdiction to jurisdiction, and spills often involve multiple jurisdictions, confusing the issue. When in doubt about whether a spill involves a reportable quantity, report it. Failure to file required reports can bring stiff fines and penalties, making it unwise to try to cover up a spill. This paper recounts the details of incidents that were managed properly and reported in a timely manner, saving the spill generators money and limiting their legal liability.

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Any fleet can become a spill generator. The time to prepare for an environmental release is before it happens. Being prepared for environmental incidents – on the highway or at your facility – is the best way to contain costs and limit liability associated with spills. That involves creating a spill contingency plan with detailed instructions for handling spills quickly and complying with all regulations associated with those incidents. Fuel spills and other accidental releases of hazardous or regulated materials, even in small quantities, can turn into expensive incidents for the spill generator who is not adequately prepared to deal with them.

Create a detailed contingency plan for each activity that has the potential to produce a spill emergency. List the names and phone numbers of local, state and federal environmental agencies and their reporting requirements. And make sure someone in your organization is responsible for keeping up with changes in the regulations. Line up outside resources and experts and make them a part of your spill emergency team.

List the names and numbers of local cleanup contractors qualified to handle spills of the materials used in your facilities and areas in which your fleet operates. You might include an expert in environmental claims management such as Spill Center, which can provide assistance with technical and legal aspects associated with spills.

A spill contingency plan is important because it ensures that the right people in your company are notified, the right internal and external reports are triggered, and preferred contractors are

contacted to handle the spill. The contingency plan is the key to efficient coordination of cleanup, mitigation and reporting efforts. The time you spend "planning a spill" can help minimize your costs and limit the likelihood of liability claims in the event of an unintentional release on the road or at your facility.

By aligning yourself with experts who are equipped to provide assistance when you need it most, you broaden your state of preparedness and help minimize your fleet's spill-related costs and liability. Spill Center, for example, assists clients with custom spill contingency planning, makes cleanup contractor referrals, and handles all required regulatory reporting, incident screening, invoice auditing, and documentation of incidents. No fleet should ever have enough spills to get good at handling them.

Driver training is another important aspect of spill preparedness. Trucks should be equipped with spill kits containing plugs, trenching tools and absorbent materials that can be used to stop fuel leaks and limit damage to the environment. Drivers should be instructed in the use of items in the kits. Drivers should also know the location of fuel shutoff valves on their trucks and understand the importance of preventing leaking fuel from running into streams or storm drains. Even a minor spill can wreak environmental havoc if the fuel reaches water.

The EPA classifies spilled fuel as hazardous waste. Any incident resulting in contamination of drinking water by fuel or oil should be reported to the National Response Center, the federal point of contact for reporting oil and chemical spills. Environmental liability for spill damages goes to the spill generator, even if the release occurred as a result a highway accident in which the truck driver was blameless. As the spill generator, it's your responsibility to contain the spill, report it, then clean it up.

Know Your Reporting Duties

The key to staying out of trouble with environmental authorities is in knowing which reports you owe to whom after accidental releases of fuel, spent solvents, cleaning materials, toxic chemicals and other hazardous materials used in a typical fleet operation. Never try to cover up an environmental incident. Stiff fines for failure to report make that an unwise decision. In fact it's better to report a spill even if you do not believe it involves a reportable quantity. If someone in authority says it isn't reportable, that is the best legal defense against third-party claims related to the spill. Just make sure you get the name, position and phone number of the person who said you didn't need to report it.

Get to know your local and state environmental authorities and the reporting requirements of each jurisdiction in which you maintain and operate equipment. Laws vary from one jurisdiction to the next. Some jurisdictions require environmental or ground water testing after a spill. In a maintenance facility that handles and manages a broad variety of chemicals and wastes, pollution prevention and proper disposal of regulated materials are primary considerations. Check with environmental authorities to ensure that you are in compliance with all regulations regarding water runoff, underground and above-ground storage tanks and spill prevention/containment.

Maintain current information and contacts for every jurisdiction in which your equipment operates to protect yourself from fines for non-compliance with environmental reporting regulations. The alternative is to use the services of experts who can do that for you and provide advice on how to avoid getting caught in the maze of environmental laws. For over 20 years, Spill Center® has been assessing and managing spills for clients and providing 24/7 reporting

services and assistance with technical and legal aspects associated with spills throughout North America.

People often ask me why they should sign up with Spill Center or another organization providing spill support services when they are already covered by insurance. The answer is simple. Insurance companies do not pay fines and penalties arising from failure to report spills or for late reporting. For that reason, insurance companies do not train people to understand reporting documentation or controlling cost and limiting liability related to spills.

Spill Center compliance associates, who include legal, technical and environmental specialists, coordinate spill response and complete telephone and written reports for clients. They fill out more than 300 US DOT Incident Report Forms each month as part of Spill Center's program of spill-related services for clients – more incident reports for clients than any other organization in the country. As such, we were recognized with a seat on the US DOT Task Force on proposed rulemaking for the DOT 5800.1 Incident Report.

We have developed a highly sophisticated spill reporting and documentation program, which is applied to the management of every incident that we handle for clients. We maintain a database of current regulations for nearly 30,000 federal, state, provincial and local jurisdictions throughout North America. We are experts at NRC, EPA, DOT, state, and local reports, and we can ensure that your reports are completed accurately and filed on time. Even if you're comfortable filing your own reports, we are working every day to add new online report generation tools to cut down on your paperwork.

I'm also asked if a carrier does not handle hazmat, why would it want Spill Center services? The answer is simple: because not all regulated spills involve cargo. About half of the spills processed by Spill Center involve ruptured saddle tanks or damaged fuel lines. The average amount of fuel released is just over 100 gallons, and the per incident cost can top \$15,000. When it comes to fines and penalties for failure to report, most jurisdictions do not distinguish between diesel fuel and hazmat. They view them the same.

Environmental authorities take their reporting requirements very seriously. One private fleet was fined \$75,000 by the N.J. Dept. of Environmental Protection after a routine diesel fuel spill of 30 gallons. The truck swerved to avoid hitting a car and scraped a saddle tank against a guard rail, puncturing the tank. The driver, equipped with a spill kit, stopped the flow from the tank, and the company filed a full accident report with the N.J. State Police. But the fine came from the failure to comply with the state's environmental reporting requirement. The police had not mentioned the requirement; and the company thought it had done everything required of it. In this case, ignorance was anything but bliss.

Expensive Emergency Response

Here's another example of a situation to avoid. One Spill Center client ended up with bills for thousands of dollars to reimburse fire and rescue services after a minor diesel fuel spill when 28 emergency personnel from two fire departments arrived on the scene after an accident involving one of the carrier's vehicles. The truck had jack-knifed in a collision with another vehicle not far from the terminal in rural central Penna., rupturing the tractor's fuel crossover line. By the driver's calculation of miles traveled since his last fill-up, no more than five or six gallons of diesel fuel remained in the tank to leak out.

From a practical standpoint, most jurisdictions don't respond to spills that small. Yet fire

departments have a right by law to be compensated when called by police at accident scenes. Could the driver have done anything to lessen the \$14,346 in charges the carrier later received from the two fire departments?

Since the carrier was a Spill Center client, the driver should have immediately called the Spill Center Hotline to report the incident. We would have contacted the local fire departments to advise them of the small quantity of fuel involved. Basically, the first thing we do is give emergency responders enough information to decide to do nothing because a spill that seems very minor can have major consequences.

If you find yourself in a similar situation, call the fire department to request a copy of the ordinance authorizing it to seek reimbursement. Often times these statutes limit reimbursement to certain items of equipment or when a certain official is on the scene to authorize work. Some ordinances require that the work be reasonable and necessary or arising directly from the spill before it is reimbursable. Experienced counsel should determine exactly what the ordinance specifies.

There is a growing concern that local ordinances authorizing reimbursement are becoming overly broad and unfair, with few limits on the type of costs that can be charged. Spill Center looks closely at invoices as part of our auditing service. Without individual audits, carriers run the risk of not recognizing unreasonable charges, such as \$25 for donuts or salary reimbursement for volunteer firefighters.

Fire departments and other public emergency service agencies that respond to environmental spills typically are authorized to seek reimbursement from spill generators. But not all the charges appearing on their invoices are reasonable or reimbursable. Transporters are being charged for everything from the cleaning, maintenance and replacement of gear to salaries and benefits of the emergency responders. Every invoice should be scrutinized and every authorizing statute questioned to avoid paying more than the law requires.

At Spill Center, we routinely screen invoices from emergency response agencies as part of our service. We look for questionable line items and unreasonable (out of line with other providers) or unauthorized charges on invoices such as line items not directly arising from the incident such as a labor charge with a pro-rated benefits cost or an administrative overhead charge. Unreasonable scope of work is also common, as in the case of multiple fire companies responding to a minor fuel spill and each one invoices the spill generator. Math errors are among the most common problems we find on these invoices. Never assume the math is correct. The numbers might not add up.

While we do not recommend that you refuse to reimburse reasonable charges from a fire department, especially if you have a facility in that municipality, you should carefully check invoices to avoid paying more than you legally owe. You can use any problem areas, such as costs not directly associated with the loss, to negotiate down the invoice amount. Replacing equipment damaged and materials used in the incident can be a good compromise.

Auditor Negotiates Down Charges

After an incident involving a diesel fuel spill on an icy road, a Spill Center auditor conducted a close inspection of a cleanup contractor's invoice for work performed – and saved the client more than \$1,700. A tank trailer belonging to one of the largest tank truck carriers in the US jackknifed in southeastern Pennsylvania early one morning, hospitalizing the driver and spilling

40-50 gallons of diesel fuel from a ruptured saddle tank. None of the cargo, toluene diisocyanate, a toxic chemical used in the production of polyurethane products, was released, but a product transfer was needed.

State Police arrived at the scene and notified the carrier and a local cleanup contractor. The York County Emergency Management Agency was also on scene. Upon learning of the accident, the carrier's safety director notified Spill Center's 24/7 call center in Hudson, Mass. to make required incident reports.

A Spill Center compliance associate took down the details of the incident and determined which agencies needed to be contacted, using Spill Center's database of nearly 30,000 local, state provincial and federal jurisdictions for this purpose. We also maintain information on more than 3,000 qualified environmental cleanup contractors throughout North America. Spill Center receives no compensation from contractors.

Our compliance associate notified each agency requiring reports and contacted the cleanup contractor at the scene to go over requirements for the product transfer and site remediation. Normally, we also provide a list of qualified local contractors to our client to select from but, in this case, the police already had a contractor on the scene.

The site was excavated and the contaminated soil, which filled two roll-off containers, was ready to be taken to a disposal site. At that point, the compliance associate requested a quote for the disposal from the contractor, and forwarded it to the carrier. He also sent written reports to the regulatory agencies, advising them that the remediation and disposal had been completed. All required reports, both by telephone and written, had been filed on behalf of the carrier, avoiding fees and fines for non-compliance.

A long-time Spill Center client, the carrier doesn't have many spills which require emergency cleanup. They use Spill Center a couple of times a year, usually on non-emergency incidents. They run an ultra-modern fleet of 700 tractors and 1,200 trailers – with an average trailer age of only 5 years (compared with the industry average of 12 years). Over 550 drivers work for the company, which has an excellent safety record and a collection of safety awards to prove it.

The safety director later told us that he likes working with Spill Center because of the ease of reporting and the quality of our employees. "You're talking to people who know exactly what needs to be done, and they do it efficiently," he said. The carrier runs 48 states, as well as Canada and Mexico, traveling through hundreds of different jurisdictions requiring reports after spills.

"There is absolutely no way on Earth we could keep track of all those individual cities, counties, states and federal reporting regulations," he noted. "Knowing that Spill Center stays on top of all of the regulatory requirements is a relief. The same thing applies to the cleanup contractor database. We know we can get the assistance we need after a spill with a single phone call to Spill Center."

After the incident in Pennsylvania, the invoice sent by the contractor for work performed was received by the carrier, which, in turn, forwarded it to Spill Center to review. Invoice auditing is a Spill Center service that many clients request, especially for high-cost cleanup projects. The auditing service evaluates all charges from contractors, emergency responders and other service providers to determine that they are reasonable and in order. At Spill Center, the contractor's invoice was audited by Senior Compliance Associate Tracie Murphy.

During her telephone conversations with the contractor, she questioned several of the invoiced charges, which resulted in a reduction of 2% of the total amount. The contractor also reduced the hourly charge for the roll-off truck, which handled the contaminated soil at the site, and reduced the charge for Level C personal-protection gear. Plus, he deleted charges for a chemical hose, photography and an administration fee.

The total reduction of the invoiced amount came to more than \$1,700, and a credit memo was issued by the contractor to the carrier. The fleet safety director had been following the auditing and negotiation process through e-mails from Tracie Murphy, who kept him in the loop during her communications with the contractor. The carrier had used Spill Center's invoice auditing service in the past – saving even more on occasion.

“Spill Center did an extraordinarily good job on our behalf for handling that situation. That is precisely why we will continue to sign up for the service,” the safety director said. “Spill Center is a great resource for any carrier, and I recommend them wholeheartedly.”

Strict Liability for Spill Incidents

Do you know the extent of your company's exposure in the event of a hazmat spill? It can be significant and very costly. By law, your company, as the spill generator, is responsible to pay the following:

- All damages and costs related to environmental impairment and waste disposal
- Property damage and bodily injury arising from the spill
- Fines and penalties for failing to comply with reporting regulations

The environmental and spill liability laws are written in such a way that no matter who causes the release, the party who has care, custody and control of the material at the time of loss is the one legally responsible to respond, contain and report the spill, plus remediate the site and safely and legally dispose of the contaminated soil and material.

In an accident where your truck is involved and it was not your driver's fault – maybe a drunk driver collides with the truck and ruptures the saddle tank, causing diesel fuel to spill – the liability for the spill is still yours. You could seek reimbursement from the drunk driver, who had a duty not to drive drunk and breached his duty, causing damages, but strict liability laws make the trucking company responsible for the spill cleanup and incident reporting.

It is in the company's best interest to respond and handle the spill as quickly and cost-effectively as possible because it is easier to claim over and successfully recover a small amount of money than to recover a couple million dollars. Time is money. Even if the damages are not ultimately going to be paid by your trucking company, you want to control those costs so you have a better chance of getting reimbursement. The state police and environmental authorities at the scene understand strict liability very well and are not going to look to the drunk driver to report, respond, remediate and contain the release. They expect the spill generator to do those things.

By managing spills in jurisdictions throughout the country, we have learned what works and what saves money. Spill Center clients do not get hit with fines or penalties for non-compliance with hazmat reporting regulations. No client in our system who has called in a spill in a timely manner has ever been fined for non-compliance, and Spill Center has never been fined for mishandling a claim.

Registering with Spill Center for spill management and reporting assistance is a good option for any company whose operations put them at risk for accidental spills, not just of hazardous materials, but of diesel fuel and other regulated materials requiring environmental cleanup and reporting. After a spill, a single call or online report to Spill Center's 24/7 call center begins the process to resolve the incident at the least cost. We bring the right resources to bear quickly for a faster response to any incident.

Fines and penalties for non-compliance with reporting regulations vary from one jurisdiction to another, and the potential for multiple jurisdictions with separate reporting requirements exists in every incident. A spill in one of the five boroughs of New York City, for example, requires that reports be made to county, state and federal authorities – plus to the NYC Dept. of Environmental Protection. Failure to make the city report, can cost \$25,000 a day, with each day being a separate violation.

An article published in *USA Today* pointed out that nearly half of the serious hazardous materials spills in transportation go unreported to the government, leaving investigators without data to identify unsafe carriers and containers. Using federal records as a source, the article reported that from 2006 through 2008, hazmat carriers failed to report 1,199 “serious” accidents, while the number that were reported totaled 1,403. In that period, the DOT levied fines of up to \$2,750 against four carriers for failure to report serious hazmat spills, notes the article.

The U.S. DOT requires motor carriers transporting a leaking package of hazardous materials or experiencing a hazmat-related loading or unloading leak or spill to report incidents in accordance with the regulations in 49 CFR 171.15 and 171.16. Immediate telephonic notification is required in some cases, along with a written report. Most hazardous materials are dangerous when they are released, relates the DOT, noting that the scene of an incident can be chaotic, and the right actions may not always be obvious. The agency emphasizes that reporting a hazardous materials leak or spill is required by law.

Case Study: Help With Serious Acid Spill

Calvin Teixeira, a Spill Center compliance associate, was working the night shift when the phone rang just before 2 a.m. On the other end of the line was a client, a manager of a trucking company based in northwest Ohio. One of its tank trucks carrying a hazardous waste solution of hydrochloric acid had rolled over on the Ohio Turnpike.

Nearly 2,000 gallons of the toxic solution had spilled into a ditch beside the road. Police shut down the highway and residents of 20 homes were ordered to evacuate. The truck driver, who was taken to a hospital, may have fallen asleep at the wheel, police said. A wrecker was on scene to pull the overturned tanker back upright.

The trucking company manager made the call to Spill Center after he received word of the accident by police on scene. They wanted to know how it would be handled. Teixeira spoke briefly with the manager, taking down the location, material spilled, amount and other details. Spill Center would get a cleanup contractor, one with a vacuum truck that could off-load product and suck up spilled acid. Spill Center would also make all the incident reports to local, state and federal authorities.

Spill generators often get so caught up in the rush to clean up a spill that they slip up on the reporting side. That's why we provide comprehensive spill reporting services for jurisdictions

throughout the U.S. and much of Canada to help clients avoid fines and penalties for missing reporting deadlines and other compliance issues. Every Spill Center client has a spill contingency plan tailored to its operations. Kept in a secure, password-protected computer file at Spill Center, the plan can be updated by the client anytime over the Internet.

Teixeira pulled up the client's spill contingency plan, which contains contact information on the company, preferred contractors and other details he needed to manage the incident. He contacted a contractor in northern Ohio offering 24/7 emergency spill response and remediation services for hazardous releases. He discussed the number of responders and the type of equipment that would be needed and provided the contractor with contact information for police and the EPA on the scene. The crew would be there with the right equipment within two hours.

Teixeira next used Spill Center's database to determine which agencies needed reports. He reviewed the regulations covering acid spills in the jurisdictions involved. He knew there was little time to waste. Some jurisdictions have a very tight deadline for phoning in spill reports before incurring a fine for late reporting. In Massachusetts, the window is only two hours after the spill occurs.

The agency search went quickly. The DOT required a report since the highway was closed. The acid went into a ditch and could impact water, triggering a report to the National Response Center (NRC). Teixeira called in reports to the Ohio EPA, local Emergency Planning Committee, Ohio Emergency Management Agency and the NRC. He also called the on-scene trooper in charge to inform him that Spill Center was managing the response on behalf of the carrier and a cleanup contractor was on the way.

The contractor called Teixeira once he arrived on scene. A four-man crew was at the site, and another four-man crew was on the way with roll-off boxes to hold contaminated soil, absorbent pads and other solid waste. They had to excavate the soil, replace it with clean soil and lay sod. The crews, working at the direction of the EPA, generated 30 full roll-off boxes, each with about 15 tons of soil and waste.

Several times the contractor called to report on the scope of work, disposal plans and follow-up testing of the soil. At each step, Teixeira updated the client. Then, at the start of the day shift, he handed the case over to another Spill Center compliance associate who would send out letters and written reports to the regulatory agencies that require them. Follow-up documentation would also be handled by Spill Center. All spill-related invoices would come to Spill Center to be audited for accuracy.

That was just another day at Spill Center. Clients know that no phone goes unanswered here, even on holidays and weekends. And when it rings in the middle of the night, we have a pretty good idea of what's in store for us.

Environmental Expertise Saves Day

Another client saved over \$305,000 in cleanup costs by having Spill Center manage a spill that occurred when a tank truck spilled about 4,000 gallons of methanol-based cleaning compound into a creek. A state Department of Environmental Quality representative initially ordered that the water in the creek and a nearby pond be drained and scraped.

That scope of work would have involved a large amount of equipment and personnel along with disposal of large quantities of soil and liquids, costing in the hundreds of thousands of dollars.

Spill Center retained an environmental consultant in the vicinity of the spill who determined that the methanol compound released would evaporate and degrade within eight days – with no residual left behind.

Based on this information, the DEQ agreed to a less aggressive approach comprised of remediation of gross soil contamination and sampling of soil and surface water to confirm that the compound had degraded. Within two weeks of the incident, sample results confirmed that the contamination was below regulatory standards. Additionally, we reviewed all contractor invoices and negotiated costs downward, adding to the savings.

Another spill involved 85 drums of hazardous waste that caught on fire after a collision between two tractor trailers. A large quantity of the waste was discharged into the soil. The carrier contacted Spill Center and requested that we coordinate with the cleanup contractor at the scene and manage the incident.

We found out immediately that the contractor had classified the soil as the type of hazardous waste which required pretreatment prior to disposal through incineration, a costly process. Before committing to that, we asked that the contaminated soil be sampled again to determine if it could be re-classified for disposal. Additional sampling showed that the soil could be disposed of locally, bringing the cost down significantly. The difference in the lower disposal rate per ton created a cost savings of \$388,035 for our client.

On top of those savings, transportation for disposal was reduced from \$4,150 per load to \$2,367 per load because the soil could be brought to a closer facility. Finally, upon review of the cleanup contractor invoicing, we noticed that a fuel surcharge was applied across the entire costs of the initial invoice. Additional negotiations reduced this amount as well, for a total cost savings of \$453,509 for the client.

It was a case of knowing which questions to ask and knowing the environmental regulations of that particular jurisdiction. It is just one example of how the expertise and experience of Spill Center's staff of environmental, technical and legal specialists help our clients reduce the costs of spills.

Communications Break Down

Even in the best operations, communications sometimes break down. One long-time Spill Center client, a truckload carrier with a fleet of 109 company tractors and 440 trailers, agreed to deploy an on-board spill reporting system in order to substantially reduce a penalty levied by the Massachusetts Department of Environmental Protection (Mass DEP) after a diesel fuel spill incident in Charlton, Mass. The new on-board reporting system, which was developed by Spill Center, enables a driver to quickly fill out a pre-formatted electronic spill message and transmit it directly from the truck to provide authorities with rapid notification and details of a spill.

We at Spill Center worked closely with the carrier and wireless communications specialist QUALCOMM®, to develop the system. It is designed to improve private and public sector response to hazmat incidents and increase efficiencies in the resolution of spills by quickly providing critical information needed to frame an appropriate incident response.

In the Massachusetts fuel spill, the truck ran over a piece of metal in the roadway during the night, resulting in a punctured diesel fuel saddle tank. A local police officer noticed the trail of

leaking fuel on the pavement and followed it to the truck. The officer pulled over the unsuspecting driver, who plugged the leak with a stick.

The “reportable quantity” of spilled material – the amount requiring a formal incident report – varies from state to state. In Massachusetts, the reportable quantity of any spilled petroleum product is 10 gallons, and the DEP must be notified within two hours of the incident to avoid a citation. Other triggers include any release of oil causing a sheen on surface water, which is reportable to Mass DEP and to the EPA in the National Response Center.

When the fire department arrived at the scene, an inflatable swimming pool was used to contain the leaking fuel while the remainder in the tank was pumped into a drum. The driver and fire officials estimated that only 20-30 gallons of fuel had leaked out, based on the flow of fuel and the time elapsed from the point of impact until the leak was stopped.

If the carrier’s emergency spill plan had been followed, the safety manager would have been notified immediately after the spill. But due to a breakdown in communications, the manager didn’t find out about it until the next morning. The driver did call the carrier’s maintenance facility to report the trouble. He also notified Operations to say he would probably be late on his delivery.

The fleet safety manager called Spill Center as soon as he learned about it in the morning, and we sent out notifications and reports to the proper authorities. But the DEP’s two-hour window had already closed. The Mass DEP late-notification infraction carries a penalty of \$11,500.

This carrier has very few spill incidents, and that is part of the reason people forget about what to do in situations like this. The safety manager told me that in 20 some years, they may have had a half-dozen of these spills. It has always been road debris that comes up and punctures a fuel tank. When the citation arrived in the mail, the client called Spill Center for help at the DEP hearing.

The DEP offers a special enforcement settlement known as a Supplemental Environmental Project (SEP), which can reduce the amount of a penalty. SEPs are agreements to perform activities which provide an increased level of environmental protection. During an enforcement conference, we proposed the new on-board spill reporting system. It was accepted by the DEP, calling it an innovative way to sound the alarm after a spill. Faster response is definitely better for the environment.

Development of the on-board spill reporting system involved adapting homeland security technology to environmental protection. The system is based on a Public Sector Reporting Center (PSRC) concept and technology developed by Spill Center in response to the U.S. government’s post-Sept. 11 efforts to prevent commercial vehicles carrying hazardous materials from being used in terrorist attacks. We successfully demonstrated the effectiveness of PSRC during the U.S. DOT’s extensive Hazardous Materials Safety and Security Field Operational Test.

In adapting the system for our client, we created a “spill macro” to be loaded into the QUALCOMM OmniTRACS® satellite-based wireless communications terminals in all the company trucks. An assigned key on the driver’s terminal brings up the blank spill form, which the driver fills in with pertinent information about the spill.

Once the driver sends the message, it instantaneously travels from the truck to QUALCOMM's Network Operations Center in San Diego, Calif., where it is processed through the Multiple Access Software System (QMASS®). That enables automatic data sharing with authorized third parties, such as Spill Center. The message is forwarded both to the carrier's headquarters and to Spill Center's 24/7 call center, which immediately notifies authorities and completes the required reports.

Case Study: 'Show Me the Money' Spill!

Any diesel fuel spill, even a minor one, requires fast action to avoid environmental damage. But when the leaking truck is heavily armored and full of cash, the incident is cause for alarm. That was evident when an armored truck spilled an estimated 20 gallons of diesel fuel in the parking lot of a retail store in Memphis, Tenn. The incident, resulting from a damaged fuel cross-over line, was managed by Spill Center® from our base in Hudson, Mass.

The armored truck company had not previously needed to use the spill support services of Spill Center. In fact, the client hadn't had a spill requiring environmental cleanup in more than seven years. The company's loss prevention manager called Spill Center as soon as the driver alerted him about the spill. A Spill Center compliance associate pulled up the client's pre-filed spill contingency plan with spill handling instructions and company information and proceeded to coordinate the response.

He contacted the Memphis branch of First Response, Inc., requesting them to respond to the spill. The compliance associate was in phone contact with the contractor again after the team arrived at the site and when the cleanup was finished. First Response applied an absorbent material to the spill and generated two 55-gallon drums of waste for disposal.

The loss prevention manager acknowledged that the armored truck company was "pretty rusty" at handling environmental releases, since it hadn't had a spill in such a long time. He was relieved at how quickly Spill Center got the cleanup crew on scene and kept him informed throughout.

Fast Action for Product Recall

Not all the incidents managed by Spill Center involve spills, as in the case of a manufacturer who asked us to handle an emergency product recall campaign. Plastic pails of contaminated commercial dishwashing detergent started expanding and bursting, releasing the highly alkaline liquid. In the first four days of the recall campaign, our call center dispatched cleanup contractors to 480 locations around the U.S. to contain the potentially hazardous material.

The manufacturer, a long-time Spill Center client, is a leading provider of cleaning and other products for the industrial, foodservice and healthcare markets. It was suspected that the detergent had been contaminated in the manufacturing process with hydrogen peroxide, which turns to water and oxygen when combined with an alkaline substance such as the detergent. The oxygen build-up was causing the containers to swell and burst.

The bursting pails posed a hazard, since the detergent can cause injury if it comes in contact with skin or gets in the eyes. The manufacturer wanted to bring the contaminated product back home, so Spill Center was contacted to coordinate the recall effort.

Over the four days that followed the decision to initiate a recall, Spill Center dispatched cleanup

contractors to pack the containers in hazmat drums and palletize and placard the loads for transportation. The detergent had been distributed to customers throughout the country, including nursing homes, hospitals, restaurants, and college facilities.

Once the company instructed its customers to contact Spill Center, our call center was answering about 60 calls an hour for the first six hours of the event. Some of the callers had contained the material and moved it out of the way. Others wouldn't touch it and were keeping everyone away from it. But the one common message was: "We need help now. We want this stuff out of here!"

Because of the potential for the containers to explode, the company acted swiftly, responsibly and professionally to locate and recall the contaminated product to minimize any problems. The manufacturer did its due diligence, contacting several companies for advice on how to conduct the recall and how much to budget for it. As a result, they expected the effort to cost nearly \$1.5 million. But since Spill Center had been called in early, we were able to reduce the actual costs to \$879,000. We did that by anticipating the disposal, product handling, transportation and return process at the outset.

Every contractor was given a complete picture of what was expected. We communicated detailed information about the material and packaging to the contractors and issued handling instructions that stipulated the type of protective equipment that was required for safety. That kept them from bringing out the most expensive equipment, which it wasn't needed.

Spill Center determined the quantity of product at each loss location, names of the personnel on the scene and what they needed. Our call center, which worked around the clock, also identified the closest available cleanup contractor qualified to do the job of segregating corrosive detergent, over-packing it, properly labeling it, securing it to pallets and placarding the pallets for transportation.

Since we maintain detailed information on contractor response jurisdictions, we were able to coordinate responses by geographic location, giving some contractors multiple assignments. That eliminated mobilization and demobilization charges for the manufacturer. Spill Center directed the contractors to retain common carriers to return the product once it had been secured for transportation rather than transporting it themselves. That resulted in a significant savings. Spill Center also managed the invoice submission process – organizing invoices by location, reviewing all costs, and placing the invoices in line for payment by the manufacturer.

We had never seen anything quite as intense as that product recall. It showed us that our computer system was up to the task. We built it anticipating we would experience a high volume of spills, but it had never been tested it at this level of activity before this recall. I'm happy to report that it performed beautifully.

Spill Data Provides Benefits

Statistical data on spill incidents can provide valuable benefits by alerting companies to safety issues that need to be addressed. Spill Center has developed proprietary computer systems that track statistical data, including container types, as part of its handling of DOT 5800.1 incident report forms for clients. When companies centralize spill reporting with Spill Center, they can be notified whenever an unusual spike is detected in the frequency of spill incidents.

Spill Center worked a case involving a nationwide transportation company that suddenly

experienced a system-wide increase in steel-drum leaks. This was unusual because the company had never had any 55-gallon steel drum spills previously. In the course of an eight-hour day, they went from a statistical frequency of zero up to 80% steel-drum failures.

Spill Center's system picked that up and notified the client. Otherwise the company would not have noticed it because the spills were occurring in cross-dock operations in terminals all over the country. A terminal manager does not typically pick up the phone and call other terminal managers or corporate to report those incidents to them.

But the Spill Center system detected the increased frequency for the client. In addition to notifying the client, a Spill Center compliance associate also notified the client's customer, a chemical shipper. It was determined that the drum manufacturer had failed to provide the proper wrenches to tighten the bungs on the steel drums. As a result, every drum going out of the chemical plant was a quarter-turn loose.

That cost Spill Center's client \$200,000 in cleanup and response costs in the eight-hour period, but the cause was identified in that short time frame and stopped. Without the Spill Center data, the situation could have cost significantly more before the source of the problem was found.

Staying Legally Defensible After Spill

Thorough documentation of every environmental release is the best way to maintain a legally defensible position against third-party claimants and avoid being included as a responsible party to a pre-existing contamination problem. A detailed log should be kept of all actions taken after a spill to document that your release was separate in time, separate in nature and was the subject of a separate and complete response and remediation.

A driver involved in a fuel spill should record the quantity spilled (based on last fueling and miles driven), times and phone numbers of calls he made to report the incident, actions he took to contain the leak, actions taken by emergency responders at the scene, number of responders, time on scene and equipment used. That driver's log will provide a written record that can be used to place the company in a legally defensible position.

Spill Center documents all reporting and remediation activities performed on behalf of clients to limit their environmental liability and establish a legal defense against any third-party claims that might arise from spills. Clients are provided with electronic data spill packages with complete documentation of spill incidents, reporting, site remediation and other actions taken to close them. Spill Center has developed proprietary environmental claims reporting, tracking and documentation systems, which are available to support clients.

Employees Ready to Handle Spills?

Do all your employees know how to activate your emergency response plan in the event of a spill? The wrong decision could cost you plenty, as in the case of a major carrier that unnecessarily lost thousands of dollars in downtime when an employee discovered a minor spill and responded in the worst way! Rather than making a call to get expert advice – as the company emergency plan instructs – the employee took the wrong advice and evacuated the entire terminal facility.

Either the employee didn't know that the company had an emergency response plan or didn't know how to use it. So instead of activating the plan, he called the local fire department. They

told him to get everyone out of the building. This scenario happens all too often. Don't let it happen to you.

Customized training is available from Spill Center to ensure that everybody who might witness or discover a release – at your facility or in an over-the-road incident – knows what to do next. Our on-site training session is designed to teach your managers, employees and drivers how to activate your spill contingency plans and reporting systems and employ the latest techniques to minimize your costs and liability arising from a hazmat or diesel fuel spill. The training provides instruction in how to:

- Document all releases
- Recognize significant releases
- Activate company emergency response plans
- Mobilize appropriate resources
- Avoid 50 Common Points of Failure

An information-packed presentation is followed by an interactive workshop, hands-on exercises and an "Ask the Expert" session. All required materials are provided. By attending the session, your people will get the comprehensive training they need to confidently navigate the regulatory maze and protect your company's most valuable assets.

Plus, clients who sign up for the training also receive ongoing support and no-charge telephone consulting that I, personally, will provide. My experience as an environmental attorney, former U.S. EPA toxicologist and founder of Spill Center, enables me to bring a unique combination of skills and knowledge of the chemical, transportation and insurance industries to the table.

Registering as a Client

Spill Center clients pay an annual subscription fee, plus an hourly fee for any services required. The annual fee covers the cost of preparation and maintenance of a customized spill contingency plan with claim-handling instructions and a security plan for every client, plus round-the-clock access to Spill Center specialists who staff the call center. Similar organizations that do not charge an annual fee are likely not staffing a call center with spill compliance and legal experts and are not providing pre-spill planning or technology that can be used to activate your spill contingency plan online or by telephone.

For direct services, we charge an hourly fee to cover the services that clients require. This is more cost effective for clients than a company which might charge a flat fee for every spill, regardless of the size. For example, if you have a spill of 100 gallons of diesel fuel on a parking lot, then you only pay for the time it takes for our staff to manage that relatively minor incident. Spill Center charges only for the services that you need, nothing more.

I'm often asked to discuss the differences between Spill Center and our competition? Our competitors do not have trained staff that can quickly identify options for response to save you money like Spill Center. Using another company likely will result in slower response to spills and higher costs. Many of our clients find that the money they spend on Spill Center registration is ROI in their first spill.

Spill Center's expertise in spill management and environmental claims handling has helped hundreds of clients in the transportation, chemical and insurance industries. They count on us to

help get past spill incidents and avoid fines and penalties for non-compliance with reporting regulations.

Once you become a Spill Center client, we help you prepare your Spill Contingency Plan. When we are notified of a spill, an incident coordinator activates your company's spill plan and provides you with a list of contractors in the vicinity of the spill who are qualified and available to handle the cleanup and disposal of spilled material.

We notify the authorities and file the required reports on your behalf. We have developed automated systems to help our clients track incidents, produce standard and customized reports and generate root-cause analysis data to help managers identify conditions and trends that can be addressed to improve fleet safety.

Anyone who has front-line responsibility for managing transportation, hazmat manufacturing, warehousing, storage or distribution will understand the benefits of Spill Center services. So will anybody who is responsible for the company's safety and compliance, as well as financial aspects, insurance and risk management.

Dealing With Media after a Spill

Truck accidents are big news when they tie up traffic for hours while emergency crews deal with diesel fuel and hazardous chemicals leaking from the vehicle. That's when the spill generator needs some good PR. But that doesn't just happen, especially in a crisis situation. Openness with the press is the best policy. A company spokesperson should be appointed whose job it will be to gather all available information (who, what, where, when, how, and what's next) and answer news media inquiries.

For Spill Center clients, we automatically notify that company spokesperson in addition to other key company officials when we activate the subscriber's emergency Spill Contingency Plan during a spill emergency. My white paper on crisis communications planning, "Dealing With the Media During a Spill Emergency," can help you as a spill generator keep your reputation untarnished. Download it at no charge from the Spill Center website: www.spillcenter.com.

About the Author

Tom Moses, a former U.S. EPA toxicologist, holds a Juris Doctorate degree and is president of Spill Center, a leading environmental claims and spill management agency that he founded in 1990 to help level the playing field for spill generators who must deal with regulatory authorities, cleanup contractors and third-party claimants. Spill Center's 24/7 North America-wide program is designed to reduce costs associated with environmental releases and limit potential liability.

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