



Responding to and Managing Environmental Incidents

PNW Reforestation Council
2018 Annual Meeting

Elizabeth Howard | 08.28.18

Overview

Responding and Managing

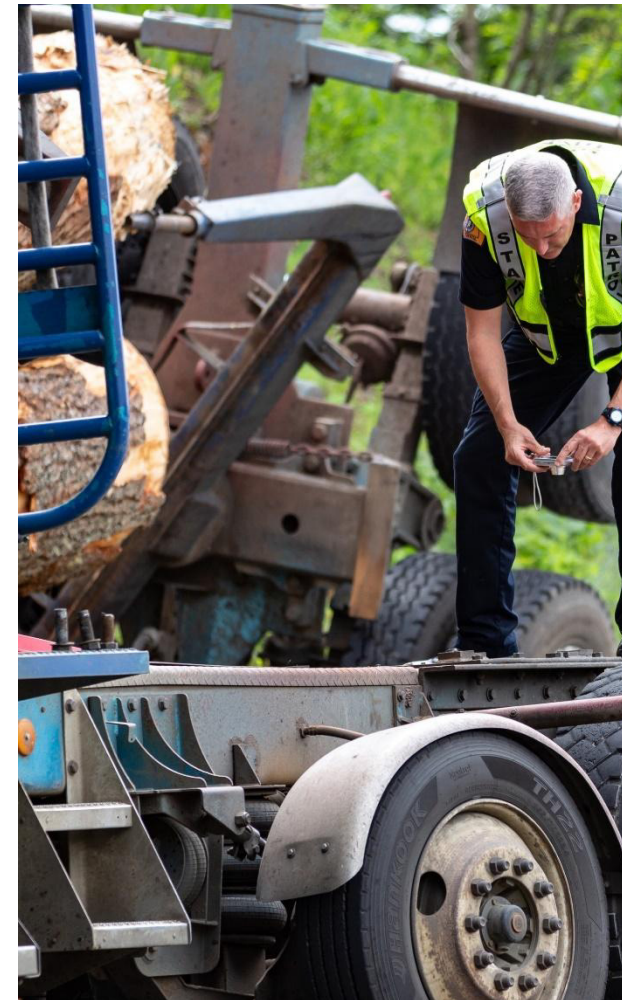
- Initial response
- Document
- Report
- Evaluate risks and liability
- Proactive response, cleanup and remediation
- Resolve liability, fines, fees
- Lessons learned – prepare for the next time



Responding and managing

Initial Response

- Don't wait to respond – the longer the incident, the more expensive the impact, injury, costs, penalties and fines
- Shut down operations or activity
- Use containment kit and other tools to contain spill or overspray
- Call in expert help (remediation company)
- Contact emergency responders if needed – sheriff, fire marshal, EMT
- Protect and treat employees, workers, contractors
- Protect and limit impacts to environmentally sensitive areas and pathways
- Legal exceptions for expedited cleanup/remediation for environmentally sensitive areas (i.e. water ways)
- Pull together your response team, including public relations company and attorney, and get them up to speed and involved to manage response
- Determine whether need to inform potentially impacted neighbors, municipalities, water suppliers



Responding and managing

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Responding and Managing

Document and Record

- Obtain accurate information at time of incident:
 - Location
 - Extent
 - Conditions
 - Contents
 - Who was involved
 - What happened
 - Other observations
 - Compliance with company BMPs
- Take samples:
 - Water
 - Product
 - Process immediately, ensure chain of custody, work with a lab on correct sample protocols
 - Sample again
- Take photographs:
 - Conditions (equipment, vegetation, ditches)
 - Defective or broken equipment
 - Damage
 - Response
- Collect other data:
 - Weather: rain, wind, etc.
 - Geography and terrain
 - Vegetation
 - Distances
- Collect names and contact information

Responding and Managing

Preserve Evidence

- Request documents from others:
 - Public records request to agencies
 - Applicator's records
 - Driver or logging company records
- Keep and preserve all records generated before and after incident
- Place hold (non-destruction policy) on all documents, emails, recordings, texts, phone messages
 - From before, during and after incident
 - Ensure have contract or order related to incident

Consider investigation and interviews

- Timing
- Cooperation of witnesses
- Hire an investigator?
- Privileged or protected?
- Attorney present or requested? – Upjohn warning

Responding and Managing

Inform and Report

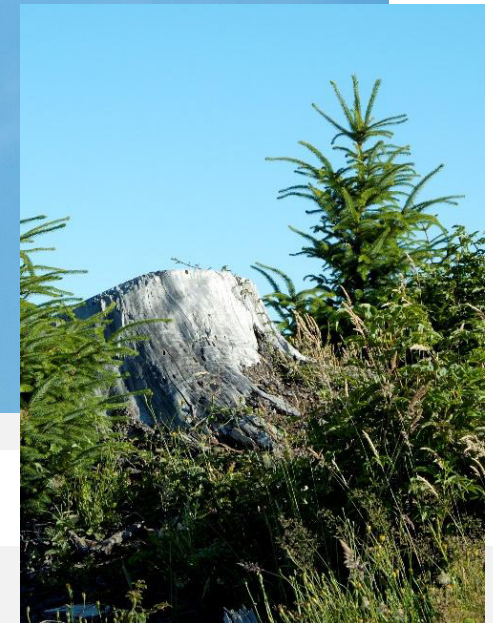
- Insurance – tender defense (pay attention to timing and preserving information and evidence)
- Others? impacted neighbors, public, towns, water suppliers
- Regulatory agencies – confirm jurisdiction first
 - Law or rule applies?
 - Permit requirements
 - License requirements
 - Consider who else may report? This may drive your timeline and decision as to who to report to.
 - Citizen
 - Applicator or contractor
 - Responders
- Press release?



Responding and Managing

Evaluate Risks and Liability

- Penalties and fines – multiple agencies
- Criminal liability
- Potential third party claims and litigation
- Scope of insurance coverage
- Contractual claims



Responding and Managing

Proactive Response, Cleanup and Remediation

- Lead the charge – don't wait for the regulator to come to you
- Develop a plan that involves the agencies and incorporates their input
- Build a rapport and be cooperative
- Work with a reputable company – don't do it on the cheap
- Obtain all permits required (don't generate a secondary violation)
- Evaluate natural resource and other potential damages and address in your plan
- Get input from interested parties other than regulators
 - Tribes
 - Towns or Communities



Responding and managing

resolve liability, fines and fees

- Penalties and fines – work with each agency. Look for tie-ins to community benefits (i.e. environmental project that benefits community as part of resolution).
- Criminal liability – may not be at issue immediately. 5 year SOL.
- Investigate
- Document cause and changes needed to avoid in future
- Terminate employee or make other changes
- Implement new practices
- Avoid repeats

- Resolve third party claims against company
- File claims against third party, where appropriate

Responding and Managing

Lessons Learned □ Prepare in Advance

- Debrief and implement changes to response based on experience
- Prepare in advance:
 - Ensure you understand the rules that apply to each type of incident you may have
 - Establish BMPs to avoid an incident – follow and record
 - Establish plans in advance of your “next” incident: how will you handle each aspect we addressed today?
 - Distribute the plan and ensure employees know about and understand it
 - Have your response team ready to go and know how you will contact them in the event of an emergency (internal point person, PR firm, attorney, consultant(s)...)



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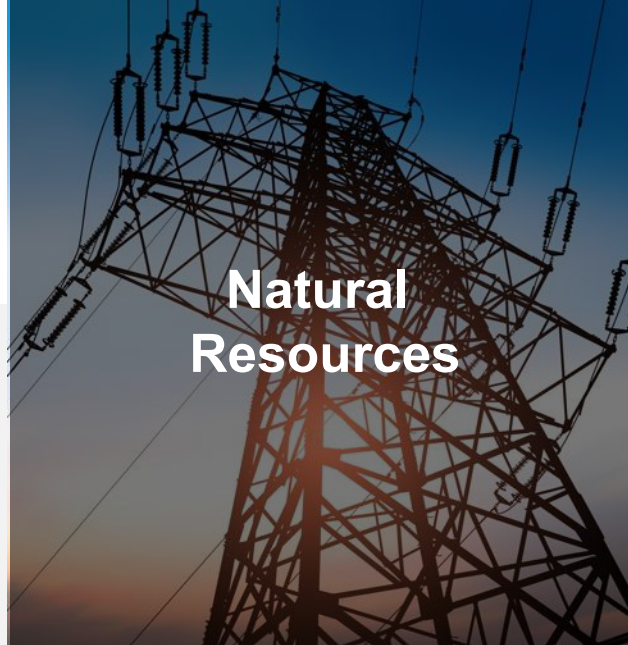
Elizabeth's family works in the timber industry, and she has represented clients in the natural resources industry for nearly two decades.

Elizabeth represents owners and operators on issues related to water, wetlands, pesticides, listed species and public lands. She negotiates permits, resolves regulatory actions, and handles complex litigation.

Elizabeth has extensive experience with complex, high profile, and contentious litigation and permit applications. She stands ready to navigate, defend, and resolve challenges her clients face. Her experience allows her to provide valuable insights as she strategizes with clients to develop and obtain promising opportunities in the natural resources arena.



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