It’s Fueling Season: What to Do If You See an Oily Sheen In or Around Your Marina

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One of Gowrie Group’s core principles is to help our marine industry clients and partners manage and mitigate their exposures to risk. In the marine trades segment, understanding your environmental responsibilities and the financial consequences of releases of petroleum or hazardous substances into navigable waters, or to adjoining shorelines, is critically important.

Generally, if you have a release of petroleum or a hazardous substance, you are required to:
- STOP it
- CONTAIN it
- REPORT it
- FIX it

Several regulatory agencies are involved when there is a release that may be harmful to public health or the environment. This includes the general obligation to report a release that causes a “film or sheen upon, or discoloration of the surface of the water or adjoining shorelines; or which causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.” Federal agencies set most of the standards regarding discharges of oil and hazardous substances. However, state and local governments, and agencies, can impose more stringent requirements. Qualified environmental attorneys can help you understand and comply with the myriad of federal, state and local laws and regulations that affect your business. Given the short deadlines for some of these reporting obligations (some of which may be “immediately”), it is important to have reporting plans and mechanisms in place well before the need to report arises.

If you have a fuel dock or above ground fuel storage, the federal government requires that you have a Spill Prevention Control and Countermeasure (SPCC) Plan. Fuel docks should be staffed with experienced employees who are familiar with the SPCC plan. Rachel Rosen, Department Manager of Environmental Services at Burns & McDonnell, a leading environmental services company, advises that while SPCC plans are required, due to the plan’s large size and high level of detail, your facility may also need additional summary documents to facilitate a prompt and efficient release response.

A Practical Solution: The good news is to supplement your SPCC plan, there are some easy to implement, impactful solutions. One approach is to create a single page laminated sheet containing the names and phone numbers of the people (and their alternates) who should immediately be called in the event a release is identified. This one page sheet should contain the names and contact information of key contacts, should be highly visible, and everyone on the fuel dock staff should be trained on who to call and what to do. These efforts will help you to report a release in a more timely manner, which not only should improve response time, but can also significantly reduce the overall financial impact. This contact sheet should include the following people at a minimum:
- Announcer – anyone who does the reporting
- Responders – individuals charged with containing the release and cutting off migration pathways
- Counter – individuals who quantify the release and the amounts recovered
- Public Relations – the person designated to inform the media and public and respond to inquiries
- Facility Contacts – the owner and other key representatives of the facility
Create a Release Response Strategy: Richard Fil, Esq., a Partner at Robinson & Cole, a large regional law firm, suggests marinas develop and document a detailed strategic response plan in advance. The strategic plan should include how to respond to a release, how to communicate with media, regulators, and the public, and how to implement protective measures such as preserving evidence. Specific individuals should be identified, trained, and engaged in practice drills to improve execution and response time. The goals are to limit the impact of a release, manage risk, improve business recovery efforts, and enhance community and governmental relations.

Financial Impact: The financial impacts from a release can be very significant. Environmental law imposes liability for releases on responsible parties (such as operators or property owners), which may be based on strict liability without regard to fault. In addition to liability for cleanup costs, a release may result in allegations of Bodily Injury, Mental Anguish, Property Damage and Natural Resource Damages. Bodily Injury means physical harm including sickness, disease, temporary or permanent disability, and death. Mental Anguish is distinguished from Bodily Injury and may include anxiety and psychosomatic physical symptoms. Property Damage includes damage that results in the loss of use of real and personal property.

Brief Review of Natural Resource Damage: Federal laws define "Natural Resources" broadly to include "land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources..." Generally a "natural resource" is a resource "belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by" the United States, any State, an Indian Tribe, a local government, or a foreign government. Natural Resource Damages are for injury to, destruction of, or loss of natural resources, including the reasonable costs of a damage assessment. The measure of damages is the cost of restoring injured resources to their baseline condition, compensation for the interim loss of injured resources pending recovery, and the reasonable cost of a damage assessment. These costs would be in addition to the costs to remediate environmental media such as soil, sediment, or surface water.

Are You Protected - Insurance Solutions: How your insurance responds to a release should not be a surprise after an incident. Since the mid-1980’s, the insurance industry has excluded Pollution Liability from most commercial insurance policies. This is because defending and paying environmental claims pose significantly higher uncertainty and expense than ordinary claims for bodily injury or property damage. This is particularly true given the expansive liability of responsible parties and the breadth of damages arising from Cleanup Costs, Emergency Response Costs, Natural Resource Damages, and others more unique to environmental claims.

Some commercial policies included limited coverage, but these extensions likely are limited to Bodily Injury and Property Damage coverage (and not for cleanup costs), and even then the coverage may have time limitations related to when the release occurred and when it was reported. More inclusive Pollution Legal Liability policies may be available and could typically include coverage for Cleanup Costs, Natural Resource Damages and Emergency Response Costs. However these are non-standard policies and typically require the experience and expert advice of an insurance professional familiar with environmental insurance. Like all your insurance needs, you should identify your environmental exposures to loss, develop and implement your plan to reduce and minimize loss, and then develop a plan to finance your risk management efforts and the cost of a potential loss. It may also help to confirm in advance that the qualified consultants and environmental attorneys you would prefer to use in responding to a covered release would be acceptable to the insurer.

Additional Resources & Links:
1. EPA Spill Prevention Regulations
2. Gowrie Group’s Environmental Insurance Solutions
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Sources & References: Richard Fil, Esq. and Partner at Robinson & Cole; Rachel Rosen, Department Manager of Environmental Services at Burns & McDonnell; Kellie Crete, Gowrie Group Safety & Loss Prevention.