

Emergency Emissions and Spill Reporting

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Emergency Spill Reporting – How to Prepare for the Worst

Presented by: Amy E. Romig
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Plews Shadley Racher & Braun, LLP

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Overview of Spill/Release Reporting

- Federal Requirements for hazardous substances and extremely hazardous substances
- Oil Spill Reporting
- Indiana Spill Reporting
- Permitted Discharges/Emissions



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Emergency Release Reporting

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) sets forth the initial release reporting framework
- 42 USC §9601(14) (CERCLA § 101(14)) defines hazardous substances
- 42 USC §9602 (CERCLA § 102) requires EPA to determine reportable quantities of hazardous substances (as well as allows designation of additional hazardous substances)
- 42 USC §9603 (CERCLA § 103) requires that release of reportable quantity of hazardous substance be reported*



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Emergency Release Reporting

- Release defined as:

Any spilling, leaking, pumping, pouring, emitting, leaching, dumping, or disposing into the environment (including abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant..." CERCLA §101(22)



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Emergency Release Reporting

- Emergency Planning and Community Right to Know Act (EPCRA) (also known as Superfund Amendments and Reauthorization Act – SARA Title III) added reporting requirements
- 42 USC §11002(2) (EPCRA §302(2)) adds Extremely Hazardous Substances
- 42 USC §1104 requires notification of release of extremely hazardous substances



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Oil Spill Reporting

- Oil Pollution Act (OPA) 33 USC 2701 *et seq.*
- Governs “oils” which Congress directed to include both oils and greases (including petroleum) as well as non-petroleum oils (animal fats, oils, greases, vegetable oils)
- Discharges governed under “Sheen Rule” - 40 CFR 110



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Emergency Release Reporting

- Hazardous Substances (42 USC 6901(14) – CERCLA §101(14))
 - 40 CFR §302.4 Designation of Hazardous Substances
 - Listed – appears in table 302.4
 - Unlisted – Characteristic Wastes
 - Table 302.4 – List of Hazardous Substances and Reportable Quantities
- Extremely Hazardous Substances
 - 40CFR 355, Appendixes A and B



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List of Lists

- Consolidated list of chemicals subject to EPCRA, CERCLA and the Risk Management Program under §112(r) of the Clean Air Act as well as Toxic Release Inventory Chemicals
- <https://www.epa.gov/epcra/consolidated-list-lists-under-epcracerclacaa-ss112r-march-2015-version>



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Oil Spill Reporting

- 40 CFR 110.3 triggered by discharges of oil that:
 - Violate applicable water quality standards; or
 - Cause a sheen upon or discoloration of the surface of the water...
 - Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines
- Exclusions:
 - Discharges in compliance with NPDES Permit
 - Continuance or intermittent discharges identified within NPDES permit
 - Any discharge permitted by EPA in connection with research, demonstration projects, abatement, etc.



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How to Report?

- National Response Center – streamlined federal reporting for all environmental spills
 - 1-800-424-8802
 - Be prepared to provide basic information
- Under EPCRA – may need to include state/local officials
- May follow up and report to Coast Guard for Great Lakes areas



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Possible Penalties

- EPA Vigorously pursues enforcement actions for late reporting
- EPA applies “15 minute rule”
- EPA will look at how late they considered notice, whether appropriate steps were taken, in addition to traditional penalty considerations
- Willfully failing to provide notice could result in criminal penalties



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Indiana Spill Reporting Rule

- 327 IAC 2-6.1-1 *et seq.*
 - Reporting, containment, response to spills
 - Applies to hazardous substances, extremely hazardous substances, petroleum, and objectionable substances
- Purpose is to protect “Waters of the State”



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Exceptions to Indiana Spill Rule

- Discharge regulated by permit*
- Lawful application of materials
 - Fertilizer
 - Dust suppression
- Application of petroleum necessary for construction*
- Spills less than one pound or one pint
- Spills of operating fluids less than 55 gal*
- Others



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What is Reportable Under Indiana Spill Rule?

- Spills that damage waters of state and “causes death or acute injury or illness to humans or animals”
- In public water supply wellhead protection area
 - 100 pounds or reportable quantity of hazardous substances or extremely hazardous substances
 - Petroleum >55 gallons
 - Objectionable Substances



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What is Reportable Under Indiana Spill Rule?

- Spills Damaging Waters of State
 - Within 50 feet of private drinking water well beyond facility property boundary; or
 - 100 yards of designated waters*
- Other Spills
 - Spills to surface waters meeting certain criteria
 - Spills to soil beyond facility boundary meeting criteria
 - Spills to soil within facility boundary meeting certain criteria



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Legal Requirements for Spill Response

- Immediately contain spill
- Immediately (no less than 2 hours) communicate spill to IDEM
- Need to Update
 - If new information indicates significant increase in damage – must update information within 2 hours
 - Submit written copy of spill report if requested



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IDEM Contact Information

- Initial Spill Communication
IDEM, Office of Land Quality
1-888-233-7745
- Follow Up Spill Report
IDEM, Office of Land Quality
Emergency Response Section MC 66-30
2525 N. Shadeland Ave. Suite 100
Indianapolis , IN 46219-1787



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Possible State Penalties

- IDEM applies standard penalty policy
 - Matrix between \$1000-\$25,000 with adjustments
 - Delay in reporting could affect gravity portion of penalty



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Spill Reporting for USTs

- Important to follow to maintain eligibility for Indiana Excess Liability Trust Fund for Registered Underground Storage Tanks
- Spill or Overflow
 - >25 gallons or
 - Causes sheen on nearby surface water
- 329 IAC 9-4-4 – report to 1-888-233-7745 within 24 hours
- 328 IAC 1-1-9 – must be reported within 14 days of when release was required to be reported to maintain eligibility



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Permitted Discharges

- Permit exceedances
 - Both Federal/State permitted discharges exempted from spill rules
 - However – if you exceed permitted allowances, permit will often control how to report
 - Self-Disclosure policy not available if you're required to report discharges/exceedences/deviations



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How Can you Prepare?

- 15 Minutes or 2 Hours isn't very long to gather information and report!
- Facility should have information already prepared to identify how to respond to spill
 - Spill Prevention Control and Countermeasure Rule
 - Facility Response Plans
 - Collection of information for Tier II forms
- Audit may help you identify where your planning needs augmenting



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WHAT TO DO IN AN EMERGENCY

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What to Do in Emergencies?

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- Air Emissions Emergencies
- Waste Discharges
- Oil Spills
- Hazardous Materials
- Hazardous Waste
- Other Spills



Air Emission Emergencies

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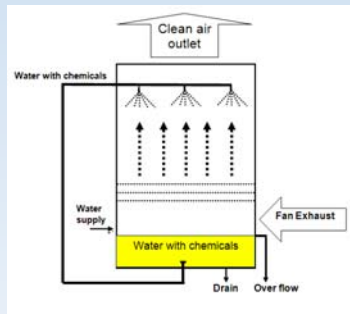
- What Constitutes an Emergency?
 - Control Device Not Operational
 - Hot Process
- Permit Reporting Requirements
 - Verbal Notification
 - Written Confirmation
 - Calculate the Excess Emissions
- SSM Plans



Control Device Not Operational

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- Control Device Not Operational
 - Baghouse motor goes out
 - Scrubber Develops a Water Leak
- Demonstrate your PM procedures were completed

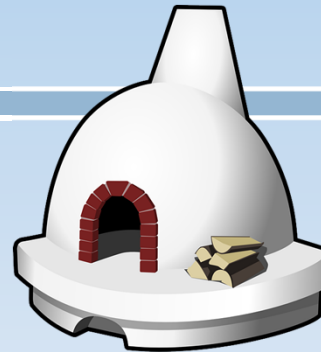


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Hot Processes

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- Bread Oven
 - Power Lost
 - Operation Ceases
 - Process Emissions Continue
- Foundry Furnace Operation
 - Power Lost
 - Operation Ceases
 - Process Continues Melting



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Wastewater Discharges

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- NPDES Wastewater Discharge Permits
 - Bypass – the intentional discharge of a waste stream from any portion of a waste treatment facility
 - Must be unavoidable, no feasible alternatives, notice to IDEM must be given
 - Upset - means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee.
 - Maintain logs showing upset, notice must be given to IDEM



Wastewater Discharges - Bypass

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- What constitutes a Bypass?
 - Emergency Repairs required to O/W Separator
 - Discharge directly from Equalization Tank
- Bypass Requirements
 - Must be unavoidable to prevent loss of life, personal injury or severe property damage
 - No feasible alternatives to the bypass
 - Notice given to IDEM



Wastewater Discharges - Upset

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- What constitutes an Upset?
 - Occurs more frequently at municipal treatment plants
 - Facilities that may use biological treatment
 - Other incident which inhibits treatment activities from occurring
- Upset Requirements
 - Operating logs that specify an upset has occurred
 - Describe the upset
 - Facility otherwise properly operated
 - Notice given to IDEM



Spills – What do we do?

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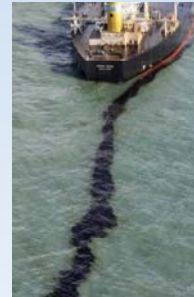
- Determine what substance has been spilled and what resource is impacted
 - Potential Substances
 - Oil
 - Solid Waste Material
 - Hazardous Material or Waste
 - Potential Resource Impacts
 - Containment Unit
 - Stormwater
 - Subsurface



Spills – What do we do?

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- Determine Specifics of Spill
- Perform Immediate Response
- Complete any Evacuations if Necessary
- Limit Access to Spill
- Contact Outside Response Contractor
- Determine if Agency should be notified



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Other Emergency Plans

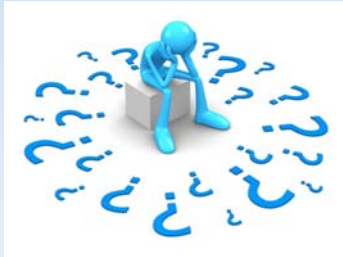
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- Spill Prevention Control and Countermeasures (SPCC) Plan
 - Emergency Response Contractors and Notifications
 - Response Team
- Storm Water Pollution Prevention Plan (SWPPP)
 - Emergency Response Contractors and Notifications
 - Response Team
- Hazardous Waste Contingency Plan
 - Notify Emergency Responders

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Questions?

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Thank you!

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Emergency Emissions and Spill Reporting: How to Deal when the Unexpected Happens

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Indiana Environmental Conference
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Presentation Overview

- (Very) brief discussion of spill rule and proposed changes
- Focus on Emergency Air Emissions



Proposed changes to 327 IAC 2-6.1-1 and 327 IAC 2-6.1-10

IDEM has sent a request to the Office of Management and Budget to initiate a rulemaking action that would amend both the spill rule and secondary containment rule.



Proposed changes to 327 IAC 2- 6.1-1 and 327 IAC 2-6.1-10

- Changes were recommended by AST Advisory Group as a more effective means of protecting surface water intakes without creating another reporting program for ASTs.
- Once rulemaking is approved by OMB, members of the public and regulated community will have the opportunity to give input.



ER Quick Reference for Spills

- Contact Information
- Reference for Assessing Spills
 - Circumstances
 - Characteristics
 - Media

https://www.in.gov/idem/files/er_quickref.pdf



Emergencies as an Affirmative Defense for Emissions Violations



Applicable Regulations

- Malfunctions*
 - 326 IAC 1-2-39 & 326 IAC 1-6-1
- Emergencies
 - Definition: 326 IAC 2-7-1(12)
 - Title V Sources: 326 IAC 2-7-16
 - FESOP Sources: 326 IAC 2-8-12

*326 IAC 1-6-1 and 326 IAC 2-9-1(h) were revised in 2016 to remove the exemption for noncompliance during SSM events. This was done in response to EPA's rule change at 80 Fed Reg 33839.



326 IAC 2-7-1(12)

“Emergency” means any situation, including acts of God, arising from sudden and reasonably unforeseeable events beyond the reasonable control of the source that:

(A) requires immediate corrective action to restore normal operation; and

(B) causes the source to exceed an emission limit under a Part 70 permit due to unavoidable increases in emissions attributable to the emergency.



326 IAC 2-7-16(b)

- “An emergency as defined in section 1(12) of this rule constitutes an affirmative defense to an action brought for noncompliance with a **technology-based** emission limitation if the affirmative defense of an emergency is demonstrated through properly signed, contemporaneous operating logs or other relevant evidence that describe” compliance with the terms of the rule.
- Affirmative defense not available for noncompliance with health-based standards, which includes source-specific SIP limits for Title V Sources.



326 IAC 2-8-12(b)

- “An emergency as defined in 326 IAC 2-7-1(12) of this rule constitutes an affirmative defense to an action brought for noncompliance with a **health-based or technology-based** emission limitation if the affirmative defense of an emergency is demonstrated through properly signed, contemporaneous operating logs or other relevant evidence that describe” compliance with the terms of the rule.
- Affirmative defense not available for noncompliance with health-based standards, “except otherwise provided in this section”



326 IAC 2-7-16(g)

Operations may continue during an emergency only if the emergency situation causes a deviation from a technology-based limit. The source may continue to operate the affected emitting facilities during the emergency provided the source immediately takes all reasonable steps to correct the emergency and minimize emissions.



326 IAC 2-8-12(g)

Operations may continue during an emergency if the following conditions are met:

- (1) If the emergency situation causes a deviation from a technology-based limit, the source may continue to operate the affected emitting facilities during the emergency provided the source immediately takes all reasonable steps to correct the emergency and minimize emissions.
- (2) If an emergency situation causes a deviation from a health-based limit, the source may not continue to operate the affected emissions facilities unless:
 - (A) the source immediately takes all reasonable steps to correct the emergency situation and to minimize emissions; and
 - (B) continued operation of the facilities is necessary to prevent imminent injury to persons, severe damage to equipment, substantial loss of capital investment, or loss of product or raw material of substantial economic value.



Qualifying as an Emergency

- Sudden
- Unforeseen
- Beyond the control of the source
 - Improperly designed equipment, failure to implement an adequate PMP, careless/improper operation, and operator error do not qualify as emergencies



Qualifying as an Emergency

Is/was immediate corrective action required to restore normal operations?



Qualifying as an Emergency

Emission Limit Exceedance

- Unavoidable
- Attributable to the emergency



Qualifying as an Emergency

- Properly operating at the time of the emergency
- Identify the cause
- Take reasonable steps to minimize emissions



Qualifying as an Emergency

- If emergency lasts 1 hour or more, must notify agency within 4 hours
- Follow up with written notification within two workdays
 - Describe the emergency, steps taken to mitigate emissions, and corrective actions



Qualifying as an Emergency

In order to continue to operate during an emergency, a source must take all reasonable steps to correct the emergency and minimize emissions.



QUESTIONS?



Thank you

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