

# Environmental Emergency Release and Incident Response

**Aligned with your business.**

## Hunton Andrews Kurth LLP Successfully Guides Clients Through All Stages of Incident Response

Catastrophic or significant releases and other environmental emergency incidents demand timely action, backed by deep industry knowledge and mature judgment — particularly since such events often generate significant enforcement responses from local, state and/or federal regulatory agencies. They also can draw intense media and political scrutiny, cause immediate business interruptions and create the risk of future toxic tort, property damage or personal injury and related claims from third parties.

**Industry experience.** Our attorneys have a wide array of industry experience and understand the imperative to have trusted and experienced legal counsel on the ground when faced with severe, sensitive and high-stakes situations, such as industrial accidents, chemical plant fires, accidental emission or water discharges and releases, tank and pipeline ruptures, train derailments or similar events. When a major incident occurs, having trusted advisers with sound judgment on your team is essential.

**Regulatory knowledge.** In addition to offering round-the-clock accessibility to our attorneys for our industrial clients and potentially impacted stakeholders, our team is skilled at shepherding companies and their executives through major investigations that can lead to potential civil enforcement and criminal charges. Because our attorneys routinely provide clients with mission-critical advice, our team knows and understands the regulatory framework facing operators responding to emergency situations and incidents.

**Speed and sensitivity.** How a company responds to an incident is crucial. These events create challenging dynamics, put stress and strain on personnel throughout an organization and require rapid decision making and effective, immediate action. We work with companies to ensure an effective and expedited response to incidents through our depth of experience with complex health, safety and environmental compliance requirements, working effectively with in-house technical experts and outside consultants, and ensuring that an effective incident response strategy is designed and executed by management, employees and counsel.



Our attorneys have experience advising clients at all stages of incident response:

- **Before an Incident Occurs.** Our attorneys assist with proactive client efforts aimed at reducing the likelihood of incidents by providing compliance assistance; preparing for, coordinating and conducting facility audits; and formulating emergency response plans. We have experience preparing comprehensive pre- and post-event checklists designed to be executed by management, employees and counsel to reduce liability, while ensuring maximum compliance and safety, following incidents. We also conduct on-site training for facility and headquarter personnel, addressing the legal and regulatory issues that come into play and establishing a critical knowledge base and resources for dealing with the fast-moving aftermath of an event. Our attorneys have experience with US Environmental Protection Agency (EPA) and Occupational Safety & Health Administration (OSHA) requirements to ensure that both applicable risk management plans and process safety management requirements are established.
- **First 24 Hours.** The first hours following an incident are the most critical and sensitive on a human level. Priority is necessarily given to incident response and minimizing any damage and threats to human health and the environment. As this occurs, a simultaneous need exists for legal counsel to engage quickly — while remaining sensitive to the situation at hand — to meet applicable reporting requirements, manage access to the scene, preserve documents, assist with outreach to the community and interact with regulatory agencies.

Actions immediately following an incident can influence the size and scope of enforcement response by regulatory agencies and risk of criminal prosecution. Those early actions will also impact the public perception of the company and the magnitude of potential financial liabilities.

Employees and the company are better protected when counsel is present for early communications and investigations. Our attorneys rapidly mobilize to meet client needs when emergency situations develop. We work closely with the client's incident commander and emergency response teams to ensure that all parties are proceeding in a manner that champions safety and compliance, while minimizing management, knowing that the range of outcomes from an incident can profoundly impact a client's business. Our goal is to assist companies in striking a balance: focusing on the facts of an incident while also showing care and compassion for those involved.

After an incident occurs, it is crucial that the affected facility be prepared for a multimedia inspection from federal agencies



(such as EPA and OSHA), state and local regulators, and law enforcement. Knowing what to expect and the regulatory requirements and authorities of these and other agencies, while operating on an even keel, helps companies manage the process and return to normal operations following the major disruption that constitutes an emergency event. Failure to restore order can be costly and lead to entirely new issues for a company.

- **Next 96 Hours.** Once an incident is stabilized, competent counsel is necessary to help clients respond to information requests, subpoenas and investigations initiated by investigatory agencies like the Chemical Safety Board, National Transportation Safety Board and the Pipeline and Hazardous Materials Safety Administration; regulatory agencies like EPA, OSHA and their state counterparts; and law enforcement agencies like the US Department of Justice, state attorneys general and local district attorneys. Our clients often elect to stay ahead of regulatory investigations and enforcement actions by promptly initiating their own internal investigations, for which we provide assistance and support. Successfully managing incident response and navigating legal requirements at this stage can further reduce the risk of criminal prosecution and minimize potential civil penalties.
- **Post-Incident Coordination, Compliance and Management.** The months following a significant environmental incident require diligent cross-disciplinary legal services to help close off avenues of potential liability and efficiently and expeditiously bring all aspects of a matter to resolution, including:
  - Resolving regulatory enforcement actions and/or third-party claims.
  - Pursuing insurance coverage, as appropriate.
  - Filing claims against negligent contractors, consultants or responsible third parties, if applicable.
  - Coordinating remediation or cleanup necessitated by any release.
  - Meeting SEC-mandated disclosure requirements. Negotiating and overseeing implementation of required injunctive relief.
  - Managing media inquiries.

- Managing political investigations at the local, state and federal levels.
- Conducting reviews and implementing additional compliance mechanisms to minimize the risk of further incidents.

## A Deep Bench and Cross-Disciplinary Approach

- Hunton Andrews Kurth's incident response team draws upon the talents and experience of more than 60 attorneys focused on environmental and safety law. Based on our experience in responding to incidents for numerous clients, our national team offers clients knowledge, insight and perspective on all aspects of federal, state and local statutes relevant to incident response, including: the Clean Air Act; Clean Water Act; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Emergency Planning and Community Right-to-Know Act; Occupational Safety and Health Act; Pipeline Safety Act; Oil Pollution Act; and Resource Conservation and Recovery Act (RCRA). Many of our attorneys come from regulatory agencies, including EPA, Department of the Interior, US Department of Justice, US Coast Guard, US Army Corps of Engineers and the corresponding state agencies (including the myriad agencies throughout California).

Following an incident, our attorneys are adept at assembling and working harmoniously in cross-disciplinary teams — both within a client's organization and within our firm. When needed, we can supplement the experience of our environmental and safety lawyers with other disciplines to address developments that follow incidents. For example:

- Our *White Collar Defense and Internal Investigation* attorneys (including a former US attorney, assistant US attorneys and a federal environmental crimes prosecutor) can work up front to minimize charges and once initiated can respond to a criminal investigation or charges arising from an incident.
- Our *Labor and Employment* attorneys are adept at managing labor/union issues as well as OSHA compliance concerns, with an eye toward minimizing operational disruptions.

- Our *Toxic Tort and Personal Injury* litigators are well-positioned to address tort claims and/or to bring claims aimed at recouping damages against negligent third parties.
- Our *Cyber and Physical Security Task Force* helps clients diagram potential issues (pre- and post-event), craft and execute plans to ensure security of vital assets, and respond to and litigate incidents.
- Our *Insurance Coverage Counseling & Litigation* practice works with clients to maximize insurance coverage.

## Experience Across Industry Sectors

Our attorneys have extensive emergency response experience representing clients across a broad spectrum of industries. The following examples, though not comprehensive, illustrate the types of incidents on which our team has assisted clients.

### Refineries and Chemical Plants

- Response to fire in chemical processing unit at chemical plant.
- Response to and management of agency communications for sudden corrosion of heat exchanger with potential for significant flaring incident at refinery.
- Response to and management of agency and community communications following tank roof collapse, resulting in evaporation and release of chemicals outside plant boundary into neighboring communities.
- Responses to refinery fires and other refinery releases to air and water, and related community outreach/concerns.
- Response to breach of waste containment levee into wetlands areas.
- Multiple search warrant responses and subsequent defense of multimedia claims at refineries, energy facilities, upstream oil/gas production wells and E&P-produced water operations.
- Response to multiple ammonia release incidents at a chemical plant, including local DA search warrant, warrant and inspections by state and federal OSHA, state air district and the US Coast Guard.
- Response to US attorney, US EPA-CID and state law enforcement search warrant at mining and chemical plant, including defense of related criminal investigation and class action toxic tort lawsuits.
- Management of multimedia inspections by EPA.

### Manufacturing/Retail

- Internal investigation of airbag initiator manufacturer after incidents causing injuries and fatalities.
- Internal investigation to determine root cause issues at a cogeneration facility facing allegations of air quality violations, health and safety program lapses and employee misconduct.
- Unannounced site visit by district attorney, state water board, regional water quality control board and local health care agency seeking access to a Fortune 500® company's facility.

### Pipelines

- Management of response to numerous non-intentional pipeline pressure releases, accompanying emissions and impacts on nearby communities.
- Response to failure of erosion and sediment controls on pipeline right of way with devastating impacts to a particular animal species, involving US Fish & Wildlife Service, Army Corps of Engineers and Federal Energy Regulatory Commission.
- Oil spills and gas releases in numerous states, across all regions of the country, e.g., to protected environmental areas and residential areas.
- Fatality incidents.

### Food Processing

- Multiagency response to significant chemical release, with live media coverage, that caused the shutdown of a neighboring major pharmaceutical campus and of a portion of the neighboring freeway.
- Unannounced agency inspection following issuance of multiple notices of violation relating to boilers and water discharges.

### Electric Utilities

- Responses to spills at utility sites.
- Responses to releases from coal ash facilities.

### Transportation

- Responses to releases of crude oil and toxic chemicals by rail incidents.
- Response to hydrofluoric acid spill on freeway.
- Response to tank truck chemical release to highway.

### Entertainment/Recreation

- Response to multiagency (local, regional, state and federal) investigation of a large waterfowl and fish kill in Southern California (including bird carcasses buried on-site).

### Insurance Industry

- Response to breach of levee caused by hurricane and ensuing flooding and liability for same.



## The Environmental, Health and Safety Incident Response Team

Hunton Andrews Kurth's core incident response team includes one of the highest concentrations of former US Department of Justice, EPA and state regulatory agency attorneys, many with backgrounds in engineering and other technical disciplines. Working collaboratively with the firm's nationally recognized environmental and OSHA attorneys, our incident response team is well-prepared to tackle the myriad challenges clients may face.

Depending on the nature of the incident, we deploy the attorneys with the appropriate experience, including *Environmental and Workplace Safety Enforcement Defense, Internal Investigations, White Collar Defense, Pipeline, Process Safety Management, Labor and Employment, Litigation and Toxic Tort, Corporate Governance and SEC Enforcement, Insurance Counseling and Recovery and Government Relations* practices. Select members of our team from California, Boston, New York, Texas, Virginia, Atlanta and Washington, DC are:

**Team Leads:** Shannon S. Broome, Matthew Z. Leopold

Walter J. Andrews  
Samuel L. Brown  
M. Brett Burns  
Scott P. DeVries  
Deidre Duncan  
M. Clare Ellis  
Erin Grisby  
Roland M. Juarez  
Charles H. Knauss

Nash Long  
Jennifer MikoLevine  
Todd S. Mikolop  
Angela Morrison  
Ann Marie Mortimer  
Eric J. Murdock  
Brent Rosser  
Penny A. Shamblin  
Joseph C. Stanko

Javaneh S. Tarter  
David Terry  
Andrew Turner  
Gregory Wall  
Malcolm C. Weiss  
Holly H. Williamson  
Susan F. Wiltsie

Clients who utilize our incident response services are offered a 24-hour toll-free number to contact the Hunton Andrews Kurth attorney on call. For those who are not current clients, initial calls should be directed to Shannon S. Broome and Matthew Z. Leopold.



[HuntonAK.com](https://www.HuntonAK.com)

---

**HUNTON  
ANDREWS KURTH**

© 2024 Hunton Andrews Kurth LLP. Attorney advertising materials. These materials have been prepared for informational purposes only and are not legal advice. This information is not intended to create an attorney-client or similar relationship. Please do not send us confidential information. Past successes cannot be an assurance of future success. Whether you need legal services and which lawyer you select are important decisions that should not be based solely upon these materials. Photographs are for dramatization purposes only and may include models. Likenesses do not necessarily imply current client, partnership or employee status. Contact: Samuel A. Danon, Managing Partner, Hunton Andrews Kurth LLP, 2200 Pennsylvania Avenue, NW, Washington, DC 20037, 202.955.1500 19315\_08.2023