

Environmental Responsibility

Managing Your Activities to Limit Liability and Control Costs

By Tom Moses

Hazardous materials response management and environmental compliance are major concerns for the aviation industry today because every aspect of airport operation involves environmental and hazmat risk. New realities and market forces have closed the gap between what you say you do and what you really do. New security rules and new technologies have changed expectations and requirements with regard to hazmat and fuel.

Laws defining liability provide that a party involved in an activity is legally responsible for damages resulting from that activity. The key to protecting your company against damages associated with fuel spills and other releases is two-fold: understand the potential liability associated with your activities and be adequately prepared to control your costs and mitigate damages. Since environmental responsibility goes to the construct of joint and several liability, your company may be legally responsible for damages even if the incident is not your fault. You need to be prepared to step in and manage a spill even if someone else caused it.

Airport expansion brings new activities that can give rise to increased environmental risk. Construction equipment not only impacts day-to-day airport operations but increases environmental and hazmat exposure for the facility. Construction-related releases often are mishandled because the construction company and its subcontractors are wholly unprepared to deal with managing the event. Something as simple as repaving or excavation can have very serious repercussions at an airport.

Last year, a construction project at one airport resulted in a major fuel spill when a dump truck sheared off the manifold of a piping system bringing fuel from a nearby tank farm. A significant amount of fuel was released in a very short period of time. Shutting off the fuel was a problem, as was getting the fuel cleaned up. Neither the driver nor the contractor knew who to call to shut it off or respond to the spill. But the real problem surfaced when it came time to pay the bills and assign the responsibility and liability. The incident resulted in multi-million-dollar damages in claims, insurance and litigation. It's still in litigation a year later.

Fast action is needed to control costs and limit liability related to spills. In the dump truck incident, everyone who came onto the site should have received instructions on what to do in the event of an accident which results in an environmental release. A simple card with a number to call would have gone a long way toward limiting the amount of fuel that seeped into the ground, minimizing remediation costs.

In another incident, about 50 gallons of jet fuel was released during fueling of a cargo plane. An initial cleanup operation was completed, but the operator of the shipping facility wasn't notified of the incident until two days later. Visible staining meant the asphalt had to be removed, and monitoring wells had to be installed to determine the spill's impact on the groundwater. It wasn't until two years later that authorities determined that groundwater monitoring was no longer required. Cost of that spill totaled \$50,000.

Again, failure to manage the response and remediation meant being attached by the hip to a cleanup contractor for a prolonged period. Hours turned into days, days into weeks, and weeks

into months. An immediate response was needed, but it didn't occur. No contingency plan was in place to be activated.

These types of environmental releases can happen at any airport. By not having a contingency plan, or having a plan on the shelf simply to meet legal requirements but not on the ground, your company runs the risk of suffering significant damages. The gap has been closed between what you say you do and what you have to do in regards to environmental responsibility. You have to understand environmental compliance exposure based on the activities in which you are involved.

If you are unsure of the environmental risks associated with your company's activities, get an assessment from a third-party firm which specializes in managing fuel spills, compliance and regulatory reporting. Line up outside resources and experts, and make them a part of your spill emergency team. It pays to have someone knowledgeable on your side when it comes to spill mitigation and the legal consequences that can result from an environmental release. Produce a written contingency plan designed to help you stay in compliance with environmental regulations, reduce costs associated with spills and limit your liability.

When writing your contingency plan, consider all activities with which your company is involved that have the potential to generate a spill. Then detail how you will respond to each to assure that you stay in compliance. Include in the plan names and phone numbers of local, state and federal environmental agencies and their reporting requirements. List qualified cleanup contractors who are equipped to quickly handle spills. Make sure the plan is communicated to managers and employees and kept in a secure location for easy access.

A transporter activity creates a legal responsibility, as does a shipping activity or a construction activity. Contingency planning is the best way to position your company to contain any spills that may occur and ensure proper disposal and remediation of the spill site. Remember that your responsibility doesn't end once the contaminated soil and materials are hauled away. Be sure you are dealing with reputable cleanup operators.

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. If your company meets the statutory definition of a legally responsible party, then the liability for the release is legally yours. You need to be prepared to handle it quickly and efficiently.

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