

READY FOR ANYTHING

Disaster can strike anytime and anywhere — and damage the environment and your business. To survive, preparedness is essential.

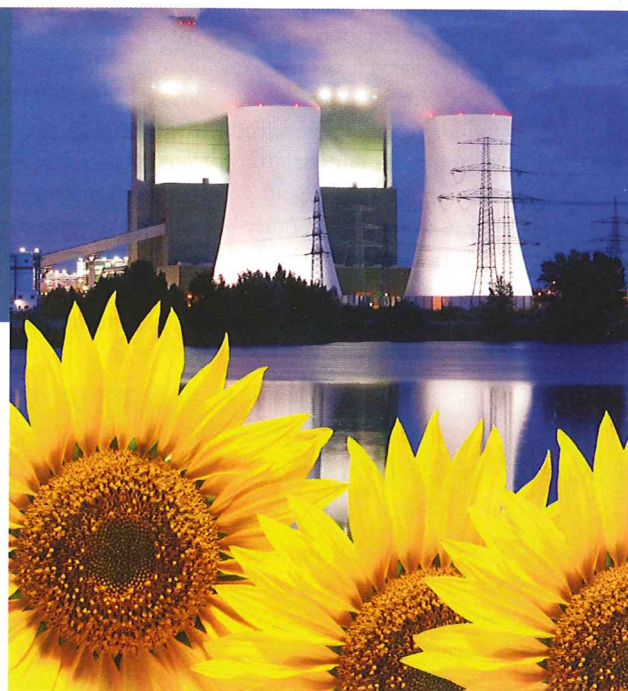
By Geoff Griffin

On one hand, environmental law is incredibly technical. Ask attorney Hal Pos of Parsons, Behle & Latimer about what laws cover the area and he can reel off a dozen federal acts covering everything from rodenticide to marine mammals, and that's just for starters. It's an area of law where complexity meets monotony — a nexus that can easily become overwhelming. At the same time, **Steve Christiansen of Parr Brown Gee & Loveless** also points out, "Environmental law is an interesting area in which to work because people have opinions and strong feelings and are emotionally connected to it. A lot of other areas are not as polarizing. A lot of times you are dealing with people who are very emotionally involved."

Both sides of the equation were on full display this past summer both nationally and locally, first with BP's Deepwater Horizon oil spill in the Gulf of Mexico, followed by Chevron's Red Butte Creek oil spill in Salt Lake City. Emotions were raw and ever-present, while at the same time, there were myriad laws and regulations to be explained. While both situations were specific to the oil industry and water pollution, there are broader lessons that all companies can glean from both episodes. When considered in the abstract, the same practices that generally lead to effective disaster mitigation strategies in the environmental area are applicable in any industry.

The two oil spills not only serve as chances to learn more about environmental law, but also as reminders about best practices in any business setting.

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RESPONSIBILITIES

Even though a company might not be covered by a specific environmental statute, that does not mean it isn't potentially liable for common law claims that may result from anything it sends out into the wider world.

Christiansen points out that, "Modern environmental law is largely made up of statutes and regulations at the federal and state levels, but it arises out of traditional common law, and how we can use our property as we see fit as long as it doesn't infringe on other people's property. The basic notion is that your right to swing your fist ends at my nose." Pos adds that common law claims, "for example, nuisance, trespass, negligence, waste, fraud, negligent misrepresentation and strict liability," can still apply beyond the various federal and state laws and regulations.

Of course, there's also a chance a company is covered by one of many different acts or regulations even if it doesn't overtly involve the environment. As mentioned above, there are so many regulations put out by so many agencies, it can be difficult to determine what is applicable and when. To that end, Pos suggests, "Industry and trade associations are excellent sources of information in understanding specific environmental laws and regulations. ... In addition, law firms that have an environmental law practice and environmental consulting firms are uniquely qualified to advise a company on its responsibilities."

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— Steve Christiansen, shareholder, Parr Brown Gee & Loveless

Take the words "environment" and "environmental" out of the previous sentences, and substitute something like "financial" or "real estate" or "communications," and the advice is still sound. All companies, regardless of business or industry, should take advantage of trade associations, attorneys and consultants to stay abreast of any regulations that may apply to them — particularly the ones they don't know about.

PLANNING, CHECKING AND AUDITING

Companies that are subject to environmental regulations often employ control technologies to curb various emissions or warn of trouble. However, such controls are only effective if they are monitored and plans are in place should they fail. "It is critical that a corporate program is established that not only ensures that these controls and equipment are in place to address potential risks to human health and environment, but also ensures that these controls or equipment relied on to address these risks are operational, functional and well maintained, and that there is a backup or alternative plan in place," says Pos.

While not every business will have to worry about things like surface liners or leak detection systems, every business should have "controls" in place that help it to have a knowledge of where its potential liabilities lie, where the capacity for catastrophe lurks and what can be done to guard against disaster.

In the environmental arena, companies often determine if they are in compliance with the law through audits. Christiansen explains that such audits can be conducted internally by the company; by a third party, such as environmental consultants or attorneys; or with the help of the government agencies responsible for regulation. "Some government agencies like the EPA (Environmental Protection Agency) or OSHA (Occupational Safety and Health Administration) have

compliance assistance programs," Christiansen says. "Small businesses will often take advantage of this. For example, EPA has a self-reporting program where if you conduct regular audits and identify a problem and voluntarily report it, EPA will not impose a fine."

In transferring these practices to areas outside of environmental law, the most obvious comparison is the financial auditing done by accountants, but environmental law provides the reminder that auditing can apply to any practice, procedure or piece of equipment, and can be done in a variety of ways.

THE UNTHINKABLE

What do the Gulf oil spill and the collapse of the real estate market have in common? In both cases, experts have observed that what ended up happening was something that many of those involved couldn't imagine happening, and therefore hadn't planned for. "Typically, regulation arises out of the cumulative effect of bad experiences," Christiansen observes. "It's based on situations that have already happened that people do not want to see repeated. But sometimes we run into situations we haven't encountered before."

Therefore, any company, whether or not it has to worry about oil wells thousands of feet under the ocean, needs to not only plan for the worst, but would also do well to think outside the box about what could happen if even the supposedly fail-safe equipment or foolproof plans should disappoint. Of course, the last thing CEOs need is one more worry to keep them up at night, so perhaps it's not a bad idea to make sure all executives and employees are exploring options for what could go wrong.

The Gulf and Red Butte Creek oil spills are regrettable, but can also serve as a reminder to companies of their own environmental responsibilities, and more generally, the best practices to put into effect to avoid their own disaster. ■

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FIRST: RESPONSE

If the worst happens, get your act together and do something.

In comparing the Gulf of Mexico and Red Butte Creek oil spills, a common observation seems to be that, in terms of company response and public relations, BP stumbled in the Gulf, while Chevron, by comparison, performed much better in Utah. **Steve Christiansen of the law firm Parr Brown Gee & Loveless** points out that it may be partially due to "a big difference between the size and magnitude" of the two spills, while also noting that if the BP spill were quickly stopped while the Chevron spill continued for months, the perception of both companies might be different. Furthermore, after the initial response, Chevron still must contend with clean-up and legal issues surrounding the spill.

Nevertheless, Christiansen states of Chevron's response to the crisis, "I think they've handled it well. It's a good case study of how to do things correctly," not only from the standpoint of a company facing an environmental accident, but any company that is confronted with an adverse situation that captures public attention.



It all added up to a situation where the public, despite its anger about the spill, had confidence things were being taken care of. Christiansen points out, "For the most part, companies are judged in the public arena by people's perception of whether they are taking responsibility and fixing the problem."

It's sound advice for a company facing an adverse situation where a business must win back public confidence.

CHRISTANSEN IDENTIFIES FIVE THINGS CHEVRON DID CORRECTLY:

1 "They quickly identified the problem and the source."

2 "They took public responsibility."

3 "They hired people to come in quickly and clean up at their own expense."

4 "They offered to compensate for damages."

5 "They made some of their spokespeople available."

— GG



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