Leaks and spills of hazardous or regulated materials often start small but can quickly become an expensive regulatory nightmare especially for a business that is not prepared for such an incident. In Oregon, spills must be reported to the Oregon Emergency Response System (OERS) (1-800-452-0311) or the operator can face substantial fines for failure to comply. In addition, the Department of Environmental Quality (DEQ) will hold you responsible for the immediate cleanup of your spill, regardless of the quantity involved. The responsibility lies with the person or entity who spills the product, as well as the person owning or having authority over the oil or hazardous material.

Reportable spills include:
- any amount of oil to waters of the state;
- oil spills on land in excess of 42 gallons;
- hazardous materials such as solvents, pesticides, or gasoline.

Information you must provide when you report includes:
- Where is the spill?
- What spilled?
- How much spilled?
- How concentrated is the spilled material?
- Who spilled the material?
- Is anyone cleaning up the spill?
- Are there resource damages (e.g. dead fish or oiled birds)?
- Who is reporting the spill?
- How OERS or someone from DEQ can contact you?

Once the spill has been reported and cleanup efforts are underway or completed, you will likely receive a letter from DEQ requesting a completed spill/release report form explaining the details of the spill as well as your efforts to 1) stop the spread of the spill, and 2) cleanup and dispose of the waste. The report and all supporting documentation must be mailed to the DEQ regional office specified in the request letter. State and Federal environmental authorities take their reporting requirements very seriously. It’s important to remember that insurance companies do not pay fines and penalties arising from failure to report spills or for late reporting. There are a number of actions you can take to reduce or mitigate the costs associated with spills.
Alternatives to payment of fines. The Oregon DEQ offers a special enforcement settlement known as a Supplemental Environmental Project (SEP). A SEP arrangement can reduce the amount of a fine or penalty or at least make it less burdensome. SEPs are agreements between the DEQ and property owners and/or operators who are subject to a fine to instead perform activities, such as a household hazardous waste collection event, or streamside restoration, that provide an increased level of environmental protection.

Bring in your own expert. You can challenge an official finding based on scientific evidence. This challenge can address the amount of material spilled, its environmental consequences, and the best way to remedy the problem, and can sometimes save you significant amounts of time and money.

Understand the environmental and disposal regulations and submit required reports on time. Often, only a little amount of hazardous material is spilled and under normal circumstances the fine would not be significant had it been reported. The problem, and a hefty penalty, can often arise from the failure to report. Avoid this situation by learning the DEQ reporting requirements. After a spill the best way to maintain a legally defensible position against a government agency or third-party claimant (and avoid being included as a responsible party to a pre-existing contamination problem) is to document every environmental release. Keeping detailed notes of all notification and mitigation actions taken after a spill will go a long way in alleviating liability exposure in both the short and long-term.

Liam Sherlock has successfully handled many environmental and hazardous waste matters for clients for over 20 years. If you have concerns or questions regarding spills, storage tanks, or need assistance dealing environmental government agencies and/or with insurance companies or please contact him at 541-686-9160 or by email at lsherlock@eugenelaw.com

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