



Fuel Spills and the Ensuing Blitz

By Catina Lemke, CCA & Peter Crosa, AIC, RPA

The Blitz

You've been assigned an accident involving a truck that rolled over. Serious injuries have resulted. The vehicles involved were totaled and you begin your investigation.

After only a few days but before you've even established liability, you receive a call from a self-proclaimed expert at hazardous materials (Haz-

Mat) cleanup and they tell you that they've been notified of your fuel spill by authorities. "If you act now," they "can clean it up for you at a cost of \$20,000." But if you delay and the state assigns a Haz-Mat vendor, "it may cost you double that."

The pressure is on and they'll remind you that the more time passes, the costlier it will be. You've received

no other notice from the state or the policyholder.

What Haz-Mat rule are they referring to?

The Hazardous Materials Transportation Act (HMTA), enacted in 1975, is the principal federal law in the United States regulating the transportation of hazardous materials. Its purpose is to "protect against the risks to life, property and the environment that are inherent in the transportation of hazardous material in intrastate, interstate and foreign commerce" under the authority of the United States Secretary of Transportation. Most if not all states have adopted this language that includes miti-

gation methodology and, in some cases, stricter protocols.

In the state of Florida, there is a very active Department of Environmental Protection (DEP) and its subdivision Office of Emergency Response (OER). Once they're activated they remain very closely connected to an incident all the way through mitigation and closure, and provide final written approval upon review of all the mitigation data. This means a mitigation contractor should be vetted and approved by your state. Find your state authority and use them as a major resource for the code of your state as well as a list of vetted competent vendors.

Your most appropriate response

Do not consent to letting the blitzing vendor proceed. First, you don't know if the company is recommended or certified by the state as an approved Haz-Mat mitigator. Second, they've made no formal written proposal of their remediation process or protocol. Despite those two glaring oversights, they'll demand the \$20,000 up front before any work is initiated.

So, what do you do? This information should serve as a checklist for your adjuster's Haz-Mat response kit. Let's start by understanding fuel spills caused by an insured and the environmental needs of your community. We won't discuss policies or coverage but suffice it to say that, if there is coverage it will be under the liability portion of the policy or by endorsement, and you'd have to rule out any exclusions or limitations.

When a fuel spill is likely to occur

Obviously, whenever a vehicle rolls over or the fuel tank or cargo hold is ruptured and there is leakage of any type of material considered hazardous, you'll be dealing with a Haz-Mat event monitored by your state environmental authorities. The police investigating the accident will no-

tify the state and that triggers the opening of a file of which your insured's incident is the focus.

Even though the truck owner may be notified, in the haze of the accident aftermath, they neglect to pass that informa-

tion onto their insurer's representatives. Several days may pass before your claims department becomes aware and by that time, the insured and agent are being blitzed by the "\$20,000 today or you'll pay double" folks.

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QUALIFYING CONTRACTORS

Here are some questions to help vet any contractors your firm might be considering for fuel spills or other types of hazardous material claims.

1. Is your company on the state's approved vendors list for Haz Mat mitigation? (It's easy to check and if they don't know about the list, you probably don't want to work with them anyway.)
2. What types of certifications do your employees who will be working on the job carry? (Individuals hold certifications, not companies.)
3. Do you have liability coverage specific to Haz Mat mitigation? What are the limits?
4. Discuss the company's history and pollution discharge-related expertise.
5. Is the company and its employees certified/experienced in complete cleanup and remediation vs. just containment and minor cleanup?
6. Does the company have an approved business license for this county?
7. What territories and counties do you cover?
8. Can you itemize your equipment inventory used for mitigation?
9. Does the company have a fee schedule?
10. Does the company have OVA (organic vapor analyzer) field instruments for soil screenings?
11. Do you have excavation equipment, or can you readily rent it?
12. Is your company familiar with the MOT (maintenance of traffic) requirements of DOT?
13. Where would your company take the contaminated soil for disposal/treatment?
14. Does your company (or lab or consultant) have a DEP-approved Quality Assurance Plan/SOP for sampling?
15. Is the company familiar with the petroleum cleanup requirements in FAC 62-780, including submitting the DRF (Discharge Report Form) and SRR (Interim Source Removal Report)?

Before you get that assignment, check in with your state's DEP and gather all of the information they're willing to give about transportation fuel spills. We have found our DEP very helpful.

They will set you up with a line up of vetted professionals who specialize in Haz-Mat cleanup and who are geared to respond immediately. By the way, we've never found any of the "blitzers" on the state's approved list.

These vendors will know how to provide you with a proposal that includes results of ground sampling tests, estimates of contamination volume, mitigation procedures, disposal procedures and final approval by the State. They will provide you with a total cost and require payment up front. That's how Haz-Mat mitigation works.

You will have to deliver that \$10,000 check before any work begins. We are using an amount of \$10,000 only because, through the use of state approved vendors, we have been able to beat the "blitzers" by at least 50 percent every time.

Know who your allies are

Work with your state DEP office to be prepared before you receive that assignment. Become familiar with virtually any of their vetted mitigators. Hopefully, your insured should be tipped off in the event they receive word from the state (or a "blitzer") of a spill.

Become familiar with the state code, and while it isn't necessary to become a scientist, at least read through the code to become familiar with the process. Interview a few of the vetted mitigators about their approach and get to know them before the loss occurs.

A copy of the federal hazardous waste regulations (40 CFR Parts 260-268) can be obtained from public, college or law libraries; EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303-3104 (404/562-8579); or the U.S. Government Printing Office, Washington, D.C. 20402. Copies of Chapter 62-730, F.A.C. may be obtained from the Department of Environmental Protection (DEP). 

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