

# MFG Week Webinar Series Transcripts

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## Future Proofing Production Facilities

00:00:15:05 - 00:00:40:03

Unknown

All right. I think it's right about 12. Let's give it just a couple of what? Just one more minute to let some more folks join, and we'll be get started here in just a second.

00:00:40:05 - 00:01:09:06

Unknown

Hey, Molly, I do have a question for you. Can you let us know when we get, we get, the majority of people on that. You can tell from the sign in. Yes, absolutely. Right.

00:01:09:08 - 00:01:32:00

Unknown

Okay. I think we're at a good spot now, if you guys want to go ahead and get started. Great. Thank you. All right. Welcome, everyone. Thank you for joining us for, FBT Manufacturing Week 2025. This is the third, installment of our one hour lunch time, depending on your, time zone, seminars on a variety of projects.

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We've got two more this week. One tomorrow at noon, one on Friday at noon. And we'll talk a little bit about those, later on in the program. Wanted to let you know just a couple of housekeeping items. We're going to be and have Q&A. There's going to be a place for you to enter questions.

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Unknown

And we will try to, hold off to the end just so we can get through the content. But if we don't get to your question, we'll be happy to, circle back with you afterwards. If you'd like. But we're going to try to get to everybody's questions. We've got a really, packed agenda with a lot of really good information.

00:02:07:19 - 00:02:31:09

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I think that will help you in your practice or in your operation of your manufacturing facility. I'm going to start by saying my name is Steve Crawford. A partner here at Frost Brown. Todd, based in the Louisville office. And I chair the manufacturing industry team for the firm. And with me is my colleague Kyle Johnson, who is in the labor and Employment practice.

00:02:31:11 - 00:03:05:18

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And he is our top notch OSHA person. And he and I have been together on many, scenes, unfortunately, where we have, combo of a, fire incident, explosion incident and, OSHA issues happening at the same time that we respond to. So with our combined 42 years of experience working with clients to develop and

implement crisis response plans and address OSHA issues and other regulatory issues, we wanted to, share that, what we have learned and lessons learned with you today.

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So this seminar is designed to challenge you to think about how you would react in a crisis scenario and whether you are prepared for such an incident. And what we're going to do is we're going to use a case study, that is going to illustrate our points, hopefully, and touch base on aspects, that are applicable to your daily operations, your practice.

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So we're going to have sort of a, made up scenario, but I think it'll help us drag out all the types of things that you might face if you had a situation, that requires future proofing of your production facility and how to prepare for and manage the crisis. So, the first, slide is what I'm going to show you here is our crisis scenario, and I want to just leave it up there for just a second to give you an opportunity to think about that.

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Depending upon your perspective, are you the premises owner? Are you an equipment supplier to that property, for example, was your equipment involved? Is this something where you are a service provider and you were recently at that site? Are there concerns as a service provider that you might be implicated in some sort of, issue that caused this, explosion?

00:04:28:21 - 00:04:52:14

Unknown

Are you in-house counsel for the premises owner? And you've got a lot of things that are going to be coming your way. We're going to talk about those and how you can triage those things. Are you the Equipment Suppliers Council and how do you get access to the scene? How do you find out information that you may want to know to either help clear you, your, your product or at least find out what's going on?

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Unknown

And if you're if your products at issue. And then the final thing would be if we have lawyers on the phone outside counsel, are you outside counsel for the manufacturer of the products, the industrial equipment providers, service providers, to the manufacturing industry and whether or not you have a product present.

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Unknown

All right. So this week, Kyle and I talked about this, and we certainly did not want to come across as in any way cold hearted. We recognize that all of this involves initially emotion and human life and and safety is the paramount issue in all of this. What we we recognize that we appreciate that. But what we're here to do is provide guidance on the next steps.

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And, I want to tell you a quick story. We were involved in responding to the Oklahoma City bombing. And one of the my mentors, I thought it was a last, lasting impression on me. We went to the scene of the explosion in Oklahoma City directly from the airplane, drove right to it, and he said nothing. And we all stood there for a while.

00:06:06:23 - 00:06:28:05

Unknown

And he said, this is something, I wanted you all to see and always remember throughout this litigation. And that's always fine with me. And we do appreciate that this involves human life and safety above all else. But, for purposes of our discussion, we want to move forward. So this first slide is the change in shift. That's our normal day.

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All was well. The team is shown that that's shown here. Here's a rumble in the distance from an adjacent building on the premises.

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Unknown

They emerge from their building to see another production building on fire. It's a very chaotic scene, is rapidly developing, and they make their way to the adjacent production facility. When they arrive, they see members, coworkers, of their of their team members of their team visitors also visitors such as other contractors, vendors, even maybe customer representatives that happen to be at the plant that that.

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Unknown

They also are witnessing. And the community around them is seeing debris in the air that's making its way onto the rooftops or into swimming pools or, you know, into gardens of the neighbors, a chemical release into the air, possibly liquids leaking into the groundwater. Now, if this is your facility, you're likely going to be on the nightly news.

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What we're left with, as the smoke begins to clear, is a production facility that's partially or fully destroyed that you are now having to address, various things with supply chain, and you've got customers calling you. There's a lot of things happening in addition to dealing with all of the OSHA issues, regulatory agencies and your employee issues.

00:08:02:04 - 00:08:31:00

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And of course, in this day and age, the photographs, and things on social media are already out there before you really have a chance to control them, which is why we're going to talk about information control. And as part of your crisis response plan, in one situation that Kyle and I handle, the news was already covering the incident before the executive board or any of your leadership had even been advised of the incident.

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And so the question that, you have up on the screen right now is, were you prepared? This is a very important question, and it's a very important question for multiple reasons. One of the goals of an agency, if they're coming out to investigate, and certainly one of the primary goals, if you have to get involved in litigation in the future, is that the plaintiffs attorneys and the government agencies are going to try to establish and prove that you were not prepared.

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So the question of whether you were prepared and taking steps to become prepared will help minimize and help you, make it as difficult as possible, for others, government agencies, third parties, to try to argue that you were not prepared. And of course, if you, if you are prepared, it also minimizes the chances that something like this would even happen.

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So the more steps that you can take to ensure that you're prepared, minimizes that opportunity and puts you in the best position possible to demonstrate to the government, demonstrate to the community, demonstrate to those third parties that you were prepared and that this is something that was outside of your control, if at all possible. So what can you do to, show that you were prepared?

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What what steps and things should you be thinking about as you are evaluating that even before this incident, this type of incident occurs and hopefully never occurs? One of the things that you can do, and I think is critical for this type of scenario is establishing work rules and safety policies. When we, when Steve and I and, go to sites and we learn about processes and talk to our clients about, where are your, what is a process?

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Unknown

What does it look like? And they can give us very detailed information about what the process looks like. We can talk to employees and they can tell us what that process looks like. But but the best way to be able to show that employees are aware of and know exactly what they're supposed to be doing is putting those rules in black and white, because unfortunately, in this day and age, it's not in black and white.

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It leaves open the argument that employees were not effectively informed of those requirements and those rules. So establishing the work rules, establishing your safety policies, is very critical to being able to show, to the government, to the community and others that you were prepared. And of course, it's not enough to just have those work rules and policies.

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It's it's also going to be extremely important that you train employees, on those work rules and policies. Again, the same thing. We can we can talk until we're blue in our face about all of the training that we

provide to employees and how detailed that training was, and now how that hands on on the job training was effective in communicating these work rules and safety policies to employees.

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But unless it's in black and white, again, you're going to be left open with an argument that you did not effectively communicate that to employees. Where is that slide on that PowerPoint that that that you do provide to employees that talks about, releasing hazardous energy during a lockout procedure and how you go specifically about doing that? If you have to release pressure from a, from a, internal, an internal system, how do you go about doing that?

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When do you go about doing that? Is that effectively communicated through your PowerPoint training? And is it something that you're going to be able to show to, others that that was effectively communicated to employees during their training? And of course, JSA job safety analysis, job hazard analysis, some companies call it, it goes by many different names, but but a document that describes in detail, especially with high risk type activities, how do you go about performing this task step by step?

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Step one here's what you're supposed to do as an employee. Here is the, hazards that you're going to be exposed to. Here's here are the steps that you take to minimize those hazards. And in light of those hazards, here is the PPE that you should be wearing while you're performing that particular step of the task. And so being able to go through and develop those JSA or GS, helps you as a company, not only have those very detailed procedures in place to show that you're prepared, but it also forces you to be thinking about these processes, on a day to day basis as you're developing them.

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What does this process look like? Is it clear in these JSA is exactly what employees are supposed to do? And so it forces you to be thinking about what the potential risks are and hopefully preparing for and eliminating those hazards that are that are incumbent with the, with with the type of operation that you're performing, hand in hand with those JSA injuries are PPE hazard assessments.

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You know, OSHA, all employers, that have manufacturing facilities are going to be required to have and perform a hazard assessment of the workplace that goes hand in hand. Many times, companies do that as part of the JSA and Gao's, but certainly, can be in compliance with the OSHA requirements. You have to have a hazard assessment that then can be incorporated into those JSA.

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And just so that everybody knows what PPE is required or during the during the performance of their work. And then, you know, you get to this point, you've you've developed the policies and procedures, you've

trained employees on it. You you've given them step by step instructions as to how they go about performing the task. Seems seems like you have prepared well enough, doesn't it?

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Unknown

But in fact, they're probably not good enough when it comes to OSHA, community and others when when looking at these sorts of scenarios. And so the question that you need to the next ask is, are your employees actually following those work rules and policies and procedures and just as they're performing their tasks? And so you have to be thinking about what kinds of assessments you can be performing on a regular basis.

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Sometimes those are regularly required by regulatory requirements like periodic inspections for lockout. But many times there's no legal requirement to perform, inspections on a regular basis of how the employees are performing the task. But certainly, and in my mind, and from my experience, having looked at and worked with OSHA, many of these sorts of scenarios, it is important to be able to show we not only have these rules, but we actively take steps to assess employees to make sure that they're following those rules.

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If they're not performing those work rules correctly, retraining employees and giving refresher training, possibly disciplining employees. And we'll get to that in a second under the disciplinary policies. But making sure that employees are aware of that this is that these these these requirements, these policies, procedures and rules are vitally important to the company and that we have effectively communicated to employees that we expect their 100% adherence to the requirements of that policy.

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And we really mean it through these assessments, audits, reviews and discipline, if appropriate. And so that kind of gets us now to the disciplinary policies, because when it comes to at least when it comes to some government regulation, regulatory agencies being able to prove that you do take these things seriously by not only doing all the things that we just went through, but if the circumstances warrant when employees violate your safety rules and the requirements of your Jesus and his imposing discipline against employees, whatever that appropriate discipline may be, OSHA doesn't really get into and dictate exactly what type of discipline needs to be issued.

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Sometimes you might have what they call cardinal rules. As an employer, you might decide that some of your work rules are so important and vital to human safety, and health that any violation of those work rules result in immediate termination. Nothing like that is required by OSHA, but many companies like to do that to demonstrate how important these rules are to employees.

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So you have a lot of latitude when it comes to evaluating what is the appropriate discipline. But certainly having a disciplinary policy in place, giving your giving you as a company the ability to bypass, if you have progressive discipline, having the ability to bypass, earlier steps like verbal warnings, if the circumstances warrant is going to be very important to being able to not only demonstrate that you have these disciplinary policies in place, but that you actually implement and effectively utilize that disciplinary policy when you have them.

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When you discover employees violating your safety rules, and then you also have, changes, you have to the, you know, your process changes, it can change from day to day, can change from moment to moment. You might have a new piece of equipment coming in. You might have a new piece of material that you're that you're processing plant.

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Unknown

And any time that there's a change in process, it is important to reevaluate all of these things and evaluate, should we be updating our work rules and policies? Should we be retraining employees on these on this new process? Is it close enough to the old process that it that it's effectively the same, or our employees being exposed to new hazards that we need to inform those employees of so that they can mitigate against those risks?

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Unknown

And so again, there are some standards that are very explicit about what that, management of change process looks like. If you're subject to the process safety management standard, I'm sure you're very familiar with the very detailed requirements that you have to go through if you have a change in process. But even if you're not subject to those explicit, regular and very detailed regulatory requirements, there are still many, regulatory regulations that do require you to evaluate these sorts of issues.

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PPE assessments, for example, if you have a change in process, you should at the very least be evaluating. Is there something new that we have to be new PPE that we need to be providing to employees? If we're changing a process in some way, we need to absolutely evaluate whether we need to update our lock out, take out protocols if it involves servicing or maintenance of machinery and things along those lines.

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Unknown

So so it's not a fixed in time type of scenario. Well, we've developed these where it's all hunky dory. We're good to go. It's proven itself to be effective. You also need to be thinking about any changes in that process and kind of going back through and evaluating all of these things again, when there is that sort of change in process that might impact any of these areas.

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And then finally we get down to recordkeeping. Obviously, there are many regulatory requirements for recordkeeping when it comes to, having written programs, training, certifications of training and things like that. So it's important, of course, to meet all of those regulatory requirements when it comes to having all of those policies, procedures and certifications in place. But even beyond when something may be required by a regulatory requirement, you still need to be able to prove to OSHA, even when it's not legally required, that you did these things and that you were prepared.

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And that's our ultimate goal. And your ultimate goal, I think, is to be able to show and demonstrate that you were you were prepared and hopefully an incident like this never happens. I, thank you, Kyle. So we broke this up into sort of the pre-planning issue with which Kyle has talked about. And if you if you heard those things and you were able to see that checklist and be able to check off most of, if not all of those, that is fantastic.

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Unknown

Good job. I think that's great. Now. But, you know, this reminds me of the the comment from Mike Tyson when he was being interviewed, in advance of one of his fights that the, the commentator was saying, well, I understand that your opponent has developed a great strategy and advanced planning. And how do you what do you think about that?

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Unknown

And Mike Tyson said, well, strategy is great until you get punched in the face. And I think that's exactly it. If you've got a plan in place that you're, you're got to, you know, you're ahead of the game by having that plan in place. But now we have the actual incident occurred. And how will you, as a company respond?

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Unknown

What we're suggesting is that you have a crisis response plan in advance that is updated. Consistent with what any process changes you've made to this, with any personnel changes you've had in your organization? We've seen several of these where the contact person no longer worked at the company. Well, that's not a good thing to find out.

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Unknown

When you have an incident where you're trying to have a phone list and getting people assigned to do different jobs. So first, first, sort of thing is, if you already have one, that's fantastic, you should pull it out, make sure it is up to date. If you've built a new production line, make sure there's something in there about the new production line.

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Unknown

So that is actually something that you can use. Some of the challenges as the at the facility owner that you're going to face, I'm sure there's many of them going through your mind, those who are in those seats, the, the,



the risk management people, the safety people that we're talking to this morning, this afternoon, we said obviously making sure to do everything you can for employee health and safety right after the incident.

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Unknown

But now you've got some other things. You've got external forces. OSHA is now at your guard gate. You're there at the front door, the first responders, if you've got various chemicals or other, items, I mean, it could be anything. It could be, batteries in your process. It could be they need to know what's in your facility so that it helps to dictate their firefighting efforts and how close they want to get, what their what their PPE is that they might need to use.

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The media is typically there very quickly, as you all know. You've experienced that, I'm sure. Meanwhile, if if you're if this isn't the home office you already getting, calls for the board meeting, a status report on what's going on. And I'm sure it's extremely chaotic. And that's one of the last things you want to do as you're trying to deal with all the other people that are on your property.

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Unknown

And then the third thing is for the last thing is, you're going to have customers who you supply to, that are going to be worried about whether if they have the just in time situation, if that's the line of work you're in, whatever it might be, that they're going to be getting product from you. And so those are all the concerns, I hate to say it, that are going to be in your mind.

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Unknown

So that is sort of the next slide. Just on a broad brush approach, just generally thinking at the top of the funnel. What is your crisis response plan? Need to have in it? We're going to talk about specifics here, but these are sort of the broad brush things. Who's who's going to be called first, who's going to do the calling.

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Unknown

Who's who's designated. Is it the general counsel of the company that is going to take the lead on forming, the team that is going to be responding to the media inquiries, the TV coverage. Is there going to be a communications management person who handles anything to do with media and also communications internally with your own employees, and their families?

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Unknown

They're going to be wanting to know, you know, we often hear about this. We don't know. There's reports say the family members haven't heard from there. So the people that work at the plant, whatever it might be, how are you going to handle that? A crisis response plan can cover all those things. And we're going to talk about how in just a second.

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Unknown

The other thing to think about is whether, you have assistance from outside counsel, and Kyle is going to talk about privilege issues because you want to be transparent and getting to whatever the root causes of an incident. But you also don't want everyone in the world to have access to that and show up in the New York Times or something like that, that has your report in it.

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So with those are some broad brush things. And we can we're going to break that down a little bit.

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All right. So the key components of your plan, we talked a little bit about outlining various roles. Oftentimes the risk management safety management people you you need to be able to break this up. Not one person can do everything. You're also going to, I would suggest, have liaisons between, the executive team and things like insurance people, the first responders, so that the same person isn't wearing so many hats.

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Unknown

In a chaotic event, you may actually need a command post if so much of the facility is, affected, you want to have a command post set up. And so I would cover that in your plan, that you where where would that be? It probably at an entrance that's a safe distance away from wherever the production facility would be.

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Unknown

And and who's going to set that up? What's going to be there at the tables? Tense. Access to electric, that kind of things. Those things that you don't want to be dealing with on the day of an incident. Those are things you're like, okay, if this happens, this happens automatically that we're going to do this. Obviously, reaching out to your insurance people.

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Unknown

That's probably the risk manager. Typically that's going to be doing that. But if for some reason that's not who's the second person that's going to, you want to get them on notice because they're going to get people on the road to help you, they're going to be sending experts. They're going to be sending, other, folks in to help, help you out.

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Unknown

The cadence of how things are going to happen, is important so that people know, hey, what we're going to do is we're going to have, this a map. This is what's going to happen on the first 1 to 2 hours of anything like this. This is the least what we're planning to happen. Also, the the content that needs to be described about what type of, how you're going to communicate.

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Unknown

Is there going to be some sort of, share file where you say all of the issues related to this incident will be stored here, and they're all going to be marked, at least with the word confidential on them. Something of that effect. And then there's going to be the do's and don'ts. I always say it's very quick that and I when I'm not the premises, owner's counsel, the first thing I do is gather all the news footage because the newspaper, the news people are very good about finding employees.

00:27:14:07 - 00:27:35:16

Unknown

And in one of the cases, we had, involving resin dust explosion, the, And the employee was interviewed as he was driving away from work, and he said, we all knew that stuff could blow up. That was an important person for us to talk to. So there's some things about, a ban on what your employees should say.

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Unknown

And frankly, there's got to be that's got to be communicated as soon as you can. That's through, guidance that you can create for your field employees and, and conveying information by hotline to your actual employees. The other thing I would suggest is you're going to have some people on your site that are not your normal employees.

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Unknown

You have to think about what you would do. What do you normally do when a contractor or somebody comes on? Do you have NDAs that you make them sign? You might want to go ahead and have something drawn up, at least partially, for an NDA for use in an emergency scenario where you've got a lot of strangers who are now walking around your partially destroyed facility.

00:28:19:01 - 00:28:41:10

Unknown

All right, a few more things that are very important to keep in mind. To keep you out of trouble. First of all, yes, once again, health and safety first and first thing thereafter after the fire is out. And then, you know, we're now post fire post incident, whatever it is, you've got to take steps to preserve the scene.

00:28:41:12 - 00:29:05:01

Unknown

If you've got security footage that's only, you know, on a loop for 12 hours, you got to save that. That could be very important for cause and origin investigators and others to see if you might have had an intruder that caused an explosion or whatever it might be. It might show, some evidence might show that, an incident occurred on one end of the facility, but the security footage shows the opposite.

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Unknown

And so video is very important to make sure it doesn't just get ignored. The other thing you have to be careful about is if you're the facility owner and you allow evidence to be destroyed, you may be preventing, yeah, a recovery on behalf of the company. If the evidence against walks out or so. We've got to be careful about preserving the scene.

00:29:28:03 - 00:30:06:03

Unknown

We'll talk about a standard in the in the industry called NFPA 921. In just a minute. The other thing is you have there are statutory notifications that should be in your crisis response plan depending on what state you're in. It could be different, but we suggest that there be a section of your crisis response plan that has the telephone numbers for to to meet your statutory notifications for, for example, for EPA, if there is a release into the air, there are certain chemicals that are on a list that you have a certain amount of time to to report that that has been released into the air.

00:30:06:09 - 00:30:39:21

Unknown

If you don't, you're subject to fines, of course. And variety of other things. You just don't want the EPA or OSHA saying that you didn't comply with their statutory notification. So please do think about putting those into plan and also having easy access to the that information you're going to need, an outside counsel and others are going to need to gather the things that Kyle was talking about, your training materials for your employees, your do's and don'ts, your your, lockout tag out procedures, your PPE procedures.

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Unknown

If you've got testing, that was done of your employees. And you think it's related to the process, that process, that issue that might have been involved in an incident, gather those things. If you've got contracts, where the supplier of that equipment that might be involved, make sure that you start to gather those things. Those are all going to be requested.

00:30:59:13 - 00:31:34:14

Unknown

I'm sure, at some point by OSHA, they're certainly going to be requested by the Chemical Safety Board and others at some point in the process. And then, just the plan should also cover, guidelines for communications with your team, your customers. I suggest even a start of a sample email, for internal distribution that partially vetted, then say something like, we have been informed of an industrial incident at such and such a location on this day, and then go forward.

00:31:34:14 - 00:32:00:24

Unknown

And that all needs to be vetted by legal. But you can get a sample email because you don't want to be starting from scratch. That's my whole point. In in this presentation for your crisis response plan. And before moving on, Steve, I was hoping that I could just add one more thing to that list. We don't want to lose sight of the fact that, of course, when an incident occurs, we'll want to immediately find out more about that incident.

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Unknown

But keep in mind that as you're responding in the immediate aftermath of that incident, when you're in the middle of the crisis, you might be in an A in the in and of that response itself, implicating certain regulatory requirements. So if you have employees that are going into the facility or designated to go into the facility like the emergency response teams, or you don't have specific and clear directives of what employees are supposed

to do, after the explosion or incident or some major catastrophe happens, you might be implicating and putting yourself into an, a situation where you might be exposing yourself further from a social standpoint.

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Unknown

So keep in mind that you want, as part of your crisis response plan, usually an emergency action plan that might be attached to or part of your safety policies, outlining what employees are supposed to do so that it so that you knowingly if you're going to have employees, you be part of cleanup. You might be implicating that as well standard, for example.

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And there going to be PPE requirements related to that. So all of that is part of crisis response as well. So obviously we want to start focusing in on to to some extent the internal investigation of why this happened. But keep in mind that that there are other things. And in between the incident itself and when you can get there that are going to potentially implicate OSHA standards as well.

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And speaking of trying to get to the bottom of it scenario, you know, we all have a tendency and want to immediately find out what happened. That is that is a natural desire. That is a going to be a desire of everybody involved. Employees are going to want to know what happened. The community is going to want to know what happened.

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The agencies that are investigating are going to want to know what happened. And of course, the people that you report to the the board of directors, the CEOs, the chiefs, they're all going to want to know what happened. And so there is an immediate desire to get out there, and get to the bottom of what happened.

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So what most companies try to do in the immediate aftermath of an accident is put together a root cause analysis. And certainly all of those goals and all of those desires are very important. And it is important to figure out what happened. But there are controlled and effective ways of accomplishing that, so that you don't run into the pitfalls that we're about to talk about.

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And so one of the main pitfalls that you have when you deal with and do root cause analysis, and that, in my view, when I've seen these nine times out of ten, if not more, there is always some sort of self-blame that is naturally going to fall within those root cause analysis. I think we're trained, on the idea that nobody's perfect, no procedures are perfect.

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And so because of that, we are always looking for ways to improve. And as part of that process, we are putting self-blame on the company. And that may be appropriate. That may not be appropriate. But but at the bottom of it is that if we put blame on yourself and it's in a document that can get out to third parties, no doubt that that self-blame is going to be used against the company in some future proceeding, whether it's by a government regulatory agency saying, you admit that you were at fault and you weren't prepared, it's going to be a, personal injury litigator, plaintiff's attorney that is going to going to be trying to

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make that argument or just just a public, public spectacle, social media aspect of of having those sorts of things that are out there where now the company is getting a lot of that publicity because the company has admitted it was at fault for this particular incident. So there's a lot of pitfalls that can come along. With that.

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It also has a tendency to roadmap for the government agencies and litigators. What what our thought process is on this issue. It will be it leaves no surprises for the other side or for the government or forces the government to do its own effective investigation. If we are road mapping for them exactly where they need to look.

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So those are the might be the main pitfalls with putting together, a root cause analysis that does not take into account, the, the, these potential risks of doing so. And so one of the things that you do want to do if you are going to and of course, we as your attorneys are going to we understand that there is an immediate desire and maybe an immediate requirement from the decision makers, the chiefs, the board of directors.

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We absolutely need this document that needs to be created. And so when that comes into play, there are steps that you can take if that's ultimately going to be the path that you go down, that we as your attorneys understand, obviously, we would prefer as your attorneys that we would generally advise the case specific, probably not to put to get put out a incident report before you are ready to make that final.

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And it's absolutely prepared and buttoned down and you know exactly what's happening and you do it at the right time. That would obviously be the the best case scenario, but obviously that's not always going to be what what we're confronted with. And when you are, when you are in a situation where you do have to put out some additional communications, we're our goal is to help you through that process so we can help you formulate what that what that document looks like.

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How do you minimize these risks and these pitfalls that we've talked about. How do we avoid road mapping these issues for for the third parties, for the government agencies, when they are looking at this report, so that

if you do have to put it out and it is required for it to be released, it can be done. So in a, in a very, in a way that is, very controlled.

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And then as part of that process, to the extent that you involve counsel as part of that root cause analysis and have counsel direct that the internal investigation occurs so that the counsel can advise the company as how to best prepare a root cause analysis, for example, or to otherwise provide legal advice to the company. A lot of that investigation can be privileged.

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The communications that you're having with counsel as part of that process, draft draft statements that might be included within this report can be run through counsel so that, at the very least, those things are protected. And ultimately, if they are to be put into a report that becomes public, it is something that is done, controlled. And all of those drafts are privileged and protected leading up to that point.

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Because ultimately, if you put together a root cause analysis on day one before you get counsel involved and it contains all of these, but self-blame and roadmaps, it's going to be requested by OSHA. It's going to be requested by the third parties in litigation, and they're going to be entitled to it. So that's something to be thinking about as you're trying to do this internal investigation.

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We're not here to say don't do the internal investigation by any means. We're saying that it can be done in a way that minimizes the risks that we just went through. Yeah, I totally agree. And we can't put that genie back in the bottle. When it when you've got one that's. And I sometimes find it a rush to judgment because that I mean really a lot of times I've seen people starting on those before, you know, literally they've turned a rock or looked at the debris and we really don't even know what the real cause was.

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Unknown

And I think there's, there's a lot of some that needs to have some time to, to, to set back for just a second. And I know there is a rush to judgment, but we've got to be really careful not to do that, because in fact, not just OSHA, but it will affect any other litigation that follows.

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So what Kyle was talking about is the internal investigation. But at some point, you're going to have to have an external investigation because the if nothing else, the insurance company is going to want to know. I mean, if they're going to be covering your loss, they're going to be looking for, ways to get their money back. That's all there is to it.

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You also have third party, litigation. You're going to have worker's comp, most likely. We talked about, obviously your employees would likely be covered by the worker's comp, but if you've got vendors on site, contractors on site, or, even customers on site, those people would all have potential claims against the company. So at some point you have to basically put all interested parties, and that's sort of a defined term under NFPA 921, which I'll talk about what that is in a second, but you'll have a scene similar to what you see here in this picture where somebody is giving an overview of what happened to a bunch of other experts and

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other, representatives from different companies. Those people could be equipment suppliers, service providers, that lots of lots of cause and origin experts. And then those people all disperse in a controlled way, and they do their investigation of what would the origin and cause of the fire NFPA 921 is a guideline put out by the National Fire Protection Association to provide a scientific approach to that analysis.

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There are other standards out there, but NFPA 921 is very well respected. If you go to hire an expert and for a fire or explosion loss, and they've never heard of NFPA 921, I suggest that you get a different expert. They should certainly know about it. It talks about scene preservation. It talks about notice and and the avoiding spoliation of evidence.

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So those are things if you're a, a risk manager or or safety person, you know, and you need, access to NFPA 921, reach out to us and, we can we can chat about that. Also, you're going to be at this same scene. There are going to be representatives from OSHA, the CSB, which is the Chemical Safety Board for those any it doesn't have to be a chemical plant.

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Unknown

The Chemical Safety Board could be at any type of manufacturing, automotive, whatever, anywhere where a chemical may be involved in what led to the incident. Same with the EPA. So, that's kind of the background on the external investigation. The big thing at the very top, maintaining privileged communications. I believe that even if you haven't involved counsel on the internal investigation, you've got to involve counsel on the external investigation because you want, that to be your analysis, to be privileged when you're talking to your employees and gathering information, you want that information to be privileged and not available to everybody else.

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This is the NFPA 921 guide. That's the 2024 edition that, they they updated every few years to that, I believe. Pretty sure that's the most current one. It is accepted as a standard of care by many courts. As, as for the analysis of fire explosion investigations, and covers all the different things now, your expert and your counsel will help you to comply with with NFPA 921.



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Unknown

I just want to make sure you are all available, are all aware that it exists. So if you don't know about it, get out your Googler and look up NFPA 921.

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Unknown

And so, obviously when something like this happens, one of the one of the, you know, Steve mentioned CSB potentially coming on site, EPA coming on site, but almost certainly after an explosion incident like this or any other, media sensitive events of this nature, OSHA is also going to be on site and depending on what happens with employees, hopefully there are no, no hospitalizations or fatalities or serious injuries that have been reported to OSHA.

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But even if not OSHA, if they hear about it in the media, they're likely going to show up. And so wanted to kind of highlight, because it's one of the first agencies that you're going to be, dealing with after an incident like this, what the process looks like and how and I'm not going to go through every single one of these in detail.

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But this is kind of from start to end. What, what the OSHA inspection process looks like. And I just want to highlight some of these bullet points and the ones that I think are going to be most important for an incident like this. So the first thing to be thinking about are the reasons why OSHA may visit.

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Because you want to evaluate when OSHA shows up, whether they have a, legal interest in being on your premises. Is there is there a statutory ability of this agency to get on site? Could they get on site if you were to refuse access? And should we just be cooperating. So it's important to understand, do they have the right to access the facility in the first place.

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And generally speaking, there are many ways and circumstances under which OSHA can come on site. They can come onsite because of just normal inspection procedures. You might be in a high risk industry that involves amputation risks and part of the National Emphasis program, and they might be coming in to do a random, worthwhile inspection. Obviously that's not going to be the scenario, but those are called programed inspections.

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And programed inspections are ones that where, generally speaking, you have referrals to the agency. You have referrals via employee complaints, you have referrals through employer reports of and we'll get to this.

What what types of injuries and incidents you have to report to OSHA. But an employer reporting an incident like this to OSHA, OSHA may hear about an incident like this in the media.

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Unknown

And many times if there's, if it's a massive incident, you'll have first responders, giving information to OSHA, which causes them to come on site. So even if you don't have the type of injuries, that would require you to report the incident to OSHA, it doesn't mean that OSHA is not going to show up. You still need to expect that that's a possibility because they could learn about it through other means, even if they didn't learn about it themselves or through the employer directly.

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One of the most important parts of OSHA does show up on site, and they have the ability to come on site. One of the most important parts of that inspection, in my view, is that opening conference. It's a time when the agency is supposed to be sitting down with an employer and telling the employer the reason why they're on site.

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It's the time when you can set the parameters and find out what the expectations are, what the requests are going to be, what it is that they want to see, and kind of use that as a, as a, as a time to find out from the agency what it is that they plan to do. You have the ability to then utilize what they say during that opening conference to be able to limit them later on, or at least try to limit them later on.

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If they told you during the opening conference, we're here to do X, Y, and Z, and then they then during the course of the walk around inspection, which is the next step, they try to do A, B and C, you can say, hey, during our opening conference, you said you're only going to do X, Y and Z. How about we kind of move on from ABC for now?

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Just focus in on x, y, z, which we talked about during that opening conference. So, once you get through that opening conference and you find out exactly what the agency is going to be doing, one of the other things that you should be thinking about during the upcoming conference. And we'll talk a little bit more about this later on.

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And Steve has touched on the topic, is the issue of trade secrets. If you have and know that the agency, based upon what it is that they are telling you that they're going to need to see and what they're going to, in terms of documents or even the site itself, is going to involve something that might reveal a trade secrets.

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And it's very broad. Anything that might reveal a trade secret, you should inform the investigator of the fact that the, of the processes that might be considered trade secret and any documents that you might be turning over that you would consider to be trade secret, because by informing them of that, they have to put it into a special.

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They have to designate that information and the photographs, if they take videos that they take of those areas in a special manner, so that if there's a for the open records request, the agency has to keep that protected and at the very least, give the company notice of the fact that this request had come in for that trade secret information, so that the company can put itself in a position to keep that confidential, so that that is also something that you should be thinking about, not just during the opening conference.

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If if trade secrets issues are apparent, but any time during the course of the inspection or if documents are requested at the time you turn those documents over to OSHA, important to communicate and have that communication with the investigator. As you are coming across and know that there's going to be trade secret information above, then you get to the walkaround inspection.

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And obviously, anything that the investigator sees during that process is fair game. Typical typical guidance here is try to find the path of least resistance, to get to that location where the incident occurred. Even if it means walking outside of the facility along mile long path to get to the location where this incident occurred, so that you don't have to be bringing the event investigator through the rest of your facility to potentially see other potential violations.

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Do it. Make that make the investigator walk it. It is it is going to be almost certainly in your best interest to do that. Employee interviews are going to be part of the process. Main thing I want to point out here is the company has the right to have management present and counsel present during management level interviews or supervisory interviews.

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So keep that in mind. And and certainly to the extent that we know that employees are going to be interviewed, to the extent that you want to have discussions, privilege discussions with those interviewees at the management or supervisory level, those can be done. And so you can talk with the through counsel, talk with those into, interviewees and kind of discuss how to deal with the interview process, the best practices during the interviews and things along those lines.

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Document requests. The main thing throughout the rest of this is making sure everything is consistent with what the agency told you during that opening conference. Make sure that the document requests are consistent, what they told you they were going to be looking into during the opening conference, if and if not likely, want to push back on that and try to minimize what you give to the agency as much as possible.

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And then the others are just things that come further down the line. The closing conference citations, if they're issued, you have the ability to have an informal conference with the agency before you have to decide whether to contest, and then you can go to a hearing if ultimately you disagree with the agency after you go through that process to.

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One of the things that I want to touch on with, with the documents and the, process that is going to be going through as it does its investigation. And one of the things that we touched on at the very beginning is how do we prepare ourselves in advance with documentation, with having these policies and procedures in place for defenses that may be coming down the line.

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And so something to be keeping in mind as you are developing and getting prepared for this process. Obviously, these things are things you can start compiling after an incident occurs because you you know, it's going to be something that you might if it's something that you're going to be relying upon an employee misconduct defense. But certainly these are things that you should be keeping in mind because even before an incident like this happens, so that you can be best prepared for an employee misconduct defense, having that work rule in place, effectively disseminating those work rules to employees, determining whether employees are complying with those work rules, and then, enforcing those rules through discipline if

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necessary.

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And something else to be thinking about, even though it's likely a situation where we you won't be able to sit in, hourly employee interviews, in my experience, the sorts of things that employees just don't remember when they are sitting in on an on an interview is you know, was I that that's going to be a question that comes up during the process.

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And if you do refresher training before OSHA even shows up, you might be able to remind the employee and refresh the employee's recollection that, hey, I did have this training before. I remember it now, so that hopefully when they're in the course of that interview process, they can effectively communicate to the agency affirmation about the training that they received.

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So refresher training is going to be important. Also think about when it comes to discipline. Should you be imposing discipline? If you know that somebody is engaged in noncompliance with your safety rules and you determined that has happened, and there's no doubt in your mind that that has occurred, should you be imposing that discipline before the compliance officer arrives?

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Unknown

And generally speaking, the sooner you can impose discipline, the better off you are in asserting that employee misconduct events. Because if a compliance officer arrives and then you impose discipline, they're going to try to argue that you only did that because we showed up. You wouldn't have done that otherwise. So the sooner you can do it, the better.

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The approach. So then we get into, the types of violations that you may see following an incident. Why this is very important to the company. You have the citations that you might get issued by OSHA can range from serious to other than serious to repeat violations. Serious violations are, hazardous conditions that are likely to cause death or serious bodily injury, other than serious violations or non serious violations are those that are not that are violations of a standard but are not ones that are likely to cause death or serious bodily injury.

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You have repeat violations, where if an if an it's a you've been cited in the past for a particular violation and that has recurred in the future after that prior violation has become final, you can be cited as a repeat violation. You can have willful violations. Willful violations are those where, an employer is determined to have, violated the known, intentionally violated the known requirements of the act, or, are deliberately indifferent to employee safety and health.

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Those would be considered willful violations. And then failure to abate. You've been issued a citation. You've been given a deadline to abate the hazard. You have felt you haven't contested the citation, but you don't abate the hazard. Then you're subject to a daily penalty, as we'll talk about in the next slide for, for that. So other than serious and serious violations carry these maximum penalties, all of those that we just went through, you can just read on the slide, what those penalties are obviously the most important ones on the slide are the repeat and willful.

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So as you can see, those carry with it a maximum of ten full what the maximum penalty is for an other than serious or serious violation. And of course even failure to abate are, you know, are going to be very important too because those carry with it the daily penalty of \$16,550. Keep in mind, in some states, Kentucky, Indiana state plan jurisdictions, those penalties may be lower.

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Like in Kentucky, for example, the maximum penalty is for another than serious, and serious is 7000 and \$70,000 for repeat or willful violation. So these can vary from jurisdiction to jurisdiction. But here's what these are. The numbers that the federal government imposes right now. And then then your obligation to report injuries. We talked a little bit earlier about potentially having to report injuries.

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This is a time period for reporting these types of injuries and fatalities.

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And then on the slide, just a list of the numbers websites that you may be able to use within our footprint of how to make those reports. The agency Ryan. Thank you Kyle. All right. Really quickly on the Chemical Safety Board, these these folks, it's a matter of funding at this point. I'm not sure how far these guys are going to be going, going forward, but right now, they still exist.

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The tough thing about the Chemical Safety Board is when they arrive on site, typically they, they rule the roost. I should say they they kind of take control of the scene. Usually on these things, what we've experienced is the, the ATF may be there first once they release the scene. If the csbs there, the CSB takes over.

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This is they are going to be there. If somehow there's an industrial, accident that involves chemicals, you can see the 40 CFR part 1604 is the reporting rule for that. They are like the National Transportation Safety Board in the fact that they will and they have very detailed videos and recreations and animations of what they have found.

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For those of you who are, safety managers, go on to their site. It's very interesting. You can learn a lot about what they are saying about things like resin dust, a lot of different industrial process equipment, things of that nature that might be important to your operation. I highly recommend you look and review some of their prior reports.

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They don't find you like OSHA does. But the biggest issue I have faced is it's actually very it's free, investigation for the plaintiff's bar. And even though the report itself is not admissible into evidence, it does give a great roadmap for the plaintiff's experts to follow. Because the Chemical Safety Board has had access to a lot of information in advance of when they might get it.

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And normal course of discovery in litigation. Last thing, this is just a because we didn't want to not talk about the EPA and neither of us are EPA lawyers. We have lawyers at our firm that are EPA lawyers. But if there is been an accidental release, as we saw in our scenario, there are going to be, reporting requirements, requirements for the EPA, depending on what the chemical might be and the amount of time, etc..

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We could we could probably do a standalone seminar on the environmental response. So we just want to at least mention it, even though we're not going to really go into it. But maybe that'll be a seminar for next October. And now you're at the end of a very long day. I think that we're getting close to the end of our time here, too, but wanted to, just highlight the things that you're going to have to be thinking about as you move through this process and get to the end of that process.

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Eventually, the investigations will end. But you're still going to have those lingering issues that you're going to be dealing with. You're gonna have to be addressing the employee concerns and the community concerns. Why did this happen? How are you going to make sure that it doesn't happen again? And obviously, that's going to be part of your internal and external investigation of making those assessments.

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But one thing to keep in mind as you're making those changes, you want to be continuously, as we talked about at the very beginning, it's almost coming full circle. As you make those changes, reevaluate, reevaluate your processes and update them as necessary to reflect any kind of, manufacturing changes that you have made as a result of this incident.

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Okay. Molly, we don't we can't see if there's any questions. I know we're right up against 1:00, but we're happy to field any questions. There are not any currently in the Q&A. But if you'd like to remind everybody, we will be sending a follow up emails where, your contact information will be included and they can definitely reach out to you directly then if they would like.

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Okay. And then Kyle, you want to chat about our next. Yep. Just want to remind everybody that this is a week long endeavor. The FTP manufacturing week continues tomorrow. Where, Mason Clutter and Jim Price will be talking about data security, privacy and and involving landscape. Make sure that if you want to attend that, you register, there will also be one on Friday and you would want to register for that one.

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And as well also from 12 to 1:00 eastern time, you will be receiving an email, that will ask you to fill out a survey. We encourage everyone to fill out that survey. For those who have, applied for CLE, that's still pending, but that will be an automatic process. Once that approval has been obtained, you will get an email from the ABA.

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So be on the lookout for that email. And again, don't forget to sign up for, tomorrow's presentation if you haven't already. Thank you very much. Kyle, and I really appreciate you joining us today. If you do have any follow up, feel free to reach out to us. We have no problem with that. So thank you and have a good afternoon.