

Planning ahead

Many companies may be refreshing their crisis-management plans to adapt to the Covid-19 emergency. **Helen Bowdren**, partner at Dentons, considers what a waste company's response should include



Have you activated your crisis-management plan recently? Was it helpful and relevant? An unexpected crisis, whether it be extreme weather, a serious accident or a pandemic, can cause major disruption and raise legal issues. Crisis response is, by its nature, urgent, and advance planning can help to focus the team on the most important issues at hand.

The crisis-management team should include a legal adviser, if possible, and the plan should have some mechanisms to address legal issues arising from the crisis. Key legal areas to consider are:

Regulatory requirements

Most waste companies operate in accordance with environmental permits, which control key operational issues. The crisis-management team needs to be aware of the key permits that regulate the company's activities, any notification obligations that apply, and the relevant regulator's powers.

Complying with permits may become difficult, but it is very rare that regulators will allow firms to breach them, even in a crisis. Failure to comply with a permit is a criminal offence. Most require the permit holder to proactively notify the regulator of breaches or major changes, such as a change in ownership or an insolvency event. The regulators may be flexible, but the company should liaise with the regulators from the outset to reduce the risk of liability.

Contractual commitments

The crisis may prevent you from honouring your contractual commitments, or leave you vulnerable to a counterparty

who can't deliver. Contracts may include force majeure or material adverse change clauses, and these can be helpful. However, the effect of these clauses depends heavily on the particular drafting and circumstances. A contract may include a proactive obligation to notify the counterparty

if certain events happen. The crisis-management team needs to understand the legal ramifications of such steps before taking them.

Employees

A crisis might create compelling business reasons to change the terms of – or even terminate – certain employment contracts. In such cases, it is important to consider the employee's contractual protections

and the legal protections offered by statute.

Communications and record keeping

A crisis can trigger mandatory communications, such as accident reports – for example, the reporting of injuries, diseases and dangerous occurrences regulations (RIDDOR) notifications to the HSE – notifications to insurers, and stock exchange filings. The crisis-management plan should include a list of these to ensure thorough compliance.

The company may also want to issue voluntary communications about the crisis, but these should be reviewed by the legal team, especially if they involve admission of fault or liability, apologies or ex gratia payment.

The legal team will also want to ensure record keeping continues during a crisis.

Attention to legal issues before, and throughout, a crisis can help minimise the legal risks to your business. ●

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