

Falls discharge pinpoints need for crisis plan

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It took the **Niagara Falls Water Board** a day to respond when a black, smelly substance was discharged into the Niagara River near Niagara Falls on July 29.

The discharge, which was noticeable compared to the bluish color of the river water, occurred at the height of tourist season and led to speculation and some panic, as residents and tourists tried to figure out what was going on. The delay in a response to the incident led to harsh statements by government officials including Niagara Falls Mayor **Paul Dyster**, who pointed out that the water board was a separate entity from the city.

“I am disappointed in the unfortunate lapse in communication...and look forward to the Board’s full cooperation in their efforts to rectify the situation,” he said in a statement, noting that the incident was being investigated by the New York State Department of Environmental Conservation and the Niagara Falls Police Department.

On July 31, Gov. **Andrew Cuomo** called on the DEC to investigate the incident.

“Any violations of the state’s water quality standards are a serious issue, and I have directed DEC to immediately get to the bottom of why this event occurred and ensure steps are taken to ensure it doesn’t happen again,” Cuomo said. “Niagara Falls and the Niagara River are a world-class destination for tourists and we should not be polluting this unparalleled natural resource.”

The communication issues surrounding the event highlight why a crisis plan is necessary for public and corporate entities that deal with the environment, said **David Flynn**, a partner at Phillips Lytle with expertise in environmental law.

The first step in a crisis is to examine all the facts of the incident and gather as much information as possible. That includes being able to separate fact from fiction, he said.

“You have to reach out to anybody and everybody who has some type of information to get input into what happened,” Flynn said. “What’s the event? What happened?”

The second step is to have a communication plan in place. Developing a plan while in the throes of a crisis won’t cut it. “You have to have a communication plan that establishes the parameters of who is going to do what,” he said. “Obviously every situation is different, and you have to be flexible to adapt your plan to what happened or what is happening. Extended delays of either no communication or ‘no comment’ communication just feed the frenzy, feed the paranoia and feed the panic of, ‘This is something really terrible here and it’s out of control and no one knows what’s going on. What do we do now?’ You see that play out on different levels.”



MICHAEL CANFIELD

Phillips Lytle partner David Flynn: A communications plan is key for public and private firms.

In the case of Niagara Falls, other levels of government started to react to the silence by the water board because they're under pressure to respond, Flynn said.

"When the governor gets tagged, and no one is telling him what happened and why, now it just ratchets up the pressure," he said. "All of a sudden, the governor is in the middle of something. Other elected officials, other agency people are all running around with little or no information and trying to react to a situation because the people who had the information really didn't have an effective plan to get that out to the people it needed to get to."

It's important to have communication professionals onboard who can get out the message of what's going on and what steps are being taken to remedy a situation. That communication can never start too early, according to Flynn, even if it starts with acknowledging the situation and describing what steps are being taken to investigate an incident.

"You can take the pressure off the system," he said. "Otherwise, if nobody is communicating, the pressure just continues to build and build and build. It becomes more and more contentious and the wild rumors come out and it can get out of control."

It's critical to get out in front of a situation and make sure people know what's going on, he said. Once the moment has passed for relaying information, it's difficult to regain control of the message.

With social media an incident can spread much more quickly, which makes it even more important to have a plan in place.

"They used to call it the news cycle," Flynn said. "If something happened, you had until whenever the newspaper went to press to get things under control; you had six or eight or 10 hours to get things straight. Now it just explodes and gets out of control very quickly and people are either knowingly or unknowingly spreading rumors that are getting retweeted or reposted, to the point now that you even see what I would consider legitimate news organizations pick that stuff up without any independent verification."

Entities involved in an incident need to say something almost instantaneously, he said. They also must recognize that the response should be different for different parties. For instance, a response should be planned for government agencies, while another response may be appropriate for news organizations. It's a way to keep everyone informed, he said.

"The message that might calm the community isn't necessarily what you want to say to the regulator," he said. "You have to be mindful of the unintended consequences of what you say and how you say it. Make sure that your strategy is effective for all of these multiple receptors who are looking at it with different-colored glasses on."

Transparency regarding an incident builds public trust, according to Flynn.

If an incident ends up in court, statements that end up not being true could be used against the entity or corporation.

"Whatever you say can come back," he said. "Two years from now, if there's a toxic tort related to some release, and they have test results saying this is bad stuff and could create health problems, I can guarantee you that they're going to say, 'Didn't the company president say there was nothing to worry about? Didn't you say that there was nothing to worry about?'" The transparency is very important, and the communication to various groups is, as well."

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