



INSIGHT: Be an Averter: Tips for Preventing Environmental Crises

Bloomberg Environment | May 1, 2019

The threat of fires, explosions, and natural disasters keeps many company executives awake at night. Fatalities, indictments, “bet the company” litigation, bankruptcy, and environmental disasters are the scary consequences, but fear is an inadequate response. By proactively building resilience and preparedness to respond to an environmental crisis, leaders can move away from the ineffective strategy of ignoring the fear and focus on mitigating, instead of hiding from, the risk.

Negative events understandably make headlines, but we rarely hear about the crisis averted. The unsung heroes of these successfully uneventful stories are the Averters—the companies and people who work thoughtfully to understand their vulnerabilities and then take steps to avert the risks without the promise of recognition or celebration.

The following are steps you and your company can take to become Averters too.

Become a Collector

Averters **collect** expertise, resources, and data in order to identify and monitor vulnerabilities and inform their response to a crisis. Without this capacity, a company misses the opportunity to avoid, and squanders the early hours and days of, a crisis.

Many companies have learned the hard way that experts and resources are strained during natural disasters.

For example, well in advance of a hurricane’s landfall, available emergency hazardous materials responders, helicopters, boats, drones, pumps, and other emergency resources become nearly impossible to find, with prices skyrocketing for those that remain.

And following a crisis, countless companies have become stuck reacting to the data shared and shaped by others, rather than driving the narrative with their own data. Averters proactively gather their own data and develop relationships with environmental consultants, public relations firms, and attorneys in advance, so they know who to call if a crisis hits.

Hone Your Coordination Skills

Averters are prepared to drive dynamic, diligent **coordination** in the event of an unavoidable disaster.

Companies can avoid potentially catastrophic environmental damage through strategic coordination of an emergency response. For example, swift coordination of inspections following a flood can stop a minor leak from taking down an entire dam and with it the people, homes and ecosystems in its wake.

Averters develop their employees’ or contractors’ response skills as much as, or more than, they develop their physical response strategy, realizing that without people to properly implement a response, the response strategy is useless. Companies without strategic coordination skills end up playing whack-a-mole as each new stakeholder complaint arises, never addressing the root cause.

Environmental response plans should be practiced through tabletop exercises and physical response drills at a frequency reflective of the potential harm and skill that is required to respond. Averters with relatively minor risks might practice their response annually, while a large chemical storage facility might practice quarterly or even monthly, running through several different potential disaster scenarios.

Enhance Your Control Systems

Averters have tight but thoughtful **controls** around contacts and information flow.

Too often, companies inadvertently impair their response and the critical aftermath because of unforced errors. Haphazard engagement with stakeholders, ambiguous lines of command, undisciplined emails and texts, and cavalier chatter create compounding problems,

forcing a crisis onto a steeper path and potentially paving the way for environmental criminal investigations and civil lawsuits.

Controls—in the form of clear policies and procedures—are a critical capacity to avoid those unforced errors and the litigation and enforcement risk that comes with them. Averters implement strict communication protocols as soon as an environmental crisis occurs, with preliminary and strategic discussions limited to regularly scheduled meetings and stakeholder engagement taking place only within official channels by designated company officials.

Refine Communication Plans

Averters recognize the necessity of static-free channels for clear (internal and external) **communication**.

Manageable issues can grow legs of their own when they are amplified by inadequate communication. Stakeholders have natural questions—what does the company's leadership know? What is being done? Is there a risk to human health or the environment?

For those on the outside, answers may be hard to discern. Communication bridges that gap. It facilitates alignment, secures buy in, and builds trust. Environmental crises make for bad silent films, and silence invites

Becoming an Averter is about building resilience and preparedness across the five core capacities—collection, coordination, controls, communication, and contracts.

misinformation. Averters understand the value of proactive communication and have processes in place to ensure such communication is accurate, consistent, and strategic.

Shift Remaining Risk in Contracts

Averters recognize that some risk is unavoidable and seek to mitigate that risk through **contracts** and other risk management tools.

Companies rarely get to reallocate risk during a crisis, but they can develop this capacity on the front-end by focusing on contract provisions and indemnities during ordinary course negotiations with suppliers, landlords, customers, insurers, and other third parties.

As an example, Hurricane Harvey had a long term negative impact on many industries after global supplies of MMA (methyl methacrylate), a chemical critical to the manufacture of plastics, paints, and coatings, were significantly

reduced. Averters had anticipated this possibility and either diversified their supplier base or negotiated better protections from suppliers or insurers in the event of a natural disaster. Many companies do not realize that pollution insurance policies are highly negotiable and that they may be able to procure additional catastrophic risk policies. Averters use contracts and insurance to limit exposure to otherwise unavoidable environmental risks.

Becoming an Averter is about building resilience and preparedness across the five core capacities—collection, coordination, controls, communication, and contracts. It will not make your company impervious to environmental crises, but it will load the dice in your favor—reducing the odds of the worst outcomes for both the enterprise and the environment.

<https://news.bloombergenvironment.com/environment-and-energy/insight-be-an-avert-tips-for-preventing-environmental-crises>



Alexandra Farmer is a partner at Kirkland & Ellis LLP in the firm's environmental practice. She is based in Houston and Washington, D.C. She counsels clients seeking to prevent, mitigate, and respond to environmental crises.