COSMOS
Navigate the Compliance Universe

The Complete Compliance and Ethics Manual 2023
Environmental Risk Factors and Mitigating Measures

Risk Factors	Mitigating Measures

• Substantial risk of death or serious bodily injury (knowing endangerment)
• Significant environmental harm
  ◦ Actual
  ◦ Potential
• Foreseeability of the incident
• Hazardous/toxic wastes/materials
• History of noncompliance/serious past regulatory violations
  ◦ Acute violations
  ▪ Large volumes
  ▪ Long duration
  ◦ Chronic or "ongoing and continuous" violations
  ◦ Clear/unambiguous regulations or permit terms
• Significant cleanup costs
  ◦ Economic benefits arising from violations/noncompliance
• Proof of intent (vs. accidental)
  ◦ Degree: "knowing" or "negligent" (Clean Water Act)
  ◦ Type:
  ▪ Witness testimony/whistleblower
  ▪ Notices of violations
  ▪ Emails
  ▪ Reports/memos
• Corporate culpability booster
  ◦ Level of participation in violations
	• Effective corporate compliance program
	• Voluntary disclosure of violations
	• Cooperation with authorities
	• Internal investigation
	  ◦ Prompt initiation
	  ◦ Credible and transparent process
	  ◦ Root cause analysis
	  ◦ Disclosure
	• Post-violation remedial actions
	  ◦ Voluntary cleanup
	  ◦ Termination of "bad apple" employees
	• Collateral consequences of violations (potential overkill)
	• Adequacy of civil/regulatory enforcement (proportional enforcement)
	• Adequacy of prosecuting individuals (bad apples vs. bad orchard)
	• Continuous improvements in compliance program/training

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- Pervasiveness of wrongdoing within company
- "Process" crimes
  - Lies/cover-up/concealment
    - Perjury
    - False statements
      - Permitting
      - Investigation
- Obstruction
  - Document destruction
  - Witness intimidation

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