

The Complete Compliance and Ethics Manual 2024

Appendix 5-I: Environmental Risk Factors and Mitigating Measures

Risk Factors	Mitigating Measures
<ul style="list-style-type: none"> • Substantial risk of death or serious bodily injury (knowing endangerment) • Significant environmental harm <ul style="list-style-type: none"> ◦ Actual ◦ Potential • Foreseeability of the incident • Hazardous/toxic wastes/materials • History of noncompliance/serious past regulatory violations <ul style="list-style-type: none"> ◦ Acute violations <ul style="list-style-type: none"> ▪ Large volumes ▪ Long duration ◦ Chronic or “ongoing and continuous” violations ◦ Clear/unambiguous regulations or permit terms • Significant cleanup costs <ul style="list-style-type: none"> ◦ Economic benefits arising from violations/noncompliance • Proof of intent (vs. accidental) <ul style="list-style-type: none"> ◦ Degree: “knowing” or “negligent” (Clean Water Act) ◦ Type: <ul style="list-style-type: none"> ▪ Witness testimony/whistleblower ▪ Notices of violations ▪ Emails ▪ Reports/memos • Corporate culpability booster <ul style="list-style-type: none"> ◦ Level of participation in violations 	<ul style="list-style-type: none"> • Effective corporate compliance program • Voluntary disclosure of violations • Cooperation with authorities • Internal investigation <ul style="list-style-type: none"> ◦ Prompt initiation ◦ Credible and transparent process ◦ Root cause analysis ◦ Disclosure • Post-violation remedial actions <ul style="list-style-type: none"> ◦ 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

- 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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