

# The Complete Compliance and Ethics Manual 2023

## Environmental Risk Factors and Mitigating Measures

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

- 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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