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## PREPARING FOR ACCIDENTS, SPILLS AND DISASTER IN THE UK: PART I

*Incidents which cause environmental harm or injury and illness to workers or neighbours can have significant consequences for the companies responsible. Preventing those incidents must, therefore, be a priority, but if they happen they must be managed so as to minimise physical and environmental damage, liabilities and the risk of an adverse regulatory and media response. This new series of articles summarises key issues for companies operating in the UK, with the first part focusing on prevention and the immediate incident response.*

### **Prevention:**

To prevent incidents, management needs to understand the legal obligations affecting their operations including requirements for environmental permits and licences, prohibitions and restrictions on pollution, duties to avoid unduly disturbing neighbours, and duties to protect employees and others. At the operational level that involves familiarity with permit and licence conditions, as well as procedures which implement both those conditions and general environmental and health and safety (EHS) laws. That task can seem daunting, and in response, many companies produce bulky EHS manuals with detailed instructions on how to deal with every eventuality. The problem is that few people have the time to read them.

Brief, clear written instructions on how to avoid EHS incidents are more likely to be effective. However, clear written instructions alone are rarely sufficient: busy workers may overlook them. "Tool box" talks are an invaluable way of ensuring that employees know how to: protect the environment, promote health and safety and minimise the company's risk of liability. Examples of points to cover in a toolbox talk include which liquid substances should or should not be poured into particular drains and sewers; and what to do and who to report to if equipment or plant is found to be defective, corroded, dangerous or likely to result in unlawful emissions. A toolbox talk also could cover simple operational procedures to ensure compliance with permit conditions and other legal requirements, and good housekeeping "rules". Bold and simple notices may also serve as useful reminders.

### **Incident response:**

If an incident has adverse EHS consequences, the first priority is to minimise its consequences. Also, a decision must be made whether to notify the relevant regulatory authority, and how to deal with regulatory officers if they carry out an investigation. Those issues are likely to affect the regulatory outcome. Many EHS incidents are strict liability criminal offences (no negligence or intent has to be proved), but the extent of culpability as well as the company's behaviour after the incident has a profound effect on the authority's approach (particularly the decision on whether to prosecute) and on the amount of any fine imposed by the courts. Recent guidance from the courts in the UK, as well as official

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sentencing guidelines, have markedly increased the normal range of fines with the intention that the punishment should be real.

There is no uniform answer as to whether and when to contact the regulatory authority. Each case depends on the circumstances including legal and permit requirements. Generally, except in the most minor incidents, it is safer to report the matter to the local officer of the regulator by e-mail (to ensure that there is a record) and by telephone as soon as possible after the incident. The initial report should be brief and factual, explaining what has happened and the steps being taken to deal with it. The incident manager should send it. Above all, the notification should not accept blame on the part of the company.

*Part II will cover dealing with the regulators and investigating officers' powers to take statements from witnesses.*

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