

# FIVE GOLDEN RULES FOR MANAGING AN ENVIRONMENTAL CRISIS

Insight  
Legal Briefings – By **Peter Briggs, Partner**

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Cutting through the noise – here are the five core principles to get your business through the crisis

Environmental incidents are unexpected and unpredictable. A small event can quickly morph into a crisis. With it come clean-ups and remediation, litigation and criminal proceedings, depression of share price and economic sanctions, reputational damage and loss of customer and shareholder trust.

Though a crisis might originate in a far-flung corner of the world, its ramifications may be felt globally. Multiple audiences, including affected communities, industry regulators, customers, employees, shareholders and the media want answers quickly. Different priorities will vie for attention.

## GET THE FUNDAMENTALS RIGHT

In the heat of crisis, level-headed thinking will ensure the organisation acts legally, transparently and competently. The first 24 hours are critical. Herbert Smith Freehills' golden rules can help:

### (1) BE PREPARED

The mercurial nature of crises means you cannot plan for every eventuality. But do not risk compiling your response as a situation unfolds.

Preparatory work will help moderate a crisis. A response plan should include a broad framework for who does what and when. It will prioritise and sequence activities. It will identify skills, facilities and technical resources. Checklists will keep the response on track yet sufficiently fluid to flex with evolving events. Priority actions for the first 24 hours of the crisis, as well as first-week obligations, can mitigate damage and assuage negative publicity.

Training and simulated responses to catastrophes might prepare staff for the real thing. A well-rehearsed response team could even prevent an incident from becoming a full-blown environmental calamity.

## **(2) DO NO HARM**

The damage has been done, but steps can be taken to limit further harm.

In your desire to resolve the crisis, hasty actions might exacerbate risks. A clean-up operation, for instance, must safeguard the safety of people first and the environment second. Get it wrong and the crisis will suddenly become much graver.

Take care not to further harm your corporate reputation. Communications, particularly over social media, need to be prompt and transparent, but do not mislead or give unsubstantiated information in your rush to respond.

## **(3) COOPERATE WITH REGULATORS**

An organisation that engages proactively and positively with regulators in advance of an environmental catastrophe might anticipate more mature engagement in the thick of a crisis.

Knowing your regulators is an imperative. There may be many of them, each going over different or the same areas of corporate responsibility. Each must be managed appropriately so that you respond compliantly to requests for information.

In understanding your legal rights and responsibilities to inform, know too the limits of your regulators' powers.

## **(4) ASSEMBLE A TEAM AND ASSIGN RESPONSIBILITIES**

A crisis demands multiple sources of expertise, both from within and outside the organisation, to mitigate damage to health, the environment and the business. Resources must be marshalled, teams assembled and responsibilities allocated within the first 24 hours.

Communication responsibilities must be clearly assigned to manage the flow of information. Spokespeople should observe the fundamental rule of 'do no harm' and be mindful of future litigation. Do not assume that the chief executive should be the public face of the crisis if there is a better communicator with more detailed understanding. The wrong signal or the wrong words from the wrong spokesperson can make a bad situation even worse.

Bringing down the shutters and making 'no comment' can be just as damaging. Clear communication with an affected community is critical, but balance transparency with the need to maintain legal privilege and protect confidentiality.

Reputational damage can be disproportionate to the level of environmental risk incurred. The share price may take an immediate and sharp hit. Expert PR and legal support might be needed to manage communications with the financial markets and to address potential shareholder class actions for diminution in the value of the business.

## **(5) DOCUMENT PROTOCOL**

Aside from corporate sanctions, today's directors can be held personally liable for actions that trigger environmental crises.

A document management system will evidence due diligence in relation to corporate decision-making and provide defence from prosecution.

Once you come through the other side of the crisis and corporate life begins to settle down, debrief and consider how you might have done things differently. Make tweaks or wholesale changes to systems and protocols that might prevent the next crisis from materialising.

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If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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