



POLICY INSTRUCTION

Environmental Incident and Near Miss Reporting for Defence Estates Number: PI 02/11

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Contact if different from above Sponsor:

Who Should Read this: All Defence Estate's Personnel, Lodger Units, Contractors and Military Personnel working on Defence Estates establishments

When it takes effect: Immediately

When it is due to expire:
Until rescinded

Estate Management

Equality And Diversity Impact Assessment

This policy has been Equality and Diversity Impact Assessed in accordance with the Department's Equality and Diversity Impact Assessment Tool against:

Part 1 Assessment Only (no diversity impact found).

1. Document Aim

To detail the procedure to be followed to ensure all DE Environmental incidents¹ and near misses² on DE TLB establishments and associated with DE TLB managed activity are entered onto the MOD's Incident Reporting and Information System (IRIS) in accordance with MOD Policy. To provide guidance on the enforcement powers of the UK Environmental Regulators and what the response would be to offences for which they are Regulator.

2. Introduction

2.1 It is the responsibility of Head of Establishment (HoE) is to ensure that:

- Incidents are reported up the HoE chain of command so that they may be reported on IRIS and in the event of a fuel spill, that the reporting protocols in JSP 317³ are followed.

¹ An incident is classed as any event or occurrence that affects or, has the potential to affect the environment including human, air, land, water, flora, fauna, buildings & infrastructure.

² An event that has the potential to cause harm to the environment but, did not cause harm due to fortuitous circumstances

³ http://defenceintranets.diiweb.r.mil.uk/sites/polestar/cs/DocumentLibrary/01/0_INTRANET_JSP%20317_U.pdf

- all employees, contractors and visitors are made aware of their responsibilities for protecting the environment and that they are informed of any areas of sensitivity on the Establishment and,
- are made aware of the procedures in place, action to be taken in the event of an incident and the process for reporting environmental incidents and near misses.

2.2 It is the responsibility of all employees, contractors and visitors to ensure that their actions or omissions do not result in the pollution of controlled waters, the contamination of land or any other environmental damage.

2.3 A template for reporting environmental incidents and associated guidance note is at Annex A.

2.4 A condensed list of some of the actions that will attract enforcement and prosecution responses from the UK Environmental regulator or in the case of the MOD as a Crown Body, Formal Warning Letters and Crown Censures is at Annex B. The information contained within the Annex is for guidance only and is a brief summary of the Environment Agency (EA) guidance⁴. This information covers the Regulators guidance for England and Wales only however; the Scottish Environmental Protection Agency (SEPA)⁵ and the Northern Ireland Environment Agency (NIEA)⁶ have similar enforcement powers.

2.5 Annex C details examples of environmental incidents, which will be updated to reflect 'real life' incidents which occur on the estate.

2.6 The reporting process will assist in:

- Providing a central point of contact for environmental incident reporting with a generic reporting format
- Identifying and monitoring any Regulator action
- Assisting site Environmental Focal Points in identifying and assessing the immediate and root cause of the incidents
- Identifying trends across the Estate and highlighting areas of concern
- Identifying courses of action to ensure that in areas where trends are identified, processes are reviewed and updated to reduce the occurrence of similar incidents
- Managing environmental risks
- Producing management information for the Defence Estates Management Board with a view to identifying actions to reduce the negative impact on the environment and reduce/eliminate the risk to human health
- Identifying financial implications of incidents
- Improving and promoting a positive corporate image
- Sharing lessons learnt and best practice with stakeholders

3. Reporting Requirements

3.1 The DE HoE is to ensure that a process is in place on his/her Establishment to report any environmental incidents/near misses to the Defence Estates Incident Notification Cell (DE INC) as soon as is reasonably practicable within the timeframes specified in this Policy Instruction, (Para 3.5).

3.2 The minimum detail required when reporting to the DE INC is:

- Name of the person reporting the incident
- Name of the Safety Health & Environmental Protection Advisor (if not the above)
- Incident detail inc. UIN of establishment, UIN of incident owner (if different), time and date, exact location, source, pathway and receptor, tier of spill or other incident associated with human, air, land water, flora fauna, building and infrastructure including the historic estate

⁴ http://www.environment-agency.gov.uk/static/documents/Business/epp-guidance_V24_Uploaded_for_Internet.pdf

⁵ http://www.sepa.org.uk/about_us/publications/better_regulation.aspx

⁶ <http://www.ni-environment.gov.uk/water-home/waterpollution/prosecution.htm>

- Cause category
- Detail of any external bodies engaged in the incident
- Action taken and any additional supporting information
- Anticipated costs

3.3 Staff lodging on another TLB Establishment or on Detached Duty

Where DE is a lodger or visitor on a site, the sites procedures for reporting environmental incidents caused by DE managed activities must be complied with. In the event of an incident the Establishment SHEP Advisor/Environmental Manager should be informed as well as the parent unit. The parent unit will undertake an investigation of the incident if required. The DE Senior Manager on site should nominate a DE focal point who will be responsible for reporting incidents to the DE INC and informing the parent unit that DE will report the incident on IRIS.

3.4 DE managed Contractor Incidents

Incidents that involve DE managed Contractors should be reported to the DE host for the site, i.e. SETL, Project Manager or DTE J4 who should report the incident to the DE INC. The site Environmental Focal Point/SHEP Advisor should also be informed immediately of any incident so that any emergency procedures can be implemented if necessary. Investigation of the incident will be the responsibility of the Contractor who should keep the DE host informed throughout and provide any additional reports as a result of the investigation.

3.5 Incident Tiers and timeframes for reporting to the DE INC are defined in the Table 1 below.

TABLE 1

<u>Tier</u>	<u>Definition</u>	<u>Timeframe and method for reporting to DE INC</u>
1	Incidents that have minor and/or no potential or actual effect on the environment, including near misses and affect a localised area. They can be dealt with entirely within the contractor or user unit's capability.	by phone, email or by completing the DE INC Environmental Incident Report Form at Annex A within 10 working days of the incident
2	Incidents which are more diverse than a Tier 1 in scale and by their nature have a broader range of impacts, have the potential to cause significant damage to the environment, require assistance from another Service unit or from an external organisation.	By phone or e-mail within 24 hours of the incident and followed up by completion of the DE INC Environmental Incident Report Form at Annex A within 10 working days.
3	Incidents which have the potential to cause catastrophic and/or widespread damage affecting one or many receptors and require major external assistance.	By phone or e-mail within 24 hours of the incident and followed up by completion of the DE INC Environmental Incident Report Form at Annex A within 10 working days.

All Incidents should be reported immediately at site level, spill response plans etc initiated and appropriate advice sought. Where there is imminent or actual threat of environmental damage occurring the relevant regulatory authority should be immediately informed normally through HoE chain of command.

3.6 Records

Where DE is HoE or incident owner a copy of the incident documentation should be retained by the site and recorded as part of the site Environmental Management System (EMS).

Contact details for the DE INC are:

- Post : DE INC, Defence Estates, Kingston Road, Sutton Coldfield, B75 7RL

- Tel: 0121 311 2160 (Mil: 94421 2160) [supported by 24 hr answering machine]
- Fax: 0121 311 3707 (Mil: 94421 3707)
- E-Mail: DE-CHSA Mailbox

3.7 Actions taken by DE INC

Upon notification, the DE INC is to:

- Notify CESO DE and Service INC as appropriate
- Align the reporting with EA Compliance Classification Scheme (CCS) or the Common Incident Classification Scheme (CICS) Categories as appropriate
- Enter the information provided and any subsequent updates on IRIS ensuring all appropriate mandatory fields are completed
- Advise the site focal point of the IRIS generated reference number to be quoted on all associated correspondence and request details of local investigation findings
- Retain incident documentation.

3.8 Investigation Report

The Contractor or user Unit is responsible for undertaking the investigation into the incident. Where DE is HoE or incident owner, it is the responsibility of the local DE Senior Manager to ensure that any recommendations for remedial action are acted upon without delay, implemented within a reasonable timescale and included as part of the Environmental Management Plan for the site. A copy of the investigation report should be sent to the DE INC and a copy filed with the EMS.

If an incident occurs that involves both an H&S related injury and an environmental incident the investigations should be run in parallel so as to enable one incident to be raised on IRIS. Information should be supplied in line with the H&S and Environmental incident reporting procedure and sent to the DE INC, annotated to identify the link between the two incidents.

4. Regulatory Action

4.1 The objectives of the Regulator taking enforcement action are to:

- Provide appropriate punishment for a criminal offence, change behaviour of the offender and deter future non-compliance
- Restore the harm caused by the offence, where appropriate, and ensure that remedial action is taken to protect the environment;
- Bring under regulatory control/secure compliance with a regulatory regime
- Prevent, stop or restrict the activity and/or;
- Eliminate financial gain or benefit from non-compliance

4.2 The policy document produced by the Regulator aims to ensure that there is a consistent decision making process and that the EA can justify their enforcement response. Any response will be subject to **public interest factors** which are as follows:

- Proportionality
- Transparency
- Consistency
- Targeting
- Accountability

4.3 The MOD has a Memorandum of Understanding (MOU) with the EA⁷ and DEFRA⁸ (Conservation) and Declarations of Intent with Natural England, Scottish Natural Heritage and the Countryside

⁷ See JSP 815, Annex N 'MOU between MOD and the Environment Agency'

⁸ See DE Library, A-Z of Publications, Agreements, DEFRA Memorandum of Understanding

Council for Wales. The MOU with the EA outlines the enforcement actions that can be taken against the Crown; the EA can also impose preventative or remedial actions. No formal agreements exist with other Regulatory Bodies.

4.4 The Crown is exempt from criminal proceedings however, this does not reduce the severity of enforcement by the Agency in terms Formal Warnings and Crown Censures which are the equivalent to civil prosecution and can affect the reputation of the department. The Regulator can also has a range of other powers including issuing:

- Prohibition Notices: requiring steps to remove an imminent risk of serious pollution
- Enforcement Notices: requiring compliance with the conditions of a permit
- Works Notices: requiring the carrying out of anti-pollution works
- Remediation Notices under the Environmental Protection Act 1990, Part 2A

Notwithstanding Crown immunity, in the event of a pollution incident or breach of consent, it is possible for an individual, namely CO/HoE, to be held liable under criminal and/or civil law if it is deemed that he/she has acted negligently in carrying out their duties. The CO/HoE should ensure that interfaces and contractual arrangements between all parties working on their sites are co-ordinated to minimise pollution risks.

4.5 Full co-operation with the UK Environmental Regulators may result in a lower enforcement response.

DE INCIDENT NOTIFICATION CELL (INC) ENVIRONMENTAL INCIDENT REPORT

IRIS REPORT NUMBER.....

SECTION 1 - Person Reporting Environmental Incident/Near Miss	Details
Surname	
Forename	
Rank/Grade	
Position	
Work Address	
Tel. No	
SECTION 2 - SHEP Advisor (if not person reporting incident)	
Surname	
Forename	
Rank/Grade	
Work Address	
Tel. No.	
SECTION 3 – Incident/Near Miss Detail	
MoD Premises Yes/No	
Date	
Time	
UIN of Establishment and/or UIN of Incident owner	
Full Details of Incident/Near Miss – (See Guidance Notes) Additional information can be provided on separate sheet if necessary.	
Location (including building/area)	

Pollutant (Source)	
Pathway (how did pollutant migrate)	
Receptor(s)	
Incident Tier if applicable -1, 2, 3 (see Guidance Notes)	
Cause Category/Analysis – Identify the cause or contributing factors that led to the event (See Guidance Notes)	
Spill Register Reference Number (see Guidance Notes)	
SECTION 4 – External Bodies - Additional Reports & Investigations (See Guidance Notes)	
SECTION 5 – Full description of Action Taken (See Guidance Notes) Please use additional sheet is necessary	
SECTION 6 - Anticipated Cost (See Guidance Notes)	Low £0 to £5,000 Medium £5,000 to £10,000 High £10,000 and above

Timescales for completion:

Please see Table 1 in the DE Policy Instruction on Environmental Incident Reporting.

Contact details are provided below:

- Post : DE INC, Defence Estates, Kingston Road, Sutton Coldfield, West Midlands, B75 7RL
- Phone: 0121 311 2160 [Mil: 94421 2160] [supported by 24 hr answering machine]
- Fax: 0121 311 3707 [Mil: 94421 3707]
- E-mail: DE-CHSA Mailbox

A copy of this form should be retained as part of the Site EMS/Unit Spill Register as appropriate.

GUIDANCE NOTES FOR COMPLETION OF DE INC REPORT

Section 3

Description of Incident/Near Miss should contain as much detail as possible including how the incident/near miss occurred, detailing any plant, machinery/equipment involved. Including exact location i.e. area/building number if applicable and any sensitivity of the areas i.e. major aquifers, Special Sites of Scientific Interest (SSSI), Special Conservation Areas (SCA), Special Protection Areas (SPA) etc.

- The source of the pollution, including type and estimated amount
- The Pathway i.e. drains, air, water
- The Receptor i.e. human, land, air, water. flora, fauna, heritage

The level of incident:

- Near miss - any event that has the potential to cause harm but, did not cause harm due to fortuitous circumstances.
- Tier 1 – Incidents that are likely to be relatively minor and/or no potential or actual effect on the environment and affect a localised area. They can be dealt with within the unit's capability.
- Tier 2 – Incidents which are more diverse than a Tier 1 in scale and by their nature have a broader range of impacts that have the potential to cause significant damage. The incident requires assistance from another Service unit or from external organisation(s).
- Tier 3 – Incidents which have the potential to cause catastrophic and/or widespread damage affecting one or many receptors and requires major external assistance and/or the mobilisation of a broad range of stakeholders.

The Tier system is based on an internationally recognised system. Tiers cannot be rigorously defined by for example, volume of contaminant released because the damage that might be caused is dependant on the sensitivity of the location as well as the amount and type of contaminant. Assessment is based on the potential risk in specific areas.

Cause Category/Analysis – This section should identify the contributing factors that led to the incident i.e.

- Act of God
- Infrastructure Failure
- Equipment Failure
- Inadequate Procedures i.e. Training, Instruction, Supervision
- Operator Error
- Sabotage
- Third Party Damage

One of the following should also be noted in this section with regards to possible enforcement action by the Regulators.

- Incident not reported/not necessary to be reported to the regulator
- Incident reported to the regulator – no action taken
- Incident reported to regulator – advice provided
- Incident reported to regulator – regulatory action taken

Spill Register Reference Number should be obtained from the Spill Register which forms part of the Unit EMS.

Section 4 External Bodies - Additional Reports and Investigations – This section should identify any additional Reports and/or investigations, assistance from External Agencies such as:

- Spillage Response Contractor
- Environment Agencies i.e. EA, SEPA, NIEA
- Natural England, Scottish Natural Heritage
- Local Water Companies/Aquatrine Service Providers
- Emergency Services
- Media

Section 5 Provide details of actions/investigations taken and any recommendations made to remove or reduce the risk and disposal arrangements

Section 6 This section should detail **estimated** costs of the incident and the following should be considered and updated as information becomes available during the management process:

- Time lost by management to investigate incident/time lost by DE staff
- Cost of repair, replacement of equipment/infrastructure
- Cost of clean up, external contractor engagement, waste disposal, manpower
- Indicate, Low, Medium or High

SUMMARY OF ELEMENTS OF THE ENVIRONMENT AGENCY (EA) ENFORCEMENT & PROSECUTION POLICY

This document aims to give some generic guidance and a flavour for what EA enforcement exists. In no way does it replace the EA guidance or is it a full interpretation of the policy. For full details and reference please use the links below.

The EA has two methods by which they categorise actual and potential environmental affects. They are a Compliance Classification Scheme (CCS) which applies to all conditioned Agency Permits regulated under the Environmental Permitting Regulations 2010 i.e.

- Installations and Waste facilities
- Water Discharge activities
- Groundwater activities
- Radioactive Waste

CCS is based on the **potential** for environmental effects based on 4 Categories outlined in Table 2 below. Please note that the category codes used by the EA are inverse to the Tier system used by the MOD.

TABLE 2

<u>Category</u>	<u>Definition</u>	<u>Penalty</u>
1	A non-compliance which has the potential for a major environmental effect	Prosecution (Crown Censure)
2	A non-compliance which has the potential for a significant environmental effect	Prosecution or Formal Caution (Crown Censure/Formal Warning Letter)
3	A non-compliance which has the potential for a minor environmental effect	Warning (Formal Warning Letter)
4	A non-compliance which has no potential for environmental effect	Warning (Formal Warning Letter)

The second is the Common Incident Classification System (CICS) which captures permissions not covered by CCS based on **actual** environmental impact but, mirrors the categories above.

Description and Enforcement measures

P	Prosecution (MOD could receive a Crown Censure)
W	Warning (MOD would receive a Formal Warning Letter)
FC	Formal Caution
FPN	Fixed Penalty Notice (MOD would receive a formal caution)
A	Appropriate to offence
N	None
CCS CI	CCS Category Incident
CI	CICS Category Incident

Section 1 – Environmental Damage

Environmental Damage Regulations 2008

- Failure to notify the enforcing authority and take all practicable steps to prevent an imminent threat of environmental damage and/or further environmental damage - **P**
- Failure to comply with instruction - **P**

- Failure to provide information - **P**
- Providing false or misleading information - **P**
- Notice non-compliance - **P**

Section 2 - Environmental Permitting

Environmental Permitting Regulations (EPR) 2010

- Operating without or other than in accordance with a permit - **CI**
- Failure to comply with a permit condition - **CCS – CI**
- Providing false or misleading information - **P**
- Operating outside the terms of an Exemptions - **W**
- EPR Notices non-compliance - **W/P**
- Obstruction of an EA Officer (Environment Act 1995) - **P**

Section 3 Extant Water Quality provisions

Water Resources Act 1991

- Failure to provide information - **P**
- Making a false or misleading statement - **P**
- Intentionally making a false entry in any record - **P**
- Criminal liability of directors, managers and secretaries - **A**
- Liability of members of a corporate body - **A**
- Liability of third parties for offences under water pollution provisions - **A**
- Failure to comply with an Anti Pollution Works notice - **P**

Control of Pollution (Oil Storage) (England) Regulations 2001

- Failure to meet the requirements of Regulations 3 to 5 - **W or CI**

Nitrate Pollution Prevention Regulations 2008 and Nitrate Pollution Prevention (Wales) Regulations 2008 (NPP Regulations)

- Breach of any provision of the NPP Regulations - **CI**

Water Industry Act 1991

- Failure of a Sewerage undertaker to refer to EA:
 - a. within 2 months any questions as to whether the discharges of special category effluent should be prohibited or made subject to conditions - **W, FC, P**
 - b. any questions as to whether any operations for the purpose of or in connection with the reception or disposal of special category effluent should be prohibited or made subject to conditions - **W, FC, P**
- Sewerage undertaker fails to exercise powers to secure compliance with provisions of a notice - **P**
- Failing to provide information - **P**

Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010 and Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (Wales) Regulations 2010

- Failure to ensure silage is made and stored in accordance with Regulation - **CI/P**
- Storing, opening or removing wrapping of a silage bale within 10 meters of an inland freshwater or costal water which silage effluent could enter - **CI/P**
- Failure to ensure slurry is stored in accordance with Regulation - **CI/P**
- Failure to ensure fuel oil on a farm is secured in accordance with Regulation - **CI/P**
- Failure to comply with “Notice requiring works” - **P**
- Failure to notify of construction, substantial enlargement or substantial reconstruction of silo, slurry storage or fuel oil storage area - **CI/P**

Section 4 - Waste

Environmental Protection Act 1990

- Treating, keeping or disposing of controlled waste or extractive waste in a manner likely to cause pollution or a risk to human health - **CCS or CI**
- Deposits from a vehicle - **P**
- Notice non-compliance - **P**
- Criminal liability of directors, managers and secretaries - **A**
- Liability of members of a corporate body - **A**

Duty of Care

- Failure to take reasonable steps to ensure other persons do not contravene their Duty of Care - **P/W**
- Failure to take reasonable measures to prevent the escape of waste from their control - **CI**
- Failure to take reasonable measures to ensure the transfer of waste to an authorised person - **P/FC**
- Failure to secure that there is a description of the waste to avoid contravention of DOC - **P/W**
- Failure to incorporate certain specified information on the transfer note - **P/W**
- Failure to keep records - **P/W**
- Failure to comply with a notice to furnish transfer notes - **P**

Hazardous Waste (England & Wales) Regulations 2005 and Hazardous Waste (Wales) Regulations 2005

- Mixing hazardous wastes - **P**
- Separation of mixed wastes (where waste has not been separated in accordance with Regulation) - **P**
- Failure to notify premises that are not exempt - **FPN**
- Removal of hazardous waste from unregistered premises - **P**
- Use of non-unique coding standards and consignment codes - **P/FPN**
- Failure to use consignment notes - **P/FPN**
- Failure to prepare and/or complete schedule of carriers where more than one carrier transports, or is to transport a consignment - **P/FPN**
- Failure to apply the multiple collection procedure - **P/FPN**
- Failure to use consignment notes for rejecting consignments - **P/FPN**
- Failure to keep, maintain and retain appropriate records- **P/FC**
- Non-compliance with notices - **P**
- Hazardous waste holders have not taken all lawful and reasonable steps to avert or mitigate emergency or grave danger - **P**
- Providing false or misleading information – **P/FPN**

Waste Electrical and Electronic Equipment (WEEE) Regulations 2006

Military equipment is exempt from the requirements of WEEE however;

‘From 13 Aug 05 the Department will have to ensure that any product that contains an electromagnetic current and is not specifically for military use e.g. IT equipment, is returned to its supplier or a central ‘clearing house’ for onward recycling and not disposed of in the normal ‘general’ waste stream.’

Further information can be found in JSP 418, Volume 2, Leaflet 18, Annex D, Para 22-27⁹

Site Waste Management Plan Regulations 2008

- Initialisation of project without a site waste management plan- **W/P**
- Update a site waste management plan - **W/P**
- Failure to keep and make available the site waste management plan - **W/P**
- Failure to keep the site waste management plan for two years - **W/P**

⁹ http://defenceintranetds.diiweb.r.mil.uk/sites/polestar/cs/DocumentLibrary/02/8_JSP418Leaf18.pdf

- Failure , so far as is reasonably practicable to ensure co-ordination and co-operation among contractors during the construction phase and that waste produced during construction is re-used, recycled or recovered - **W**
- Failure to ensure that waste arising on site is managed within the terms of the plan - **W/P**
- Failure to give reasonable directions to any contractor to enable the contractor to comply with Regulations - **W/P**
- Failure to review, revise and refine the plan as necessary to ensure that any changes in roles and responsibilities are clearly communicated to those affected (W)
- Failure to ensure that sufficient site security is in place to prevent the illegal disposal of waste - **W/P**
- Making false statements in the plan - **P**
- Intentionally obstructing person executing Regulations - **P**
- Failure to provide assistance or information - **P**
- Providing false or misleading information - **P**
- Failure to produce a site waste management plan or any other records when required to do - **FPN/P**
- Criminal liability of directors, managers, secretaries of similar, or persons acting in that capacity - **A**

Waste Batteries and Accumulators Regulations 2009

Even with the exemption in place, efforts should be made to abide by legislation, and plans to collect and recycle batteries should be implemented. Where technologically feasible, batteries containing fewer heavy metals should be used. Research into alternatives should be carried out where exemptions are enforced. We still have a duty of care to manage waste in line with MOD Policy and Legislation

Section 5 - EU Emissions Trading Scheme

- Operating without a permit - **P**
- Non-compliance with a permit - **CI**
- Non-compliance with notification provisions - **W**
- Failure to surrender a permit - **FC**
- Non-compliance with new entrant reserve provisions - **W**
- Non-compliance with an enforcement notice - **P**
- Failure to provide information - **W**
- False or misleading statements/false entry in records - **P**
- Deception - **P**
- Failure to supply or update registry account information - **W**
- Failure to comply with permit conditions - **N**
- Failure to comply with registry terms and conditions - **N**
- Suspected unauthorised access or undermining of security of registry - **N**
- Breach of security of Community Independent Transaction Log or registry - **N**
- Application to retain allowances refused or failure to meet conditions in retention notice - **N**

Section 6 - Land Quality

- Non-compliance with a remediation notice - **P**
- Requirements under the Sludge Use in Agriculture Regulations 1989 - **P/W/CI**
- Obstruction - **P**

Section 7 – Chemical Sector

Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000

- Holding contaminated equipment without Registration - **W/P**
- Holding PCB's in breach of regulation - **P**

- Failure to dispose of PCB's or equipment used for research and analysis as soon as possible after they are no longer required - **W/FC**
- Failure to decontaminate or dispose of equipment - **W/P**
- Failure of the holder of a decontaminated transformer or of contaminated equipment to label the equipment - **W/P**
- Provision of false or misleading information at registration of contaminated equipment - **P**
- Failure to supply information - **P**
- Supplying false or misleading information - **P**
- Failure to renew registration if entitled to hold PCB contaminated equipment - **N**

Persistent Organic Pollutants Regulations 2007

- Producing, placing on the market or use in contravention of the Regulations - **P**
- Management of a stockpile and management of a stockpile in a safe, efficient and environmentally sound manner - **P**
- Waste Management, contamination of waste - **P**
- Failure to provide information in relation to a stockpile >50kg of substances, the use of which is permitted - **P**
- Waste Management, disposal and recovery of waste - **P**
- Prohibition of specified disposal and recovery operations - **P**

Registration Evaluation Authorisation & Restriction of Chemicals (REACH) Enforcement Regulations

'REACH has provision for a defence exemption where this can be demonstrated to be 'in the interests of defence'.

- Contravention of a listed REACH provision and/or causing or permitting another person to contravene the regulations - **P**
- Providing false defence exemption certificate or false copy or permitting another person to do so - **P**
- Failure to provide a defence exemption certificate when requested - **P**
- Marketing and use of leaded paint - **P**
- Intentionally obstructing an Agency Officer - **P**
- Making false or misleading statements - **P**
- Failure to comply with any requirements of an Agency officer - **P**
- Failure to comply with a notice - **P**
- Failure or refusal to provide facilities - **P**
- Failure or refusal to permit an inspection - **P**
- Preventing a person appearing before an Agency officer - **P**
- Impersonating an Agency officer - **P**
- Disclosure of information relating to specified persons - **P**

Major Accident Control Regulations (MACR)

- JSP 498 sets out the Major Accident Control Regulations (MACR) for the MOD. MACR implements arrangements to achieve results at least as good as those achieved by non-MOD controlled sites which fall within scope of the Control of Major Accident Hazard Regulations 1999 (COMAH) as amended.

Section 8 - Water Resources

Water Resources Act 1991

- Abstraction without a licence or in accordance with a licence - **no licence issued-CI, where licence issued CCS CI**
- Failure of a licence holder to comply with other conditions of a licence - **CCS CI**
- To begin to construct or alter impounding works without a licence - **CCS CI**
- To impound water without a licence - **CCS CI**

- Failure to comply with the conditions of an impounding notice - **CCS CI**
- Failure to comply with an enforcement notice - **P**
- Failure to supply information - **P**
- Contravention of drought order or permit - **CCS CI**
- Obstructing an Environment Agency Officer - **P**
- Making false statements - **P**

Water Resources (Environmental Impact Assessment) (England & Wales) Regulations 2003

- Beginning a 'relevant project' under the EIA Regulations without the consent of the EA - **CCS CI**

Water Industry Act 1991

- Causing or allowing any underground water to run to waste from any well, borehole or other work - **P**

Flood Risk Management

- The erection, alteration or repair of any structure over or under a watercourse or designed to contain or divert flood waters of any main river without consent - **N**
- The erection or alteration of a mill dam, weir or other like obstruction to flow without consent - **N**
- The erection or alteration of any culvert that would be likely to affect flow without consent - **N**
- Non-compliance with notice - **P**
- Obligations to repair watercourses, bridges etc - **N**
- Watercourse condition impeding proper flow of water (ordinary watercourse/main river) - **W**
- Prohibited activity undertaken without consent, main river only - **CI**
- Non-compliance with bylaw notices - **P**
- Interference with EA apparatus - **P**
- Obstruction or impersonating an EA officer - **P**
- False or misleading statements - **P**

Section 9 - Carbon Reduction Commitment (CRC) 2010

- Obstruction of an authorised person - **P**
- Making false or misleading statements - **P**
- Notice non-compliance - **P**
- Failure/refusal to provide facilities/assistance - **P**
- Prevent person from appearing/answering questions - **P**
- Impersonation of an Environment Agency officer - **P**
- Refusal to allow access - **P**

Offences that are common to all regimes are outlined below for information:

- Fear or provocation of violence
- Harassment, alarm and distress
- Obstruction or impersonation of an EA Officer
- Intentionally, recklessly or wilfully making a false or misleading statement or record
- Non-payment of fees to EA
- Non-payment of as FPN/non acceptance of formal caution
- Operating without a required EA permission (other than low risk activities which they would not normally enforce against)
- Non-compliance with a condition of an EA issued permission
- Non-compliance with a served notice Non-provision of data and other offences with a specified/fixed compliance date

Remedial Responses

The Agency also has powers to impose prevention/remediation measures. The EA Officer should explain:

- The reasons for requiring the action and discuss what needs to be done
- Confirm the action start and finish date
- Make clear whether the action is required to comply with the law or, whether it is required as a matter of best practice or a combination of both
- Explain the consequences of not carrying out the action

NOTE

The information contained in this document is for general guidance only, it is based on the EA's Guidance for the enforcement and prosecution policy however, there are various criteria that effect the decisions on enforcement, including but not exclusive to;

- ***Public interest factors,***
- ***Waste - Duty of Care have other regulations been breached?***
- ***The severity of the breach dependant on permit conditions***

There are also, at times several elements to each offence therefore, depending on the actual breach depends on the enforcement response i.e. where it is identified that two responses may apply. Further more detailed information can be found in the links below.

EXAMPLES OF NEAR MISS, CATEGORY 1, 2 AND 3 SPILLS AND OTHER INCIDENTS

The purpose of the following information is to provide example of incidents, this section will be updated periodically to reflect actual incidents that have occurred.

Near Miss

A mobile bowser is being filled from a unit Fuel & Lubricant point, the operator is sat in the vehicle and the tank is about to overflow. Luckily, a supervisor checks the bowser and switches off the flow before the fuel spills onto the hard standing.

A waste oil drum has been stored outside on a un-banded pallet; it has been open to the elements and is in poor condition with damage to the seal at the opening of the drum. An employee notices the drum and it is put onto a banded pallet and stored appropriately (securely and undercover) thus eliminating the risk of rainwater getting into the drum and causing it to overflow onto the ground or into a surface water drain close by.

Tier 1 Incident

A military vehicle (lorry) is parked on the vehicle park, the driver carries out the first parade and notices the vehicle has an oil leak, the site Environmental Protection Officer is informed and the spill is cleaned-up and spill kits disposed of appropriately and stocks replenished. The incident was dealt with immediately by a trained member of the spill response team who followed the procedures outlined in the Unit Spill Response Plan.

Tier 2 Incident

A fuel storage tank containing 500 litres has been leaking over the weekend, and the excess water from the bund has not been removed for several months. The capacity of the bund is therefore reduced and causing the mixture of fuel and water to overflow and migrate towards an office block and grassed area. There are no surface or foul water drains in the immediate vicinity. However, the spill has occurred next to a main drive through for the site which has foul water drainage. The local Fire Brigade are called in to help contain the spill and reduce the risk from fire. The remaining fuel in the tank is drained and appropriate measures taken to remove and dispose of the fuel and water mixture which was contained in the bund in line with MOD Policy and legislation. The liquid that has escaped from the bund was contained within spill kits which were deployed by the spill response team. The fuel had migrated to the edge of the grassed area and investigation was needed with the assistance of the regulator to assess if there was potential for any ground water contamination.

Tier 3 Incident

A substance has entered a watercourse on site due to leaking underground pipe work, the site is on a major aquifer and there is a river on the boundary. The watercourse leads into the river and the leak has remained undetected until there is a report of dead fish in the vicinity of the site. Upon investigation the site is responsible for the pollution of the river. The works to stop the leak and clean up the local area are significant. The Environment Agency has been called and testing on the water has commenced to establish the severity of the leak. The investigation identifies that there were no maintenance checks in place to test the integrity of the tank or associated pipe work, it was also noted that discrepancies had been occurring in the consolidation of figures for the data when the tanks had been dipped for reconciliation. It is estimated that approx. 500 litres of diesel had entered the water course and due to lack of site inspection and appropriately trained staff the escape was undetected.

Waste – Duty of care (Tier 1)

A building on site is being prepared for some maintenance work and a wire bound pallet full of old cardboard, paper and plastic waste has been left outside. The intention was to segregate the waste into the skips in the Waste compound but, this did not happen. Due to windy weather conditions the waste has blown around the site and is escaping onto a nearby local road and into the adjacent residential area.

Hazardous Waste (Tier 2)

On a recent audit at a site it was identified that hazardous waste was being mixed with non-hazardous waste in a small skip. The person depositing the waste was unaware of the consequences of mixing hazardous and non-hazardous waste in terms of environmental legislation and the potential impacts to the environment. The actions also had associated risks from a Health & Safety perspective and financial implications due to the whole skip now being classed as hazardous waste.