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FOOD CONTAMINATION INCIDENTS – HOW TO PREPARE FOR AND RESPOND TO A CRISIS

By Miles Robinson and Mark Stefanini

Introduction

The recent contamination scares affecting Irish pork and Chinese milk have shown the massive financial and reputational impact that such incidents have on businesses. Food businesses operate in a global marketplace where problems with a single supplier in a single jurisdiction can become worldwide issues in a matter of hours. Meanwhile, the prosecution of Cadburys following the 2006 salmonella incident shows that the risk of criminal liability for companies and officers is very real. Food businesses need to be alert to these risks, and should urgently focus their attention on ensuring that procedures for preventing or responding to contamination incidents are sufficiently robust.

Understanding its legal obligations, putting in place a well thought out crisis management plan and ensuring that all of the operators in its supply chain have adequate traceability procedures in place can significantly reduce the impact of contamination incidents on a food business. This article examines the main features of a crisis management plan and considers the level of traceability information that food businesses should hold to ensure they are able to respond effectively to an incident.

Regulatory framework

There is a maze of legislation at a national and European level relating to traceability and contaminants in food. The key requirements are as follows:

- it is an offence to place on the market foodstuffs containing various contaminants in excess of the limits prescribed by European law;
- a breach of the prescribed limits will give rise to an obligation on the food business to initiate procedures immediately to withdraw the food in question from the market and inform the competent authorities; and
- food businesses are obliged to retain details of their customers and suppliers, the nature and quantity of products supplied or delivered to each of them and the date of each delivery. These records must be made available to the enforcement authorities on demand.

Breaches of the relevant legislation carry criminal penalties. Officers of companies concerned can be held personally liable, in addition to the company itself, for any breaches committed with their consent or attributable to their neglect.

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Traceability

Traceability is important to enforcement agencies and businesses because it allows the source of a contamination incident to be traced rapidly and the products affected to be withdrawn. This information is particularly important to businesses because:

- the enforcement authorities tend to take a very cautious approach when dealing with a contamination incident. Their first priority is to protect public health and safety. Until such time as information can be provided to the enforcement authorities showing exactly which products have (and more importantly have not) been affected, all products which may have been affected will be the subject of any action taken;
- where products have reached the consumer, it is likely that the enforcement authorities will wish to make a public announcement immediately covering all products which may have been affected;
- the more traceability information that a food business has available at the time it notifies the enforcement authorities, and immediately following notification, the more likely it is to be able to identify and confirm the source of the contamination and narrow the scope of the products affected by any action taken or referred to in any public announcement.

Unless the contamination has been introduced into the product by the business itself, it will be reliant on its supply chain to provide information for transmission to the enforcement authorities.

The legally required level of traceability information may be of limited assistance. Where a contaminant has been introduced into an ingredient provided by a supplier and the same ingredient is also sourced from other suppliers, it may be that only a small quantity of product is affected. However, it will not be possible to identify which products are affected from the legally mandated traceability information.

What is required is a more comprehensive system of traceability, often referred to as "internal" traceability, identifying how batches of raw materials are split and combined to produce batches of products. Where "internal" traceability is implemented by the entire supply chain, it should be possible to identify rapidly the products contaminated and provide this information to the enforcement authorities.

The reduction in the financial impact and the impact on the reputation of a business as a result of implementing "internal" traceability systems can be immense. It can mean the difference between recalling two or three batches of a particular product and undertaking a wholesale recall of all products produced during an affected period.

Implementing an "internal" traceability system can be relatively expensive and a cost/benefit analysis should be performed in order to decide whether to do so. Relevant factors include the risk to the business in terms of adverse publicity, loss of sales and customer claims, the likelihood of other operators in the supply chain cooperating and the level of information already available through existing systems.

Crisis Mnagement

Significant pre-planning is needed in order to respond rapidly to a contamination incident. It is vital that an overall strategy and crisis management team are in place in advance. The crisis management team should be composed of key managers with relevant expertise. A summary of the expertise required and its role within the team is as follows:

- Technical – to provide detailed knowledge of the production process and existing quality/safety controls in place to enforcement authorities and spearhead the efforts to identify affected product.

- Sales – to liaise with customers. Liability for the contamination should not be admitted, but commercial relationships must be preserved. Up to date information puts customers in the best position to minimise losses and may allow failures by them to mitigate those losses to be used against them in subsequent claims.
- Purchasing – to liaise with suppliers and collate the available traceability information relating to the source and extent of the contamination.
- Public Relations – to act as a central point of contact for all consumer and press enquiries.
- Distribution/Logistics – to advise on the location of affected product and organise its removal from the market.
- Legal – to provide initial advice on whether it is necessary to inform the enforcement authorities. To co-ordinate and advise upon all communications with enforcement authorities, customers and suppliers and any likely liability arising from the process. To ensure that insurers are notified.

In addition, an overall co-ordinator should be appointed to lead the crisis management team and ensure that agreed actions are implemented by the business.

The initial stages are vital. If the extent of the contamination is established quickly, it may be possible to present enforcement authorities with a comprehensive response plan at the same time as notification. This enables the business to maintain control of the response to the incident and can drastically reduce its impact.

Key actions for businesses:

- Ensure a crisis management plan is in place, identifying an appropriate crisis management team.
- Check the level of traceability information available through existing systems and consider improvements.
- Check that other participants in the supply chain have adequate crisis management plans and maintain adequate traceability information.