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Teaching the Business Case

Environmental, health, and safety managers must educate their company that if the firm addresses only compliance, it has an incomplete EHS system. But if it has a risk-based regime integrated into the corporate culture, compliance, and greater profitability, will follow

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Those of us who have worked over the years in the environmental, health, and safety area have long recognized that a well-designed EHS management system is not just a legal compliance tool but a critical business tool. It is essential for identifying and controlling risks. These include the strictly legal but much more — witness the aftermath of the Gulf of Mexico oil spill. Lawyers and other senior officials of a company are responsible for regulatory compliance and ensuring that the corporation's capital is spent wisely, but that is just a start. In this article, we use the term *EHS managers*, not environmental managers, to emphasize the scope of responsibility, which includes worker health and safety and process safety, not just environmental compliance. To be successful today's EHS managers need to be teachers. They need to convince top officials and employees at all levels that EHS needs are root concerns of the firm. Despite the dollars and hours involved, a vital EHS management system means greater corporate success and profitability.

That is a difficult but vital lesson. In too many companies, as we have discovered, these fundamentals have been forgotten. In the post–Sarbanes-Oxley, post–Gulf of Mexico oil spill era, however, top officials at many if not most firms are realizing that compliance and risk management via robust EHS management systems are core components of responsible corporate operations. EHS management systems are a means not just for avoiding costly agency enforcement but also for reducing the risk of catastrophic accidents, major reputational and brand damage, and False Claims Act and securities liability for erroneous certifications of compliance and flawed estimates of enterprise risk. Corporate boards and shareholders alike need the comfort of a sound EHS management system just as they need well designed and executed systems for compliance and risk management regarding financial, administrative, and operating functions of a company.

Too often, particularly in a company that has not had to respond to a major incident in recent years, top management may lack an understanding of a company's true EHS profile. This frequently creates a false level of confidence that the basics are in place. Sometimes, in their efforts to make this quarter's numbers, top management may compound this problem by putting off consideration of the less obvious but often significant long-term EHS risks. As Eric Schaeffer, former director of EPA's regulatory enforcement office, noted at an ABA conference, "EPA's docket is full of cases involving prominent companies that have sophisticated management systems and terrific codes of behavior written into their corporate policies and posted on their walls."

But if a system is only in place on paper, risks are not going to be reduced. Without full support at all levels, including the most senior officials, and active company-wide implementation efforts, an EHS

management system is very likely to fail. Persuading top officials to be advocates means recognizing and dealing with reality. Convincing the company's leaders to commit the necessary time and resources to address matters properly may prove to be challenging. Many of today's top corporate managers lack hands-on experience with day-to-day EHS issues and may only have experience in financial or more general business matters rather than manufacturing. In addition, because many companies have gone for extended periods without significant enforcement actions or other major environmental incidents, today's senior officials may have the mistaken view that EHS matters do not present genuine risks. They may also assume because of recent reductions in federal, state, and local environmental agency budgets that the risk of enforcement is minimal. That would be a profound error.

Even if senior officials know something about EHS issues, institutional memories about related risks can be lost as long-time employees retire, personnel shift positions, or companies merge or spin off into new entities. It is also difficult to focus attention on longer-term issues when leadership is overwhelmed with immediate concerns. Getting resistant senior officials to understand the importance of EHS matters and to support a strong, long-term management system will require sound research, marshalling of the relevant risk-related information, the ability to put EHS risks in the proper perspective for top executives — in language that mirrors the company's culture and values — and persistence. To get top-level support for creating and implementing and improving a system — or even getting them to listen to a presentation — EHS managers must tie their needs directly to the firm's bottom line. In short, they must make the business case for a rigorous and integrated EHS management system.

Doing the right thing in the EHS arena means showing officials up and down the corporate ladder how an effective management system will enable the company to handle these risks and meet its other performance goals. This convincing will require evidence that administering all of the firm's EHS functions appropriately and meeting all standards at a high level are key business objectives of equal importance to the company's other regulatory compliance and business performance efforts, such as its mandatory financial disclosure obligations and its manufacturing and sales goals. If a senior manager is responsible for the program, that executive can be a helpful advocate to other top officials. His or her personal interest in success is a strong tool for making the system succeed.

EHS managers must make it clear that the consequences of mishandling EHS matters can have severe adverse consequences for the company. These include loss of life, massive environmental damage, loss of operating assets or extended down time, reputational or brand damage, not to mention millions or even billions of dollars in fines or related legal liabilities. EHS managers have a large number of recent incidents to call on to make this showing besides the gulf oil spill.

Explaining EHS risks in a way that compares them with the company's other risks — the risks of deficient financial disclosures, market shifts, transportation failures, new competition, supply disruptions, personnel losses, etc. — will be critical in educating the company's top officials and getting their active support. Providing bullet-point lists of the types of EHS activities that are specifically tied to the company's manufacturing processes, especially process safety (such as loss of containment) incidents, that can cause harm, liability, and other costs would be critical to this educational effort. The list should provide examples of potential EHS occurrences or concerns, such as deaths and personal injuries; contamination of soil, water, air, or other media; destruction of natural resources; explosions, fires, or other catastrophic events; damage to property; and process malfunctions requiring costly manufacturing delays.

EHS officials also need to show top executives the complex nature of their programs. These educational reviews should be management-oriented and emphasize process. If a company manages strictly for compliance, it has an incomplete EHS system, but if it has a management system integrated into the company's operations and culture, compliance, and greater profitability, will follow. Compliance issues include the need for careful monitoring and attention to detail, anticipated capital expenditures to maintain the EHS profile, ongoing EHS operations and maintenance costs — which top officials need to understand are also general operational costs — and the consequences of falling short.

It is particularly important to describe such matters as the number and complexity of applicable laws and regulations, not to mention overlapping

federal, state, and local authorities with separate enforcement interests and powers. It is necessary to discuss special equipment needs for pollution control and waste-management obligations. Bring up the need for assessing and managing risks associated with process systems, operating procedures, and raw materials. Describe preventive maintenance and inspections. Explain that permits allow operation — they literally permit the facility to start or continue doing business. List steps for managing change within the EHS arena. And talk about ongoing self-compliance, recordkeeping, and reporting obligations, especially those that may require senior officials' involvement.

EHS managers must warn that the consequences of incidents and compliance problems can be significant. It is important to discuss the risks the company faces as well as the potential liability exposure of individual officials. These can include such matters as government, criminal, civil, or administrative actions against the company and individual officials; citizen suits; third-party tort claims; and financial penalties. Orders to shut down or reduce operations, pay remediation expenses, and submit to government-supervised operations (probation orders and consent decrees) are also possibilities. All of these problems create risk not only to the business, its officials, and the company's reputation, but to the bottom line. And these risks are frequently more challenging for operations in international jurisdictions.

While these issues and potential consequences are real, a list of "general horribles" usually doesn't grab attention. But some real-world examples can be attention-grabbers for senior officials and increase their willingness to get with the EHS management program. In carrying out such education, EHS officials should include any available information about recent liabilities of the company, its competitors, or others within an allied or related industry. Emphasize actual incidents that resulted in significant financial losses, criminal sanctions, or other adverse consequences, especially loss of assets or suspension of operations. It is also important to explain how long it can take and how difficult it can be to resolve EHS incidents should management systems lapse. Additionally, show senior officials that there often can be long-lasting repercussions when EHS problems arise — as examples, court-ordered monitoring, consent decrees, oversight, or probation.

Modern, effective, integrated EHS systems focus on risk management, particularly process safety. Once the company's top officials understand the importance of having and using a robust regime to identify and effectively minimize risks, the EHS managers can develop a focused system that meets the company's needs. It will need to ensure that all appropriate people, facilities, equipment, processes, materials, and procedures are in place for achieving and maintaining strong EHS performance. It should be tailored to the company's specific needs, rather than simply employing a generic form. The apparatus needs to fit within the company's culture, and focus on both immediate needs and long-term concerns. Most importantly, operating management, not the corporate EHS department, must take accountability for EHS management and performance.

A well-crafted EHS management system will lay out appropriate strategies, include leading indicators of performance, and mandate that the individuals running the EHS functions report directly to high levels within the company. Focus on process issues, such as managing change and ensuring that preventive and predictive maintenance occurs in a timely fashion. By including these building blocks, the regime will create a company-wide, formal, systematic process for making and carrying out decisions that are expected to yield consistent, predictable results.

A well-crafted EHS management system will lay out appropriate strategies, including leading indicators of performance

Identifying potential EHS risks is a critical first step. The management system must begin with processes to identify EHS risks and issues, equipment, materials, and other items that present the potential for problems — understanding and managing risk goes beyond those processes regulated by the Environmental Protection Agency and the Occupational Safety and Health Administration. Once risks are identified, assess the adequacy of existing practices to address them. If that review determines that EHS risks require action, the system should require implementation of a plan to ensure that the process or equipment design, operating parameters and procedures, and hazards associated with materials and technology are current and complete.

Options for managing risks are built on managing change and preventive and predictive maintenance. These are not just best management prac-

tices, but are considered integral parts of generally acceptable EHS systems. Good risk management calls for orderly arrangements to identify and control or otherwise respond to changes affecting EHS functions. Such risks can concern staffing, buildings, land use, machinery, raw materials, processes, procedures, laws, regulations, prices, waste streams, vendors, contractors, or any other aspect of a company's resources or activities that have an EHS-related component — which, as this long list indicates, means most of them. Potential changes require careful review because they can come in a variety of forms. Changes can be direct, indirect, complete, partial, permanent, or temporary. Changes occur when people are replaced, new positions are added, facilities, equipment, materials, or processes are modified, added, or closed, and when laws or regulations are added, amended, replaced, or in some cases repealed. In other words, effective management of EHS-related change requires constant vigilance.

Establishing and meeting an adequate preventive and predictive maintenance and equipment replacement schedule for EHS processes is a major piece of proper risk management. It should also be part of a company's general operational approach. It requires identifying the business's critical EHS equipment and processes that could lead to lost time or other problems when a malfunction or shutdown occurs. The identification process needs to list these points of vulnerability, compile a ratio of breakdown events to scheduled maintenance events, and develop sufficient information to plan adequate predictive maintenance. Any equipment or process that requires maintaining compliance with applicable EHS laws, regulations, and permits or are otherwise needed to manage potentially significant risks — most importantly, pollution-control equipment — should be immediately placed within the predictive maintenance program. Others that address less significant risks can be added to the program in accordance with good risk management procedures.

Many large companies today have, at a minimum, substantial EHS management systems in place that employ leading, rather than just lagging, indicators of performance. Lagging indicators such as specific violations and lost-time incidents only tell companies about the past. In contrast, leading indicators help companies look forward because they include key information that enables firms to identify and deal with the causes of violations and lost-time incidents such as specific excursions, government inspections, reportable incidents, training, and near-misses. As a management technique, poll operating people as to what they feel are items that would judge the effectiveness of their EHS program and are fair indicators of performance. "What keeps you awake at night?" is a simple but effective question in this regard.

There are other components that can be part of a proper EHS management system, but companies must recognize they are not adequate substitutes for the essential risk-based activities described above; they are supporting actors. Audits can help in the risk-management process, but they require careful planning, drafting, use, and interpretation to achieve this goal. Too often audits are simply canned, check-the-box papers that serve as preliminary lists that could be useful tools to begin preparing part of the eventual EHS system. Auditor experience varies in the EHS management and operations areas. Similarly, a focus on sustainability or a commitment to particular standards of conduct are appropriate, but, without full integration in the EHS program's risk-management process, they may simply provide a green glow to a company without helping to manage risks. Smaller measures such as instituting sustainability codes can lull companies into a false sense of compliance, a lack of completeness, and no real integrated EHS culture.

Once the EHS management system is created, the company must work hard to integrate the program into the company's culture

Once the EHS management system is created, the company must work hard to integrate the program into the company's culture. A system that is not fully responsive to the culture will usually fail. All personnel must understand the need to identify, and want to respond appropriately to, EHS risks because the company has made environmental protection, worker health and safety, and process safety among the firm's highest priorities. This will require use of top-level support that recognizes the value of such an approach. All personnel must learn to implement the EHS management system's steps and goals as standard operating procedure.

The responsibility to integrate EHS awareness and commitment to best practices into business operations rests with top management. Although it can be a slow process, it is essential for developing

an effective EHS system that permeates every aspect of a company's processes, from the shop floor to the executive level. A company can achieve this integration by introducing positive reinforcement for compliance with the EHS management system; incorporating EHS into all employees' performance evaluations; creating EHS-related financial bonuses; and factoring EHS performance into decisions to promote or advance workers. Likewise, top management needs to be prepared to institute escalating penalties for failures. By implementing both carrots (such as rewarding line employees for responsibly invoking stop-work authority), good managers can institute an EHS-conscious corporate culture that will survive and thrive.

A successful EHS management system is a never-ending process that must be actively supported by all levels of the company. The initial assessments and planning steps are not enough. The firm must develop a system built on "plan, do, check, act" elements. This means the company must implement plans to identify and control risks and check the results. It must monitor changing conditions, needs, and performance and revise or add new plans. And it needs to train workers, document activities, and incorporate backup plans, extra safeguards, and protections against incidents and emergencies that could spiral out of control.

All of these elements are essential for proper EHS compliance, performance, problem-avoidance, and both environmental and corporate sustainability. The goal is to have all personnel carry out these EHS compliance and performance measures as second nature — they should have the mindset that "here we just do EHS management the right way."

Having an integrated EHS management system focused on all types of environmental, health, and safety risks is the best method for helping the company achieve operational efficiency and regulatory compliance. In contrast, having a system that focuses only on compliance is short-sighted. An EHS effort in response to a significant enforcement action is a last-resort step that usually indicates a problem with the overall management system.

In consequence, regulators need to understand the shortfalls of a compliance-focused system and encourage the benefits of a fully developed risk-based alternative. While regulators historically have viewed their enforcement actions as both the main drivers for getting companies to act and as the regulators' primary measure of their own effectiveness, firms with sound, integrated, risk-based EHS management systems can help change regulators' mindset. It is certainly possible to show a strong correlation of high EHS performance with both compliance and business needs such as profit making, maximum utilization of assets, etc.

Even when regulatory enforcement actions are appropriate or needed, having the settlement or other resolution include a requirement for development and use of a risk-based EHS management system can be a win-win for the agency and the company, plus shareholders and citizens. In an enforcement case involving Ashland, the court appointed one of the authors (Frank Friedman) as a special consultant to the probation officer to be paid by the firm, with responsibility for monitoring both the company's compliance and its efforts to improve its management system. Following those steps, Ashland was able to make significant improvements to its EHS management regime — particularly in broad awareness of culture, commitment, and process-related risk management — as well as significant integration into the firm's businesses. These improvements accelerated compliance, shortened the probation period, and significantly reduced Ashland's risk of another major problem. Regulators and enforcement officials should be looking for opportunities to use their authority to get firms to create these types of risk-based EHS systems.

A requirement for development and use of a risk-based EHS management system can be a win-win for the agency and the company

A company must understand that an EHS regime is a process for properly managing parts of the company's business that have legal implications. It is also equally important as a tool for helping officials to understand the company's EHS-related processes, equipment, materials, and activities and their associated risks. A critical part of the system focuses on managing these risks through such processes as dealing with change and maintenance requirements, which are also of importance to the general businesses and their manufacturing operations. A successful regime will establish lines of accountability and acceptable standards of conduct throughout operations. The system, with its continuous loop of plan, do, check, act elements, will drive the firm to achieve regulatory compliance and avoid adverse incidents. The company, its workers, shareholders, the public at large, and the environment will benefit from a smoothly functioning, integrated, risk-based EHS management system. **TEF**

Sidebar

A Recipe for Sustainable EHS Management

Across the environmental law and policy arena, sustainability generally refers to efforts to remain responsible stewards of our planet and, in the words of Lyndon Johnson, leave future generations "a glimpse of the world as it was created, not just as it looked when we got through with it." Yet the term is also relevant to the implementation of environmental, health, and safety management systems — those programs that, when used correctly by a company, can be the foundation for reliable risk management, compliance assurance, and even value creation.

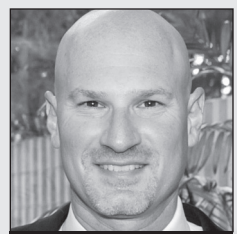
These systems are neither self-implementing nor sustainable themselves. Without proper development, nurturing, and oversight, they can precipitate false assurance, noncompliance, and, potentially, a crisis.

There are at least three core factors that dictate the reliability, and sustainability, of EHS management systems.

First, systems should be homemade, not off the shelf. ISO 14001 and similar programs offer invaluable guideposts for EHS management. Their principles are critical to compliance and risk management, and otherwise provide ingredients for the final product. Yet companies cannot use these tools blindly. Rather, they must adopt systems that fit their unique risk profiles, value structures, and cultures.

Corporations are dynamic. Leaders come and go; strategies evolve; products and services change; and tolerance for particular organizational design models fluctuates. By extension, policies and standards can alternate between strict rules and broad principles; EHS support functions can be centralized one year and dispersed the next; and senior leadership perspectives on the value-creating potential of effective EHS management can be changeable. So, while core values like integrity, responsibility, and assurance must remain constant, systems must be flexible and otherwise molded to the companies they serve. In contrast, store-bought frameworks that are cut and pasted from big manuals, purchased blindly from expensive consultancies, or copied from glossy web sites are destined for disappointment and failure, if not disaster.

Second, management systems should be locally sourced and implemented. Most large companies operate across multiple geographies with rich and proud — yet diverse — legal cultures and regulatory systems, with varying degrees of maturity. Without question, organizations are wise to establish globally applicable policies and frameworks. "Plan, do, check, act" is a common, critical concept that transcends geography and culture. Global oversight also makes sense. Yet local needs and stakeholder expectations differ, as do operating risk profiles.



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More importantly, EHS systems must be owned by local line management, not a far-away corporate center dictating action from above. To be sure, a comment like "We're following this procedure because that's what corporate wants" is a mere euphemism for "You know where you can shove your EHS management system." The likely, disappointing outcome is also predictable. In contrast, local systems built on global platforms, yet integrated into site-specific ways of working, beget success. For example, our new manufacturing facility in China is operating under a system built through a true partnership between global EHS advisors and local staff. The system comports with our global policy, yet contains unique features that the threats and opportunities associated with that site, and country, demand.

Finally, beware of the use-by date. Companies that forget that EHS management systems have a shelf life do so at their own peril, and that of their staff, neighbors, and the environment. Global policies must be periodically updated to reflect changes to business models, priorities, and stakeholder expectations. Similarly, local systems must be frequently refreshed to adjust for personnel turnover, manufacturing process changes, and, of course, deficiencies uncovered by audits or incidents. Failure to do so can have serious consequences.

In fact, not too long ago, one site's procedures for complying with occupational exposure limits were, for all practical purposes, forgotten! Production staff responsible for collecting air samples departed without proper handover and new laboratory technicians did not know enough to wonder why they were not receiving samples to analyze. The causes — and potential consequences — were obvious. Previously trustworthy procedures were taken for granted and could not withstand multiple years of organizational churn and change.

Ultimately, EHS management systems, no matter how robust, do not sustain themselves. The proper recipe demands creativity, local flavor, periodic mixing, and, at times some extra spice. Absent that, these systems cannot deliver their core purpose of enabling the companies that rely on them to remain trusted and responsible corporate citizens.

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