Environmental Compliance Program

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Environmental Compliance

Each corporation needs to design an environmental compliance program that fits within its organization's structure and culture. To try to design and implement a program without giving consideration to these issues would doom the program before it ever is implemented. However it is important to have some framework in the program to insure that all laws and regulations are complied with.

A good starting point to develop an environmental compliance program is the federal sentencing guidelines. These guidelines provide a starting point to coordinate and organize an effective and useful compliance program. It is important to review the following points when organizing a compliance program:

1. Criminal liability from Top Down:
2. Federal, State and Local Requirements:
3. Written Compliance Policy:
4. Responsibility at High Level:
5. Integrity Review:
6. Effective Communication of Standards and Procedures:
7. Auditing System:
8. Consistent Enforcement and Appropriate Disciplinary Mechanisms:
9. Meaningful Follow Through in Noncompliance Issues.¹

Review these issues and analyze the manner your corporation operates to try to structure a program that encompasses the federal sentencing guidelines.

Another source for reviewing elements of an effective environmental compliance program is the policy standard of the Department of Justice, the agency charged with the responsibility for prosecuting violations of the criminal provisions of federal environmental laws.

The Department of Justice states that an environmental compliance program should contain the following elements:

¹18 USC 3553
1. A strong institutional policy to comply with all environmental requirements;

2. Safe guards beyond those required by existing laws;

3. Regular procedures, including internal and external compliance and management audits, to evaluate, detect, prevent, and remedy circumstances that might lead to noncompliance;

4. Procedures and safe guards to ensure the integrity of any audits conducted;

5. Audits that evaluate all sources of pollution, including the possibility of cross-media transfers of pollutants;

6. Timely implementation of auditor's recommendations;

7. Commitment of adequate resources to the auditing program and to implementing its recommendations; and

8. Employee and corporate department accountability for environmental compliance.2

How to Get Started:

1. Prototype Audit

After reviewing the federal sentencing guidelines it is now important to determine what environmental regulations apply to your corporation. The best manner for determining which statutes need to be complied with is to do two things: (a) send out an environmental questionnaire to each facility owned or leased by the corporation; and (b) do an environmental assessment of each type of facility that your corporation operates. For example, you corporation may have several cut and sew facilities, distribution centers, research centers, design centers, transportation centers, etc. Pick a prototype of each type of facility and conduct an environmental assessment. Attached is a copy of the questionnaire you may want to use.

Below is a list of several regulations or areas that should be reviewed in the prototype audit:

a. Underground Storage Tanks, Federal and State Regulations
   (i) Removal
   (ii) Upgrades

2. Mission Statement

A mission statement should be drafted to aid in providing direction to the compliance program. It is helpful to have a mission statement or an environmental policy approved by the board of directors of the corporation or at least the chairman of the board of the corporation. The mission statement will help focus the direction of the environmental plan and also assist the personnel who will gather information and implement the environmental program.

3. Appointment of Personnel

It is important to appoint the correct personnel to aid in the coordination of this project. A technician person would enhance the chances of bringing continuity to the project. Credibility and enforceability are two important factors to consider when deciding on the team to direct and run the environmental compliance program. Many companies combined the OSHA, health and safety area with the environmental area. However, many times the technical expertise for environmental matters lies in other parts of the company. Sensitivity to this area is very important and should not be overlooked.
4. **Compliance Program**

After the prototype audit assessments have been completed, an environmental compliance program can be developed. It is important to set out the entire compliance and training program to ensure continuity and credibility. A compliance program must be of a substantive nature to include the areas of concern discovered in the audit assessment and other areas that already need to be addressed including but not limited to Community Right to Know Programs, Spill Control, Emergency Preappearance, Lock Out Tag Out, Material Safety Data Sheet training, etc.

5. **The Manual and Training**

An environmental manual and training program should be developed to provide the necessary information to the individual facilities. It is also important to determine which department will have responsibility for environmental compliance once the initial training has been completed. After a compliance program and training have been put together, it is important to decide how the training will be conducted. It is important to remember a few issues when reviewing the training including:

1. Who is the audience?
2. What is the audience’s educational level?
3. What are you trying to accomplish?
4. Who would be the best trainer and facilitator?
5. Where should the training be conducted?
6. How long should the initial training take?
7. Should a walk through of the facility be conducted?
8. What type of aids will be provided?
9. Who will get the Environmental Manual?

6. **Auditing**

The only effective manner of insuring that facilities are in compliance with the necessary environmental statutes is through auditing. Auditing for environmental compliance is very different than financial auditing. It is important to review which department should conduct environmental audits. Many experts agree that a well-conceived environmental audit program enables a company to have a better chance of surviving a battle in the court or with a regulatory agency. There are several aspects to setting up an environmental audit program that should be considered:

1. Commit to Corrective Action:
2. Set Specific Goals and Criteria and Circulate:
3. Define the Scope of the Environmental Audit with Checklist:
4. Document Fully and Accurately: and
5. Commit to a Schedule and Circulate.

A final aspect of environmental auditing that should be addressed by the company is the disclosures of environmental audits. Claiming environmental audits as "PRIVILEGED" information may, according to some experts, hinder a regulatory investigation. Many experts claim that disclosing the results of environmental audits to a federal or state regulatory authority may be looked upon as very favorable by those regulatory agencies. Voluntary audits by regulatory agencies may be the wave of the future.

It is important to note that an effective auditing program accounts for five out of the eight listed elements of the Department of Justice's policy standard.

7. Corporate Communication Policy

An effective corporate communication policy will support and enhance a company's environmental compliance program. If claims are made by regulatory agencies regarding a company an effective corporate communications policy will already have established the proper procedures that should be set into place. Such considerations as the operation of the local government where a facility is located or who and how does a city or county's government operate can be useful information in a crisis. Finally, communicating the company's environmental compliance program can enhance public image as well as employee relations.

Conclusion

A useful, effective and active environmental compliance program can provide enormous benefits to the initial costs that are involved in its development and implementation. However, effective follow-through, meaningful accountability and effective corrective action must be set in place to allow the program to work. Environmental sanctions include criminal liability and negligence and intentional acts are large unqualified risks for all corporations in this area.
Please complete this entire questionnaire (one for each facility) to the best of your knowledge.

I. GENERAL INFORMATION

A. Facility Location

Company Name ________________________________

Local Facility Name _______________________________

Mailing Address ________________________________

______________________________

______________________________

Telephone Number ______________________________

B. Person Responsible for Completing Questionnaire:

Name ________________________________

Title ________________________________

Mailing Address _______________________________

______________________________

______________________________

Telephone Number ______________________________

C. Please identify the person(s) responsible for environmental/health compliance at the facility.

______________________________

D. Business Information

1. Materials Used in Business Operations

   a. Identify all materials (including but not limited to inks, solvents, chemicals, solders, metals, etc.) used in the business operations of the facility and the approximate amount of each material used per year.
b. Indicate the approximate amount and location of such materials stored on site and the usual duration of storage.


c. How are the materials stored (i.e., drums, tanks, containers)? Please describe for each material.


E. Is the area around any drum, container or tank storage area diked?


II. AIR

A. Does the facility emit any emissions to the air including fugitive emissions from processes?

Yes____, No____

If yes, does the facility have permits for such emissions?

Yes____, No____
If yes, please attach a copy of such permit(s).

B. Complaints, Claims or Citations

1. Has the facility received any notice of violation, compliance order, governmental citation, complaint from the public or similar claim related to air emissions in the past two years?

Yes____, No____

If yes, please provide details regarding the nature and status of the claim:

________________________________________________________________________

________________________________________________________________________

III. WATER

A. General Information

1. Does the facility discharge any material or wastewater into waters of the United States?

Yes____, No____

2. If yes, does the facility have an NPDES or SPDES permit(s)?

Yes____, No____

If yes, please attach a copy of such permit(s).

B. Sanitary Waste

1. How is sanitary waste treated at the facility?

___ Municipal treatment (city, county, etc.)

___ Septic tank system

___ Treated by facility

C. Water Used in Business Operations (Process Water)
1. How is water used in the business operations of the facility handled (e.g., process wastewater, cleanup wastewater, cooling water, etc.)?
   ____ Discharged to municipal treatment system
   ____ Discharged to septic tank system
   ____ Discharged to facility treatment system

2. Describe processes from which water discharged.

3. If to municipal treatment system, does the facility have a permit for such discharge?
   Yes____, No____ N/A
   If yes, please attach a copy of the permit or contract.

4. Approximate amount of water discharged (monthly)
   __________

5. Does facility perform
   ____ Stonewashing
   ____ Acid washing
   ____ Dying, including button dying
   If yes, please generally describe process, chemicals used, and quantity of water used.

D. Water Supply

1. Please indicate for each water use at the facility whether the supply is from: well water, bottled water, municipal water, surface water or other.
   Drinking water __________
   Shower water __________
Process water (water used for business operations of the facility)
Utility water
  Boilers
  Cooling towers
  Other
Safety shower and eye wash
Other

E. Potable Water (e.g., Drinking Water)

1. Is the potable (drinking) water at the facility treated in any way by the facility?
   Yes___, No___
   If yes, how? ________________________________

2. Is the potable (drinking) water at the facility tested?
   Yes___, No___
   If yes, is lead tested for?
   Yes___, No___
   If yes, what are the typical results of lead testing?
   ________________________________

3. What else is tested for? ________________________________
   Please provide the typical results of other tests:
   ________________________________
4. Have there been any potable (drinking) water problems (contamination, etc.) at the facility in the past two years?
   
   Yes____, No____
   
   If yes, please describe: ____________________________
   ____________________________
   ____________________________
   
   How was the problem resolved? ____________________
   ____________________________
   ____________________________

5. What is the approximate number of employees and visitors who utilize the facilities' potable (drinking) water on an average day?

   ____ Number of employees at facility
   ____ Number of daily visitors to facility

F. Groundwater

1. Does the facility have underground storage tanks or vessels?
   
   Yes____, No____
   
   If yes, please complete the following chart for each tank.

<table>
<thead>
<tr>
<th>TANK REG. NO.</th>
<th>CONTENTS</th>
<th>AGE (YRS)</th>
<th>VOLUME GALLONS</th>
<th>ANNUAL THROUGHPUT</th>
<th>TYPE OF MONITORING SYSTEM(S) INSTALLED</th>
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2. Has the facility ever had underground storage tanks onsite in the past? _____ If yes, please describe how tank was closed.

3. Does the facility have underground piping for any material used in its business operations?
   Yes____, No____
   If yes, what material is contained in the underground pipes?

4. Has the facility tested the underground tanks, vessels or underground piping at the facility for leakage?
   Yes____, No____
   If yes, please provide the date of the last test and the test results:

5. Does the facility have any wastewater or other type holding or storage ponds?
   Yes____, No____
   If yes, has any leaching been detected from such ponds into the groundwater?
   Yes____, No____
   If yes, please provide a description of the problem:

6. Does the facility have a groundwater monitoring program?
   Yes____, No____
If yes, has groundwater contamination been detected at the facility?

Yes___, No___

If yes, please provide a description of the problem:

________________________________________________________________________

________________________________________________________________________

G. Complaints, Claims or Citations

1. Has the facility received any notice of violation, compliance order, governmental citation, complaint from the public or similar claim related to any water discharge or groundwater in the past two years?

Yes___, No___

If yes, please provide details regarding the nature and status of the claim:

________________________________________________________________________

________________________________________________________________________

IV. SOLID WASTE

A. General

1. Please provide the information requested below with regard to the solid waste materials generated at the facility.

(This information requested above should include all types of solid waste material generated at the facility including, but not limited to, cloth, trim, general plant and office trash, solvents, solders, scrap material, used chemicals, laboratory waste, equipment cleaning waste, waste inks, waste metals, waste oil, etc.)
2. Are any wastes treated or disposed of on-site?  
   Yes____, No____

3. Are any wastes shipped off-site?  
   Yes____, No____
   If yes, list all wastes shipped off-site for treatment or disposal.

4. Does the facility have contracts for the recycling, treatment or disposal of each waste listed?  
   Yes____, No____

5. For those wastes that are under contract, please specify:

<table>
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<tr>
<th>Name of Recycling/Treatment/Disposal Company</th>
<th>Contract Expiration Date</th>
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Attach a copy of each contract.
6. Does the facility generate waste oil?
   Yes___, No___
   If yes:
   From what source? __________________________
   How does the facility dispose of it?
   __________________________

7. How does the facility dispose of general plant, office or facility trash? (Check one or more if appropriate.)
   How hauled:
   ____ City pick-up
   ____ Private hauler
   ____ Company truck
   ____ Other __________________________
   Where disposed:
   ____ Municipal landfill
   ____ Private landfill
   ____ On-site landfill
   ____ On-site incineration
   ____ Open burning
   ____ Other __________________________

8. Does the facility have any inactive disposal sites on the property?
   Yes___, No___
   If yes:
   Please provide information indicating what was disposed there and the approximate dates of disposal:
   __________________________

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Was this site reported to U.S. EPA in 1980 pursuant to CERCLA §103(C)? N/A

Yes____, No____

If yes, please provide a copy of the notification.

B. Hazardous Waste -- General

1. Does the facility hold any permits under the Resource Conservation and Recovery Act (RCRA) as a treater, storer or disposer?

   Yes____, No____

   If yes, please attach a copy of the permit.

2. Does the facility receive any hazardous waste from off-site?

   Yes____, No____

   If yes, please list type of waste and source(s):

   ________________________________

3. Does the facility generate any wastes which are listed as hazardous wastes under the Resource Conservation and Recovery Act or which the facility believes to be hazardous?

   Yes____, No____

   If yes, please list type of waste and source(s):

   ________________________________

4. Is training provided to employees who are involved in the handling or use of chemicals and wastes?

   Yes____, No____
If yes, are records of the training provided to such employees retained and where are they located?

V. TSCA
A. PCBs

1. Are there transformers, capacitors, dielectric fluids or electromagnets or other equipment potentially containing PCBs at the facility?

Yes__, No__

If yes, please provide the following information:

a. If there are transformers at this site, who owns the transformers?

____________________________________________________

Have they been tested for PCBs?

Yes__, No__

Do they contain PCBs and at what level?

____________________________________________________

____________________________________________________

Are they properly labeled?

Yes__, No__

b. If there are capacitors at this site, have they been tested for PCBs?

Yes__, No__

Do they contain PCBs and at what level?

____________________________________________________
Are they properly labeled?

Yes___, No___

2. Is the facility in compliance with the PCB regulations regarding labeling, inspection reports, and inventory reports?

Yes___, No___

3. Have all employees been advised of their right under TSCA Section 8(c) to allege adverse reactions to health and the environment?

Yes___, No___

If yes, when were they last informed?

________________________________________

4. Describe the procedures for reporting and recording allegations of adverse health or environmental reactions?

________________________________________

________________________________________

Have any been received?

Yes___, No___

VI. ASBESTOS

A. Is asbestos or asbestos-containing material present at the facility?

Yes___, No___

If no, do not answer the remaining questions in this section.

B. Where is any known asbestos or asbestos-containing material located?

________________________________________

________________________________________

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C. Is the asbestos labeled?
   Yes___, No___

D. Are proper safety precautions taken and safety equipment worn when work is done near asbestos?
   Yes___, No___

E. Has any asbestos been removed from the facility?
   Yes___, No___
   If yes, when?

Who performed the removal operation (in-house maintenance or private contractor, include names)?

From what location in the facility was it removed?

Where was the removed asbestos disposed?

VII. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

A. Chemical Purchasing

1. Is there one person at the facility in charge of purchasing chemicals?
   Yes ___  No ___

2. Please give the name(s) of person(s) involved in purchasing chemicals for facility.

3. Are purchase orders for chemicals kept on file?
   Yes ___  No ___  Where ___________
B. Material Safety Data Sheets (MSDS)/Annual Reporting

1. Is the facility required to maintain MSDS under OSHA regulations?
   Yes, No

   If yes:

   Did the facility submit MSDS or lists of MSDS to the state, local committee and local fire department by October 17, 1987?
   Yes, No

   Has the facility submitted inventory reports annually to the state, local committee and local fire department since March 1, 1988?
   Yes, No

2. Where are the MSDSs kept on site?

   

If you are not familiar with the Emergency Planning and Community Right to Know Act of 1986 (SARA Title III), do not complete this section.

C. Facility Notification

1. Does the facility produce, use or store extremely hazardous substances in excess of the threshold planning quantities set forth in SARA Title III?
   Yes, No

   If yes:

   Did the facility notify the state by May 17, 1987?
   Yes, No

2. Did the facility name a Facility Emergency Coordinator by September 17, 1987?
   Yes, No

   Please provide the name of the Coordinator:

   ____________________________
D. Release Reporting

1. Has the facility ever had an accidental release of an extremely hazardous substance in excess of the reportable quantity?

Yes___, No___

If yes, please provide the following information for each such incident:

Date of release: ____________________________

Substance released: _________________________

Amount released: ____________________________

Did the facility notify the state and local commission?

Yes___, No___

Did the facility notify the National Response Center?

Yes___, No___