Sarbanes–Oxley as a Driver for Corporate EHS Compliance

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Introduction

- Understanding Sarbanes-Oxley
- Recognizing the EH&S Reporting Connection
- Leveraging Sarbanes-Oxley to improve EH&S Management Systems
Understanding Sarbanes–Oxley
Sarbanes–Oxley Act of 2002

Congress enacted Sarbanes-Oxley to protect investors by improving the accuracy and reliability of corporate disclosures.
Sarbox: More Accountability

- Requires the CEO and CFO to certify the accuracy of quarterly and annual reports.
- Requires the CEO and CFO to certify that internal controls and operations are in place to make sure that material liabilities are uncovered and reported.
- Requires reporting material changes that affect the financial or operating condition of the company on a rapid and current basis (5 business days).
Sarbox: Material Liabilities

“The term ‘material,’ when used to qualify a requirement for furnishing information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to buy or sell the securities registered.” SEC Rule 12b-2
Sarbox: Harsher Penalties

- Non-compliance can result in as many as 10 years imprisonment and $1 million in fines.
- Willful non-compliance can result in as many as 20 years imprisonment and $5 million in fines.
What You Don’t Know About Sarbox

“…if you thought the provisions of Sarbanes–Oxley only concerned corporate finance, independent auditing, and equity research, you’ve missed the fine print. Sarbox also covers such disparate corporate functions as information technology, human resources, compensation, and environmental compliance.”

Recognizing the EH&S Reporting Connection
Environmental Disclosures

- Sarbox added an additional layer of enforcement and harsher penalties to existing SEC regulations.
- Sarbox requires that the methods and data used to determine costs of environmental liabilities are documented and periodically audited.
- These regulations require the disclosure of environmental liabilities.
SEC Disclosure Regulations

- Regulation S-K, Item 101 (Description of Business):
  - Disclose material costs associated with compliance with existing federal, state, and local environmental laws.

- Regulation S-K, Item 103 (Legal Proceedings):
  - Disclose legal actions when claims for damage, and/or expenditures, potentially exceed 10% of a company’s current assets.
  - Disclose legal actions for sanctions exceeding $100,000 regardless of materiality.
Regulation S–K, Item 103

74 % of companies failed to report in their 10–Ks cases where environmentally related legal proceedings could result in monetary sanctions over $100,000.

SEC Disclosure Regulations

- Regulation S-K, Item 303 (Management’s Discussion and Analysis):
  - Disclose anticipated material changes in financial condition due to any known trends, demands, or commitments.
Environmental Disclosure Study

- Companies failed to estimate or disclose billions of dollars of asbestos liabilities and related worker health claims.
- Company declined to estimate the potential costs of dredging extensive mercury contamination from a lake in New York despite serving as a steering committee member of an industry group that had developed cost analysis at 22 other dredging sites that could have been used to develop an estimate.
- PCB and asbestos liabilities scrubbed from a company’s balance sheet when it spun off a subsidiary which then went bankrupt.

Environmental Disclosure Study

- Company used a "no look" agreement to prevent investigation of contamination at an oil refinery for 10 years after the date of sale. This questionable agreement is now the subject of a lawsuit by the ultimate buyer.
- Companies cleared their balance sheets of millions of dollars in shutdown and cleanup liabilities related to aging oil wells by selling them to an undercapitalized company that then went bankrupt.

Disclosure Guidelines and Trends

- In July 2004, the The United States Government Accountability Office (GAO) recommended that the SEC work with the EPA to obtain data relevant to environmental disclosure.

- EPA launched the Enforcement and Compliance History Online (ECHO). This site lists the environmental compliance history of companies by calendar quarter. The public is able to compare environmental compliance with disclosures made in SEC filings. http://www.epa.gov/echo/
Disclosure Guidelines and Trends


- Most material changes are being reported within 4 business days. The SEC is currently considering reducing the reporting deadline from 5 business days to 2 business days.
Leveraging Sarbox to Improve EH&S Management Systems
Sarbox is an Opportunity

- Demonstrate alignment of EH&S Management Systems with the corporation’s overall Sarbox compliance strategy.
- Improve controls and procedures used to collect, analyze, audit, and report EH&S data.
- Provide your CEO and CFO “peace-of-mind”.
$6 billion in total SOX spending is expected in 2006. It is estimated that 32% will be spent on technology purchases.

## Recommended Actions

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<td>EH&amp;S managers meet with corporate managers to determine an environmental disclosure plan.</td>
<td>Aligns EH&amp;S Management System with corporate objectives.</td>
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<td>Designate an individual or group to ensure the plan is followed.</td>
<td>Company has a point of contact for environmental disclosure.</td>
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<td>Audit your current EH&amp;S controls and procedures.</td>
<td>Identifies gaps between current procedures and regulations.</td>
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<td>Delegate and track actions required by audits, permits, and other regulations.</td>
<td>Delegation will keep individuals from becoming overloaded with tasks.</td>
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Recommended Actions

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<td>Utilize technology to track the status of tasks and link them to audits, permits, and other regulations.</td>
<td>Reduces time to collect, analyze, and report data to all levels of management. Data is centralized and accessible.</td>
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<td>Periodically audit the environmental disclosure plan and its controls and procedures.</td>
<td>Identifies items or issues that need improvement. Reduces risk of non-compliance.</td>
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Utilize Technology

- Associate or link tasks to applicable regulations
- Schedule notifications and reminders for each task
  - Notify responsible individual
  - Notify supervisor of incomplete and past-due tasks
- Record events that automatically trigger tasks
- Summarize and report data to determine compliance and support calculation of material environmental disclosures
Conclusion
Don’t Overlook EH&S Reporting

“Management should not overlook the implications Sarbanes–related requirements have had on environmental reporting requirements. Failure to take such implications into consideration can result in severe corporate and personal consequences. Proper planning and monitoring is needed to protect the corporation, directors, and officers from significant liability.”

Leverage Sarbox to Improve EH&S

- Environmental disclosures are required by SEC regulations.
- Non-compliance has the potential of 20 years imprisonment and $5 million in fines.
- SOX spending is estimated at $6 billion for 2006.
- Improve your EH&S Management System to accurately and efficiently communicate material information to all levels of management.
- Safeguard your company, CEO, and CFO from SEC sanctions.
Questions
Contact Information

If you have additional questions please contact:

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