

## Formulating an integrated disclosure strategy

By Richard MacLean

*Companies are required to disclose a tremendous amount of environmental, health and safety (EHS) information and many go far beyond the basics. Put simply, there is a lot of information flowing externally from many people in different departments. Keeping all this consistent and in sync is a task that few companies address, perhaps because the "silos of responsibility" can be so divergent. This month we examine the forms of public disclosure and point out areas where a consistent strategy is especially important.*

Most companies have extremely strict policies on who may speak to the media, and for good reason. Nothing gets a company in as much trouble as a "loose cannon" who runs amuck. In the event of a major EHS issue, the media often seek out the EHS manager because they think this person may have the facts and be less likely to cloud everything in corporate spin. If you are an EHS manager and have not undergone media training — do so now! Even if you have no plans to talk to the media, there are specific techniques for saying, "No comment" and not further exacerbating a delicate situation.

The "meet the press" form of communication represents, however, a minute fraction of the information disclosed by a company.

The vast majority of disclosure in most companies (I am using the term in the broadest sense) is disjointed, disconnected and with no integrating strategy. Consider the types of disclosure listed in Table 1. They cover the full organizational spectrum — and that is the point. When disclosures appear to be the exclusive responsibility of one department, problems can occur.

For example, the communications department may get involved with the public relations aspects of a new plant expansion, but they rarely see the information placed on permit forms — the "technical people" take care of those details. Steve Rice, President of Environmental Opportunities Inc., provides competitive intelligence business evaluations of publicly available environmental records such as monitoring reports and permit applications. Mr. Rice has occasionally found an amazing amount of information disclosed, far beyond what is required.<sup>1</sup> He concludes that, "The people who set the strategic direction within these companies would be shocked if they were aware of what the company is revealing." This may be due to the inexperience of the internal EHS professional having a workload that prevents him or her from critically examining the business value of

the documents or it may be due to the outsourcing of the effort to consultants who may not be aware of the competitive sensitivity of the information.

### Knowing the Rules for Disclosure

If revealing too much information can create problems for a company, disclosing too little can create even greater headaches. Companies have gotten the hang of the Community Right-to-Know provisions of the Superfund Amendments and Reauthorization Act (SARA Title III). They are also familiar with thresholds for mandatory reporting of releases of certain substances. But the notification of substantial risk, record-keeping requirements, reporting of health and safety studies and the pre-manufacture notice provisions under the Toxic Substances Control Act (TSCA) may not be widely known outside the chemical industry.

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You may not be manufacturing “magic fu-fu dust” but if you are using it in a significant new way, or if you are importing it as a component of your new widget and it is not on the TSCA inventory list, you are in a situation that the lawyers refer to as “deep do-do.” The fines for minor paperwork infractions under TSCA are shocking and they are aggressively enforced.

Another area not well understood concerns the precise requirements for financial disclosure of EHS issues. The Securities and Exchange Commission (SEC) requires that financial statements be prepared in accordance with generally accepted accounting principles (GAAP) which are prepared by the Financial Accounting Standards Board (FASB) and the American Institute of Certified Public Accountants (AICPA). These not-for-profit organizations write the standards for accounting models in the United States. Thus, the GAAP arrangement is a rather unique partnership in that a government agency is enforcing private guidelines.<sup>2</sup> The requirements and guidelines relative to EHS accounting and disclosure practices are extensive. (Contact the author for a list).

Pivotal to the question of financial disclosure is the “materiality” test, a subject of continuing controversy since a May 11, 1988 *Wall Street Journal* front page headline “Can \$100 Billion Have ‘No Material Effect?’” The article reported the general trend in industry to underreport environmental liability issues on their 10-Ks. Overall, the reporting issue is complicated because

- The extent of an issue is generally not known until long after the initial concern is raised;
- The timing can vary tremendously; both past and future events are involved;
- The cost estimates are not precise and can vary tremendously;
- There is no clear line between what you: 1.) should; 2.) must now; 3.) would like to; and 4.) may someday be required to remediate;
- Regulations change with time;
- “Materiality” is not precisely defined and can include subjective factors that may influence the perceived value of the company to shareholders;
- It is an area about which accountants have limited expertise or professional organizational guidance; and
- There is no universally recognized environmental accounting system.

Companies have used all this confusion and uncertainty as the justification (rationalization?) for disclosing very little information. The companies that have been more open have done it out of company policy considerations, rather than regulatory requirements or fear of enforcement. For example, in the past 25 years, the SEC has initiated administrative proceedings for insufficient environmental disclosures against only three companies.<sup>3</sup> Already the banking community gives little credence in the 10-K reports on environmental liabilities when considering loan applications.

Environmental groups have begun to focus national attention on the issue by

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directly challenging the SEC.<sup>4</sup> Superfund liabilities are part of the public record, so

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why are these liabilities swept under the umbrella of “immaterial” and rarely reported? An even more significant, but rarely raised issue is the liability from contaminated property where no “trigger” has been pulled that would require site characterization in sufficient detail to assign liabilities. Initiating events may include corrective actions prompted by the sale/closure of operations or the discovery of significant off-site environmental impacts. Recently, the European Commission recommended a uniform way for companies to disclose environmental risks on their financial statements.<sup>5</sup> Will the United States follow their lead?

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Conclusions

These are only a few of the issues concerning EHS disclosure. Getting “out of sync” can be costly, if not outright embarrassing.

Table 1. Types of EHS Disclosure

Financial	10-K; Annual Shareholder Report; stock prospectus; Financial analyst reports, Innovest and Dow Jones Sustainability Group Index research reports
Good Will/Community	External: Environmental/Community/Social Responsibility Reports; Community Information Brochures/Newsletter; Public announcements prior to or during plant expansions/constructions; Voluntary Instructions and Caution for Products & Services Internal: Employee notifications, both verbal and written (your employees are the community); Company newspapers and magazines
Issue-Driven	Responses to media inquiries; Product recalls or warnings; Disaster/crisis management response
Regulatory/Legal	Facility: Air and water discharge Monitoring Reports; TRI release and emission reports; CAA Title V Risk Management Plans; Construction/expansion permits and applications; Notices of Violations (NOVs) and Consent Agreements; Site remediation plans and status reports; Annual waste minimization reports; Emergency preparedness and prevention plans
Products & Services:	Toxic Substances Control Act (TSCA) pre-manufacture notices; Material Safety Data Sheets (MSDS); Product labeling requirements; State product/constituent registration lists
General Legal:	Responses to subpoenas, discovery process in litigation
Supply Chain:	Company supply chain management surveys and response data; Internal and third-party supplier audits


Although SEC enforcement appears lax, the current situation is fluid. A company should consider positioning itself as a showcase and not a test case by the environmental organizations now setting their sights on incomplete disclosure.

And it is not just incomplete, but disjointed disclosure that is troubling. For example, on several occasions I have seen slick environmental and community reports that totally ignore the gritty details that appear in the 10-K financial statement. This may be done by design for PR reasons, but whether by design or accident, it just opens the company up to criticism.

I recommend to my clients that they map out an overall strategy for all disclosures that either directly or indirectly relate to EHS issues. This requires good understanding of the existing requirements as well as emerging trends, since you should focus on developing a strategy for future disclosure needs, not just fine tuning the existing system.

Executive managers are impressed with managers who network outside their

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individual silos of responsibilities and consider the broad implications of company activities on external stakeholders. This may be another opportunity to build the reputation of your group. 



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For more information, circle 101 on card.

## References

<sup>1</sup> S. Rice, "Public Environmental Records - A Treasure Chest of Competitive Information," *Competitive Intelligence Magazine*, July - September 2000. Available at [www.enviropps.com/ac.html](http://www.enviropps.com/ac.html)

<sup>2</sup> A similar arrangement is the EPA and the American Society for Testing and Materials (ASTM).

<sup>3</sup> "Crackdown Sought on Companies That Fail to Disclose Risk," *Business and the Environment*, Volume XII, No. 3, March 2001, Page 8.

<sup>4</sup> For example, see: (1) the previous reference; (2) the Sunshine Working Group Web site at [www.foe.org/international/cswg](http://www.foe.org/international/cswg); and (3) "Enviros Go After the SEC on Non-Disclosure," *EHS Management*, The Environment Group, Inc., New York, New York, September 1997.

<sup>5</sup> "Brussels Advocates a Way to Disclose Liabilities and Risks," *Business and the Environment*, Volume XII, No. 8, Page 6.

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