



Eco-Friendly and Fuzzy

Eco-friendly terms sound great in company statements to the public, but their use can create unintended consequences.

By Richard MacLean

Spinning the company's environmental commitment in vague and ill-defined terms may seem risk free, but is it? How can a company be held accountable for stating that it is dedicated to leadership and excellence? The lower threshold of basic, no-frills environmental health and safety (EHS) management has become well-defined and codified over the past 10 years. A company that professes its environmental excellence, and does not deliver even a rudimentary system, may be viewed by the public as disingenuous and by a jury as willfully negligent. It is time to take a closer look at what your company is promising.

If you scan through company environmental reports, policies and press releases, you will find eco-friendly commitments to "global leadership" to attain "superior environmental performance" for operating in an "environmentally sensitive and responsible manner" which will "achieve high standards." Back in the late 1980s when companies were gearing up their public relations efforts in response to a series of highly publicized disasters, the wordsmiths were busy hammering out new terms to describe their company's dedication to the environment.

"Environmental excellence" was one of the most popular terms, and its use continues today. Searching the Internet for the exact phrase "environmental excellence" yielded 24,900 hits. There are even institutes for environmental excellence.¹ It is surprising that after a decade there is still no official or, for that matter, unofficial definition.

Conducting a search for the "definition of environmental excellence" yielded two hits: an earlier reference that I wrote and a 1995 newsmagazine article stating the need for a consensus definition.² A search of the U.S. Environmental Protection Agency's (EPA)

Web site landed a 1996 reference stating that environmental excellence was not defined, but "seems to imply the top five percent of companies" that "meet or exceed thresholds."³

When environmental excellence rose to prominence, EHS departments were still trying to get their houses in order and build the first generation of environmental management systems (EMS). Abstract, eco-friendly terms made their way into the mission and policy statements of scores of companies. After all, who can be held strictly accountable for something that is ethereal?

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Sufficient time has elapsed since these terms first appeared that the lower platform of basic environmental management is now well established and codified in standards such as the ISO 14000 series, Responsible Care®, Eco-Management and Audit Scheme (EMAS) and so on. Thus, while "environmental excellence" may still elude a consensus definition, one could confidentially conclude that it is at least better than the basics. This is a critical point.

There are well-developed tools to quantitatively measure a company's status with respect to EMS implementation. If your company's environmental policies state that excellence and "beyond compliance" (another favorite term) are the objectives and you do not even have a basic EMS, you have what is technically known as a "big whopper," and we are not talking burgers. This gap between spin and reality is easily discoverable, since all management system stan-

dards require documentation. The attorneys know exactly what documents to subpoena and what questions to ask in a deposition.

Risky Business

For example, if there were a lawsuit because of a toxic material release, counsel for the plaintiffs might subpoena records related to how the company manages such risks. If the company does not have even a basic audit system and a procedure to evaluate aspects and impacts, the plaintiff could represent to the jury that their absence demonstrated irresponsible conduct. If the company was also not following its own high-sounding policies, punitive damages may be in order.

Companies often cite in their defense that no regulations were violated when they engaged in some practice that later caused a major problem (e.g., using PCBs or asbestos). Consider the legal implications if a company had ignored international standards that were directly applicable to the practices in which they engaged at the time. Consider also the consequences if the company had been reassuring the public and its employees with policy fluff.

Frank Friedman, attorney and author of one of the most widely used handbooks on environmental management, states that tort liability is not the only risk.⁴ "The U.S. Securities and Exchange Commission (SEC) has in several instances taken a very dim view of companies that are clearly not following their own policy statements." Companies that profess excellence, but skirt around material liability for site contamination issues, could be in for rough times as the SEC gears up for tighter governance in the wake of the Enron debacle.

Excellence, leadership and beyond compliance are gradually losing position as the

eco-friendly words of choice. Sustainable development is very much in vogue. Again, it shares some similarities with the past favorites: (1) no universally accepted definition; and (2) business management is all for it (although they are not always certain what it really means in actionable terms).

An Internet search for the "definition of sustainable development" yielded 3,710 hits. This is in sharp contrast to the results for environmental excellence. I suspect that this may be due, in part, to the surge in attention after the Brundtland commission offered its own definition in 1987. Excellence and leadership are familiar terms that make business managers comfortable. The Brundtland commission's definition baffled most business managers and still does to this day. Possibly as a result, companies began to give their own interpretations for their sector.

For example, in their 2001 Sustainability Report, WMC (the Australian mining company) provided in considerable detail their own definition of sustainable development for a resource company. The company even included a "pathway to sustainable development" to describe its four-phase transition strategy and performance indicators. For the most part, however, the term is used freely, loosely and is poorly defined, just as environmental excellence has been for more than a decade. This equivocation will not continue much longer.

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Ira Feldman, president of Greentrack Strategies, states that "an organization's EHS program can be viewed as a three-stage 'continuum,' evolving from a compliance and liability-driven orientation to strategic or integrated approach (using a manage-

ment systems framework), and then on to considerations of sustainable development or 'triple bottom line' issues."⁵

Each stage has its own set of performance metrics. Compliance is relatively well defined in the regulations, and management systems are now codified into a structure that can be audited, quantified and tracked. Feldman observes that "the metrics for sustainable development are only now being defined through activities, such as the Global Reporting Initiative (GRI). But, at the sustainability level, it is going to be a question of finding metrics that work for both the regulators and the financial sector."

In other words, "sustainable development" is not as mature as "compliance" (stage 1) or "systems" (stage 2), but could be there in the next five to 10 years. Compliance performance failures can hit a company's assets because of fines and permit problems. System performance failures can: (1) add to compliance problem failures; (2) decrease profitability because of system inefficiencies; and (3) create legal liabilities (as discussed earlier). Sustainable development performance failures will impact a company's ability to capture or hold market share.

Environmental Excellence Defined

This is not about eco-friendly statements for the public. In competitive terms, it is about knowing exactly what you are promising your stakeholders and how it fits into your overall strategy. If you are talking environmental excellence, recognize that a definition has been created, in effect, because the lower platform has now been codified.

My definition of "excellence" is as follows: *fully implemented, state of the art EMS; performance at least in the upper half of your industry sector with respect to its most basic compliance, risk management and emission parameters; and one or more cutting edge initiatives underway.* This definition is a moving target as systems mature, public expectations increase and sector performance improves. Your company's documents and policies need to reflect what is going on real-time.

If you are currently using terms such as sustainable development, recognize that although it may be all warm and fuzzy to management now (i.e., no resource expenditures needed), it will some day be defined in specific key performance indexes (KPIs). For example, the most intriguing aspect of WMC's annual report is that it frames sustainable development progress using the

Dow Jones Sustainability Index (DJSI). It is up for debate if this scoring system will become the definitive performance indicator for the sector, but the point is that the company is using a numerical scoring index to state to stakeholders (and shareholders) what its position is relative to the competition.

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If your company were similarly compared on its sector's KPIs, where would it rank in the pack? If you do not know the answer to that question, you are operating in the dark. If you do not know what the future KPIs may be for your sector, you are also operating without a compass. In an upcoming "Manager's Notebook" I'll describe the basics on defining sustainable development KPIs and benchmarking performance. **EP**



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References

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- ⁴ Frank Friedman, *Practical Guide to Environmental Management*, Environmental Law Institute, Washington, DC, 8th Edition, May 2000.
- ⁵ See www.greentrack.com