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## Ask the Experts

by Steve Rice & Richard MacLean  
December 2002

### Strong Advice for Whistle Blowers

#### Also this month:

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**COMING IN 2003:** Next month will begin our fourth year of providing insightful and practical expert opinion on strategic environmental management and sustainability. Beginning with the February column, we will present a new feature, *Point 2 Point*, four times during the year. *Point 2 Point* will present a specific premise, then have two differing points of view from other experts and opinion leaders on the topic. We intend to provide you with thoughtful, opposing points of view that will help you to decide on the right objectives, decisions and approaches for you and your organization.

Of course, while we have our thoughts on next year's four topics, we are very much interested in what topics **YOU** would like to see covered in these four special *Point 2 Point* editions of

Ask The Experts! [Email](#) us your suggestions.

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**I believe my company is violating EPA regulations, but my boss will not do anything about it. I've never thought about becoming a whistle blower, but I'm so frustrated, I may. Is this wise?**

**Richard:** Whistle blowing is not for the faint of heart. It is like pushing the button to start a nuclear war, with your career possibly left in ruins. The movies may make it appear glamorous, but it's a living hell and should only be done as a last resort, and then only when the issue is of sufficient substance to warrant the action.

As a general rule, it is always advisable to work within the company system to correct a problem. In my thirty-year career, I have never run into a problem involving a clear violation of the regulations that was not eventually corrected voluntarily by management once they understood the issues. What is difficult is when there are gray areas. State and federal laws are subject to interpretation and that's what keeps armies of lawyers employed.

Be absolutely sure that there is a significant problem. The law department is a key ally in these matters. For small companies, however, there may be no inside counsel nor any budget to hire outside counsel. Find trusted colleagues outside the company to use as a sounding board. Sometimes it is possible to contact the agencies and pose hypothetical questions anonymously. Try to systematically build a case that will reverse the position of a stubborn boss. With patience, you may also encounter opportunities to bring the issue higher in the organization without appearing to go blatantly behind your boss.

Criminal, not just civil penalties may be involved. For example under TSCA (Toxic Substances Control Act), if someone has access to information of substantial risk (as defined under section 8e), that person could be held personally responsible if they do not take prompt action. In general, companies defend their employees if there are legal problems, but if it becomes clear that an individual knowingly violated a law, they may suddenly find themselves seeking counsel on their own. Be mindful where you stand personally.

If there is a serious problem and absolutely nothing works, it is time to ask yourself the question, "Do I want to be associated with this company?" Find another job and then reconsider if you want to disclose on your former employer. Your new employer may not appreciate having a whistle blower in its midst.

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**As I replace plumbing in my house, what are the health issues for choosing copper or PVC pipes for the plumbing in my home?**

**Steve:** The health issue associated with copper piping is with the solder used to connect the

pipng and elbow joints in water supply lines. Make sure that your contractor uses lead-free solder. Copper is rarely used for wastewater piping due to its cost, especially for larger diameter piping.

The health issue associated with polyvinyl chloride (PVC) piping is with the glue (instead of solder) used to connect piping and elbow joints in water supply lines. I've not heard of any concerns or data that shows vinyl leaches into supply water as the piping being installed was probably produced many weeks prior to installation, so has cured sufficiently. I sent a request for information on this topic to a major PVC producer, though did not receive a response back from them to share with you. Additional information is also available from the [Vinyl Environmental Resource Center](#).

Some of the issues with PVC pipe could be avoided by making a smart choice from purely a construction perspective. Steve Jensen, the owner of Jensen Construction here in New Jersey, advises me that even though copper is a bit more expensive, it is more durable than PVC so should be used for all of your water supply lines. PVC should be an acceptable selection for your typically larger-diameter wastewater lines. From personal experience, though, be sure to pack a lot of insulation around those PVC pipes – low frequency water flow noise passes right through them!

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### **What are some of the most important considerations that should be taken into consideration when setting up an EH&S billed services unit?**

**Steve:** Here are just a few of the most important ones:

1. *Decide which services are the most valuable to your customers.* Use the common 2x2 “High/Low” grid with urgency on the horizontal axis and importance on the vertical axis. List all of your potential services in its appropriate quadrant, as seen from your customers’ perspective. Survey them to confirm your placements. Then select only those in the “High” importance quadrants. Focus on providing “High” importance and “Low” urgency services (usually the more strategic ones), but don’t forget to service the “High” importance and “High” urgency service areas also – urgency brings a premium price.
2. *Develop your Strategy/Weapons/Opportunities/Threats analysis.* Check most any business planning book for more on preparing a SWOT analysis.
3. *Pick no more than four service areas.* You need to be an expert provider in one area and at least competent in the other three.
4. *Do your market research.* Talk with your business units to find out what they want – both now and in the future. Determine the skills and resources needed to deliver those services at the price they are willing to pay – then eliminate those that aren’t needed and obtain those that are.
5. *Develop a three or four year financial plan.* It should slowly wean the organization, or at least the portion that is to operate as a billed services unit, off key allocation

funding. This will give the organization time to adjust to being more of a business unit from both a financial and service/marketing perspective.

6. *Get a business advisor or gather an advisory group.* They should have different business experiences upon which your organization can draw, and should include both internal company and external advisors, including an accountant. Expect to pay them for their advice.
7. *Never accept the premise that your internal customers can hire external providers while your organization must service only internal customers.* If they can go outside of the company to obtain low-price services, then your organization MUST be allowed to go outside of the company to obtain high-margin customers. Otherwise, your organization will be stuck with all the low-margin, low importance work and difficult business units that the external providers don't want. I've seen it happen! The billed services flow needs to be able to travel either in both directions, or not at all.

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**You have written that sustainable development is more talk than substance, yet there are hundreds of companies doing positive things. Just what is the basis of this very negative assessment?**

**Richard:** Yes, I have been negative in my assessment of progress towards sustainable development (SD). Companies doing commendable projects that they publicize widely (winning awards in the process), but I believe that they have not integrated SD into their core business strategy.

A Wall Street Journal article, "PR Firms Advise Corporations On Social-Responsibility Issues" (November 13, 2002, Page B10), reported that "Companies are interested in incorporating responsible social and environmental policies into their operations, *or at least appearing to do so* [Emphasis added]." The thrust of the article is that companies are turning to PR firms to manage these issues. In my view, this is akin to using a dermatologist instead of a neurologist to cure a brain tumor.

There have been exceptions, what John Elkington calls the "Butterflies" in his book "The Chrysalis Economy," namely companies that are beautiful on SD. He points out that these have had low market influence because of their size and nature of their operations. More recently, a few high-impact companies, such as BP, have adopted and are pursuing core SD strategies. These remain the rare exceptions, however.

What matters is not the progress within a select few companies but the advancements within the tens of thousands of companies across the globe. What will also determine success is the rate of progress in undeveloped countries where the most serious environmental problems are now manifesting themselves. Progress in downtown Berkeley is not the issue.

It is to these ends that the SD progress story is less than encouraging. For example, Ernst & Young, in [Corporate Social Responsibility – A Survey of Global Companies](#), recently reported

that “companies are, in the main, failing to maximize the associated value.” PricewaterhouseCoopers in [2002 Sustainable Survey Report](#) reports that “most are not assessing their business strategies or activities in terms of the social or the financial risks and opportunities associated with this new form of corporate responsibility.”

Ultimately, the outcome will be determined by the rate of progress vs. the rate of degradation – in effect, the global mass balance and carrying capacity of the planet. Historically, technology has consistently come to the rescue. I am not so sure it will this time, unless more aggressive action is taken earlier, rather than later.

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### **When will the United States sign the Kyoto Agreement?**

**Steve:** In my opinion, never. In the perhaps distant future the U.S. might sign a climate change agreement, but it certainly won't be the Kyoto Agreement.

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### **Note: Update on public access to Risk Management Plans (Offsite Consequences Analysis) in Federal reading rooms.**

**Steve:** In the October column I noted how the federal public reading rooms were essentially being shut down for reviewing Risk Management Plans (Offsite Consequences Analysis) pending ‘security evaluations’, without appropriate legislative or regulatory process. Our recent experience with other reading room requests around the country has shown that the practice is either not universal or that certain rooms are now again open. In general, rooms operated by the Department of Justice are more unresponsive and/or closed than those operated by the EPA. In fact, the EPA personnel have been very responsive and helpful, while maintaining strict conformance with file review procedures and security.

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## **Got A Question?**

Send your question about environmental management issues to [Experts@GreenBiz.com](mailto:Experts@GreenBiz.com)

We can't guarantee that we'll answer every question, but we'll try.

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