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Ask the Experts

by Steve Rice & Richard MacLean
October 2002

Using Risk Management Plans to Your Advantage

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I would like to do some research on companies' Risk Management Plans as a part of my preparation for job interviews. How do I access these public 'right-to-know' documents?

Steve: Risk Management Plans (RMPs) can be a unique source of research information for job searches. These are facility-based plans for identifying and evaluating environmental risks associated with industrial facilities subject to the RMP requirements of the Title III of Clean Air Act. Sections 2 through 5 contain the Offsite Consequences Analysis (OCA) Information. You are commended for exploring the ins and outs of companies and their facilities as a part of your pre-interview research.

As I've prefaced other answers in past columns, there are two answers – the theoretical one



and the real one.

Theoretically, it is a three-step process:

1. Find the reading room for the state where the facility is located by visiting www.epa.gov/ceppo/readingroom.htm. Some reading rooms are operated by EPA and some are operated by the Department of Justice.
2. Call the Federal Reading Room Appointment Line at 1-888-442-9267 at least 7 days prior to the date you wish to review the RMP. Since the phone number is an automated message system, you must leave certain contact information. It is a sort of “don’t call us, we’ll call you” system.
3. According to the [Department of Justice’s procedure](#), “A Reading Room Representative will contact you by telephone prior to the requested appointment date to confirm the date and time of the appointment and provide the address of the reading room.”

Realistically though, based on my recent personal experience, the process is much different. Since recently no one in the past two months has ever called me back to respond to my reading room request messages (Step 2), Step 3 never occurs. This creates a classic “Catch-22” bureaucracy -- you can’t schedule an RMP review without an appointment but can’t get an appointment because no one calls you to schedule it.

My sources suggest that there are some ‘behind the scenes’ reasons for this. As reported on September 6, 2002 by Inside EPA on www.iwpnews.com, the White House is drafting a guide to limit access to ‘sensitive’ industry data. Limits, in my recent experience, appear to have already been implemented ex-officio. No files can be viewed if no reviews are scheduled.

Ironically, this places industry in a difficult position. For decades we have relentlessly rallied against state and federal agencies declaring policies and enforcing them as legally binding requirements and regulations without going through the required regulatory process. Nevertheless, this is exactly what appears to be happening with the RMP reading rooms – apparently they are being shut down by policy decree while federal agencies evaluate further limitations on access.

One person raised an interesting side-effect of this policy change, though. If a Title V permit is up for public comment, and the OCA is a part of the public hearing process yet can not be viewed by the public, can the permit be issued? I’m checking on that and hope to have a follow-up in next month’s column.

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What environmental accounting system or method do you recommend?

Richard: One that fits in seamlessly with the existing accounting system.

Accounting systems, even for relatively small companies, are very complex and must work reliably all of the time. If invoices are not sent out and employees are not paid on time, all hell breaks loose. In addition, environmental costs for most companies represent only a few percent of total costs. With this perspective in mind, it is no wonder that CFOs are reluctant to make major modifications to their accounting systems to facilitate environmental tracking. Adding a few extra cost center codes may appear like no big deal, but the accounting department may be wary if the existing system is already marginal.

For the same reasons, attempting to institute a separate accounting system, either as a stand alone or as an adjunct to an existing system, may not be well received. The environmental folks may think that these costs are worth tracking (and indeed they may be), but the case has to be extremely compelling to get over the activation energy needed to affect change. The very best way to go about implementing a system is to leverage an upcoming accounting system modification that is demanded by other business needs. It is during these times that adding extra tracking codes or reports requires little extra effort.

Modern environmental accounting systems are derived from activity based costing (ABC). ABC systems were designed in the 1980s to support a clear understanding of product and customer profitability and help prioritize areas for process improvement. If your current system is based on this principle, the effort should be directed at overlying the proper framework needed to gather the key costs.

Some robust commercial accounting systems are supported with environmental modules. For example, the SAP AG enterprise resource planning (ERP) system contains several environmental modules, although overall system is quite limited. If your current system has no environmental functionality, review existing environmental accounting software packages to determine how they are structured (e.g., cost centers and report structures). [Donley Technology](#) is a good starting point for examining environmental software packages. You may not be able to use the specific software these vendors sell, but they may be able to help set up the structure within your existing system.

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We recently discovered subsoil contamination and buried drums at our corporate headquarters site, which was formerly the location of several former production facilities. What would trigger CERCLA reporting requirements and what are our responsibilities regarding the buried drums?

Steve: This question raises legal issues, so I asked [Ed Frost](#), a lawyer with [Leonard, Frost, Levin & Van Court](#), a law firm with offices in Washington, DC, for his expert response.

“Buried drum sites are a common problem. Nevertheless, there are still many issues for the owner/operator of the site, but the question above provides only enough information for general answers.

"Notification under Section 103(a) of CERCLA [42USC§9603(a)], is probably not required. This provision applies only to the release of a designated reportable quantity of a listed hazardous substance into the environment. Neither the presence of buried drums, nor the existence of groundwater contamination, on its face, triggers a reporting obligation. Theoretically however, a groundwater flow sufficient to carry a reportable quantity offsite in 24 hours could be a problem that needs to be reported.

"Section 103(c) of CERCLA [42USC§9603(c)] could be an issue. It is a one time historical notice provision requiring (within 180 days after December 11, 1980) substantial disclosure regarding facilities at which hazardous substances were or had been stored, treated, or disposed. Assuming the drums containing a hazardous substance were buried (disposed) prior to enactment of CERCLA in 1980, notice should have been given to EPA. Assuming no notice was ever given, the §103(c) notice obligation could be considered in default even though more than twenty years has passed.

"The discussion above addresses only Federal CERCLA notice requirements. There could also be notice requirements under RCRA and/or state and local law.

"Since so much time has passed, the owner/operator may decide to take an additional very short amount of time to gather the available facts and decide on a wise course of action before contacting government officials.

"Experience under CERCLA makes clear that voluntary notice and cleanup is almost always preferable to enforcement. Both Federal and State governments have a great deal of discretion regarding remedial requirements (and costs) and cost effective remedial approaches require credibility and trust. Thus, I strongly advise any owner/operator to make promptly a full disclosure and propose a responsible voluntary cleanup when reporting the groundwater contamination and buried drums to local, state, and federal officials.

"Further delay in reporting and dealing with the situation should not be an option. Potential sensitive receptors such as drinking water wells or streams and waterways could be threatened or even contaminated. Delay will allow the contaminants to continue spreading, and increase the risks of human exposure and health effects. All of this will likely increase cleanup costs and could lead to significant personal injury and natural resources damages liabilities."

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Would additional environmental taxes significantly benefit the environment?

Richard: In a perfect world, taxes are the ideal tool to shift consumer spending towards more environmentally friendly products and services. The most commonly cited examples are carbon taxes on fossil fuel to encourage renewable energy sources and gasoline taxes to encourage more energy efficient cars and lower dependence on foreign oil sources.

The theory behind environmental taxes is simple: consumers are not fully paying for the

“hidden” environmental or societal costs associated with these products or services. You may pay \$1.50 per gallon to fill your tank, but Mrs. Brown across town pays \$350 each month for asthma medication and you pay an extra \$1,000 in federal taxes to support our access to “cheap oil” in the Middle East.

If you paid the fully loaded cost of all these “externalities,” some argue that gasoline should cost five to twenty dollars per gallon. It is easy to imagine the dramatic shift that would occur in driving habits, automobile design, and urban transportation systems if prices at the pump increased dramatically. Indeed, Europe has traditionally had higher taxes and both automobile fuel efficiency and public transportation infrastructure is greater. Gas taxes in the UK are about \$3.40 vs \$0.40 in the US.

Tobacco “sin taxes” have been based on the same premise: fully load the cost of the product to offset the long term societal damage. Examining the benefits is instructive. Some say that the 1998 state tobacco settlement has done little more than re-distribute wealth, mostly into the pockets of lawyers. Tax revenue has wound up going towards some questionable projects, including technical assistance for tobacco farmers. Politicians have already started to cut prevention programs and shift funding to other more politically expedient needs ([see the National Center for Tobacco-Free Kids’ press release of July 22, 2002](#)).

In our real, non-perfect, world run by politicians, do not think for a moment that the money will go towards solving the problems collectively called externalities. Yes, taxes will change behavior, but they may also have very negative effects on the economy and produce unintended consequences. Taxes could be the solution, but only if a way can be devised both to provide the intended behavior and to use the funds collected to achieve the desired permanent transformations.

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In the wake of 9/11, the bursting of the tech bubble and corporate governance scandals, how have socially responsible companies’ financial performance fared compared to other companies?

Steve: An accurate answer would depend largely on the social screens selected and their respective evaluation weightings. Absent these specific criteria, one can look at the various socially responsible mutual funds for an indication of recent relative performance.

The factors that helped these funds show impressive gains the past few years, unfortunately, are the same factors that have mauled them over the past two years. Their high portfolio exposure to the tech, telecommunications and banking/finance sectors have had their impact; most funds’ results trail the broad indices. Picking through the carnage, perhaps the best that can be said is that some of the socially-responsible funds have had only significant losses, compared to their peers’ crushing losses.

The Pax World funds are the ones that I track the closest and, in my opinion, use suitable performance comparison benchmarks. In their recent semi-annual report that their Balanced

Fund showed a six-month loss of -5.4%, compared to the Lipper Balanced Fund Index loss of -6%. Their Growth Fund had a six-month loss of -11.4% compared to the Lipper Multi-Cap Growth Index loss of -20.1% and the S&P500 loss of -13.8%, and their High Yield Fund had a six-month loss of -4.6% compared to the Lipper High Yield Bond Fund Index loss of -5.2%. So, at least for this fund family, one can say that their relative financial performance has been slightly better than their relative benchmarks. I don't know that annual extrapolated losses of -11%, -23% and -9% provide comfort to many of their investors.

Interestingly, recent data from the prospectus for [The Vice Fund](#), a "socially irresponsible" no-load fund, shows that stocks associated with alcoholic beverages, gambling, defense and tobacco have significantly outperformed the S&P500 over the past 1-year and 3-year periods, and all but the tobacco stocks have outperformed the S&P500 over the past 5 years.

As readers of this column know, I have supported the concept of socially and environmentally responsible mutual funds but as a whole they must do a better job of establishing credibility. Their true financial performance has been extremely difficult to assess due to the use of confusing benchmark comparisons and inconsistent investment selections. For example, one well known fund promotes itself as a growth fund, compares itself to the broad-based S&P500 yet has an investment portfolio more like an income fund. Another fund changes its comparison periods so often that they are obviously spending a lot of time finding the time frames that reflect the most favorable results. Most socially-responsible funds also have high loads and management fees.

On the other hand, regardless of their financial performance, these funds' biggest advantage is their ability to introduce, vote on and track shareholder resolutions that other funds and most individuals are not willing or able to do. That alone may be worth a certain performance price for many people.

Disclosure: I maintain a position in the Pax World Balanced Fund.

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

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