

Corporate Environmental Strategy

International Journal for Sustainable Business

Volume 11, Issue 8 (September 2004)

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Publication Information

Publication, Reprints and Order Information

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The New Rule Makers: The Paradigm Shift in Environmental, Health, Safety, and Social Responsibility “Regulations” Now Underway

Richard MacLean and Brijesh Nalinakumari

Corporations are facing a fundamental shift in the nature of environmental, health, safety, and social responsibility (EHS&SR) issues. These dynamics will affect their ability to bring products to market, raise capital and either expand existing or develop new facilities. Yet business executives, and even some EHS&SR managers, are unaware of the full significance of the transition underway. They are still stuck in a two-dimensional world of EHS&SR defined by government regulations and public relations. The emerging landscape is far more complex and populated by a new breed of “rule makers” most commonly referred to as non-governmental organizations (NGOs). This article describes the challenges of this transition and makes recommendations on how to turn these challenges into competitive opportunities.

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Introduction

In 1962 Rachel Carson's *Silent Spring* exposed the hazards of the pesticide DDT, initiating a revolutionary shift in thinking about the environment. That same year Thomas Kuhn's *Structure of Scientific Revolutions* challenged traditional thinking of the evolution of science in which universally accepted paradigms defined the world of chemistry, physics and so on. Kuhn's position was that conventional science dominates, at least until unexplained abnormalities reach a tipping point that triggers a “scientific revolution” establishing the next generation of scientific logic. Carson and Kuhn were each in their own way challenging traditional thinking.

Carson's work led to a tectonic shift in government laws and regulations which have driven environmental progress to this day. Indeed, it has defined the paradigm in which

governments and businesses think about their responsibilities for protecting the environment, employees and the community. But exactly as Kuhn described, this traditional, “regulatory-driven paradigm” cannot explain the realities of what is now emerging. And the old paradigm most certainly does not account for the competitive business opportunities that this new transition might afford savvy business leaders.

Looking at the environmental movement from a historical perspective, if some corporations instantly “got it” in 1962, they would have been more competitive over the past 40 plus years. They would have been spared the cost of remediating sites where a few simple practices would have saved millions. They would have opted for low cost or no cost – indeed positive cash flow investments to reduce waste. They would have “plucked the low hanging fruit” sooner. Unfortunately, few got it until the trends were obvious to everyone. Industry leaders had already beaten a safe and well-defined path to minimizing environmental costs and the competitive advantage evaporated. How will they respond to the paradigm shift underway? A few – very few – leaders are beginning to make their moves.

The Next Generation

In the first half of the past century, there were relatively few EHS&SR regulations or voluntary standards for corporations to follow. Those simpler times would soon be replaced by a set of complex and sometimes confusing and conflicting government agency regulations. From the 1970s into the 1990s, state and federal agencies set much of the agenda. In Kuhn’s framework, regulations defined today’s “EHS&SR science.” Business executives may not like it, but they understand the rules of how this regulatory game is played. What’s more they may believe that they have a substantial degree of control over the process through their elected representatives, public relations organizations and lobbyists.

Beginning in the mid 1990s, a subtle, but significant, shift began. The rate of introduction of new regulations declined and, more significantly, corporate infrastructures required to deal with government rules reached maturity.¹ At the same time, standards and guidelines emerged, led by a new generation of “rule makers” collectively called non-governmental organizations (NGOs).

In the United States a number of factors contributed to this shift. In the 1980s the Reagan Administration made an effort to “downsize government” with Ann Gorsuch at the EPA’s helm and James Watt as Secretary of Interior. The EPA became a “demoralized, do-nothing agency.”² Environmentalists later claimed that this “un-dynamic duo” were probably the greatest fundraisers for environmental NGOs.

NGOs rushed in to fill the vacuum as corporations, especially those in the chemical industry, began to rebuild their image in the wake of Bhopal. At the beginning of the Clinton Administration, NGOs had high expectations for government intervention to fix environmental problems, only to be disappointed by their great hope, Vice President Al Gore. He spoke the green message, but little concrete came of it as the political process stalled because of partisan squabbling.

The Bush Administration’s handling of EHS&SR issues over the past four years has been notorious in environmental activist circles.³ This, combined with the rash of corporate governance failures, has led NGOs to believe firmly that they must lead the effort to solve the problems that they (and increasingly

¹ This is a U.S.-centric statement. In some parts of the world, and especially in Eastern Europe and developing nations, government environmental regulations and their enforcement are every bit as challenging as the evolution of regulations in the U.S. in the 1970s.

² Editorial, “Where is the EPA’s Sense of Decency?” *Journal of Bioelectricity*, 3(12), 1-2 (1984).

³ See, for example, Sierra Club’s “Top Ten Bush Administration Environmental Misdeeds,” <http://www.sierraclub.org/planet/200404/images/BushTopTen.pdf>, last accessed 6/29/2004.

the public) think the government and industry are incapable or unwilling to address. In spite of all the corporate talk of “sustainable development,” NGOs increasingly believe that this is more lip service than a substantive effort.

The situation in industrialized countries such as Canada, Japan, Australia, and Europe is somewhat different. Although trust in government solutions is greater, the relentless march for non-governmental solutions through partnerships, standards, guidelines and certifications is, if anything, *more* aggressive. Some of the best, most innovative strategies for EHS&SR are coming out of Europe and Japan.

These differences between domestic and foreign-based industry have not affected the competitive landscape ... at least until now. U.S.-based activists see Europe as a major opportunity to push their agenda. In the past it was domestic consumer, safety and environmental issues that spread over to Europe. Now Europe is triggering the action domestically.⁴

While voluntary and sometimes created by corporations themselves, these new “de-facto regulations” are beginning to impact companies every bit as much as traditional government regulations. Their reach now extends to products and services along the entire global supply chain and is influencing the banking and investment community. The impact of these “regulations” can be indirect, yet profound.

ISO 14001 and EMAS are the obvious examples of non-regulatory standards where corporations (at least those companies with the resources to participate in the process) have nearly exclusive control over defining the rules. However, other standards- or guideline-setting organizations derive their influence by their very independence from corporations;

indeed they may leverage their activism toward corporations as a fundraising mechanism.

For example, the Global Reporting Initiative (GRI), a non-governmental organization, sets reporting guidelines that are, in effect, a declaration of what is significant to stakeholders. The GRI grew out of an initiative by the Coalition for Environmentally Responsible Economies (CERES) which is “a coalition of investment funds, environmental organizations and public interest groups” with a mission “to move businesses, capital and markets to advance lasting prosperity by valuing the health of the planet and its people.”⁵

Over the past 15 years, CERES has sought endorsement of its core principles from major corporations. Some of the signatories to the “CERES Principles” are finding themselves on the receiving end of activist shareholder resolutions supported by CERES. Shareholder resolutions that got virtually no traction in the past are receiving double digit support, according to the Interfaith Center on Corporate Responsibility (ICCR) that tracks EHS&SR resolutions. NGO-coordinated activism might be the most visible indicator (certainly to CEOs) that there is a shift in dynamics underway.

Where the Action is Today

Needless to say, navigating through this emerging landscape of standards, guidelines, reporting practices and certifications has become a daunting task for EHS&SR managers. It is littered with landmines for the unaware and competitive opportunities for the imaginative. Before, it was all about questions concerning the presumptive need for new laws and the interpretation of the regulations that followed. The battles with NGOs such as the Natural Resources Defense Council (NRDC) were on familiar regulatory turf. Today it is about which of these NGOs matter, who has

⁴ Otto Pohl, “European Environmental Rules Propel Change in U.S.,” *New York Times*, July 6, 2004, page 4, Science Section.

⁵ <http://www.ceres.org/about/main.htm>, last visited 7/9/04.

influence over these dynamics, what are the key metrics and what are the performance thresholds.

Our senior colleagues within industry report that dealing with these new rule makers can be challenging. Indeed, many of the senior managers state that the traditional EHS issues have become routine, or as one manager described it to us, “these programs are running on autopilot.” The real challenges lie in their efforts to: prevent a boycott; negotiate a product certification; prepare for an ISO 14001 registration needed to expand market reach; coordinate a community issue; and so on.

This is the new reality they face and it is a sensitive one where stumbles or successes are brought instantly to the attention of the CEO. Dealing with the “regular stuff” (i.e., the old EHS&SR paradigm) is costly, consumes the bulk of staff time, and so on, but the rules are familiar and the procedures standard. If there is a major challenge, it usually is related to obtaining resources for these programs that are viewed by many business executives as overhead and contributing nothing to the bottom line.

Not surprisingly, government regulations define their understanding of EHS&SR. The notion that “we have the permits, therefore, we can proceed” still is rampant in corporate thinking. This mindset dominates even after well-publicized events such as Brent Spar (Shell) and the boycotts of bioengineered products (Monsanto). These issues were not about government regulatory violations, but they had profound business impacts.

Business executives can become very myopic when extrapolating these non-regulatory flare-ups from other companies to their own. “We are different, we’ve taken care of that, it can’t happen here,” and so on. Indeed, corporate social responsibility and sustainable development easily can be rationalized as an issue re-

quiring some good public relations, impressive sustainable development demonstration projects and some clever marketing. Where is the need for depth (also known as significant resource commitments) in the absence of any clear regulatory mandate or crisis du jour? (see Sidebar, *Half full or Empty?*)

Half Full or Empty?

Companies are quite proud of their EHS&SR efforts and some become quite defensive or even angry when accused of not doing enough or that industry, in general, is not meeting their responsibilities to society. This raises the question, just how much is enough? Is the proverbial glass half full or half empty? The answer is obvious: it depends if you are the waiter (company) pouring (out resources) or the customer (stakeholders) waiting for the drink (benefits to society). It also depends on just how big the glass is.

There are currently major differences in perceptions of where things stand vis-à-vis EHS&SR. Viewed from the perspective of companies that are proud of their efforts, the glass is overflowing. But the dilemma soon becomes apparent if their size of the glass is no bigger than regulatory compliance. Confusion is added to the mix if companies are using terms such as “environmental excellence” to tout their efforts when an objective, independent evaluation may reveal that they are barely doing more than baseline compliance.

From the perspective of NGOs, the glass is much bigger. They define it not just by regulations but by progress toward preventing long-term EHS&SR issues facing the world. To some NGOs the glass is not even partially filled and it is leaking faster than it is being replenished (unsustainable). It is a very big glass, indeed.

Who is right? In the long run, what matters is what stakeholders perceive the situation to be. Ultimately it is the “customer” that pays the bill who has the last word. The waiter’s opinion is of secondary importance. The key point is: companies need to evaluate where they stand according to stakeholder expectations. Their own opinions of their performance, even benchmarked within their sector, and the opinion of regulatory agencies are narrow dimensions in this evaluation. And the wild card in defining this are NGOs that have a higher trust level with the public than the corporations and even the regulators.

Flat Earth Society

NGOs, partnerships and certifications have been around for many years, so what is the compelling business case to give this dimension of EHS&SR more resources and management attention? From the regulatory paradigm that most companies operate within: none whatsoever. Why can't more business executives see the added value? It is a question that EHS&SR managers struggle with and it is one that has led to numerous books and journal articles on "value to the business" such as the series produced by the Global Environmental Management Institute (GEMI).⁶

The best and the brightest EHS&SR managers clearly see that the old rules will not dominate in the future. They understand that global EHS&SR issues are reaching a tipping point equivalent to Kuhn's stage in another scientific revolution (see Sidebar, *Reaching the Tipping Point*). But many struggle just to maintain the status quo as they face continued pressure to cut spending. Why? The answer is simple: most corporations live in something analogous to a two-dimensional "Flat Earth Society" defined by regulations and public relations.

The business case for resources is particularly challenging in the absence of even common definitions for social responsibility and sustainable development. The metrics and performance thresholds that define corporate accountability in these areas are just as poorly defined. Executive marching orders that are delivered in fuzzy, feel good rhetoric is hardly the best way to drive change.

Therein lies the "corporate cognitive dissonance" that exists today. On the one hand, executives understand that boycotts, for example, can devastate a company's brand; but on the other hand, they believe that there is little need to spend significant resources on

⁶ The three-part series on business value can be found at <http://www.gemi.org>, last accessed 7/1/04.

Reaching the Tipping Point

Non-Governmental Organizations have been around for more than a century, what is different now?

- Growth in the complexity of EHS&SR issues; some problems do not lend themselves to regulatory solutions
- Loss of faith in government institutions to solve problems
- Growing distrust in corporate governance in the wake of financial scandals
- Refocus on market mechanisms to solve perceived problems, sometimes using market alliances (the carrot) or disruptions (the stick)
- Government failure to respond to concerns of the public
- Exponential growth in NGOs over the past decade
- NGOs redefining their roles; some NGOs now acting more like businesses, even considering such things as their own brand value
- Explosion of cheap global communication through the Internet facilitates NGO's ability to "get the message out" through increasingly sophisticated networks
- Real time Internet communication of issues, when the issues are drawing media attention
- Business is more complex with larger companies operating internationally with joint ventures or partnerships
- Fluid networks instead of static institutions; responding in optimal configuration
- Widely acclaimed successes with some corporate/NGO partnerships; following the trail-blazers

EHS&SR unless they are mandated by regulation or a response to some PR crisis. Even more significant, there is little motivation to change a corporate culture firmly rooted in the existing paradigm.

Kuhn wrote that old paradigms sometimes die slowly and with great resistance. Espousing Einstein's theory of relativity in a world dominated by Newtonian physics gets little

traction (see Sidebar, *Not all industry sectors think alike*). Flat Earth Society rules! Astute managers who sense the paradigm shift underway are surrounded by Flat Earth Society members, both within their own business management structure and even within their own profession.

For example, we examined the agendas of some of the largest and most prominent EHS professional organizations in the United States.⁷ What dominates? The usual suspects. Even topics on sustainable development or social responsibility are framed in the same, familiar context that has yet to gain substantial traction within business or even government after more than a decade of widespread talk (i.e., the PR dimension in action).

Flat Earth Society membership extends to the consultants selling the same old services. It extends to academics that go after the “bankable grants” or focus on the niche areas that may help define the individual trees in this forest, but do little to define the forest we find ourselves entering the outer edges of. Membership certainly extends into the regulatory world. Even the EPA’s highly publicized voluntary initiatives seems little more than programs that facilitate corporations in attending to the PR dimension.

The world of new rule makers that is on the horizon is far more aggressive and potentially riskier to corporations who do not play by the new rules (e.g., think Monsanto and the dynamics that went into the May 2004 decision

not to produce genetically-modified wheat). It’s hardball not softball photo ops and sound bites that are commendable, but do little to shift the underlying corporate culture and thought process of these areas. Indeed, the new world is *deja vu* all over again circa 1970, but with a new set of players over which corporations have far less control.

The NGO’s world and the corporate world rarely talk to one another, and then usually in highly structured settings which, if anything, discourage open communication. We state this full well, recognizing that an increasing number of companies⁸ have formed collaborations with NGOs and organizations, such as the World Business Counsel for Sustainable Development, and are heavily into stakeholder dialogues. These agreements and discussions are the exceptions, not the rule; most companies may not be ready or willing to directly navigate this gap in the absence of any pressing need. A telling sign of this wary separation is the rarity of external NGO-type advisory committees within corporations.⁹

In summary, many talk about the trees, but the forest and its implications are seldom directly explored in this world dominated by distrust and misunderstanding between NGOs and corporations.¹⁰ Indeed, if you work in the world of the current paradigm, speaking out may run you the risk of being labeled a heretic within your own organization (see Sidebar, *Not all industry sectors think alike*).

⁷ The review included meetings run by the Air and Waste Management Association (the nation’s largest environmental professional society); The World Resources Institute BELL conference (environmental academics); ABS Consulting – Government Institutes Division (leading commercial supplier of EHS professional training); Academy of Certified Hazardous Materials Managers (professionals dealing with hazardous materials and EHS issues); American Industrial Hygiene Association; and the American Society of Safety Engineers. NAEM’s October 2004 conference will include, out of its 24 sessions, an NGO partnership case study and another session on “stakeholder interactions.”

⁸ Examples include McDonald’s, Foron Household Appliances, Georgia Pacific, Johnson & Johnson, General Motors, Dayton Power & Light, MoDo Paper Company, S.D. Warren Company.

⁹ R. MacLean and J. Musser, “The Best Advice May Come with Attitude,” *EM Magazine*, October 1999, pages 13-16.

¹⁰ This statement does not, of course, apply to some NGOs such as those representing professional societies, standard-setting bodies or trade associations that are controlled primarily by the companies themselves.

Who are These New Rule Makers?

The NGOs first appeared on the international scene during the middle of the 19th century. However, the term non-governmental organization was not in general use until the United Nations (UN) was formed in 1945. The term was used to differentiate in the UN Charter between participation rights for intergovernmental specialized agencies and for international privately-held organizations.

Closely aligned with these various stakeholders is the notion of a “civil society.” The concept is more commonly used within NGO circles than inside corporations. It refers to the integrated principles of laws, institutions and behaviors that define the interactions between the state, the marketplace and the citizens. The point is significant in that non-profits, organized groups, universities, movements and associations that operate independently from the government and the private sector (i.e., corporations) are considered important players in defining these interrelationships. Indeed, the United Nations specifically has recognized “private bodies” as having certain rights to a place at the negotiating table.¹¹

For this article we are using a broader definition that includes quasi-governmental organizations, trade associations, standard setting organizations, research organizations and EHS activists groups. In essence, these organizations are the stakeholders that influence the metrics and performance thresholds that define EHS&SR. They are setting the standards and guidelines that companies “must follow” and they are certifying corporate actions in the next generation of de facto regulations.

Banking and investment firms could even be included, although they clearly fall well outside the definition of an NGO. What sets all

Not All Industry Sectors Think Alike

At the 2000 Air & Waste Management Association conference, I discussed some of these emerging dynamics in a small group of senior environmental managers. I urged them to start talking to their business executives about these issues that extend far beyond the usual regulatory dimensions or image-building, sustainable development projects. A manager within the chemical industry told me, “If I talked about these issues to my business executives, they would throw me out.” A manager from the mining industry immediately countered his point by stating that her management was beginning to understand these dynamics and would welcome such a presentation.

This exchange was instructive. It was the chemical industry which bore the brunt of the environmental movement during the 70s and 80s. This industry led the way in new systems that manage environmental regulations. Over the same period and even extending to this day, the mining industry was considered the slackers – the Neanderthals of industry. Indeed, it was, and still is, exempt from some environmental regulations.

The mining industry now finds itself on the front lines of these emerging EHS&SR issues because of its dependence on community support in developing countries and the need to raise capital for massive, new, long-term projects where delays due to boycotts and activism can be devastating. The same could be said of the oil exploration and development industry.

In essence, business executives in the chemical industry may be still firmly entrenched in the regulatory world, with decades of success and leadership. The mining industry initially did not have to be out in front on these regulatory issues and, thus, may be more willing to transition to these new dynamics.

Richard MacLean

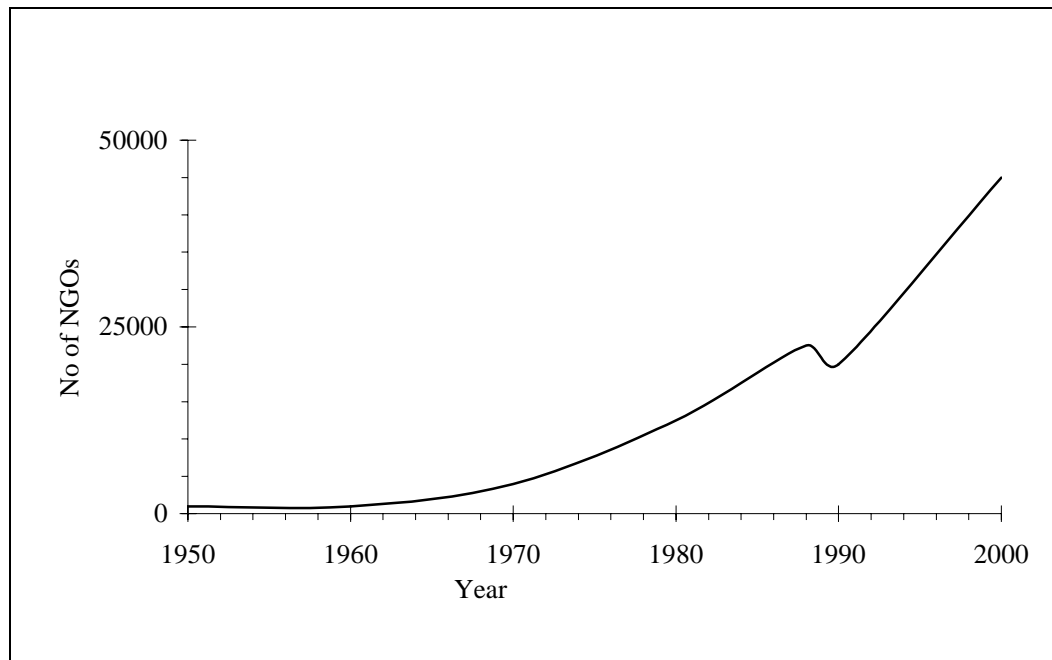
of these organizations apart, however, is that they do not issue government regulations, yet their positions can heavily influence corporations, the markets, communities and even future government regulations.

The 1960's and 1970's saw the emergence of an increasingly activist wave of NGOs. It included World Wildlife Fund and Amnesty International founded in 1961, Natural Resources Defense Council in 1968, Survival

¹¹ P. Willetts, “‘The Conscience of the World’ The Influence of Non-Governmental Organizations in the UN system,” 1996.

Figure 1
Growth of International NGOs from 1950 to 2000*

*(Union of International Associations, as reported in the *The 21st Century NGO* by SustainAbility, 2003)



International and Friends of the Earth in 1969, Greenpeace in 1971, ActionAid in 1972 and Human Rights Watch in 1978. Figure 1 shows the growth in numbers of international and national NGOs from the 1960's to 2000. This figure clearly shows that there has been a boom of NGOs after 1980. There were around 12,500 national and international NGOs during 1980 which increased to approximately 45,000 by the year 2000.

The reasons for this rapid increase in NGOs in the last two decades are complex and we have already described a number of political dynamics that contributed to their growth in the United States. There are other reasons for their remarkable growth, especially those that contributed to the global growth.¹² For example, the fall of the communist regimes in Europe and other parts of the world allowed not only free markets but also the spread of NGOs. A similar expansion is going on today

in Iraq.¹³ NGOs started taking the role of governments in providing the basic necessities in areas where governments reduced funds from many areas of service provision, especially to poor.

The decreasing trust in traditional institutions such as government, church and business was another factor for the rapid increase in the number of NGOs in the last two decades. Increasing awareness of the ongoing social inequality and continued environmental degradation across the world contributed significantly. For example, the number of NGO's working in the social sector increased 78.5% in 2000 relative to 1990. Apart from the social sector, the growth of NGOs was prominently in the health, education and environmental sectors while the number of NGOs working in defense and politics decreased during this period.¹⁴

¹² For an excellent analysis of these factors see "The 21st Century NGO: In the Market for Change," SustainAbility, London, UK, 2003.

¹³ Robert Pollock, "Half-Full in Iraq," *Wall Street Journal*, June 30, 2004, page A8.

¹⁴ United Nations Development Program, Human Development Report 2002, Chapter 5.

Growth is just one factor that provides an indicator of influence. The communication revolution has enabled various NGOs to inexpensively network and empower individuals and groups worldwide. Another indicator is the importance given by the UN to NGOs: representatives from more than 650 NGOs attended the Earth summit in Rio in 1992 and more than 3,000 attended United Nations World Summit on Sustainable Development in South Africa in 2002. But an even more significant factor is the nature by which NGOs have joined the mainstream business world. International Organization for Standardization (ISO) has already been mentioned. As significant is the importance the World Bank gives to NGOs.

The World Bank has issued an Operational Directive which mandates an environmental assessment for all projects that may have significant negative impact on the environment. The original directive was vastly strengthened and reissued. It mandates the type and timing of NGO participation in environmental assessment (EA) process. It expects the borrower to take the views of affected groups and local NGOs fully into account in project design and implementation and, in particular, in the preparation of EAs.¹⁵

Governance varies with each NGO and plays an important role in its relations with constituents and with potential collaborators.¹⁶ NGO governance is a subject of growing prominence as NGOs build their power, influence and brand.¹⁷ Some NGOs have trained and professional staff at the helm and they function with minimum oversight and

advice from the board. An elaborate committee of volunteers who directly represents the NGO governs some. Other NGOs function in a democratic way giving voting rights to its members to vote for their board (e.g., Friends of the Earth, Sierra Club). But NGOs, like Greenpeace, have no voting rights for its members but instead appoint a board.

Some NGOs receive funds from various governments. For example, CARE and Catholic Relief Service receive food resources from the U.S. government, which they distribute to the poor people in third-world countries.¹⁸ Some NGOs like World Neighbors, OXFAM America and the American Friends Service Committee never accept money from the U.S. government as a matter of policy. Others prefer to work on joint projects with the host government. For example, Project Concern International works closely with the host governments in the countries in which they work.

But most of the NGOs consciously avoid close working relationships with those governments, believing that such collaboration might inhibit their independence and their capability to reach the people they seek to serve. Some NGOs, like Church World Service and Lutheran World Relief, believe in strengthening the capacity of local NGOs in the Third World through their resources. But most of the NGOs prefer to maintain as complete control as possible over the allocation of resources (i.e., they do not seek active partnership relations with local NGOs).¹⁹ This is gradually changing, however.

The NGOs working in the industrialized and developed markets are classified as “Northern NGOs” while those working in third-world countries are classified as “Southern NGOs.” There is extensive literature available about the functioning of Northern NGOs while little has been published about Southern NGOs. The Southern NGOs, especially in the past, have looked to their northern counterparts for

¹⁵ World Bank, Operational Directive 4.00, Annex A: Environmental Assessment (EA), The World Bank and the Environment: A Progress Report, Fiscal 1991, and Operational Directive 4.01: Environmental Assessment, 1991.

¹⁶ T.H. Fox, “NGOs from the United States,” *World Development*, 15, 1987, page 11.

¹⁷ H. Kovach, C. Neligan and S. Burall, “Power Without Accountability,” *The Global Accountability Report*, One World Trust, 2003.

¹⁸ T.H. Fox, *Loc. Cit.*, page 12.

¹⁹ *Ibid.*, page 14.

assistance as they lack funds, manpower and expertise.

This is admittedly a “50,000-foot overview” of the NGO world (a follow-up article to this one will go into much greater detail). The important point in all this is that there has been: (1) a dramatic surge in the number, power and influence of NGOs, particularly over the past decade; (2) they’re big business in their own right – more than a one-trillion dollar industry;²⁰ and (3) *they are changing*. SustainAbility has been tracking the evolution of NGOs for more than a decade and states in their latest report, *21st Century NGO – In the Market for Change*, that they see “early tremors which we believe represent warning signs of seismic shifts in the landscape across which NGOs operate.” Specifically, they are influencing markets – the traditional territory of the business world.

The clearest summary to date of these emerging market-focused mechanisms is described in *Smart Alliance*.²¹ Chiquita Brands International and its predecessor United Fruit Company (which gave us the name “Banana Republic” because of its human rights, environmental failings and political influence over governments) has used an NGO alliance to turn around a situation that threatened its ability to compete in the marketplace.

Success tends to breed more success – and at an ever accelerating pace. NGOs are anything but stagnant. They recognize that the traditional “gadfly role” serves an important function, but there are other techniques that can affect change. Although the NGO and corporate worlds have been separated by a wall of distrust and misunderstanding, there have been bridges that have occasionally spanned

this gap. Facilitated stakeholder dialogs at the Aspen Institute and at meetings such as the Social Responsibility Conference (Stockholm, June 2004) and the upcoming Business for Social Responsibility Conference (New York, November 2004) enable NGOs to see a fuller range of levers that may influence companies.

An example of companies being drawn into the emerging universes of voluntary standards and networking among NGOs is the Global Compact, a UN effort initiated in 1999 to engage business leaders. Signatories to the Compact must agree to 10 principles and report on progress. Not surprisingly, more than 1,700 companies eagerly joined (we suspect to boost the PR dimension) but remain firmly planted in the Flat Earth Society. Critics have widely condemned these disingenuous corporate efforts and the Global Compact responded by issuing “Integrity Measures” to strengthen the program.²²

The Next Generation Business Leadership

To be fair, our “Flat Earth Society” characterization is a brutally harsh judgment of a situation that is anything other than black and white. If you read the books by James Gustave Speth, Lester Brown, or Paul and Anne Ehrlich, the planet is in for some tough times unless dramatic steps are taken soon. If you read Bjørn Lomborg, Jack Dini, or the editorial pages of *The Wall Street Journal*, this negativity is a bunch of bunk – things are getting better. Authors such as Forest Reinhardt, Paul Hawken or Amory Lovins take a pragmatic, “business can do it with the right strategy” approach. So who’s right?

They all are to some extent. It is a complex situation (as are most business and community issues). The real danger is in ignoring the overarching trends and the competitive op-

²⁰ John Hopkins Center for Civil Society Studies: Global Civil Society – Dimensions of the Non-profit Sector, John Hopkins, Baltimore, 1999.

²¹ G. Taylor and P. Scharlin, *Smart Alliance – How a global corporation and environmental activists transformed a tarnished brand*, Yale University Press, New Haven, CT, 2004.

²² Global Compact press release, “Global Compact Launchers Integrity Measures,” June 15, 2004. Also Pete Engardio, “Global Compact, Little Impact,” *BusinessWeek*, July 12, 2004, pages 86-87.

portunities. Just as the cultural divide over Christians, Jews and Muslims will dominate the war on terrorism and influence the price of oil, there are emerging trends that will strongly influence EHS&SR, irrespective of who is right or wrong over the current status of these issues. It is in this regard that most business executives are woefully unaware and ill prepared.

We say most, but certainly not all. This provides companies with a competitive opportunity. If it were a level and well understood playing field, the differences would be harder to leverage. To a large degree it has reached this mature point with the prevailing regulatory paradigm, at least within developed countries in Europe, North America and some countries in the Pacific Rim. Indeed, this lack of competitive differentiation due to regulations is another reason that business executives are far less concerned about EHS issues than other issues. But for the next paradigm shift, the competitive field is wide open.

Companies such as The Body Shop, Patagonia, and Interface Corporation have built their business strategy on these new dynamics. But, as John Elkington in *The Chrysalis Economy* describes such companies, they are like butterflies, beautiful but with little business impact. On the other hand, companies such as British Petroleum (high impact like honeybees in Elkington's characterization) are beginning to make their move by forming alliances with NGOs (such as Environmental Defense) and changing their business strategy. Chiquita Brands, Home Depot and dozens of other large corporations also appear to be better positioning themselves in this "new forest" of NGO certifications.

This is virgin territory, fraught with risks and rewards. Under much fanfare Shell traveled in the wake of Brent Spar down a path toward greater commitment to EHS&SR. It is now criticized by the same environmental and socially responsible NGO organizations that

praised them initially.²³ Their loss of credibility with stock analysts due to overstated oil reserve estimates has only worsened public distrust. Again, if the motivating factor is a public relations dimension and/or a reaction to a crisis rather than a fundamental shift in culture and business management strategy, such efforts are risky.

Implications – Both Obvious and Subtle

The long-term implications of this paradigm shift are both obvious and subtle. Clearly, "responsible corporations" can leverage their brand in the market place and/or get preferential treatment on permits. Analysis and ranking by organizations such as the Investor Responsibility Research Center, Innovest Strategic Value Advisors and the Dow Jones Sustainable Development Indexes can lead to "winners or losers" in the market place or "good or bad" companies as judged by the public. Whether fair or not, there are already distinct public perception differences between companies such as BP and ExxonMobil in the same industry sector. Eco terrorists and even hard-core terrorists appear to understand and leverage public relations better than many corporations and governments.

If the current flat world is two-dimensional, the paradigm shift underway will add one or two others (see Table 1). To emphasize a point made earlier: we are entering a situation similar to the one in 1970 where government regulations first began to define the rules corporations contend with today. Unlike 1970, there are many more players involved that deal with these issues on both a domestic and global agenda. Clearly, companies have far less control or influence over this more complex universe of "new regulators."

That said, there are a number of key steps to undertake. Here is an overview of the obvious

²³ See, for example, "Friends of the Earth, Failing the challenge - The Other Shell Report 2002."

ones; the research underway at the Center for Environmental Innovation is refining each.

Educate Business Executives

Business executives already understand many of the pieces to the puzzle we have described in this article (or to use our metaphor “trees in the forest”). The growing influence of NGOs has been of late a common subject in business circles, but the focus has been on trade and banking issues governed by organizations such as the World Trade Organization, the International Monetary Fund and World Bank.²⁴ What is missing is a perspective of NGOs in relation to the EHS&SR arena. Who are the emerging players, how might they operate, what will the defining metrics be and what will their potential influence be on markets?

The challenge is to arrange these fragmented views of the individual trees into a cohesive picture of the forest. As our earlier sidebar illustrated, not all business executives may be ready for the message, so it is best to build slowly from what they already understand. The ultimate objective is to shift management thinking of EHS&SR: (1) these issues will not be dominated by government regulations; (2) NGOs cannot be managed solely by public relations; (3) transparency, verification and governance will intensify relentlessly; and (4) the occasional partnership, demonstration project or certification will only be the table stakes to play in this game.

Clearly, the transition from a “Flat Earth” to a “Civil” Society is one that calls for a carefully researched and reasoned strategic plan. A good starting point would be the references listed in this article, the work by the World Business Counsel for Sustainable Develop-

ment,²⁵ the writings by Michael Edwards, Director, Governance & Civil Society, Ford Foundation²⁶ and our own work on strategic planning.²⁷

Evaluate Where You Stand

Decades of audits and a stabilized EHS regulatory climate²⁸ have provided companies with the confidence that they are meeting their corporate responsibilities. Meeting regulatory compliance obligations is no small resource commitment and an accomplishment worth praise for most companies. But for this emerging world, critical issues or opportunities could be overlooked. The next generation of rules requires a different type of assessment, not just another compliance audit. This is especially necessary after the Sarbanes-Oxley Act that mandates more rigorous corporate governance practices, including those for potential EHS&SR liabilities.

Bruce Marsh, Principal with Independent Perspectives, has been performing these next-generation assessments for the past several years for major projects in Australia, Canada, Indonesia, New Caledonia, Panama, Peru, Romania and the United States. He states, “The Equator Principles and other NGO rules ensure that international companies need independent cross checking of their opera-

²⁵ Specifically, the scenario “Jazz” in Exploring Sustainable Development: WBCSD Global Scenarios 2000-2005, Geneva 1997, page 24.

²⁶ Michael Edwards has published several including The Earthscan Reader on NGO Management and Beyond the Magic Bullet: NGO Performance and Accountability in the Post-Cold War World.

²⁷ Richard MacLean, “Preparing for an Uncertain Future – Environmental Strategic Planning Essentials,” *Environmental Protection*, June 2004, pages 12-18.

²⁸ A relatively stable regulatory climate applies to developed countries, especially the U.S. For developing countries this can be another matter entirely. Although regulatory frameworks and templates have been in existence for some time, implementing and enforcing these can be problematic. For example, Eastern Block countries entering the European Union (and thus required to meet the EU environmental regulations) are particularly hard pressed to make this transition.

²⁴ See, for example, George Melloan, “As NGOs Multiply, They Expand a New ‘Private Sector,’” *Wall Street Journal*, June 22, 2004, page A19.

tions. A sustainable development evaluation is as necessary today as a compliance audit.”

This next generation review requires an evaluation of techniques to increase public participation and transparency that will improve trust. Key in this is the identification of potential NGO partners. All this does not necessarily increase costs. Mr. Marsh emphasizes, “We are consistently recommending that companies streamline traditional compliance-based programs and transfer some of these funds to far higher value-added areas. It is really rewarding to work with staff focused on traditional regulatory issues. They soon recognize that we are not there to eliminate their jobs, but to help them be proactive and successful.”

Identify the New Rule Makers that may Affect Your Business

There are several services that track and analyze EHS&SR laws and regulations.²⁹ While there are a number of resources that provide listings of NGOs, there is no central clearing house that sorts through all this stuff, prioritizes it and makes sense of it for EHS&SR managers.³⁰ Companies need to do this sorting and we have yet to find any company or trade association that systematically tracks this arena with the same rigor as the regulatory universe. It’s ad hoc.

The Center for Environmental Innovation is currently working on a “starter kit” – a simple database to begin this process of identifying and prioritizing the NGOs that may matter. There is no universal formula for prioritization; however, it is clear that some NGOs have greater significance than others. Size, staff, location of operations, focus areas and

so on are possible considerations. The important point is this: a company needs to start somewhere and the potential issues and opportunities are too significant to leave to happenstance – some formalized process is needed.

Formulate a Slate of New Metrics

Judging from the number of articles, conference agendas and our own direct discussions with EHS&SR managers, the subject or metrics is of great interest. Companies are beginning to move toward a “balanced scorecard” approach with a more robust slate of metrics. Historically, companies focused on lagging indicators such as emissions, accidents and compliance violations. Today they search for good leading indicators of this regulatory-centric universe.

Few, however, are making it to the next generation of metrics that will distinguish the responsible companies from the irresponsible ones. These metrics may not fall within the menu for corporate reporting laid out by the Global Reporting Initiative (GRI) of corporate disclosure. The really savvy companies will need to dialogue directly with stakeholders to determine what really matters in the future for their company. Benchmarking with other companies by reading their reports or following the GRI guidelines will keep a company current, but it will not yield the niche information needed to gain competitive advantage.

Organization

In navigating this transition (see Table 1) one thing becomes abundantly clear: the organizational structures that brought success to corporations navigating through the regulatory changes over the past 30 years may or may not be set up optimally to meet the next generation of challenges. New rules, new players and dynamics require fresh approaches, different competencies and new management systems. We are currently studying the impact

²⁹ Examples include The Bureau of National Affairs, Inc., Citation Publishing, Inc., *Environmental Law Reporter*.

³⁰ The Union of International Associations provides a directory of over 44,000 international organizations, but this information is not exclusive to EHS&SR and does not include many of the key parameters of interest to EHS&SR managers.

Table 1
Navigating the Transition

Dimension	Flat Earth Society	Civil Global Society
Time domain	Past and Present	Future
Operative business questions	Are we in compliance? How do we cut EHS costs?	Are we doing the right thing? How do we gain competitive advantage?
Power drivers	Regulations	Market mechanisms (boycotts, certifications, labeling, happy stakeholders)
Power brokers	Exclusive: Regulatory agencies	Shared: Government, Non-Governmental Organizations, and Local communities
External stakeholders	Government, Community	Multi-faceted, Multi-dimensional
Primary impact zones	Inside the fence, Community	Supply chain, Global markets
Sphere of influence	Domestic, Local	All Stakeholders
Positioning mechanisms	Legal challenges, Lobbying, Public relations	Transparency, Governance, Partnerships, Alliances
Source of advantage	Cost (i.e., waste reduction), Agency expedited regulatory permits	Preferred provider, Product branding, Certifications, Market-entry barriers, Community support for facilities – preferred neighbor, Propriety products with EHS-friendly characterizations
Metrics	Lagging, Reacting to issues, Measuring past or ongoing issues	Predictor of future issues and trends, Shaping the agenda, Measuring current concerns
Objective	Reacting to problems, Solving short-term issues	Identifying solutions, Preventing long-term problems
Organization	Stand alone, Isolated departments containing EHS specialists	Functional integration, Strategic enterprise coordination
Governance	Ad hoc, Voluntary, Trust but rarely verify beyond regulatory-required parameters	Independent audits, Certifications, Sustainable Development Evaluations... Trust but verify
Valued competencies	Regulatory and technical knowledge	Negotiation and influence skills
Routine EHS regulatory matters	Handled by in-house specialists	Outsourcing, Responsibility embedded within operations, Accountability at all levels
Culture	Do not interfere with “business as usual” EHS staff held responsible and accountable	Supportive of sustainable development and social responsibility All employees held responsible and accountable
Span of transition	<30 years	10 - 30 years

of these dynamics in the Center for Environmental Innovation research program, Organizations in Transition.³¹

Some companies are beginning to recognize this and are responding. For example, in 2000

Intel created a new position, Director of Corporate Responsibility, to focus on these emerging dynamics driven by NGOs. A number of other companies have created such positions, but Intel went the next step: first, by staffing it with a senior EHS professional, not a communication or public relations individual; and second, by placing it in public affairs

³¹ See http://www.enviro-innovate.org/OIT/OIT_main.htm, last visited 7/10/04.

which reports to Intel's "Technology and Manufacturing" group.

These points are subtle but significant. A recent report sponsored by the UN's Global Compact states that, "While effective communication is vital, in too many cases, the skills of most people fielded by business to take part in [EHS&SR] initiatives are more suited to managing public relations challenges than evolving new business models."³² Intel does not see these emerging issues as another public relations effort, but a core issue that will affect its ability to locate new fabrication shops world wide and expand into new markets.

Bob Baker, Senior Vice President, Technology and Manufacturing Group for Intel, puts it this way, "We know these issues are real and complex. They do not just go away with a dab of goodwill and PR. We are the leading player in this industry sector and NGOs closely examine us for either criticism or praise, depending on how we perform in these critical areas. Intel wants to demonstrate ongoing leadership in this area of the business – we know managing it well leads to competitive advantage."³³

Educate Yourself

Last in this list, but actually first in our estimation, is the importance of educating yourself on these emerging issues. There is a certain kind of "group think" that prevails within EHS&SR managers today. "We're on top of this, we understand these issues" and so on. Few do. One of the few that does is Dow, which, for more than a decade, has been "letting in the opposition" to directly challenge its thinking at biannual external stakeholder council meetings. The council was formed to provide a credible outside perspective from

thought leaders on current and emerging issues.

But even Dow would be the first to admit that it struggles to understand all the dynamics in play. Larry Washington, Dow's corporate vice president of Environment, Health & Safety, Human Resources and Public Affairs and chair of the council states, "We live in a complex world where stakeholder expectations are changing rapidly. In addition, the business of a multinational corporation is complex and dynamic, and we believe a standing council with the combination of a keen external perspective and a working knowledge of Dow is a valuable asset. The Council's importance will continue to grow as we strive to enhance our economic, environmental and social performance. We learn something new at each meeting and often times we hear things that we really did not want to know, but clearly needed to know."³⁴

Indeed, it takes courage to let in people who have no qualms about criticizing weak or poorly-thought-through programs. Many EHS&SR managers go to meetings where they circulate among friends and like-minded thinkers, reveal only what they want to (usually the showcase projects) and face the "opposition" as they are paraded up to the podium.

Some of these new rule makers do not always "play by the rules." In the current regulatory paradigm, if companies do not like the rules, they can always call their lawyers, lobbyists, trade associations and congressmen to try to change the rules. Such action with the new rule makers might be welcomed and boost memberships and revenues. The first mistake an EHS&SR manager can make is to think they know all about this stuff. It takes a focused effort. And again, some of the most innovative thinking that will shape the competitive landscape is coming out of Japan and

³² SustainAbility and UN Global Compact, *Gearing Up – From corporate responsibility to good governance and scalable solutions*, 2004, page 34.

³³ Personal communication to authors, July 21, 2004

³⁴ Personal communication to authors, July 15, 2004.

Europe, not the United States.³⁵ The key meetings of “movers and shakers” are also migrating offshore, adding another challenge to U.S.-based EHS&SR managers facing budget cuts and travel restrictions.

Closing Remarks

In the past, governments defined corporate responsibility and companies tracked the metrics dictated by these laws and regulations. In the emerging world described in this article, NGOs will define a new generation of metrics, certify the results, rank relative performance and set the minimum thresholds. It's a world where corporations can have limited or significant influence, depending on their business strategies. And it is a new world already well underway.

In preparing this article, we talked to many professionals who are at the leading edge of this transition. To them, nothing that we have stated here is particularly surprising. What they all have remarked, however, is that there has been a lot of talk about the individual trees, but there is essentially no talk about the forest that is starting to grow (to use our metaphor again).

This forest/trees distinction is critical. Business executives respond to major concepts and trends that affect their competitive position or, in this case, the forest (or possibly jungle in their view). These very bright executives, generally unfamiliar with EHS&SR issues, are understandably hard pressed to integrate all the various components together into a cohesive picture. It is not at all surprising that most respond to EHS&SR issues in what we call the two-dimensional “Flat Earth Society” of regulations plus public relations.

That is our challenge as EHS&SR professionals. If we do not educate executives then who will? The NGOs themselves, we suspect. If that turns out to be the case, then what strategic value do we serve? Colleagues, there is a revolution underway, in the true sense of Kuhn.



³⁵ An indicator of this shift is the number of corporate reports EHS&SR cites as winning international awards or receiving high rankings that come from outside the US. See for example, “Trust Us – The Global Reporters 2002 Survey of Corporate Sustainability Reporting,” SustainAbility, London, UK where only one U.S.-based company (Bristol-Myers Squibb) made it into the top 10 scoring reports.

Corporate Environmental Strategy:

International Journal for Sustainable Business

(ISSN: 1066-7938)

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