Compliance in Green Business

by

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Compliance

Compliance in green business is typically characterized as the legal and regulatory minimum requirement to conduct activity. But the definition of compliance is getting broader. Governments are playing an increasingly critical role and, given greater awareness of the impact of humanity on our environment, restrictions will continue to get tighter. We have also seen how external stakeholders' demands are having greater impacts on the greening of business practices. With the mandate for a Green Society covering the consumption, availability, and distribution of energy resources and a host of green issues on a global level, the idea of compliance is not particularly clear. Commitment to compliance is generated when there are substantial enforcement risks and sanctions for non-compliance with a clear legal mandate (Di Lorenzo, 2007). Given the wide-ranging challenges facing both the companies and regulating agencies, adoption of green business strategies is a daunting process. In short, organizations need to go beyond compliance, considering the intent behind the regulations as they strive to meet the ethical purpose that drives mandate demands.

Since 1995, the corporate stance on compliance has shifted from opposition to awareness, with some moving to take environmental concerns head on in an effort to 'go green.' Most still rely on the course set by their national governments, following the adoption of the Kyoto protocol, waiting for the implementation of compliance mandates before they take action (Kolk & Pinkse, 2007). However, there is a balance that must be maintained between external regulation and self-regulation. Most people think that regulation is necessary to protect the public, but others believe that regulation does more harm than good (Weiss, 2009). The reality is—we need both.

Pressured by world organizations, the European Union (EU), and evidence of ecological problems (e.g., the Greenhouse Effect), the U.S. and governments from around the world have started to take action to promote a broader view of green compliance. More than 100 independent federal ecological statutes (Helm, 1991) and a variety of state level regulations have been enacted to promote health and reduce dangerous chemical substance levels in the environment (Orts, 1995). Acts such as the Clean Air Act, Clean Water Act, Emergency Planning and Community Right-to-Know Act, Pollution Prevention Act, and the Resource Conservation and Recovery Act represent examples of these government interventions.

To be a green business the firm must be compliant with the laws intended to protect the welfare of others and the environment and conform to these standards. Experts say that you must first bring operations into compliance with all environmental regulations (www.business.gov). Then the firm must go beyond compliance to meet the general practices and targeted resource conservation and pollution prevention measures. Recommendations for how to 'go green' are outlined below:

1. Comply with environmental regulations
2. Develop an environmental management plan
3. Build green
4. Buy green products
5. Adopt energy efficient practices
6. Reduce, reuse, recycle wastes
7. Conserve water
8. Prevent pollution
9. Create a green marketing strategy Join industry partnership and stewardship programs

To impose compliance and to encourage green business in the U. S., regulatory agencies such as the Environmental Protection Agency (EPA) use a variety of tools and approaches. Enforcement deters those who might otherwise profit from violating the law, and makes it fair play for compliant companies. EPA's civil, cleanup, and criminal enforcement programs work with the Department of Justice, state, and Tribal governments to take legal actions in both federal and state courts that bring polluters into compliance with federal environmental laws. The Agency emphasizes those actions that reduce the most significant risks to human health or the environment, and consults extensively with states and other stakeholders in determining risk-based priorities. The push-pull relationship between regulators, environmentalists, and special interest groups continues to challenge the effectiveness of compliance. For example, In 2006, the EPA proposed to reduce allowable levels of particulate matter (PM) in air, but not by as much as its Clean Air Scientific Advisory Committee (CASAC) recommended, the latter group claiming that the rule would not be sufficiently protective (Renner & Christen, 2006).

Regulations are mandatory requirements that can apply to individuals, businesses, state or local governments, non-profit institutions, or others. The EPA describes its role as creating regulations that set specific requirements about what is legal and what is not, and then tries to ensure that these laws are adhered to (www.epa.gov). For example, a regulation issued by EPA to implement the Clean Air Act might explain what levels of a pollutant are considered safe (e.g., sulfur dioxide). The EPA continually works to help businesses comply with the law and then to enforce it.

A concern with regulations in general, is that the rules are based upon prior knowledge. As researchers continue to pursue new knowledge, additional information is uncovered that can render rules obsolete and/or ineffective. For example, since the early 1970s, water-cooled power plants have installed fish protection technologies with limited guidance from the U.S. EPA. In 2004, the EPA published rules for implementing the Clean Water Act (CWA) at existing plants. Researchers examined possible sources of injury and stress that fish encounter as they move through the cooling water intake system (CWIS) and previous assumptions that influence regulation parameters were challenged (Taft, Black, & Tuttle, 2007). Such findings demonstrate how existing regulations may not be based upon complete and accurate assumptions, rendering rules that are based upon less than effective information. While the motives underlying all research must be vetted, existing rules can become outdated. As new technologies and insights emerge, rule adherence can be problematic and/or less than effective.

Regulators use other tools to encourage businesses to comply with their requirements, such as partnerships, educational programs, and grants. For example, the EPA models how to go beyond compliance by providing voluntary programs to help firms procure green power as a way to reduce the environmental impacts associated with electricity use. By partnering with the EPA, hundreds of organizations opt to purchase billions of kilowatt-hours of green power annually. One of the leaders of this initiative was the New Belgium Brewing Company, who became the first brewery in the U.S. to use 100 percent wind power to meet its electricity needs. Partnering with the EPA can help organizations lower their transaction costs of buying green power, reduce their carbon footprint, and communicate green leadership to key stakeholders. The choice to buy green power is claimed as one of the easiest and most effective ways to improve a firm’s environmental performance (www.epa.gov/greenpower/). Joining green clubs (e.g., ISO 14001) has been shown to improve a facilities’ compliance with government regulations (Potoski & Prakash, 2005).

Other concerns with existing compliance protocols have to do with how they actually

function. Researchers have expressed concern for the EPA's audit policy, which authorizes reduced penalties for firms that voluntarily undertake compliance audits and then correct and report any discovered violations to the agency. Self-auditing is beneficial because it permits self-policing to occur. However, researchers have found that it is more likely to be socially beneficial when the damages caused by such violations are large and current audit policy explicitly excludes violations of this nature. The program is currently designed to address small violations, which actually increase social costs, rendering the program potentially less effective (Friesen, 2006).

Specialized programs such as 'cap-and-trade,' are designed to reduce carbon emissions. This phase-in process takes the largest carbon dioxide emitters (e.g., coal-based utilities) and gives them permission to buy rights to produce CO2 emissions. Those who are deemed to have reduced carbon emissions can then sell their emission rights to other emitters. Like many programs, this one is based on an economic model, predicting that over time the supply of carbon rights becomes tighter, the price higher, and the incentive to reduce carbon emissions will become greater. The problem, however, is that government-created markets for emissions are now in trouble. The goal of environmentalists and those who want to ensure clean air and green business practices, claim to want fewer permits at higher prices. Recently, the court got involved and their ruling influenced trading houses to hesitate before buying pollution permits, which could now lose more value. Those reviewing this legislative decision claim that it defeats the intent of the program (Dizard, 2009). In fact, representatives from the EPA suggest that low prices created by the uncertainty will have the perverse incentive of inducing utilities to use up existing pollution allowances by emitting more than they would have, while postponing building new controls. It has been suggested that the EPA needs to use greater command-and-control authority, which could instill non-market-based limits on emissions. While such authority is within their power, it would not support the precedent for carbon cap-and-trade. This scenario exemplifies the complex issues that emerge with compliance programs, as 'carrot-and-stick' efforts among governmental agencies work to support compliance-driven mechanisms stemming from different motives, driven by different time-lines, and aiming to achieve a variety of goals.

One central feature of compliance in the U.S. is that controls often expect firms and communities to self-identify, monitor, report, or complete requirements on their own recognizance. For example, state- and federal-issued general permits for stormwater discharges associated with industrial activities, came into effect back in the early 1990s. It did not, however, reflect compliance until 2004. This approach demonstrates how compliance can vary in its effectiveness among states and different urbanized regions. One study showed how Texas and Oklahoma attained higher compliance rates than California (Duke & Augustenborg, 2006). As such, it is extremely important for firms to carefully attend to the specifics of their program designs and their implementation strategies in concert with regional, state, and federal mandates.

Taking this information together we see how the phrase *beyond compliance* emerge, which describes actions taken that are not required by law, but assumed to be relevant, important, and adopted voluntarily. Given the variety of challenges present when trying to initiate change through compliance, legal rules are just not enough. They can be general or specific, but only those with narrowly focused prescribed requirements have a record of being followed. Ironically, when they are more specific, it may be easier to build a case that supports alternative vantage points, which may not favor the purpose of the regulation. Green businesses realize the need to do more than what governments ask, especially when stakeholder forces are beginning to insist upon more rigorously green product development and creation. Resource efficiency is good

business, but when companies face mandates from their customers and market forces, we are likely to see more demonstrative change. Customers can influence standards and mega-retailers like Wal-Mart can demand their own controls and phase-outs (e.g., phthalates in plastic toys) (Winston, 2008). Because the supply chain framework supports our global economy, when a food or chemical scare runs through a business it affects manufacturer and retailer alike.

When companies establish their own standards, they can mirror, partner with, and/or exceed government program expectations. For example, Winston (2008) describes how Verizon chose to go beyond their compliance regulations by setting energy performance standards for their suppliers. Home Depot examined the environmental regulations regarding air pollutants for diesel trucks. Although recent 2007 legislation was to be phased-in and carried grandfather clauses (the manufacturer has a specific period of time before all trucks must meet the new standard), they informed their suppliers and distribution companies that they would impose a changeover to their infrastructure sooner than the government required. If customers, end users, employees, or other external stakeholders and influencers begin to set more stringent standards, then industry will move to address this demand. It remains a challenge for customers to desire green products, but it is an important responsibility on the part of industry to surmount real and/or perceived price and quality issues.

Compliance in organizations is essential. But to address green business objectives, companies must not only abide by the regulations to avoid punishment and negative consequences, they must also advance the ethical intent behind them (Sekerka & Zolin, 2007). While the prevention approach provides some constraints toward unethical action (such as polluting the environment and exploiting natural resources), it has significant shortcomings. It is reactive and inefficient because it targets the moral minimum rather than aspiring to achieve ethical strength (Sekerka, 2009). Firms that address green business strategies vis-à-vis compliance often demonstrate the time lag between the identification of an unethical act and its correction. While legislative forces impose legal pressures for compliance, processes can be derailed by costly lawsuits, conflicts, and sometimes arriving too late—after harm has been inflicted.

In the past decade, business received a push in the right direction from the Sarbanes-Oxley Act of 2002 (SOX) and an amendment to the Federal Sentencing Guidelines for Organizations (FSGO; section 8B2.1 (b), revised November 1, 2004). The FSGO helps organizations create a structured and systematic approach toward achieving compliance and ethics standards within the firm. The guidelines read:

1. The organization must establish standards and procedures to prevent and detect criminal conduct.
2. High-level personnel of the organization shall ensure that the organization has an effective compliance and ethics program.
3. The organization must exercise due diligence and not place individuals with questionable backgrounds into positions of substantial authority.
4. The organization must communicate the standards and procedures of its compliance and ethics program to all of its employees and, as appropriate, to the organization's agents. It must also conduct effective ethics training programs.
5. The organization must ensure its compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct.

The organization must also periodically evaluate the effectiveness of its program and must include and publicize an anonymous or confidential system for the reporting of suspected wrongdoing.

6. The organization's compliance and ethics program shall be promoted and enforced consistently throughout the organization.
7. After criminal conduct has been detected, the organization shall take reasonable steps to respond appropriately to the criminal conduct.

Compliance serves as the foundation for a broader and more inclusive approach to environmental care in the course of doing business. To effectively address the agenda for a Green Society, organizations need to direct and guide members' behaviors by imposing measurable 'green' objectives that are specific and incorporated into everyday decision-making efforts. It is not productive to write emails, make announcements, and form policies if members believe that they still have the ability to make compliance decisions based upon situational variables (Greer & Downey, 1982). Organizations must create internally driven and designed programs that train for compliance as a part of members' organizational tasks. But they must also educate members' ability to go beyond compliance, understanding the intentions behind the rules to ensure that the green business strategy is realized through consistently applied decisions and actions.

Responsible conduct cannot be achieved by imposing from the outside what must be done on the inside (Michaelson, 2006). The desire for a Green Society must be instilled from within the firm and its members. It is up to the leaders of industry to surpass conventional wisdom about environmental protectionism, previously touted as an extra burden imposed by government. The most successful organizations have already begun to combine their compliance and ethics efforts and have even reshaped compliance as a means to build value through corporate culture rather than legalistic thinking that simply affirms a myopic 'check the box' mindset (Verschoor, 2006). Leaders of green business must aim much higher, creating environmental excellence as a part of their planned performance objectives, pursuing goals that incorporate the observance of environmental rules and regulations, which serve as the moral floor for all current and future enterprise. Compliance and ethics must be a part of the climate and culture of the firm, which is driven from the top down and implemented at every level of the organization.

See Also: Environmental Protection Agency; Ethics; Federal Sentencing Guidelines for Organizations; Green Management; Organizational Climate; Organizational Culture; Sarbanes-Oxley Act; Sustainability.

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