

ILTA PROPOSAL
to
CREATE A GUIDANCE DOCUMENT
on
DEVELOPING TERMINAL ENVIRONMENTAL MANAGEMENT SYSTEMS

Introduction

“ILTA’s mission is to provide our members with essential informational tools to facilitate regulatory compliance and improve operations, safety and environmental performance.” An explicitly stated ILTA goal supporting this statement is to **“promote the development of environmental management plans by member companies.”** And among its core principles, **“ILTA is dedicated to helping our members continually improve the safety of their operations and the level of environmental responsibility demonstrated at their facilities.”**

In this era of ever increasing environmental legislation, regulation and enforcement, ILTA is seeking the best tools to enable its terminal members to effectively perform in an environmentally responsible fashion. ILTA presently encourages the use of one tool in particular to meet this objective: the Environmental Management System (EMS).

A properly developed EMS, if used effectively, will improve terminal environmental performance in several ways. These include:

- Enhanced employee awareness of environmental responsibilities;
- Improved environmental compliance;
- Improved environmental performance;
- Resource conservation and pollution prevention;
- Reduced costs and increased efficiency;
- Enhanced image within the regulating community and from the viewpoint of lenders, investors insurers, and the public.

While accidental and statistically unavoidable product releases will occur within the terminal industry, even with the presence of an EMS, such a system will aid terminals in reducing their frequency, minimizing any resulting damage, and improving response preparedness at individual facilities.

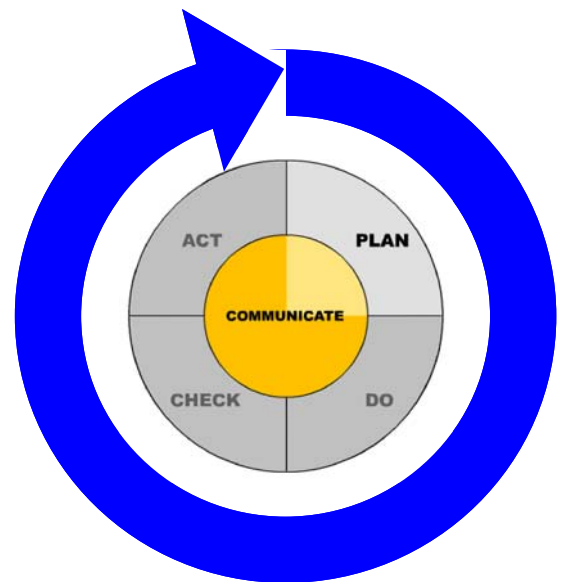
Ultimately, when an enforcement agency considers assessing a penalty for such accidents, the mere presence of an EMS is known to reflect favorably on the offending operation and improve the firm’s chances of obtaining a reasonable outcome. It is in this overall context that ILTA proposes to develop a **Guide** to assist terminal members in their development of systematic environmental management programs.

The Environmental Management System

The essence of an EMS is the identification of all operations that can or may have an impact on the environment either in terms of resource consumption, disposal, recycle or discharge. Each of these operations should have, as appropriate, guidance on how to minimize negative environmental impact. In addition, applicable regulatory requirements are to be identified with procedures to ensure that they are met. The system is to be documented in the context of a stated environmental policy with certain features common to quality and other management systems. These features include training, record-keeping and document control, internal assessments, corrective action, measurement and monitoring, and management review.

There are several recognized standards for Environmental Management Systems, yet each have much commonality. All elements must all be referenced in a corresponding manual. And consistent with both EPA and ISO 14000 requirements, the following list summarizes the essential elements of an EMS:

- Environmental Policy
- Organization, Personnel and Oversight
- Responsibility and Accountability
- Environmental Requirements
- Assessment, Prevention and Control
- Incident and Noncompliance Investigations
- Training, Awareness and Competence
- Environmental Planning and Organizational Decision-Making
- Recordkeeping and Document Control
- Continual Evaluation and Improvement



One additional element in the EPA system which is not included in the ISO format is a requirement for Public Involvement / Community Outreach. EPA further states that an effective EMS should embody the W. E. Deming model of “Plan – Do – Check – Act” for continual improvement. All of the predominant systems follow this model.

The most common environmental management system is defined by the ISO 14001 Standard. The American Chemistry Council (ACC) Responsible Care Standard aligns with the ISO standard and may include a slight variation. EPA has developed its own guidance for implementing an EMS, which includes a compliance-focused system (CFEMS) that has been used as the basis for meeting EMS requirements in a host of settlement agreements.

Proposal to Develop an EMS Guidance Document

It is well understood that development and implementation of an EMS reflects a serious investment and commitment. In recognition of both the cost and potential for benefit to our members, ILTA is proposing to develop a **Guide** to assist terminal companies in this process. This effort is with the intent of providing a proven “jump-start” to terminals who choose to develop an EMS. It is further proposed that the basis for the **Guide** be ISO 14001:2004. A matrix will be developed to correlate the ISO Standard with EPA’s recommended EMS elements and other contending EMS models. The **Guide** will be tailored to the peculiar needs of the terminal industry. It will reference recognized best practices and will be revised and updated with new learning from subsequent implementation processes.

The resulting document shall follow the model of ILTA’s existing Terminal Operations Series (TOS). As with the TOS products, usage is not compulsory. Our objective is to create a high quality document that lends itself to voluntary usage. It is anticipated that the **Guide** will be completed during the second half of 2007 and will be available at ILTA’s 2008 Annual Operating Conference and Trade Show. Draft versions suitable for reference shall be made available prior to this time.

The **Guide** will explain, in layman’s terms, what is meant by each element and how to apply each element to a terminal operation. It will propose a draft Environmental Management System Manual, and a methodology for managing files, documents and records.

In addition to developing this **Guide** as a resource for terminal members, ILTA will set aside resources based on demand to support terminal efforts in program development and implementation. The early stages of development will be spent working with ILTA terminal members active in developing and implementing their own EMSs. This effort will help expand ILTA knowledge of the EMS. ILTA already has substantial expertise with Quality Management Systems. Member companies with a working knowledge of EMSs will be invited to contribute to the development of this **Guide**.

The Cost

With the implementation of such a system comes a considerable cost, primarily in labor from internal manpower and contractor or consultant assistance. For those who choose to formalize their systems, there will be additional third-part audit costs as well as certification and registration costs. It is also arguable that the greatest cost of all will be the disruption associated with changing work processes when employees are faced with new ways of conducting their daily routine.

Estimated ILTA Cost to Develop an EMS Guide

Just as there is a cost and a benefit to developing an EMS at a terminal, there are costs and benefits associated with development of the proposed **Guide**. The expected benefit comes through providing terminals with an effective tool to understand the EMS process and to begin the documentation process from a common starting point. With the assumption that internal ILTA resources will be the primary source of the **Guide**, and using limited consulting resources, a direct cost of \$10,000 - \$25,000 has been estimated. In addition, during the time the Guide is in development, overhead costs of 20-30% of

the Director of Regulatory Compliance would be incurred, as well as additional staffing to support ongoing ILTA environmental and regulatory activity.

Terminal Cost Estimates

A broad range of dollar costs is expected for a terminal company beginning the process of developing an effective EMS. Where these fall will depend on the number of facilities, the size and scope of individual operations, the prior existence of required documents and processes, and the ability of the organization to consistently apply elements of the System across multiple operations.

If a company is to primarily utilize internal resources, and limit the use of outside consultants to pre-audits and limited guidance on finalizing a system once essentially complete, a cost range of \$100,000 to \$2,000,000 for bulk liquid terminal companies is estimated. At the low end of this range would fall operations with one to three relatively uncomplicated facilities and a vast majority of their required EMS elements already in place. This figure would reflect an approximate man-year of writing and assimilating a formal system into daily practice. As the degree of complexity increases along with the number of terminals and a need to develop additional processes and documentation, the estimated cost of implementation is expected to increase.

Justice, Attorneys General, and EPA interests in EMS

In a 2001 document entitled *Compliance-Focused EMS Enforcement Agreement Guidance*, the Environmental Protection Agency (EPA) concluded that since the 1980s, compliance investigations have been generally warranted in the absence of adequate EMSs. In 2003, both Department of Justice and EPA published guidelines that, in effect, raised the status of a company EMS by designating it as a possible vehicle for penalty mitigation.

On January 20, 2003, Larry Thompson, Deputy Attorney General at the U.S. Department of Justice issued a memorandum entitled *Principles of Federal Prosecution of Business Organizations*. Commonly referred to as the *Thompson Memo*, this document presents “principles to guide Department prosecutors as they make the decision whether to seek charges against a business organization.”

In this document, Justice expresses particular interest in indicting corporations guilty of “certain crimes that carry with them a substantial risk of great public harm, e.g. environmental crimes.” Thompson cites several factors as relevant to deciding how to prosecute corporate targets. Prominent among these is “the existence and adequacy of the corporation’s compliance program.”

Thompson provides further definition in the following principle: “Compliance programs are established by corporate management to prevent and to detect misconduct and to ensure that corporate activities are conducted in accordance with all applicable criminal and civil laws, regulations and rules. The Department encourages such corporate self-policing, including voluntary disclosures to the government of any problems that a corporation discovers on its own. However, the existence of a compliance program is not sufficient, in and of itself, to justify not charging a corporation for criminal conduct.... (T)he commission of such crimes in the face of a compliance program may suggest that the corporate management is not adequately enforcing its program.”

Regarding continual improvement, the *Thompson Memo* recognizes that despite any inadequacy of a corporate compliance program, “quick recognition of the flaws in the program and its efforts to improve the program are also factors to consider” when deciding whether to prosecute a corporation.

On June 12 of that same year, EPA’s Office of Enforcement and Compliance Assurance (OECA) made its point regarding the value of an EMS in a letter entitled *Guidance on the Use of Environmental Management Systems in Enforcement*. Juan Suarez, Assistant Administrator, states that EMSs “may be considered for penalty adjustments in the context of settlement penalty calculations.”

To further underscore the importance that EPA places on such programs, the June letter continues: “Where EPA determines... the root cause of... violations is the absence of a systematic approach to... compliance,... injunctive relief should include an EMS with a compliance focus.”

In March of 2003, the National Association of Attorneys General and the USDOJ Environment & Natural Resources Division (ENRD) issued a document entitled *Guidelines for Joint State / Federal Civil Environmental Enforcement Litigation*. This document, in short, “reflects the commitment of ENRD and state Attorneys General to strong coordinated and collaborative environmental enforcement programs.”

From these documents, it is clear that federal regulatory bodies perceive value to environmental performance in the existence of such EMS programs and see them as indicative of the seriousness with which an organization takes its environmental responsibility. Recognizing that even with such a program violations will occur, Suarez affirms OECA “support for the use of EMSs by all sizes and types of organizations, whether they are in compliance or determined to be in violation.” The consensus seen in these statements from Justice and EPA is that such Environmental Management Systems will reduce not only the number of violations, but also their seriousness.

Other Benefits

While an EMS has thus far been cast as a sort of “insurance policy” to limit the downside of being found in violation of environmental regulations, that is not the sole reason, or even the primary reason, for a terminal to consider adopting and developing such a program.

As stated in the introduction, a properly developed EMS, if used effectively, will in fact result in improved terminal environmental performance in the following five ways:

- Enhanced employee awareness of environmental responsibilities;

With an increased visibility of senior management commitment to promoting improved environmental performance, employees at all levels will have greater confidence that actions to support this objective will be seen favorably as a net benefit, rather than as a net cost. Employees may thus be less tempted to improperly respond to environmental matters in ways that could ultimately lead to civil penalties or prosecution.

- Improved environmental compliance and performance;

With a systematic method in place to readily identify regulatory requirements and how they are being addressed, the terminal will be enabled to more consistently ensure adequate performance. With increased knowledge of the requirements and a well-documented performance history, a facility will be better suited to incrementally improve how it goes about meeting these requirements.

- Resource conservation and pollution prevention;

Knowledge and identification of the resources that a facility consumes and the pollution streams that it generates will allow for a systematic assessment of opportunities for efficiency gains or reduced consumption.

- Reduced costs and increased efficiency;

With an EMS in place, reduced cost and increased efficiency will apply to not only environmental process efficiency, but also to environmental compliance management efficiency through process improvements and streamlined compliance efforts.

- Enhanced image within the regulating community, the public, lenders, investors, and insurers.

It is not only the enforcement arms of government that recognize the EMS as a strong indicator of facility commitment to environmental stewardship. All regulators recognize such a program as a signal that the organization is taking steps to act as a responsible neighbor. Facilities may also demonstrate to community watch groups that they are continually improving environmental performance. As a terminal demonstrates a decreasing likelihood of catastrophic spills or resulting financial penalties, investors and insurers will translate that reduced risk into more favorable rates or premiums.

Conclusion

There are numerous reasons to encourage a terminal company to consider the implementation of a structured EMS. Some of the benefits may be difficult to achieve. Indeed, all EMSs will require great effort to properly implement. The *Thompson Memo* acknowledges a need “to ensure that these measures are truly effective rather than mere paper programs.” While each terminal will have a different experience in managing these costs by the use of existing resources, the value derived will be directly proportional to how effectively the measures introduced are put into practice. The memo further states: “In making a decision (on whether) to charge a corporation (for environmental violations), the prosecutor generally has wide latitude in determining when, whom, how, and even whether to prosecute for violations of Federal criminal law.” Clearly, it befits terminals to consider the value of formalizing their systems of environmental oversight.