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# Regulatory Compliance Management

What is your Regulatory Strategy?

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# Regulatory Compliance Management

- **Responsible Distribution** - Monitor regulations, implement industry or best practices, train employees and outside contractors, verify compliance
- **ISO 14001**- Know and understand environmental regulatory requirements, train employees and contractors, implement and maintain controls, perform internal audits for verification of compliance



# Regulatory Compliance Management

- **OSHAS 18001/ANSI Z 10** – Know and understand H&S regulatory requirements, train employees and contractors, implement and maintain controls, perform internal audits for verification of compliance



# Mid-90's Change in Drivers for EHS Management and Compliance

- Enforcement of EHS regulations promulgated in 70s and 80s
- Public Disclosure - TRI (Toxic Release Inventory)
- SEC Disclosures - Accrued Environmental Liabilities
- DOJ Sentencing Guidelines
- Industry-Specific Regulation - Effluent Guidelines, MACT
- Regulatory Policy Shift - Risk Assessment, Cost/Benefit, Decentralization
- State "Brownfield" Laws for Industrial Redevelopment
- Industry Standards & Guidelines - e.g., ACC's Responsible Care, NACD's Responsible Distribution
- Global Market Standards - ISO 14001, OHSAS 18001



# Today's Compliance Drivers/Trends

- Market Incentives (Sustainability)
- Technology and Transparency (information) – Public, Communities, Investors
- Regulatory Restructuring – toward self regulation for some; more enforcement (e.g. NEP) for others
- Global Markets – EHS and quality as a Competitive Issue.....  
...supply-chain management, costs, productivity, efficiency, sustainability....philosophical and policy differences
- Pressure on Resources – materials, water, energy, labor, GHG
- Security/Terrorism Threats
- Limitations on Risk Transfer – Insurance
- Changing Personal Liability of Directors, Audit Committees
- Financial Reporting - SarbOx, FAS 5, etc. (Pub Traded Cos)



# Observed Best Practices--Practical Steps

- Manage EHS as a high priority of the business – as a “marker” for quality and efficiency – as a leadership and management responsibility
- Assess the EHS risks and performance - Know more about the risks than others know
- Set objectives and targets – track and report progress
- “Hard-wire” compliance into day-to-day responsibilities and work – proactive approach
- Identify risks and compliance needs related to “changes”
- Get Operating/General Manager’s “EHS Certification”
- Reward good performance; Make poor performance uncomfortable



# Observed Best Practices—Practical Steps

- Develop Structured EHS Management System
  - basic “blocking and tackling”—provides capability to comply with laws and regulations
  - baseline to continually improve and stay in business
- Design and deploy a reliable compliance assurance program
  - Internal operational inspections, walk-about by Management
  - Independent insider and/or 3<sup>rd</sup> party audits
  - Standards, training, consistency, rate/rank findings, complete and close-out corrective actions, data analysis for improvement
- Investigate and learn from incidents



# The Management System “Cycle” of Control and Improvement



# Typical Components of Regulatory Compliance Requirements

- Inventory (e.g. quantities, types, locations, etc.)
- Permits and Authorizations (“license” to operate)
- Plans (how compliance is achieved/maintained)
- Training (who, what content, how often, etc.)
- Practice in Place (planned/required actions actually being implemented—in day to day operations)
- Inspections (what, how often, details, logs)
- Monitoring (measures performance—air, water, waste, noise, toxics, etc.)—often as permit condition
- Records (what is required, for how long)
- Reporting (to regulatory agencies)



# Reliability in Maintaining Compliance

- Compliance needs to be planned and managed within the organization's operational management system
  - Quality management
  - EHS management
- A Management System provides the “capability to comply” with regulatory requirements.....and to maintain a high level of performance



# Indicators of Process Control Maturity

- **Fully Functional**—documented; processes used consistently across organization; reviewed for improvement; exceptions and inconsistencies are addressed; data driven; metrics are leading/lagging/in-process; continual learning and adapting
- **Developmental**—documented and practiced widely; improvements identified and underway; exceptions and inconsistencies evident but show improvement; metrics are mostly lagging but some leading
- **Initial**—routines and practices exist in some but not all areas of organization; documentation limited; exceptions and inconsistencies are common; regulatory-required metrics; reactive to issues



# Regulatory Compliance Management (examples)

- EPA and OSHA
- DOT
- Homeland Security
- State Requirements
- Specific examples—SWPPP, SPCC, Air Permits, inventories and reporting
- Of special note—Process Safety Management (PSM)



# Regulatory Compliance Management (examples)

- International Fire Code
- National Fire Protection Association (NFPA)
- Building Codes
- Insurance Requirements
- Food Safety/Security
- Electrical Code Requirements



# Regulatory Compliance Management

Steps a successful organization can follow to assure regulatory compliance.

1. Assemble a regulatory review team

Use a cross functional management team to determine all known regulatory information for company.



# Regulatory Compliance Management

2. Assemble all known regulatory information and permits for organization. Consider assigning personnel to become regulatory area content experts. Assure permit(s) are current. Verify the requirements for each permit are known and understood.



# Regulatory Compliance Management

3. Review all permits and regulatory information, looking for methods to operationalize each requirement. By making regulatory requirements known and part of everyday work occurrences, employees will be able to notify management when an abnormality presents itself.



# Regulatory Compliance Management

4. Assure that key compliance-related operational and maintenance practices are documented (e.g. SOPs, Work Instructions) and implemented as planned



# Regulatory Compliance Management

5. Train employees on compliance practices and verification methods and requirements for regulatory compliance. Develop checklists, statistical charts and work instructions for employees to use and follow. Encourage employees to question information generated.



# Regulatory Compliance Management

6. Using internal or 3<sup>rd</sup> party audit team, verify regulatory requirements have been operationalized. Verify management and hourly workforce understands ramifications of information generated and consequences of deviation.



# Regulatory Compliance Management

7. Using the Management Review Team (senior management) review and discuss each regulatory requirement and permit requirement at least on a yearly basis. This review will encompass internal audit reports, C/P Actions and any excursions on permit requirements. Take meeting notes for verification on topics covered.



# Regulatory Compliance Management

- This methodology will allow an organization to verify known regulatory requirements, operationalize them, verify compliance through auditing and allow for senior management review of compliance.



# Unknown/New Regulatory Requirements

How does an organization learn about unknown or new regulatory requirements prior to receiving a Notice of Violation?



# Unknown/New Regulatory Requirements

1. Assign management personnel, based on responsibility, to review regulatory requirements at State and Federal level.

e.g. HR Manager responsible for company personnel policies and procedures.

Maintenance Manager responsible for building and electrical requirements.

Warehouse Manager responsible for DOT requirements



# Unknown/New Regulatory Requirements

- Subscribe to a service that provides information concerning regulatory requirements.

There are many good subscription services available to keep abreast of regulatory requirements.

e.g. State EPA or OSHA legisletters,  
Registrars, Dunn and Bradstreet,  
Commerce Clearinghouse, BNA Reporter



# Unknown/New Regulatory Requirements

- Retain independent 3<sup>rd</sup> party to perform compliance audit on regular basis.
- Management team should determine scope/frequency of compliance audits



# OSHA TOP 10

- Every year OSHA develops an OSHA Top 10 list to help organizations understand the most common causes of workplace non-compliance and rule violations.



# OSHA Top 10

## 1. Scaffolding-1926.451

- Failure to provide fall protection
- Failure to provide adequate platform construction
- Failure to provide proper access
- Failure to support scaffolding properly
- Failure to install guardrails
- Failure to use certified inspector on daily basis



# OSHA TOP 10

## 2. Fall Protection 1926.501

Failure to provide fall protection in construction

Failure to provide fall arrest system

Failure of harness/lanyard manufacturing date available

Failure to ensure walking/working surfaces, including skylights are free from hole hazards



# OSHA TOP 10

## 3. Hazard Communication 1910.1200

Failure to develop a written program

Failure to provide adequate training

Failure to assure every container is labeled

Failure to have a valid MSDS for each chemical onsite

Failure to have outside contractor MSDS's onsite during project



# OSHA TOP 10

## 4. Respiratory Protection 1910.134

Failure to have a written program

Failure to provide medical evaluation

Failure to provide respirators to employees who request them

Failure to provide fit testing; including dust masks

Failure to provide appropriate respirators



# OSHA TOP 10

## 5. Lockout/Tagout 1910.147

Failure to develop, document and utilize work instructions for each piece of equipment with two or more energy sources

Failure to conduct periodic inspections of energy control program

Failure to provide training on program



Failure to establish a written LOTO program

# OSHA TOP 10

## 7. Electrical 1910.305 and NFPA (70e)

Failure to close wiring boxes and cabinets

Failure to use flexible cords properly

Failure to provide appropriate covers

Failure to apply temporary wiring installations correctly

Failure to complete thermo imaging

Failure to complete Arc Flash study



# OSHA TOP 10

## 8. Powered Industrial Trucks 1910.178

Failure to ensure truck operator is competent and has been evaluated

Failure to provide refresher training

Failure to certify each operator has been trained and evaluated

Failure to examine trucks prior to placing into service (daily inspection)



# OSHA TOP 10

## 9. Machine Guarding 1910.212

Failure to provide guarding methods

Failure to guard at point of operation

Failure to anchor fixed machinery

Failure to guard blades

Failure to affix guards to machinery

Failure of guards to be of contrasting color



# OSHA TOP 10

## 10. Process Safety Management

Failure to review Appendix A for inclusion

Failure to complete Process Hazard Analysis

Failure to ensure Pre-Startup Safety Review

Failure to complete Mechanical Integrity

Failure to complete Management of Change



# OSHA Inspection Process

## Authority

OSHA may not conduct a warrantless inspection without an employers consent.

It is in “best interest” of organization to allow the inspection

OSHA will acquire an authorized search warrant; based on probable cause or evidence of a violation



# OSHA Inspection Process

Organization should have a fully developed OSHA Inspection procedure written, trained on and trialed, prior to needing it.

1. Verify credentials of inspector.
2. Conduct an opening meeting. Learn reason for inspection.
3. Train inspector on site specific training requirements. ( Use outside contractor training guidelines)



# OSHA Inspection Process

4. Inform all management and hourly employees of inspection requirements.
5. Guide inspector to area's requested, taking care to not over expose company in process.
6. Take notes and pictures on anything the inspector looks at or asks a question on.



# OSHA Inspection Process

7. Inspector is allowed to speak with any employee in private.
8. Postings and recordkeeping (OSHA 300 LOG) will be checked carefully by inspector.
9. Employer's safety and health programs will be inspected carefully.



# OSHA Inspection Process

Safety and Health programs include:

Emergency Action Plans, Fire Prevention Plan, Emergency Response, LOTO, Respirator program, Confined Space Entry Program, Hazard Communication, Machine Guarding, Fall Protection, Process Safety Management, etc.



# OSHA Inspection Process

During the course of the inspection, the inspector will point out any unsafe or unhealthy conditions observed.

Inspector will communicate corrective actions; if employer requests.

Apparent violations detected may be corrected immediately.



# OSHA Inspection Process

## Closing Meeting

The inspector will engage in a closing meeting to inform management of all unsafe and unhealthy conditions observed.

Citations and penalties will be determined by Area Director; not inspector onsite.



# OSHA Inspection Process

Citations inform the employer and employees of the regulations and standards alleged to have been violated and of the proposed length of time set for abatement.

The employer must post a copy of each citation at or near the place the violation occurred, for three days or until violation is abated



# OSHA Inspection Process

## Penalties

### **Other than Serious-**

A violation that has a direct relationship to job safety/health; but would not cause death or serious injury.

Up to \$7,000.00 for each violation

Can be reduced by 95%, based on employers good faith



# OSHA Inspection Process

## **Serious Violation**

Substantial probability that death or serious physical harm could result and that employer knew or should have known, of the hazard.

Mandatory penalty of \$7,000.00 for each violation.



# OSHA Inspection Process

## **Willful Violation**

A violation employer knowingly commits or commits with indifference to the law.

Penalty of up to \$70,000.00 for each violation. Minimum \$5,000.00 for each violation.



# WILLFUL Violation

If an employer is convicted of a willful violation that has resulted in the death of an employee, the offense is punishable by a fine of \$250,000.00 for an individual or \$500,000.00 for a corporation; plus six months in jail.



# Additional Violations

Falsifying records, reports or applications can bring a fine of \$10,000.00, plus six months in jail.

Violations of postings requirements can bring a fine of \$7,000.00.

Assaulting a compliance officer while they are engaged in their duties can bring a fine of \$5,000.00 and three years in jail.



# Bulletproof Your Compliance Program

Senior management must **lead, plan, check, review and act** to ensure regulatory compliance

A written **Compliance Procedure** with associated **Operational Controls** should be developed, trained on and audited



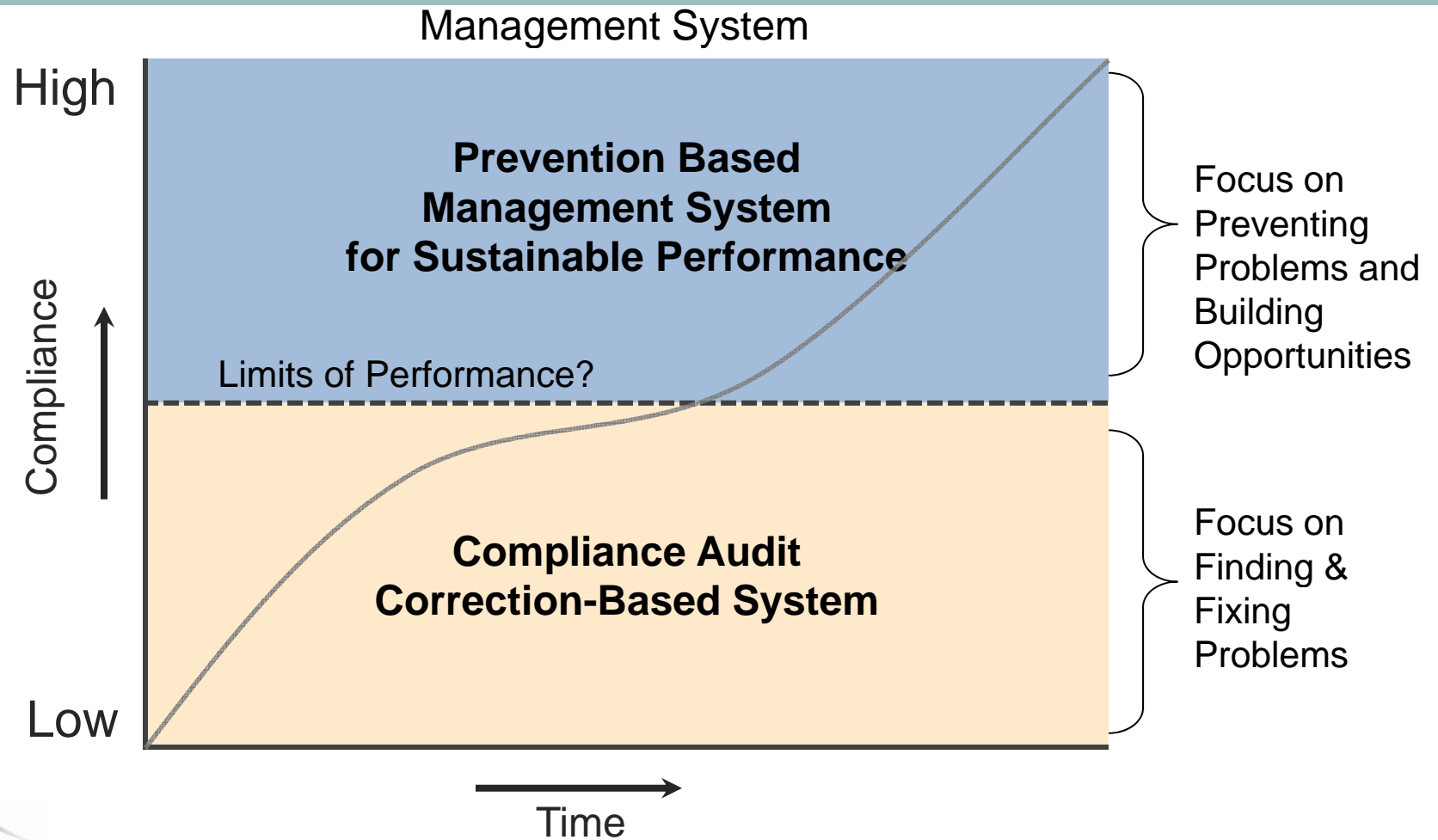
# Bulletproof Your Compliance Program

A written **Inspection Program** should be developed, trained on and audited

**Comprehensive Compliance Audits** should be conducted periodically based on Management's timeframe requirements.



# Break-through EHS Performance



# From Compliance Focused Attributes to Management System Attributes

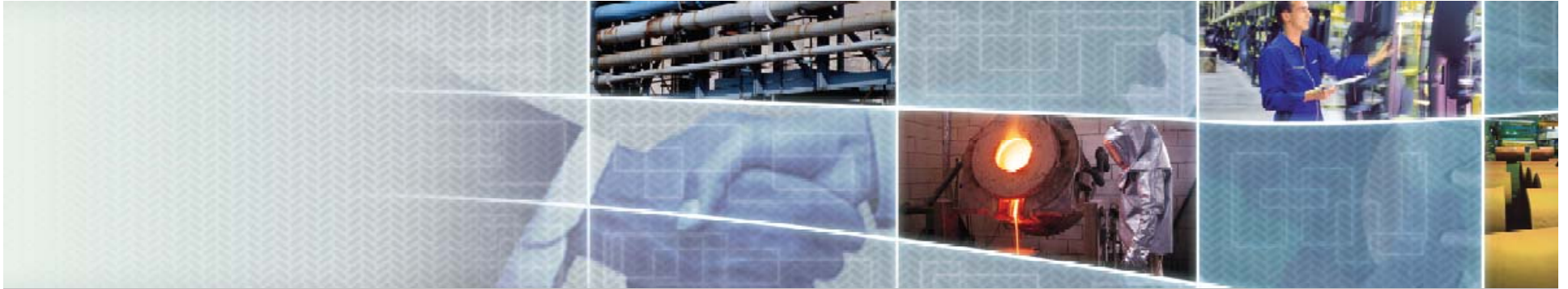
## Compliance

- Driven by law/regulation
- Threshold standards
- Ask regulators what to do
- Event-centered
- Local/area focused
- Operations constrained
- Goal of zero violations
- Incident response
- Who's at fault
- Fix it
- Cost of Programs

## Management System

- Driven by business needs
- Continual Improvement
- Analyze/solve/present
- Systems-centered
- Cross-functional
- Operational solutions
- Goal of zero accidents
- Incident prevention
- Data Driven
- Learn from it
- Investment in Programs





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# Questions?

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