

**T**welve years ago, I left the Army's JAG Corps Environmental Law Division to earn a living in corporate America. I took a position as safety, health and environmental (SH&E) counsel for a multinational specialty chemical company headquartered on Madison Avenue in Manhattan.

## Dare to Ask the Obvious Questions

BY JAMES A. NORTZ

Shortly after I arrived, I was introduced to the company's very impressive SH&E staff. In office after office, I met one smartly dressed and highly experienced SH&E veteran after another. In some perverse way, I couldn't help but feel my heart sink. Not only did I feel a bit intimidated by the depth of experience in the department, but I also began to wonder what, if anything, a young attorney with only four years of experience in the field could really contribute. These guys appeared to have all the bases covered already.

Over the coming weeks, as I got to know the team by working with them in the field and speaking with them in private, a very different picture began to emerge. I'll never forget the first global SH&E department meeting I attended in Chicago. After a full-day session in a hotel ballroom, I was in a car with three department members on the way to dinner at a local restaurant. Not long into the journey, one of them said to me, "Jim, you're going to find this out sooner or later, so I might as

well be the one to tell you. We (the SH&E department) are a completely dysfunctional family. Our leader is mean-spirited and incompetent; we don't work well as a team and have a hard time getting things done."

As my first months passed, I began to slowly see the various manifestations of this dysfunction in our manufacturing facilities around the world. For example, the first time I visited our Houston plant — which handled thousands of tons of highly toxic and explosive chemicals every day

— the plant manager took me on a plant tour and then brought me to his office. During our conversation, I asked if there was anything I

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could do for him as corporate SH&E counsel. He began to say something, thought better of it and told me that there was no need to bring it up because it might get him in trouble. After pressing him to disclose what was on his mind, he asked if I had ever heard of the Occupational

Health and Safety Administration's Process Safety Management (PSM) regulations. A bit embarrassed, I had to admit that I had never dealt with those regulations in the Army and had not looked at them.

The plant manager proceeded to explain that the PSM regulations required hazardous manufacturing operations, like the ones in his plant, to do a process hazard analysis and take corrective actions if the analysis revealed significant unmitigated risks. He told me they could not even get started on this work because there were no reliable "as built" drawings of the plant. He pulled some papers from his desk drawer and explained that they were three years of denied requests for funding the plant drawings. As a consequence of these repeated denials, the plant was completely out of compliance with the law, and possibly presenting significant risks to the lives of employees and local residents.

When I returned to my office, I met with a process safety expert the SH&E department had recently hired to evaluate our plant's PSM compliance worldwide. She explained, with some panic in her voice, that she had been to many of our plants and felt like "a TV repairman in the stone ages." When I asked her to explain, she exclaimed, "There's nothing to repair! There's no TV to fix!"

Shortly after this meeting, I attempted and failed to get both the SH&E department and the senior management team to take decisive action to remedy the PSM shortcomings in our plants. Fortunately, a year or so later, a new CEO and COO arrived on the scene, recognized the importance of running



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safe chemical plants and invested over \$100 million to remedy this and similar SH&E issues at our plants around the world.

This whole experience taught me a very significant lesson: Never presume that because impressive and talented people are in charge of a function, or a company for that matter, that things are all in order. As often as not, when you look under the covers, you will discover one hair-raising issue after another. This is not necessarily a consequence of evil or incompetent corporate management. Instead, I think these issues persist in many companies because managers grossly underestimate the extraordinary challenges associated with managing corporate legal and ethical risks, and there is always a genuine scarcity of resources to deal with them.

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**Dare to ask whether your regulatory department has the resources to manage the significant burden your business places on them.**

So, my advice is to take nothing for granted and dare to ask the obvious questions. Dare to ask whether your HR department has systems in place to effectively manage labor law and data privacy risks. Dare to ask whether your regulatory department has the resources to manage the significant burden your business places on them. Dare to ask

whether your finance and accounting departments really have a good handle on financial controls. Dare to ask whether your workplaces and your products are safe enough. Dare to ask whether employees really understand the laws and corporate policies associated with their jobs. Dare to ask these and other obvious questions, and encourage your colleagues to do the same. This is where you will find the greatest opportunities for making material reductions in your company's legal and ethical enterprise risks. 

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