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Oil and Gas Company Lawyers: Navigating the ESG Landscape

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Locke Lord's **Rob Evans**, **Gerry Pels and Jon Daly** co-authored an article featured in the Texas Bar Journal that examines the ESG movement, the implications of its ever-evolving landscape and how lawyers can help oil and gas (O&G) companies navigate it.

For many years, O&G companies have worked to integrate ESG goals into their business strategies, operational controls and reporting mechanisms, but as demands in the regulatory landscape shift, so must their focus and processes. The article details emerging compliance guidelines and regulations altering the industry, such as proposed climate-related disclosure rules from the SEC as well as the opportunities and challenges of the U.S. Inflation Reduction Act of 2022. The authors explain, "Amidst these challenges, lawyers play a crucial role in advising their clients. They provide strategic counsel on legal implications, ensuring that strategies align with both sustainability goals and regulatory requirements."

The authors further note, "As regulatory frameworks and societal expectations evolve, companies that proceed proactively will not only weather the storm but emerge as leaders in sustainable business practices."

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Oil and Gas Company Lawyers: Navigating the ESG Landscape

Written By Rob Evans, Gerry Pels and Jon Daly

INTRODUCTION

For many years, oil and gas companies, or O&Gs, and their lawyers have been living with the environmental, social, and governance, or ESG, movement and its ever-increasing demands on the industry. Initially, lawyers often recommended top-down planning approaches—making board members and senior executives responsible for implementing sustainability reports and reporting mechanisms to satisfy demands of those pushing transparency and changes to practices. As the ESG movement continued, many O&Gs and their lawyers began focusing on advancing companies' goals and values while also addressing the expanding regulatory requirements and

investor concerns.

More recently, anti-ESG efforts have stalled the momentum of ESG demands—primarily in terms of public enthusiasm. O&G lawyers have been deeply involved in advising their clients in the contentious, politically charged situation the two efforts have created. Most companies are continuing annual sustainability reporting and responding to the increasing regulations. Lawyers are helping their clients avoid the turmoil of politics and related public relations issues. One useful approach is to help redefine and retool business strategies and controls with new sustainability requirements in mind, which can enhance operational understanding, build trust, and gain recognition from investors, customers, and other stakeholders—while not overly hindering the companies' operations.

Amidst these challenges, lawyers play a crucial role in advising their clients. They provide strategic counsel on legal implications, ensuring that strategies align with both sustainability goals and regulatory requirements.

ONGOING DEVELOPMENTS

The majority of O&G companies have been preparing and publishing ESG sustainability reports for several years but recently have begun to refine their internal processes and metrics. One key change is the Committee of Sponsoring Organizations on the Treadway Commission's, or COSO's, guidance: *Achieving Effective Internal Control Over Sustainability Reporting*.[1] Building on the Sarbanes-Oxley Act of 2002, the guidance provides a framework for sustainability reporting, emphasizing "tone from the top" and board oversight of sustainability and related opportunities. Lawyers can assist in the integration of COSO's guidance, ensuring that internal controls are not only effective but also legally sound.

This refocusing can challenge the trust deficit perceived by investors/stakeholders regarding the industry's commitment to ESG goals. Building on business-generated activities allows companies to achieve realizable business goals rather than chasing new ESG hot topics. Additional board oversight and strategy development allows companies to better parse the rising tide of demands. Further, this refined approach builds additional trust and understanding between companies and invested stakeholders. Once risk and opportunity priorities are identified, the company needs internal controls that can easily be applied, monitored, reported, and audited from top to bottom. As the internal controls provide more detailed information, the company can better respond to risks it is facing and capture opportunities. A shift away from just annual reporting to these more integrated internal systems allows companies to adapt to new requirements and capture opportunities. Enhanced controls over reporting, in turn, may strengthen relationships and foster a culture of compliance.

REGULATION

O&G lawyers have advised their clients as ESG mandates have morphed over time from simple requests for disclosures—such as greenhouse gas emissions—to aspirational commitments that have now evolved into regulatory demands. For example, the Securities and Exchange Commission, or SEC, has proposed climate-related disclosure rules. The SEC's Climate and ESG Taskforce, established in 2021, issued Release No. 33-11042 on *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (Mar. 2022).[2]

The proposed rules expand on existing guidance and introduce comprehensive disclosure requirements for

climate-related risks and impacts—providing standardization for investors. The proposed rules require disclosures on processes for identifying, assessing, and managing climate-related risks, board and management oversight, material impacts on financial statements, and details of strategies and plans to reduce climate-related risks. Companies would disclose (1) how climate-related risks affect their business model and financial statements in the short, medium, and long term and (2) internal use of carbon pricing, quantitative disclosure of greenhouse gas, or GHG, emissions (full spectrum), reduction targets, and whether offsets or credits will be used.

Anticipating these changes, lawyers advise on key areas to address, including enhancing board and management structures, controls, and procedures for assessing and reporting climate-related risks. Disclosure lawyers work with companies on methodologies for climate-related disclosures, metrics, estimates, and GHG emission information for financial statements. Delay in adoption of final rules has given companies time to prepare, but further work will be necessary if and when final rules are adopted. Lawyers must make certain they stay abreast of these emerging regulations, ensuring that their clients are well prepared to comply with evolving disclosure requirements, including the development of comprehensive strategies for climate-related disclosures and ongoing review of disclosures and filings.

INFLATION REDUCTION ACT

The U.S. Inflation Reduction Act of 2022 with $370 billion in funding offers opportunities and challenges.[3] Companies can benefit from its tax provisions, but their lawyers must help navigate additional regulations and considerations, including environmental justice. The tax incentives are becoming pivotal factors in shaping changes in the industry, especially as a major goal of the act is to advance energy transition for sustainable development.

CALIFORNIA'S GHG REPORTING PROGRAM

O&G lawyers are addressing California's Climate Corporate Data Accountability Act, or CCDAA, effective October 2023. The CCDAA significantly impacts O&Gs doing business in California.[4] Mandating reporting of Scope 1, 2, and 3 emissions, the law poses additional challenges, with reporting expected to commence in 2026. The law covers all public and private U.S. companies doing business in California that have revenues exceeding $1 billion. Lawyers advising O&Gs even outside California often suggest that the CCDAA further underscores the benefit of building controls in anticipation of evolving regulatory developments.

PRACTICALITIES

O&G companies are facing unprecedented changes, leading many lawyers to recommend a shift in management focus from predominantly financial measures to include non-financial aspects. Companies are adapting to new compliance and disclosure requirements and implementing measurement and data collection systems. Lawyers who advise boards know all too well that board members' time is in short supply and has historically been focused on financial measures and controls. The sea change shift will require lawyers to help board members and senior management grapple with the complexity of new reporting while maintaining business goals and profitability.

During these pivotal next steps, O&G lawyers will help their clients focus on embedding appropriate, business[1]oriented strategies into the core of a company's culture and operations. This approach is likely to go

beyond simple reporting and focus on creating a culture of compliance and ongoing improvement regarding sustainability goals. Many lawyers are concerned that O&G companies that lag will forfeit the opportunity for new business and development and face potential regulatory penalties—the proverbial carrot and stick.

Developing internal controls beyond financial metrics poses significant challenges. For example, the state of Texas has initiated litigation to challenge what it described as "putting [workers'] financial futures at risk by allowing asset managers to consider non-financial factors when investing client funds."[5] An independent group within the company focused on sustainability reporting may not be sufficient. Lawyers may instead recommend a cross-functional approach that integrates legal, financial, environmental, operations, and compliance functions. Involving and integrating more of the workforce can lead to new opportunities while also harnessing critical skill sets that would traditionally be less involved with internal controls. This approach can foster a culture of compliance while furthering the overall goals of the business. Lawyers must stretch beyond a limited role of identifying legal and compliance issues to help with business functions.

CONCLUSION

While the ESG movement has faced setbacks, the fundamental principles persist. Companies need to navigate ever-evolving regulations and disclosure obligations, adapting to a new operating reality. Detailed analyses outlining the current status, future goals, and identified gaps enable lawyers to help their clients prioritize steps forward. As regulatory frameworks and societal expectations evolve, companies that proceed proactively will not only weather the storm but emerge as leaders in sustainable business practices. Lawyers face a unique challenge in advising clients regarding ESG as the cycle of regulation ebbs and flows. Regardless, lawyers must prepare their clients to navigate the requirements of complex filings, statements, and disclosures.

Notes

1. COSO, Internal Control–Integrated Framework, https://www.coso.org/guidance-on-ic.
2. U.S. Securities and Exchange Commission, https://www.sec.gov/rules/2022/03/enhancement-and-standardization-climate-related-disclosures-investors.
3. U.S. Internal Revenue Service, Inflation Reduction Act of 2022, https://www.irs.gov/inflation-reduction-act-of-2022; see also U.S. Department of Energy, https://www.energy.gov/lpo/inflation-reduction-act-2022.
4. Climate Corporate Data Accountability Act, California Senate Bill No. 253, Chapter 382, October 2023, https://legiscan.com/CA/text/SB253/id/2833821.
5. Press release, Ken Paxton, Attorney General of Texas, August 14, 2023, "Major Company Reverses ESG Credit Rating Practice," https://www.texasattorneygeneral.gov/news/releases/major-company-reverses-esg-credit-rating-practice-victory-texas-efforts-against-improper-political.

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