

This article first appeared in the July 2000 issue of *International Environmental Systems Update*. For more information, please visit this Web site: www.ceem.com.

MSWG Releases New Consensus Statement on ISO 14001

Fair Warning Issued Concerning Legal Requirements, Certification

OAKLAND, Calif. —The Multi-State Working Group (MSWG) on Environmental Management Systems met here last month and strongly upheld its conviction that environmental management systems should be designed and implemented to produce results that meet and exceed legal requirements.

The consensus statement at MSWG's quarterly meeting, attended by 80 EMS experts, state officials and consumer interest groups, grew out of fear that the confusing ISO 14001 standard will lead to EMS targets and objectives that give short shrift to federal and state environmental laws.

ISO 14001 says that businesses must commit to following legal and other requirements under Section 4.3.2, and efforts to clarify the standard have failed so far, according to most state regulatory bodies involved in MSWG.

MSWG's move follows a year of fact-finding, expert presentations and policy drafts by the group's business, public interest, government and academic members. Jason Morrison of Oakland's Pacific Institute directed the MSWG process, which he said was long but open. Even eleventh-hour comments from Joe Cascio, chairman of the U.S. Technical Advisory Group, and officials from the U.S. Environmental Protection Agency were accommodated in the final draft, Morrison reported.

"This [statement] is a consumer alert because the interest in ISO 14001 is taking off, and there is a problem with the standard," Morrison said.

The MSWG policy has four principles:

1. EMSs should improve compliance with environmental laws, enable organizations to achieve performance beyond compliance with legal requirements and reduce environmental impact from both regulated and unregulated activities.
2. EMSs can serve as a supplementary tool that enables regulatory agencies and others to jointly achieve greater environmental protection.
3. The quality of an EMS is linked to the environmental performance achieved.
4. EMS performance metrics can document improved environmental performance, which may enable regulatory agencies to achieve policy objectives more efficiently and improve communications with the public.

The policy warns that “adoption of an EMS based on ISO 14001 or any other model does not guarantee compliance [with the law] and that the public should be aware that certification to any standard does not necessarily mean that registered organizations are in full compliance with all relevant environmental laws.”

Morrison said some businesses are advertising or announcing their certification to ISO 14001 to the public. “Announcements may suggest that certification means they are environmentally special when that may not be true,” Morrison said.

Robert Stephens, a California EPA representative and the MSWG chairman, said the statement is well-timed because the Ford Motor Co. will require its suppliers to certify at least one manufacturing site to ISO 14001 by the end of 2001.

Additionally, the General Motors Corp. will require its suppliers to certify to ISO 14001 or Europe’s Eco-Management and Audit Scheme (EMAS) by Dec. 31, 2002.

“Large and small businesses soon will need to be certified,” Stephens predicted, “and state regulators want to discourage the temptation for ‘low balling’ the registration.”

The policy says government should not “unduly scrutinize” EMS adopters, but also that “governments must continue to maintain some degree of regulatory oversight over all regulated entities, regardless of whether an entity has an EMS in place.”

That was put into context by Wisconsin’s Department of Natural Resources’ Jeff Smoller, who said the statement could be called “fair warning.”

“We heard reports in Oakland that some registrars are totally ignorant of state laws,” Smoller said following the meeting. “So what are the states? Chopped liver? Registrars might know EPA, but if they are ignorant of state laws, how the dickens can they certify that an EMS is committed to meeting all legal requirements?”

EMSs Have Merit

However, the MSWG policy said there was general evidence to suggest that a comprehensive approach to compliance through the use of EMSs has merit. EMSs can serve to assist organizations in consistently meeting their environmental regulatory obligations.”

In addition, MSWG suggested EMSs might better position firms for government incentives for self-disclosure of violations. It advocated education that promoted “increased and creative use of EMSs in achieving and going beyond compliance.” Moreover, an EMS that achieves compliance with the law and increases public access to information about the environmental performance of a business can build “public confidence” in the business, MSWG said. Public reporting of environmental performance also tends to produce a better working relationship between the business and regulator, the policy suggests.

The policy began to evolve last year in Scottsdale, Ariz., with an MSWG forum moderated by Arizona Assistant Attorney General Dave Ronald. Taking part were Jerry Spier of the Tulane Law School; Ed Quevedo, Pillsbury, Madison & Sutro LLP; Jim Connaughton of the Coalition for Implementation of ISO 14001 (CI²); William Thomas, Winthrop, Stimson, Putnam and Roberts; Matthias Weigand, Bavarian State Environmental Ministry; and Steve Sisk, EPA Office of Enforcement and Compliance Assurance.

Thomas, in particular, emphasized the potential relationship between EMSs and compliance, but warned, “ISO 14001 will not be a compliance tool unless you ask it to be.”

The final MSWG statement heeded that advice and stated: “Government authorities are beginning to recognize that EMSs can support an array of regulatory tools and voluntary programs that assist organizations to reach, maintain and go beyond compliance. More education is needed for government, business and non-government organizations in regard to the increased and creative use of EMSs in achieving and going beyond compliance.” A multisector team prepared drafts that were circulated between meetings in Pittsburgh; Portland, Ore.; and Oakland. The MSWG involves most state regulators and others who are experimenting with EMSs in the United States.

Although the EPA contributed to the consensus, it does not represent official EPA policy.

In other actions, MSWG:

- Held a second fact-finding forum on the competency of registrars and the integrity of the ISO 14001 registration process. A white paper will be drafted after more information-gathering.
- Received input on the attributes of an environmental management system that meets public sector needs rather than only those of a facility or firm. By consensus, MSWG will articulate a menu of needs of the public sector application of EMSs but will not devise a prescriptive “public policy EMS.”
- Announced that its annual EMS workshop will be held in San Diego, Calif. Tentative dates are June 5-6.
- Heard reports on regulatory innovation in California, EMS adoption in Thailand, EPA’s EMS policy implementation and EPA’s training on the use of EMSs in enforcement settlements.

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