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Jerry Higdon is an experienced environmental lawyer with 24 years of experience representing private and public parties in avoiding, managing, and resolving environmental liabilities. Known for his pragmatism and imagination in solving environmental problems, his work on behalf of clients extends throughout the country. As a lawyer recognized for years in both *Chambers USA* and *The Best Lawyers in America* for his extensive environmental experience, Mr. Higdon routinely defends clients in state and federal environmental enforcement proceedings, develops and implements environmental permitting and planning strategies to facilitate a client's more rapid response to its changing business climate and growth opportunities, and assesses, structures, and negotiates the allocation of environmental risk affecting transactions. Mr. Higdon is a long-time member of the Houston and Texas environmental legal community, and thus regularly advises members of the energy industry regarding management of environmental issues affecting the upstream, midstream, downstream, and renewables/alternative energy sectors.

Mr. Higdon also represents potentially responsible parties at federal and state Superfund facilities, counsels on cost-effective and efficient remediation strategies, advises on climate change regulation and business planning, assists in the review and modification of operations to address environmental compliance issues for manufacturing, industrial, or waste disposal facilities, and represents clients in litigation and other disputes regarding responsibility for environmental liabilities.

COMPANIES, GOVERNMENT INCREASE USE OF TECHNOLOGY IN DEVELOPING, MONITORING COMPLIANCE PROGRAMS

Editor's Note: This is one in a continuing series of Q&As with Locke Lord lawyers on key legal issues confronting companies engaged in industries that have national and global impact.

With regulations often changing, how can companies keep the necessary records to demonstrate at any given point in time that they are operating in compliance with environmental regulations?

GDH: Developing a comprehensive, yet workable, compliance program is an ongoing challenge for a company. A significant and necessary component of such a program involves adequate records retention. Fortunately, with developments in technology, automated compliance management systems have become more common and the market currently offers numerous environmental management software options that can assist with making the records retention job more manageable. Of course, these software systems are only as good as the effort to utilize their capabilities, and the initial effort to populate the data inputs for these systems. However, with appropriate due diligence, good solutions can be found, regardless of the size of the company.

How has the legal team's role changed in responding to an enforcement inquiry during the past five or 10 years?

GDH: Many companies have recognized the need to have good and productive relationships with environmental regulators to foster quicker resolution of issues that arise, and the preservation of good will for future business planning and growth that may require environmental permits or other regulator input. In light of these realities, more highly regulated companies have begun adopting approaches that attempt to use the legal team as the safety net, rather than the first line of defense, in responding to many enforcement inquiries, particularly those of a more routine or modest nature. Good, frequent and sophisticated personnel training are essential to such a model, but the benefits over time can be considerable.

How has technology – the easy access to information – affected the frequency of legitimate and not-so-legitimate calls for investigation?

GDH: Just as technology has become more frequently used in a company's compliance function, governmental authorities are increasingly turning to technology as a means by which to quickly and efficiently collect, sort, and analyze compliance related information from regulated entities. As one might expect, much of this information then becomes part of the public domain, and can be easily accessed on-line by interested parties, including the media and private parties. With greater frequency, the information has served as the predicate for complaints to governmental authorities, and where the government does not act, for citizen suit actions against the regulated actor. Ironically though, for companies with strong compliance histories, the increased transparency probably has also had the effect of easing concerns that in the past would have been exacerbated by the inability to easily learn about a regulated actor's environmental compliance.