



Compliance with the Law is Not Always the Highest Ethical Priority

Compliance and Ethics



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New Orleans is one of my favorite cities. I love the people, the food, the music, the French Quarter, and the laid-back atmosphere. I got to know the town well after serving as the safety, health, and environmental counsel for a chemical company that had three plants in the area. One of our plants was located just across the Mississippi River from New Orleans, in Gretna, Louisiana.

Like the rest of Gretna, our plant was just a few feet above sea level and was protected from the Mississippi by a 20-foot-high levee. This meant that during heavy downpours, the entire plant could be covered in two to three feet of water. Over the decades that the plant operated, this periodic flooding picked up fluid from the oil-based products we manufactured and spread it all over the area. In the unpaved portion of the plant, this process resulted in a two-foot-deep layer of oily mud that had the consistency of Vaseline. Although this situation did not pose a particularly significant threat to human health or the environment, we did have a legal obligation to remediate such spills and it was never a pretty sight.

I recall once walking through the plant with a new manager named Richard, who was not accustomed to managing a facility in which you risked being knee deep in brown smelly goo. During the tour, we frequently had to walk on wooden walkways that workers had constructed over the muddy areas so they could get around the plant. At one point, he stopped me and said that he was ashamed to be in charge of a facility that looked like this. He said, "Jim, I often wonder what would happen if I ended up on *60 Minutes* having to explain how we justify making such a wreck of the environment and

working in such filthy conditions. How could I ever explain to my grandson that I'm partly to blame for this mess?"

I didn't have a good answer for him, and the memory of that walk has stuck with me for over a decade. I shared Richard's sentiments about our responsibility to comply with the law, be good environmental stewards, and provide our employees with a safe, decent place to work. Our problem was that environmental enforcement in Louisiana was very lax and there was a very small likelihood that the regulators would ever insist on corrective actions being taken. As a consequence, when faced with a multimillion dollar price tag for such a cleanup project, the company's senior management consistently balked at committing the funds to perform the work.

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Prior to my visit to the Gretna plant, the company had invested millions in a comprehensive safety, health, and environmental audit of its 50 or so manufacturing and laboratory facilities around the world. This audit resulted in the identification of several thousand violations of law and/or safety, health, and environmental issues that needed to be addressed. Around US\$200 million was set aside to take appropriate corrective actions. I participated on a team that was formed to prioritize the work. After much discussion, we established the following criteria to rank the projects necessary to respond to the audit findings:

1. First priority projects — Those necessary to mitigate immediate or serious risks to human health and safety (regardless of whether mandated by law).
2. Second priority projects — Those necessary to mitigate immediate or serious risks to the environment (regardless of whether mandated by law).
3. Third priority projects — Those necessary to address known violations of law that did not pose immediate or serious risks to human health or the environment.
4. Fourth priority projects — Those necessary to address minor risks to human health or the environment in which there was no clear violation of law.

As you might imagine, the muck at our Gretna plant was identified as an unacceptable condition during the audit that required corrective action. However, because it posed no immediate or serious risk to human health or the environment, work to remediate the soil in the plant ranked as a third priority project. In practical terms, this meant that the muck would remain in place until the first and second priority projects were completed and then it would have to compete for funds with the other third priority projects.

Perhaps you would have taken a different approach in allocating the company's limited safety, health, and environmental project dollars. I think the situation we faced illustrates several important points about the many multi-dimensional calls that corporate counsel are asked to help their clients make. First, it exemplifies the general worthlessness of the oft-repeated phrase "just do the right thing." As I've maintained for years, this mantra expresses a laudable sentiment, but provides no guidance in making principled business decisions. Second, it is vital not to be myopic when seeking to discern an ethical course. Had we just focused our attention on the Gretna plant, we would have failed to identify and mitigate other serious threats to human health and the environment we discovered at other locations during our audit. Third, regardless of how reasonable you may think our approach was at addressing a legacy of underinvestment in our manufacturing facilities, there may be occasions in which compliance with the law is not the highest ethical priority.

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