

tion toward environmental management. A short (about 10 pages, including appendices) policy document, organized like an EPA regulation, ISO 14001 has straightforward rules on how to achieve an internal environmental program. To create an EMS, a company must do five things:

- Create a policy that everyone in the organization can understand. The policy is an environmental mission statement established by top management and communicated in writing to all employees, customers and the public.

- Set objectives and targets based on regulatory requirements and activities that affect the environment. This entails setting specific and, whenever possible, measurable environmental goals that take into account the technological, operational and economic functions and limitations of the organization.

- Put together a program to achieve the objectives.

- Monitor and measure the effectiveness of the program.

- Keep reviewing and improving the program.

For example, a regulated American company with manufacturing processes releasing pollutants into water, land or air would identify a complete "top-down" program to manage, monitor and adjust environmental impacts based on the actual experience, current capabilities and resources and the regulatory history of the company. The EMS is designed, however, for any type or size of organization in any country.

While simple, ISO 14001 is not benign. It is likely to evolve into a set of many industry-wide standards of care designed by business that

will greatly change the thought processes of executives, environmental managers and environmental lawyers (particularly those in environmental litigation). Twenty separate standards will constitute the ISO 14000 series. More specific environmental standards in the ISO 14000 series recently issued or under development are likely to be adopted by the same organizations that use the EMS of ISO 14001.

ISO 14004 provides guidelines on principles and techniques to implement or improve an EMS. ISO 14015 addresses environmental site assessments. ISO 14020 and 14024 provide rules on environmental labeling. ISO 14023 discusses environmental testing and verification methods.

ISO 14001, the first standard, is truly revolutionary and needed in the sense that regulatory compliance itself under 14001 has been reduced to just one aspect of overall environmental management. Traditionally, and particularly in the United States, most companies have attempted to manage environmental affairs by complying in piecemeal fashion with the myriad statutes and regulations within cost constraints, and often have assumed that statutory and regulatory compliance itself, often

on an emergency basis, will somehow constitute an "environmental program."

Given the past successes of the ISO organization and ISO 9000, many expect the ISO 14000 environmental series to develop new industry-wide standards of care for environmental liability. Companies themselves will "agree upon" the rules and may inadvertently set them in stone by following them. Trade associations have done this for years in a number of regulated health and safety areas.

Ironically, ISO 14001 itself studiously avoids establishing specific performance standards. But the very existence of the standard and other standards in the 14000 series encourages the development of uniform environmental risk-management and liability standards for labeling, site assess-

ments, environmental audits, duties of disclosure and specific pollution-control requirements, to name a few.

Many state courts already consider voluntary industry standards to be relevant in determining standards of care and whether a company has acted negligently. In two cases, advisory standards adopted by the American National Standards Institute were held admissible in defining an industry-wide standard of care. See *Kent Village Associates Joint Venture v. Smith*, 657 A.2d 330, 337 (Md. Ct. Spec. App. 1995) (ANSI 1977 standard for stability of refuse bins); *Hansen v. Abrasive Engineering and Manufacturing*, 856

P.2d 625, 628 (Or. 1993) (ANSI standard for safety features in a sanding machine).

In *Hansen*, the Oregon Supreme Court noted: "Because advisory safety standards that are adopted by nongovernmental entities such as ANSI may represent a consensus regarding what a reasonable person in a particular industry would do, they may be helpful to the trier of fact in deciding whether the defendant has met the standard of care due."

While the creation of new standards is still a long-term issue that deserves monitoring, the ISO 14000 series, and ISO 14001 in particular, is likely to generate scores of new standards over the next two decades as more ISO environmental practices become developed, fleshed out and followed by industry groups. ■



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