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Energy & Environmental Law Update Web Conference

Critical Energy and Environmental Concerns for Next-Generation Manufacturing

Thursday, February 27, 2014

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Next Industrial Revolution is Here

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- Manufacturing is converging with technology at an astonishing speed
- Breakthrough innovations are igniting a new era of competitive, sustainable, and advanced manufacturing
- Majority of large manufacturers are planning or considering 'Reshoring' from China to the U.S.*
- Foley has been advising manufacturers since the first industrial revolution
- We're moving into the next generation of manufacturing along with our clients

* According to a Boston Consulting Group study (August 2013)



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Manufacturing is Not Just Coming Back ... It's Moving Forward

And media outlets across the nation are taking note

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Manufacturers' Concerns in Era of Advanced Technologies

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- Will we be able to compete?
- Can we control costs?
- Will we be able to meet increasing regulatory pressures?
- Do we have the workforce to meet new challenges?



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Six Core Strategies to Compete

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To compete in 2014 & beyond, manufacturers must implement six core strategies necessary for world-class performance*:

- Continuous Process Improvement
- Customer-Focused Innovation
- Human Capital
- Sustainability
- Supply Chain Management
- Global Engagement

*According to The MPI Group's Next Generation Manufacturing Study



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Learn More About

- Foley's Legal Innovation HubSM for Next Generation Manufacturers
- <http://www.foley.com/manufacturing/>



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Agenda

- Saving money on energy
- Sustainability
- Siting, re-shoring, and closure



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Energy & Environmental Law Update Web Conference

Saving Money on Energy

Presented by Thomas McCann Mullooly

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The Changing Energy Marketplace

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- Energy costs represent 2% of overall cost of manufactured goods – compared to 15% for labor or 50% for raw materials
- U.S. energy costs reflect competitive advantage over 9 largest trading partners
- Lower costs trends attributable to fracking and increased natural gas supplies
 - Between 2006-2010, manufactures experienced decline in energy costs of 11%
 - Until this polar vortex winter, that trend would have continued

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The Changing Energy Marketplace

- Usage projected to increase
 - Annual non-renewable energy expenditures for industrial sector projected to grow from approx. \$206 billion in 2010 to \$584 billion in 2040
- 17 states with retail competition in markets have seen rates drop 1.7% for industrial users between 1997-2012 – compared to increase of 10.1% in regulated states



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Responding to Energy Market – The Basic Steps

- Assign responsible manager and determine goals
 - Authority
 - Goals
 - Lowest cost
 - Predictability
 - Corporate values
- Establish baseline of energy usage
 - Internal
 - External



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Responding to Energy Market – The Basic Steps

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- Examine self-generation options
 - As much as 28% of total energy consumed in manufacturing in 2010 came from non-purchased sources
 - Co-gen
 - Wind
 - Solar
- Examine competitive supply options
 - Where available
 - Running your own auction
 - Negotiated agreements



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Responding to Energy Market – The Basic Steps

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- Work with utilities, cooperatives and municipalities
 - Work with tariffs
 - Contract tariffs
 - Cooperatives and municipal utilities



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Responding to Energy Market – The Basic Steps

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- Examine demand response opportunities
 - Voluntary participation
 - FERC estimates potential contribution from all U.S. demand response programs was nearly 72,000 MW – almost 10% of U.S. peak load
 - Substantial growth expected
 - Curtailment payments to industrial customers expected to reach \$4.3 billion by 2019



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Wrap Up

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- Attractive load
- Negotiating leverage
- Opportunities



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Energy & Environmental Law Update Web Conference

Environmental Sustainability Concerns for Next Generation Manufacturing

Presented by Linda E. Benfield & Sarah A. Slack

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Manage Energy Usage and Efficiency

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- Energy Audits
 - Identify inefficiencies
 - Optimize energy cycles and resources
- Facility Construction/Renovation
 - Incorporate energy efficiency measures
 - Consider sustainability in design
- Regulatory Energy Efficiency Requirements/Developments
 - Monitor regulatory developments
 - Collaborate with agencies regarding energy efficiency requirements

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Securities and Exchange Commission Requirements

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- Rule 14a-8 Shareholder Proposals
 - Increasingly related to sustainability developments/initiatives
 - Seeking enhanced disclosure of sustainability issues
 - Requesting company action on sustainability measures
 - Modification of SEC Staff Policy in 2009
 - “Evaluation of risk” no longer sufficient to exclude sustainability proposals
 - Sustainability proposals now allowed if “appropriate for a shareholder vote” and have “sufficient nexus” to company



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Securities and Exchange Commission Requirements

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- Allowed Shareholder Proposal Examples
 - PPG Industries, Inc.
 - Requesting report on responsible disclosure of environmental impacts of operations
 - PNC Financial Services Group
 - Requesting assessment of greenhouse gas emissions in lending portfolio and exposure to climate change risk
- Disallowed Shareholder Proposal Example
 - FLIR Systems, Inc.
 - Requesting report on company’s strategies for managing energy expenses



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Securities and Exchange Commission Requirements

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- Strategies for Addressing Shareholder Proposals
 - Be proactive—provide previously prepared sustainability reports (if available)
 - Open dialogue/negotiations with shareholders before proposal is issued
 - Explore procedural grounds for dismissal
 - Consider negotiation and agreement to moot the proposal. Environmental and social policy proposals have the highest percentage of proposals withdrawn in connection with direct dialogues between the company and its shareholders.



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Securities and Exchange Commission Requirements

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- 2010 SEC Guidance Regarding Climate Change Disclosure Requirements
 - Primarily Items 101, 103 and 303 of SEC Regulation S-K
 - When determining “risks” for disclosure, must consider:
 - Impact of existing and potential climate change litigation and international treaties
 - Indirect consequences of climate change (e.g., decreased demand for greenhouse gas-producing products)
 - Impact of physical effects of climate change on business



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Regulatory Developments

- Evaluate long-term planning opportunities and impacts
 - Global and national sustainability initiatives/requirements
- Engage with lawmakers to improve legislative proposals
 - Incentives, tax credits, grant programs
 - Focus on long-term environmental impact vs. immediate, short-term gains



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Third Party Requirements and Certifications

- Identify and comply with supplier/customer sustainability requirements
 - Wal-Mart Example
 - Sustainability Index
- Sustainability certification examples
 - Forest Stewardship Council
 - UL Environment




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Supply Chain Evaluation

- Assess and improve the sustainability impact of raw materials in the supply chain
 - United Nations Global Compact
 - CERES Global Reporting Initiative G4 Reporting Guidelines




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“Green” Marketing Claims – Background

- What are “green” marketing claims?
 - Claims regarding the environmental attributes and/or impact of a product
- Examples:
 - Compostable
 - Recyclable
 - “Free-of” claims
 - Non-toxic
 - Made with renewable energy/materials
 - Carbon offset claims



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“Green” Marketing Claims – FTC “Green Guides”

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- Regulated by Federal Trade Commission under Section 5 of the Federal Trade Commission Act (15 U.S.C. § 45) – “unfair and deceptive” claims
- Governed by FTC’s “Green Guides” guidance document
 - 16 C.F.R. Part 260
 - Revised in 2012
 - Intended to prevent deceptive and misleading advertisement regarding environmental attributes



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“Green” Marketing Claims – FTC “Green Guides”

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- What the “Green Guides” cover:
 - Substantiate claims with scientific evidence
 - Avoid general, difficult-to-substantiate claims (“green,” “eco-friendly”)
 - Accurately and adequately qualify claims
 - Properly use environmental certifications/seals of approval, with adequate disclosures (FTC Endorsement Guide)



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“Green” Marketing Claims – FTC “Green Guides”

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- What the “Green Guides” do not cover:
 - Do not address “organic,” “natural,” or “sustainable” claims
 - “Organic” – Governed by U.S. Department of Agriculture’s National Organic Program
 - “Sustainable” and “natural” – FTC “lacks sufficient evidence on which to base general guidance”



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“Green” Marketing Claims – FTC Enforcement

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- Recent enforcement – demonstrates FTC is serious about holding companies accountable under the “Green Guides”
- FTC has recently brought several enforcement actions against companies making “green” marketing claims
 - ECM Biofilms, Inc.
 - Unsubstantiated biodegradable claims
 - Similar FTC complaints against four other companies, including ECM customers
 - AJM Packaging Corporation
 - Violation of 1994 consent order barring unsupported environmental claims about products or packaging



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“Green” Marketing Claims – Best Practices

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- Review 2012 revised FTC “Green Guides” and update marketing claims/materials accordingly
- Always have scientific evidence to substantiate “green” marketing claims
- Make proper disclosures/qualifications of claims
- Ensure proper use of environmental certifications/seals of approval

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Energy & Environmental Law Update
Web Conference

Siting, Re-Shoring, and Closure

Presented by Thomas K. Maurer

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Re-shoring

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“The act of bringing outsourced personnel, services or facilities back to the location from which they were outsourced.



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MIT 2012 Study

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- 198 multinational manufacturers
- 15% are actively re-shoring production to U.S.
- 34% are considering re-shoring




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Reasons for Re-shoring

- Labor Costs
- Productivity & Technology
- Energy Costs
- Supply & Distribution
- Proximity to R&D and Management


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Environmental Regulations

- Manufactures Alliance for Productivity and Innovations
 - 2,183 Unique Regulations for Manufacturers in U.S.
 - 972, the most by far, are Environmental

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Re-shoring

- New “green field” facilities
- Redevelopment of unused facilities
- Modification of operating facilities
 - Environmental issues are the same for re-shoring or purely domestic expansion of production facilities



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Areas of Regulation

- Air Quality
- Waste Management
- Waste Water
- Material Storage & Transportation
- Pollution Prevention
- Development requirements (wetlands, stormwater zoning)
- Demolition requirements
- OSHA



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Siting

- Permits
 - Federal
 - State & Local
 - Complete Operational Data
- Site Specific Requirements
 - (Attainment/Non-Attainment TMDLs)
- Development Regulations (wetlands, stormwater)



Siting, Continued

- Potential Oppositions – NIMBYs
- Lead Time
- Capacity and Strategy
- Regulatory Climate
- Team Approach





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Corporate Environmental Policy

- Objectives – (Costs, Sustainability, Risk Management)
- Worldwide standards?
- Audit policies
- Confidentiality
- SEC and other Reporting of Obligations
- Sustainability



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Closure

- Demolition or Mothballing
- Closure Permits
- Asbestos, Lead Paint, PCBs
- Waste Management
- Storage Tanks
- Financial Assurance
- Transfer of Credits



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Planning

- Teamwork
- In-house environmental staff, outside consultants, lawyers
- Policy & Planning
- Reasonable Timelines & Expectations



Questions & Answers



Thank You!

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- A copy of the PowerPoint presentation and a multimedia recording will be available on the event Website early next week
<http://www.foley.com/critical-energy-and-environmental-concerns-for-next-generation-manufacturing/>
- Past Energy & Environmental Law Update Web Conference materials available at: <http://www.foley.com/environmental/?op=events>
- CLE questions? Contact Jennifer Bartz at jbartz@foley.com
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