Environmental Health & Safety Management in the Wake of Sarbanes-Oxley: A Focus on the Benchmark Alcohol Beverage Industry

Diana V. Vesosky

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Environmental Health & Safety Management
In the Wake of Sarbanes-Oxley:
A Focus on the Benchmark Alcohol Beverage Industry

By Diana V. Vesosky, CIH, CSP

Graduate Project Report submitted in partial fulfillment of the requirements for the
degree of Master of Science in Environmental, Health & Safety Management.

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November 17, 2007

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Abstract

In a post-Enron world, the Sarbanes-Oxley Act holds the highest corporate officers of publicly held corporations personally accountable with regard to financial reporting. This project examines the requirements of the law, risks of not complying the law, how Sarbanes-Oxley has impacted environmental health and safety (EHS) management, and what EHS professionals and companies should be doing to comply with the law.
1.0 Introduction

1.1 Topic

On July 30, 2002, President George W. Bush signed into law legislation that changed the corporate landscape in the U.S. with respect to financial reporting and auditing for publicly traded companies. The Sarbanes-Oxley Act (SOX) was written to address the corporate governance issues brought to light by World Com, Enron and Arthur Andersen. An offshoot of this legislation is the impact that it has had on environmental, health and safety (EHS) professionals, and on how companies manage EHS.

It is vital that EHS professionals understand what they should be doing to protect both themselves and their company in complying with SOX. The result of non-compliance could result in severe criminal penalties for the company and its officers, as well as the EHS professional. The penalties for corporate fraud have been strengthened to attach criminal liability to senior executives deliberately violating financial reporting requirements. Violation penalties for CFOs and CEOs now include a fine of up to $5 million and/or imprisonment for up to 20 years. Beyond the criminal penalties, the bad publicity will likely cause the company’s stock value to tumble, and non-compliance with respect to disclosure of EHS issues may jeopardize the EHS professional’s job.

This research is significant to the field of EHS management since it identifies best practices that EHS professionals and their organizations can utilize to minimize their risk and comply with the Sarbanes-Oxley Act.
1.2 Research Questions

This research answers the following questions regarding SOX:

- What does the law say companies have to do?
- How does this relate to EHS?
- What are the risks with not complying with the law?
- How has the law impacted EHS professionals?
- How has the law impacted how companies manage EHS?
- What should EHS professionals and companies be doing to comply with the law?

1.3 Definitions

This research uses the term "corporate governance" as defined by the Organisation for Economic Co-operation and Development (OECD): "Corporate governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders, and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company objectives are set, and the means of attaining those objectives and monitoring performance" (OECD April 1999).
2.0 Background

The events that precipitated the Sarbanes-Oxley Act included the unstable condition of the marketplace followed by news of bad corporate governance. In March of 2000, the NASDAQ was at a high level. Then the dot.com companies crashed, which resulted in a loss of confidence in capital markets. This was followed by the financial collapse of Enron, which further shook the confidence of investors. Recognizing the negative impact of these events on the economy, and reacting to the growing lack of confidence in the Securities and Exchange Commission (SEC) and a great many unhappy constituents, Congress and the SEC faced extraordinary pressure to take action. The Sarbanes-Oxley Act was put together very quickly, providing the framework for corporate governance that the SEC has put substance to in the form of new and stricter regulations.

Not long ago, Enron Corporation's name was part of the lexicon of corporate and political power. Enron was a pioneer in the marketing and brokering of energy and other futures and commodities. How could America's seventh largest corporation fail without the public market knowing what was going on? The fact of the matter was Enron was not performing well financially, and it hid its true financial health from the investing public by misusing financial accounting standards.

The internal corruption that destroyed Enron included Enron's top management as well as its in-house and outside accounts (Arthur Anderson) and lawyers, all of who approved the unethical accounting practices. All of them
apparently knew that Enron was pledging its stock to guarantee its own hedges with an outside party. What Enron was doing was trying to expand its business in a way that kept debt and potential losses off the main books. The company set up a web of nearly 6,000 off-balance deals or transactions. Enron had "cooked the books" to make its shares more financially viable, creating little or no real shareholder or creditor value and had made the top company executives millions of dollars. By October 16, 2001, investors had become aware that Enron's off-balance-sheet partnerships had hid billions of dollars of liabilities, and had led to a $1.1 billion reduction in Enron's equity.

Enron employees were forced to stick with their company's stock. Even when top executives were aware the company was in decline, the employees were locked into their 401K plans, which were heavily invested in company stock. While the top executives were spouting ethics and direction and how they were going to make Enron the world's greatest company (and then making decisions in the other direction), the employees believed in the mantra, and were caught totally off-guard. Many employees lost all their retirement investments when Enron's stock tumbled from a Fortune 400 company down to a penny stock in three weeks.

Where was the Securities and Exchange Commission? Where was the Financial Accounting Standards Board? Where was Enron's audit committee? Where were the accountants? Where were the lawyers? Where were the investment bankers? Where were the analysts? Where were the institutional investors?
Various Congressional and other federal agencies investigated what has been referred to as a sham operation, whose alleged purposes were two-fold: to make investors believe that debt and risk had been removed from the financial statements, and to create phony income.

Enron’s collapse has brought attention to deficiencies in several accounting and auditing areas. The most commonly cited areas include treatment of off-balance sheet and related-party transactions, auditor independence, retention (as opposed to shredding off!) audit records, and clarification of disclosure rules. The Sarbanes-Oxley Act was enacted to address these issues and restore investor’s confidence.

As a result of this increased pressure on corporate transparency, EHS management has been impacted by increased scrutiny on internal controls, disclosure of EHS liabilities, and the Whistleblower provisions of the Act.

3.0 Literature Review

3.1 Sarbanes-Oxley Act: Summary of Major Provisions

On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002 (“SOX”) (Pub. L. No. 107-204, 116 Stat. 745) which followed an overwhelming majority vote by both chambers of the U.S. Congress. The law was intended to bolster public confidence in the U.S. capital markets and impose new duties and significant penalties for non-compliance on public companies and their executives, directors, auditors, attorneys and securities analysts. The Securities and Exchange Commission (SEC) is currently implementing provisions
of the Act by setting new rules. Most of the provisions of this new law only apply to public companies that file a form 10-K with the Securities and Exchange Commission and their auditors and securities analysts.

3.1.1 Background

The demise of Enron and the bankruptcies of several major telecom companies, including Global Crossing and WorldCom, and the resultant layoffs of workers (who in many cases had lost their entire retirement savings), prompted intense Congressional scrutiny of required corporate financial disclosures (Bowman 231). The level of scrutiny was already high because of the publicity surrounding the numerous failures of the accounting firm of Arthur Andersen (which was one of the world’s leading auditing firms with 85,000 employees operating in 78 countries) (Associated Press). Arthur Anderson had failed to detect and report major fraud in corporate audits, including Enron.

In reaction to a seriously declining stock market, on June 14, 2002, the SEC proposed regulations requiring enhanced certification of all publicly traded companies’ financial statements by CEOs and CFOs. Congress began holding hearings, and very quickly reported out legislation, which received an overwhelming majority vote by both chambers of Congress.

When asked in an interview whether Sarbanes-Oxley is an effective way of bringing integrity into an organization, Jack Welch, the former CEO of General Electric, answered:
"First of all, Sarbanes-Oxley had to happen. We needed to get confidence back in the investment community. And now the question is what are the unintended consequences? How much are we spending, not money but time? The CEO and CFO always had to sign the financial statement, that is not new. The only new bit is you can now go to jail for it!

If you have a code of ethics in the company then nothing has really changed except the consultants have got one hell of a business as they are called in to create process maps and the like. Most companies have pretty good governance policies anyway, so for those that did not, Sarbanes-Oxley is a good thing" (Welch 7).

3.1.2 Overview and Covered Entities

SOX represents the most intense scrutiny of corporate behavior affecting the securities markets since the passage of the Securities Exchange Act of 1934 (known as the "Exchange Act"). The goal is greater transparency and accuracy in reporting of corporate finances and transactions. Much of the information in this section has been gleaned from the American Institute of Certified Public Accounts (AICPA) website. SOX applies to all "issuers" whose securities are registered under Section 12 of the Exchange Act or who are required to file report under Section 15(d) of the Exchange Act or who have filed a registration statement for securities under the Exchange Act.
3.1.3 Corporate Governance Standards for Officers

SOX requires two separate CEO/CFO certification statements. First, the CEO and CFO must certify in writing as to each periodic report containing financial statements filed with the SEC (which includes Form 10-Q, Form 10-K, proxy materials, etc.) that:

1) the reports comply with the applicable reporting requirements of the Exchange Act; and
2) the information contained in the report fairly presents, in all material respects, the financial conditions and results of operations of the reporting company.

Unlike the SEC's prior certification requirement for companies, there is no knowledge qualifier or materiality qualifier to this certificate, although penalties are provided only for knowing and intentional violations.

The second required CEO/CFO certification is for each annual and quarterly report filed with the SEC, and it requires each officer to affirm ("Summary"):

1) the officer has reviewed the report;
2) the report does not contain an untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, and that the financial information and reports fairly present in all material respects the financial condition and results of operations of the company as of and for the periods covered by the report;
3) the CEO/CFO have established internal controls adequate to insure that material information relating to the companies covered by the report is made known to them, and that they have evaluated and included in the report their
evaluation, as of a date within 90 days prior to the report, of the effectiveness of the internal controls;

4) they have disclosed to the company's independent auditor and audit committee:

4a) all significant deficiencies in the design and implementation of the controls, as well as any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal controls; and

4b) whether or not there have been any significant changes in internal controls or corrective actions taken with regard to significant deficiencies or material weaknesses in controls.

According to Clark Hill, two definitions are needed to understand the implications of the second certification: "Material" means information that a reasonable investor would, in light of all the information available, consider important in making a decision to invest in the stock of the company. "Fairly present" is intended to mean more than that the actual financial statements comply with Generally Accepted Accounting Principles (GAAP). It means that the whole picture derived from all the financial information is a fair presentation.
The requirement goes beyond GAAP to include the selection and application of the accounting policies permitted under GAAP which best present the financial condition, results of operations and cash flows; that the disclosure is informative and reasonably reflects in an understandable manner the underlying transactions and a complete picture of the material information.

3.1.4 Public Company Accounting Oversight Board

SOX established a five-member non-governmental Public Company Accounting Oversight Board (the "Board") that is overseen by the SEC which must adopt or establish auditing standards. The Board has a mandate to register all public accounting firms within 180 days following its establishment. The Board has the authority to conduct investigations and disciplinary proceedings and to impose sanctions on public accounting firms and their employees. The Board must perform annual inspections of accounting firms and audit 100 or more public companies and at least tri-annual inspections of other publicly traded companies (TSCPA).

3.1.5 Auditor Independence Standards

SOX specifically prohibits independent auditors from providing certain non-auditing services to companies they audit. Any non-audit services, including tax services, must be pre-approved by the company's audit committee and disclosed to investors in a SEC filing.
There is also a one-year prohibition on auditing a company's financials if a former employee or partner of the registered public accounting firm is the CEO, CFO or equivalent of the audited company. Finally, the Act mandates that the Comptroller General develop a set of standards for mandatory rotation of firms auditing issuers, so that the same firm does not continue to audit an issuer's financials indefinitely.

3.1.6 Corporate Responsibility

SOX also sets standards for independence of directors on audit committees. These standards are as follows ("SEC Requires"):  
- Each member of the audit committee must be “independent”, which requires that he or she not receive any compensation from the company other than as director or committee member and not be affiliated with the company or any subsidiary.  
- The audit committee must be responsible for the appointment, compensation and oversight of the work of the independent auditor.  
- The committee must establish procedures for receiving confidential, anonymous submissions by employees regarding questionable accounting or auditing matters.  
- The committee must have authority to engage independent advisors as necessary and be provided with adequate funding.

3.1.7 Penalties and Increased Enforcement
SEC appropriations for 2003 were increased to $776 million, $98 million of which will be used to hire additional employees to provide enhanced oversight of auditors and audit services ("Recent SEC and Legislative Developments"). The SEC now has the power to censure or permanently disbar practitioners found not to possess the requisite qualifications or to be lacking in character and integrity or to have willfully aided and abetted the violation of securities laws and regulations. False certification by a CEO or CFO is punishable by fines and imprisonment not to exceed $5 million and 20 years, respectively ("SEC Adopts Rules"). The knowing destruction of audit papers can also draw a fine and up to 10 years in prison or 20 years if determined to have been willful. There is also statutory protection against employers taking discriminatory action against "whistleblowers" who follow the provisions of SOX ("Summary").

There is also a "white collar crime enhancement" section, which states that anyone who attempts or conspires with anyone to commit any offense prohibited in SOX shall be subject to the same penalties prescribed for the offense.

3.2 Applicability of SOX to EHS

Even before SOX was enacted, there was a growing acknowledgement that voluntary approaches to such issues as transparent corporate governance, corporate social responsibility, and corporate sustainability all had real, measurable, positive effects on corporate financial performance. These benefits are the direct consequence of improved reputation and branding, better
stakeholder relations, and the lower cost of and increased ability to raise debt and equity capital.

Unfortunately, even as the most forward-thinking corporations were increasing expectations for ethical and transparent corporate governance, others were engaging in fraudulent disclosure practices which shocked the very core of a market system that relies on the complete disclosure of financial information as the basis for properly valuing public companies. In the post-Sarbanes-Oxley world, investor demands are moving beyond environmental issues. Investors are increasingly aware of social and cultural factors that can affect a company's long-term financial health (Burr 30).

3.2.1 Internal Controls

When broadly applied, several of SOX’s requirements apply to EHS, including the requirement for internal controls. Internal controls are a widely used tool to ensure that the organization’s risks are identified, quantified, and qualified; mitigated through controls, policy and procedure; and ultimately audited to ensure that the risks are being properly addressed. It has been noted that the elements of Process Safety Management closely resemble that of Internal Control Standards (Abrams and Yellin 49).

3.2.2 Disclosure of EHS Liabilities

Although the Securities and Exchange Commission (SEC) has required disclosure of environmental costs and liabilities for more than 20 years, SOX has induced companies to scrutinize their procedures for quantifying and disclosing
environmental liabilities (Bibler and Davis 1). SOX requires full disclosure of all types of organizational/operational risk, which would include EHS related disclosures, as these can impact operations and expose the company (and its shareholders) to financial losses due to litigation and/or harm caused to persons, property, and the environment (Abrams and Yellin 49). SOX brings heightened awareness that promises to bring quick resolution to audit findings and good documentation of the remedial efforts in order to demonstrate good faith efforts to meet regulatory requirements and to protect the interests of shareholders and avoid criminal penalties. Failure to inform the company’s independent auditor of all potentially material environmental health and safety matters could subject the company’s director and its officers to civil and criminal liability (Rogers 54).

For the disclosure of environmental cost estimates, internal controls are procedures designed to identify areas of risk and noncompliance and to evaluate whether costs are likely to be incurred and their amount. Many companies already have internal controls, such as continuous improvement processes like ISO 14001, to manage environmental issues. For companies that do not already have an environmental management system in place, compliance with SOX may also improve environmental management (Saul and O’Halleran 76).

Now that fines and imprisonment are a possibility, corporate executives will expect more and more detailed financial information from both their staffs and their outside advisors. In order to be able to provide the required information at a useful level of detail and in a timely manner, both the internal staff and the outside advisors will need, even more than before, a well-organized system to
manage the required information. As it relates to the EHS Manager, organizations with effective Environmental Management Systems (EMS) may be ahead of those without such systems.

Both the organization and the EHS Manager can benefit from more senior management attention to environmental matters. Academic studies have shown a strong positive correlation between a company's environmental performance and their business performance. For example, The Environmental Fiduciary, the Rose Foundation reports a 2000 study which analyzed over 600 U.S. manufacturing firms for the decade ending in 1996 finding a positive association between environmental and financial performance, and a 2001 study which found that multinational firms which adopt a single, stringent, global environmental standard enjoyed higher market value than firms which defaulted to less stringent host country standards ("Sarbanes-Oxley").

SOX for the first time requires plain English disclosures of material changes in operations or financial conditions on a "rapid and current basis." For the EHS Manager, this may mean that, in addition to coping with an actual environmental emergency, it will also be necessary, virtually in real time, to prepare and provide the related financial information to senior management and the Disclosure Committee. And this will have to happen while trying to address an environmental episode of such proportion as to be financially material to your company.

While most environmental episodes can be anticipated to fall short of the level of materiality, this is an example of an additional demand on the EHS
Manager and his or her EMS— one which a proactive EHS Manager will want to anticipate when reviewing the EMS, hazard evaluations, and other environmental scenarios.

Given the severe fines and possible jail time that awaits officers that violate the disclosure provisions of SOX, organizations have been turning to environmental management systems and other internal control strategies to ensure that items requiring disclosure rise in a timely fashion to the top of the organization. To push responsibility and accountability down the corporate chain, and to support their own certifications to the SEC, many officers are requiring environmental managers to certify the provision of environmental information up the corporate chain (Davis and Humes 26).

3.2.3 Whistleblower Provisions

Another provision which affects EHS is the requirement to establish procedures to address complaints received by its audit committee. Audit committees must establish procedures for the “receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters.” According to Abrams and Yellin, "It would seem that ‘auditing matters’ would include SH&E audits conducted by the covered company and/or its third-party SH&E professionals, and employees who believe that the auditing process or results are invalid, inaccurate, or misrepresented are provided a forum within which they can voice their concerns” (Abrams and Yellin 49).
Furthermore, the "voicing of concerns" is covered under the "Whistleblower" provisions of SOX, where OSHA was made the administering agency. SOX imposes new criminal and civil penalties relating to fraud, conspiracy, and interfering with investigations. Under SOX's strong civil and criminal whistle-blower provisions, companies must be prepared to defend their actions immediately if there is a claim (US Newswire). Over 90% of all whistleblower claims are filed by current or former employees. Since many of these claims raise safety and health issues, it is not surprising that OSHA has been named the agency to handle those claims.

ASSE notes that the Whistleblower provisions are significant to SH&E professionals because many organizations still lack a culture in which SH&E issues, complaints, and allegations are taken seriously. A worker can disclose his/her concerns within the company or to regulators, law enforcement officials, or Congress, and need not have proof that a crime has occurred, merely a "reasonable belief" that a law or regulation has been violated.

4.0 Methodology

As stated in Section 1.2, this research answers the following questions regarding SOX:

- What does the law say companies have to do? How does this relate to EHS?
- What are the risks with not complying with the law?
- How has the law impacted EHS professionals?
• How has the law impacted how companies manage EHS?
• What should EHS professionals and companies be doing to comply with the law?

The methodologies used to answer these questions consisted of a combination of literature research and interviews with EHS professionals at publicly held alcohol beverage corporations.

4.1 Sampling Strategy

An effective sampling strategy in this situation was to begin with identification of key individuals through Internet websites of companies and professional organizations and/or phone inquiries. In every interview, reconnaissance questions were included (e.g., is there anyone else that you think I should talk to about this? Would you introduce me to this person?). The sampling strategy that was used is known as snowball sampling and its strengths lie in its effectiveness at identifying individuals and organizations central to the research and in identifying social networks associated with the topic being investigated (Lindlof 127-8). In this way, the sample interviewee list grew (snowballed) over time toward more and better information sources. When additional significant resources were no longer being identified, this provided an indication to the researcher that field research needs were satisfied.

Organizations investigated included publicly traded companies in the alcohol beverage business. The choice to investigate alcohol beverage companies was made because the researcher is the EHS Director for a large publicly traded beverage company, Constellation Wines North America (a
Constellation Brands company). Internet sites (e.g. CNNMoney.com, Hoover’s, etc.) were used to identify publicly traded alcohol beverage companies. Large companies such as Anheuser-Busch, SAB Miller, Brown-Forman, Coors, Diageo, et al were contacted as they are the leaders in the alcohol beverage industry. Individuals interviewed within these organizations included corporate-level managers, environmental directors, and other participants in EHS management.

4.2 Protocol and Logistics

Study subjects were approached in the following manner:

➢ The EHS manager for the company was identified.

➢ The EHS manager was sent a letter describing the research project, the information needed (in the form of interview questions) and requesting an interview via phone (since in person was not practical). (See sample letter used on page 20.)

➢ The letter was followed-up with a phone call to establish the time and date of the interview.

➢ The EHS Manager was offered a copy of the finished Research Project.

➢ A letter of thanks was sent to the EHS Manager.
March 23, 2007

interviewee
address

RE: The Impact of Sarbanes-Oxley on EHS Management – Beverage Companies

Dear __________,

My name is Diana Vesosky, and I am the Director of Environmental Health and Safety at Constellation Wines (a Constellation Brands company). I am a candidate for a Master of Science in Environmental Health & Safety Management at Rochester Institute of Technology. As part of my studies, I am performing a research project on the impact of the Sarbanes-Oxley Act on EHS Management in Beverage Companies. As a leader of EHS for your company, I would like to interview you on the impact of the Sarbanes Oxley Act on your business and profession.

Specifically, I am seeking answers to the following questions:

1. How has the Sarbanes-Oxley Act (SOX) impacted how your company manages EHS?
   What changes (if any) did you institute?

2. How has SOX impacted you and your EHS organization?
   (e.g. has EHS become more of a focus/higher visibility and profile; have you hired more EHS professionals; are you now asked to certify data, etc.)

3. What should EHS professionals and companies in your industry be doing to comply with SOX?

Your answers can remain confidential, if you wish. I will include in my work the responses from other EHS leaders in the beverage industry, and I would be glad to send you a copy of the finished research project.

I will be contacting you by ______ to arrange a convenient time to discuss your answers to these questions. If it is more convenient for you, you can e-mail your responses to xxxxx.com. Just be sure to tell me whether you want your response to be kept confidential.

Thank you so much for your time, and I hope to work with you on EHS benchmarking for the beverage industry in the future. If you should have any questions, please contact me at xxx-xxx-xxxx.

Sincerely,

CONSTELLATION WINES

Diana V. Vesosky, CIH, CSP
In order to avoid misquoting the source, it was encouraged that the EHS Manager provides his/her answers in writing. To ensure reliability, a follow-up call was made, as needed, to ensure proper interpretation of wording. Since the interviews were done via telephone, the interviewer strived for consistent understanding of the questions by the interviewees. Understanding of a question may vary from one person to the next depending upon how a person “sees” the world and perceives the motives of the interviewer for asking the question.

Establishing rapport, imparting a sense of trustworthiness, and creating a context for expressing feelings, opinions and communicating knowledge and opinions early on in the interview was helpful in engaging the interviewee (Patton 120). Toward this end, the interviewer initiated each interview with a casual, candid and value-neutral description of the purpose for and nature of the research, and asked a fairly general, non-controversial first question prefaced by a narrative describing a relevant and historical event and establishing a context for the response.

4.3 Validity

The validity of a research effort is a measure of the extent to which the findings and conclusions of the work accurately explain the activity under investigation. Also, it asks whether the right thing is being measured. Validity of qualitative research data can be established, however, by carefully and incisively identifying and evaluating competing interpretations of the data.
5.0 Results

Telephone interviews were completed with environmental health and safety leaders from the following alcohol beverage companies: Diageo North America, Brown-Forman, Coors Brewing, and another alcohol beverage company who requested their identity be held confidential. In addition, information on the author’s company is included: Constellation Wines North America. The results of the interviews are chronicled in this section.

5.1 Diageo North America

A subsidiary of Diageo plc, the world’s largest producer of alcoholic drinks, Diageo North America makes up 30% of the parent company’s total beverage business. Total sales for 2007 were $15.8 billion (Hoover’s). Its beers and distilled spirits include Guinness Stout, Harp Lager, Johnnie Walker Scotch, José Cuervo tequila, Tanqueray gin, and Smirnoff vodka.

Roberta Barbieri, Director of Risk Management of Diageo North America, stated that Sarbanes-Oxley didn’t have a very large effect on the environmental health and safety management system at her company; it didn’t drive performance since robust environmental health and safety management systems were already in place. Even though the there wasn’t an impact to the EHS management system, it was apparent that SOX did have effects on EHS management at Diageo. According to Ms. Barbieri, Sarbanes-Oxley “put
environmental health and safety management on the radar screen as a control objective instead of a necessary evil."

In Diageo's company-developed Sarbanes-Oxley questionnaire they have three questions on health and safety and three questions on environmental that are quite general. They took existing (mature) EHS controls and incorporated them into the Sarbanes-Oxley questionnaire. For example, one of the health and safety questions asks whether an occupational health risk assessment is performed annually at each facility. One of the environmental questions asks if local, state and federal environmental regulations are understood and followed at the facility. Ms. Barbieri is not asked to certify these questionnaires, however, each facility manager is. Each Diageo plant manager in the world has to sign off they are in compliance with environmental policy.

According to Ms. Barbieri, Sarbanes-Oxley, "... put EHS right up there with financial accountability." She stated that for companies that have not put the time and effort into their EHS programs, Sarbanes-Oxley is a great opportunity for the EHS Manager and can act as a "stick" in their toolkit to use for EHS.

5.2 Brown-Forman

Brown-Forman's products include such well-known spirits as Jack Daniel's, Canadian Mist, Early Times, Korbel, Southern Comfort, Old Forester, Finlandia, Gentleman Jack, and Pepe Lopez. Its wine labels include Bolla, Fetzer, Bel Arbor, Five Rivers, Little Black Dress, and Michel Picard. Jack Daniel's is the company's leading brand and is the largest selling American
whiskey in the world (by volume). Offering 35 recognized brands of wines and spirits, the company’s products are available in more than 135 countries. Brown-Forman’s 2007 sales are estimated at $2.8 billion (Hoover’s).

Cheryl-Lynne Patrick, Director of Environmental Performance and Government Compliance at Brown-Forman, was interviewed.

At Brown-Forman, implementation of internal control standards to comply with Sarbanes-Oxley had more of a financial structure focus since a strong environmental program and internal controls were already in place. Prior to Sarbanes-Oxley, third party environmental audits were already performed at each facility with a frequency determined by risk. Ms. Patrick also does an environmental audit annually for each of the facilities, and is therefore responsible for signing the Sarbanes-Oxley certification for the environment. The certification states that except for the exceptions listed at the bottom of the certification, that the particular facility is in compliance with all applicable internal policies and all local, state and federal environmental laws and regulations. The certification is then routed to the president of the manufacturing operations for signature and then to legal.

The growth of Brown-Forman internationally has included operations located in France, Italy, Mexico, and Canada as well as the US. Ms. Patrick states that the focus for new acquisitions is to ensure they are brought up to speed on the auditing/reporting/certification aspect required by Sarbanes-Oxley as soon as possible.
5.3 Molson Coors Brewing

Molson Coors Brewing Company is among the largest brewers by volume in the world, producing 42 million barrels of beer in 2006. Its most popular brand is Coors Light, known as the "The Silver Bullet." The company markets more than a dozen beers in the US, including George Killian's Irish Red Lager, and Keystone. Molson Coors also makes Zima and Coors Non-Alcoholic (Coors NA). In 2005, Coors merged with Canadian brewer Molson. Sales for Molson Coors Brewing are estimated at $5.8 billion for 2007 (Hoover's).

Jere Zimmerman, Director Corporate EHS for Coors Brewing, was interviewed. Ms. Zimmerman stated that enactment of Sarbanes-Oxley did not result in profound operational changes in EHS management at Coors. As part of their evaluation of internal controls, personnel from their legal department inquired how EHS was managed and evaluated the controls that were already in place to ensure compliance, and were satisfied that the systems in place were more than adequate. No certification on environmental is required from management specifically for Sarbanes-Oxley.

Although there were no profound changes on day-to-day EHS management at the Operations, Ms. Zimmerman stated that one of the biggest changes she has seen after Sarbanes-Oxley is that her company has placed even greater scrutiny on environmental liability accounting and disclosure of material risks, whether they are probable or actual. Also, internal and third party EHS audits have increased in sophistication to go beyond mere compliance and now include risk assessment and planning objectives. In 2007, a full system
review was performed at all facilities and the findings were tracked using an EHS software system. Each facility is evaluated by a scorecard that rates them on timely progress made.

Another effect Sarbanes-Oxley had was that EHS was added to the Coors' computer based training program on their Corporate Code of Conduct. EHS questions were added to evaluate whether employees understand the company's corporate ethics and values pertaining to the environment, as well as safety and health. Part of this understanding includes alcohol responsibility and who the employee can report an environmental or safety and health issue to. The increased communication from employees to top corporate management is one of the prime objectives of Sarbanes-Oxley.

5.4 Smaller, Publicly Held Alcohol Beverage Company

The EHS director for this publicly held alcohol beverage company asked that his name and the name of his company be kept confidential. Sales of this company are less than one-quarter of that of the other companies included in this section. This EHS director reported that Sarbanes-Oxley impacted the EHS organization by making EHS more of a focus with higher visibility and importance within the corporation. The impact on general managers of the facilities, who were now responsible for certifying that their facilities were following environmental policies and in compliance with environmental regulations, increased ownership and visibility. Auditing was stepped up in frequency and a greater priority was placed on timely resolution of audit recommendations. This
EHS manager felt that the most important effect of Sarbanes-Oxley at his company was the increase in communication of EHS issues from the employees and facilities up to the corporate level staff.

5.5 Constellation Wines North America

Constellation Wines is a subsidiary of Constellation Brands, the world’s largest wine company, ranked sixth in the beverage industry in the Fortune 500. Constellation Brands’ sales for 2007 are estimated at $5.2 billion (Hoover’s). Constellation Brands makes and distributes more than 250 brands of beer, wine, and spirits in some 150 countries. The Wines division (53% of company sales) is the global leader in wine production by volume, offering brands such as Hardy’s, Almaden, Banrock Station, Inglenook, Vendange, and Arbor Mist. It also makes premium wines including Robert Mondavi, Estancia, Ravenswood, and Simi. The company imports beers such as Corona and Tsingtao, markets distilled spirits such as Svedka, Fleishmann’s and Barton, and produces and distributes cider, wine, and bottled water in the UK. The Vincor acquisition in 2006 made them the largest wine company in Canada.

The author of this project is the Director of Environmental Health and Safety for Constellation Wines North America. In response to the enactment of Sarbanes-Oxley, fourteen areas of the business were identified in 2002 as requiring Internal Control Standards. The Internal Control Standards established a worldwide framework for minimum controls that must be in place at all Constellation operations. One of the fourteen areas identified was environmental
health and safety. This established for the first time a consistent written framework for EHS globally within the corporation. The importance and visibility of EHS management may not have been increased within the operating divisions where EHS management systems were already firmly in place, but its importance and visibility was certainly increased at the corporate level and consistency between the operating divisions was achieved. A four part environmental health and safety internal control standard was developed that included requirements for: EHS management systems; EHS auditing and corrective actions; EHS notification; and EHS acquisitions and divestitures. A quarterly questionnaire is sent to operations in each division to verify controls are in place.

Additionally, communication and training of Constellation's Corporate Code of Conduct and values, including environmental health and safety, was reinforced and a hotline established to report issues of noncompliance and/or areas where performance is not living up to company values.

6.0 Analysis & Discussion

Out of the eleven companies contacted for an interview, only four companies agreed, and the smallest company of the four requested their name to be withheld. A majority of the EHS Managers at companies who declined an interview did so because their responses would have to be cleared through their legal departments before being disclosed. One potential interviewee declined because he "needed to focus on business objectives".
This research did not give an indication of the effects of SOX on smaller companies. Since only one smaller company consented to be interviewed, the results are heavily influenced by the larger industry leaders. Of the four companies that were interviewed, three of the companies are among the largest alcohol beverage companies in the world (four out of five if you include Constellation), and actively participate in industry benchmarking groups. Diageo, Brown-Forman, and Molson Coors are leaders in the industry. Their interviews identified the best practices as described below.

The common best practices identified in the interviews that EHS professionals and their organizations can utilize to minimize their risk and comply with the Sarbanes-Oxley Act include:

- Inclusion of EHS as an area covered by Internal Control Standards.
- Inclusion of EHS in the Corporate Code of Conduct and reinforcing the message to employees what the corporate values are (including EHS) and providing a means of reporting noncompliance from employees directly to the Audit Committee.
- Increasing communication/reporting of EHS issues up the corporate chain.
- Greater scrutiny on reporting of EHS liabilities and disclosure.
- Implementation of strong EHS management systems and auditing programs to assess both compliance and risk.

Although most of the companies interviewed reported little change in the day-to-day EHS management in the Operations, SOX did indeed have a significant influence on EHS management overall. Based on the responses of
the EHS managers interviewed, the law has impacted how companies manage EHS as follows:

- Raised EHS to a higher level of importance and visibility within the organization.
- Although the majority of the companies interviewed had strong EHS management systems already in place, more consistency was achieved for these global corporations by putting an internal control standard framework in place for EHS globally.
- Increased focus on audits and compliance... from a "necessary evil" to more of an integrated and necessary part of business management.

7.0 Conclusion

It is evident from this research that SOX has applicability to EHS Managers and EHS Management, and that companies that already had excellent EHS Management Systems and good corporate governance will inevitably have much less to do than companies with poor or missing systems.

There are both internal and external benefits to complying with Sarbanes-Oxley’s requirements for internal control standards and disclosure in the alcohol beverage industry. Internally, compliance generates more completely communicated information, allowing corporate leadership to prevent, detect, and/or remediate EHS concerns in a timely manner. Externally, better EHS disclosure increases transparency, allowing stakeholders to make informed
decisions, enhancing brand and reputation and increasing competitive advantage.

EHS managers have benefited from the increased importance/visibility of EHS issues and EHS management and control has established more clear links to overall corporate performance. This visibility has helped change corporate leadership's view of the EHS function from a separate cost center to a fully integrated component of corporate governance that has a significant effect on the corporation's branding and reputation, stakeholder relations, and many other areas that affect corporate image and value. It has also changed the view of the EHS manager; he or she is no longer simply the person who fills out the Form Rs and OSHA 300 Logs. SOX has established EHS managers as fully integrated members of the corporation's business management team.
Works Cited


"Sarbanes-Oxley." Payne Firm, Inc. 


