



Colbert Practicum Presentation

University of Houston Law Center

January 27, 2020

Colbert UH Practicum Presentation (1/27/2020)

Professional Background

EDUCATION

Columbia Law School – Juris Doctor, Certificate of Achievement (International Law)

Yale University – Bachelor of Arts (Political Science)

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Professional Background

WORK HISTORY

CORPORATE LAW/IN-HOUSE

Exxon Company, U.S.A.

Attorney

Mobil Chemical Company

Environment & Employment Counsel

TXU Electric & Gas

Legal & Compliance Manager

Environmental Legislative/Regulatory Manager

The Goodyear Tire & Rubber Company *Coordinator, Global Environmental, Health & Safety Law*

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Professional Background

WORK HISTORY

LAW FIRM

Kelly Hart & Hallman

Attorney

Cantey Hanger LLP

Partner

Haynes & Boone LLP

Partner

Vorys, Sater, Seymour and Pease LLP

Partner

Culhane Meadows PLLC

Partner

Colbert Law, PLLC

Managing Partner

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Professional Background

WORK HISTORY

GOVERNMENT

City of Houston

Senior Assistant City Attorney

CIVIC & QUASI-GOVERNMENT

State of Texas Clean Air Responsibility Committee

Vice-Chair

North Texas Clean Air Coalition

Chairman

H-GAC Regional Air Quality Planning Advisory Committee

Member

Greater Houston Partnership

Clean Air Subcommittee

American Bar Association

Standing Committee on Professional Discipline

Coordinating Group on Energy Law

**National Bar Association
Section**

Vice President; Chair, Energy & Environmental Law

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REGULATORY COMPLIANCE COUNSELLING

“Effective” In the Environmental Arena this means **“HANDS ON”, “FACT HEAVY”, “DILIGENCE”**

Permits

Air, Water, Waste

Superfund

Negotiations, Litigation, Settlements

Developing

“Pro-active” Environmental Management Procedures

Corporate Social Responsibility – what does it mean?

- For all of the above:**
- (1) ID Specific Facility, Media, Project Knowledge & Information**
 - (2) ID Specific Control Options, Technical Options, “Potentialities”**
 - (3) Knowledge & understanding/investigation of Client and Adverse Party, (potentially) Concerned Party goals (time, financial, quality of life) and philosophies; compliance history.**

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REGULATORY COMPLIANCE COUNSELLING

“Effective” In the Environmental Arena it is also important to understand the need to provide more general and generic guidance on:

- **Helping your Client to identify and understand “Project Issues”**
 - **Technical, financial, time, jurisdictional, people**
 - **Available options (traditional, “outside the box”)**

Environmental Regulatory Counselling IS NOT the “typical attorney model”, i.e., you are not just a: “Mouthpiece”, “Fixer”, “Litigator”, “Advocate”

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REGULATORY COMPLIANCE COUNSELLING

To be “Effective” :

- 1. Establish trust and mutual respect for the roles of yourself and client**
 - a. Executive level, Staff, Plant, Environmental Specialists**
 - b. Identify the TEAM (formally or informally)**
- 2. ID “Goals” and ensure TEAM “understanding” & (hopeful) concurrence**
- 3. Prioritize Goals**
- 4. Establish (and update as necessary) tentative Timelines & responsibilities for same**
- 5. Identify, assess, quantify: Compliance Costs, Public Relations “Investment” Costs, potential costs of resolution failure (project, litigation, “other”)**
- 6. ID important of “Flexibility”- friendly approach to achieving Environmental project goals**

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REGULATORY COMPLIANCE COUNSELLING

Develop/Maintain a “Thick Skin” :

- 1. When Client fails/refuses to take your advice**
- 2. Maintain/protect/enhance the “attorney-client” relationship**
 - a. avoid “I told you so”**
 - b. embrace “this is where we are now” and/or “where should we go from here”?**
 - c. stress that “the glass is (still) ½ full”**
 - d. try to keep an “up-to-date” focus on “expected” and “potential” outcomes**

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REGULATORY COMPLIANCE COUNSELLING

CAREFULLY CONSIDER AND SEEK TO CLEARLY UNDERSTAND YOUR DECISION-MAKING ROLE, WHETHER “IN-HOUSE”, RETAINED COUNSEL OR IN PUBLIC SERVICE.

I HAVE HAD THE OPPORTUNITY TO EXPERIENCE IN ALL 3 SETTINGS:

- **I HAVE FOUND IT EXTREMELY HELPFUL THROUGHOUT MY CAREER TO:**
 - **CLEARLY RECOGNIZING MY ROLE IN THE VARIOUS PROFESSIONAL SETTINGS**
 - **KNOW WHAT’S EXPECTED (ASK AND UPDATE AS NECESSARY)**
 - **IDENTIFY AND COMMUNICATE LIMITATIONS ON ABILITY “TO DO THE JOB”**

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REGULATORY COMPLIANCE COUNSELLING

PRACTICUM ASSISTANCE REQUESTS

Background

Assistance is requested in helping to identify potential pathways to more effectively manage the location and operation of concrete batch plants. This work may also be applicable to other facilities that emit, release or store hazardous substances.

Concrete Batch Plants

- The Texas Clean Air Act authorizes, among other things, the permitting of concrete batch plants through issuance of “standard permits” if a proposed facility commits to meeting specific operational standards. Indeed, the §382.05198 of the Texas Health and Safety Code mandates permit issuance if the facility represents that it will meet 19 requirements.
- Cities with zoning, however, retain an ability to regulate where these types of facilities may generally locate.
- **ARE THERE OTHER POTENTIAL REGULATORY OR LEGAL OPTIONS TO ADDRESS THESE TYPES FACILITIES?**
- **HAVE CASES BEEN FILED BY LOCAL GOVERNMENTS (e.g., Cities, Counties) TO CHALLENGE LOCATION OF THESE FACILITIES? WHAT IS THE CASE LAW IN TEXAS ON LOCATION OF THESE FACILITIES?**

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REGULATORY COMPLIANCE COUNSELLING

PRACTICUM ASSISTANCE REQUEST

Community Right-to-Know Laws

- The Community Right-to-Know Act (EPCRA) was passed in 1986.
- EPCRA establishes requirements for federal, state and local governments, Indian tribes, and industry regarding emergency planning and “Community Right-to-Know” reporting on hazardous and toxic chemicals.
- The Community Right-to-Know provisions were designed to help increase public’s knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment.
- States and communities, working with facilities, can use the information to improve chemical safety and protect public health and the environment.
- **HAS THIS LAW BEEN EFFECTIVELY IMPLEMENTED IN HOUSTON & SURROUNDING AREAS?**
- **IS THERE EVIDENCE OF ACTUAL CASES DEMONSTRATING EFFECTIVE IMPLEMENTATION EITHER BY LEGAL OR REGULATORY ACTION?**

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THANK YOU