MESSAGE FROM THE CHAIR OF THE MINING AND MINERAL EXTRACTION COMMITTEE
Rebecca A. Comstock

The Fall 2013 issue of the ABA Mining and Mineral Extraction Committee Newsletter is now available! As chair of the ABA Mining and Mineral Extraction Committee, I want to give special thanks to the committee’s newsletter vice chairs, Dennis Donohue and Gerald George, who have worked diligently to publish this edition, as well as to the authors of the articles in our newsletter.

Elizabeth Wheeler has provided an interesting article about frac sand mining in Wisconsin and Minnesota; Cari Anne Renlund’s article discusses conflicts between federal and state policy goals and the recent Seventh Circuit Court of Appeals decision involving the Flambeau Mining Company; and Scott Shock and Robert Pojasek have authored an article about the alignment of mining business interests with community interests, integrating sustainability and risk management programs. These are very interesting articles—I hope you will read and enjoy them.

The ABA Mining and Mineral Extraction Committee’s vice chair of Membership, Sean Hood, reports the committee now has 221 members. Jim Noble, the vice chair of Social Media, has expanded the committee’s presence on LinkedIn and Facebook. Our Electronic Communications vice chair, Emily Schilling, continues to forward information of interest to committee members. The Program vice chairs, Tara Duhy, Tim McCrum, and John Zimmerman, have announced a committee teleconference program (set for January 14, 2014), and are developing proposals for the 22nd Fall Conference in Miami. Finally, the vice chairs of the Year in Review, Joseph Jenkins and Michael Young, will be preparing the Mining chapter for the ABA Section of Environment, Energy, and Resources’ Year in Review, which will be published electronically in April 2014.

Thank you for your continued interest in and contributions to the ABA Mining and Mineral Extraction Committee, and especially those who have made this Fall 2013 issue of the newsletter possible. If you have areas of interest you would like the committee to address in future newsletters, programs, or other formats, please let us know.

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Minnesota and Wisconsin don’t sit above any frackable shale gas plays, but they are critical to the natural gas industry nonetheless. The two states straddle several formations of Cambrian and Ordovician sandstone—the source of some of the highest-quality pure quartz sand in the United States. This sand, referred to as “proppant” in the fracking process, is highly valuable to the fracking industry because it is perfectly round, and strong enough to prop open fractures that have been drilled for oil and gas extraction. Fracking can use anywhere from 300,000 to 4 million pounds of frac sand per well. (http://www.earthworksaction.org/issues/detail/hydraulic_fracturing_101#.Ugukv9LktIE) With over 50,000 shale gas wells (and counting) registered in the United States, the demand for sand continues to grow. (http://www.fracfocus.org)

The rate and extent of growth are immediately evident in Wisconsin and Minnesota. In 2010, there were five sand mines and five processing facilities in Wisconsin. (Sand Mines in Wisconsin Unearth Environmental Problems, JS Online, http://www.jsonline.com/news/wisconsin/sand-mines-in-wisconsin-unearth-environmental-problems-b9966691z1-218315291.html) As of June 2013, those numbers had exploded to an estimated 115 mines and facilities in the state. Minnesota’s sand mining boom lags Wisconsin with fewer than 20 existing facilities, but those numbers are expected to double in the near future. (http://minnesota.publicradio.org/collections/frac_sand/frac_map/)

The mines continue to crop up, especially along the unglaciated portions of the Jordan, Wonewoc, Mt. Simon, and St. Peter sandstone formations in the southeast quadrant of Minnesota and the northeast quadrant of Wisconsin. The well-rounded, well-sorted, nearly pure quartz required for fracking is typical of these formations, deposited by transgression in the Cambrian and Ordovician periods. (C. Byers & R.H. Dott, Sedimentology and Depositional Sequences of the Jordan Formation “Upper Cambrian,” Northern Mississippi Valley, J. SEDIMENTARY RES. B65:3, 289–305 (1995).) The sandstone in Wisconsin and Minnesota is easily accessible, often appearing at the surface or accessible with minimal excavation, making it a prime target for profitable extraction.

Environmental Issues Relating to Silica Sand Mining

Industrial sand mining has impacts on air, land, and water resources. The nature and magnitude of those impacts can vary drastically depending on the location and size of the facility, the geology of the site, and the quality of the sand. The primary environmental impacts of a typical frac sand mine are summarized below.

**Air**—Blasting, excavating, and transporting sand can release fugitive dust, particulates, and crystalline silica emissions into the air. Idling machinery causes emissions of carbon monoxide. Processing releases nitrogen oxides and volatile organic compounds.

**Land**—Impacts at the site include vegetation removal, habitat destruction, and disruption of endangered species, like the Karner blue butterfly, which is endemic to the sandy region that has been targeted for mining. Truck transport of the silica sand can wreak havoc on local roads.

**Water**—Significant amounts of consumptive or nonconsumptive water use will be required for dewatering, washing, and processing the sand. Beyond that, building structures, bridges, roads, or culverts may be necessary in navigable waterways. Providing temporary or permanent access to a facility may require filling wetlands. Surface water runoff and construction site erosion can impact nearby waterways. Hydrogeologic impacts can also result from altering the terrain and surface structure of the area.
Regulatory Authorities over Frac Sand Mining Are Lacking

Both Wisconsin’s and Minnesota’s state-level legal framework leaves gaps in regulation of the frac sand mining industry. The primary authority for regulation of frac sand mines in both states—the conditional use permit or reclamation permit—has been handled at the county or local municipality level. And, in both states, municipalities have varying degrees of experience with the technical aspects of mining and issuing the necessary permits, with many unprepared to process the massively expanding volume of permit applications. Due to the rapid proliferation of the mines and growing citizen concern, the issue has garnered significant attention at the local, state, and even national level.

Wisconsin’s Regulatory Framework for Frac Sand Mines

There are no Wisconsin regulations expressly directed to the frac sand mining industry. Instead, frac sand mining falls under Wisconsin’s nonmetallic mining regulations. Those regulations require a reclamation permit, issued through either the county or municipality if the county or municipality has adopted an ordinance based on statewide standards as required by Wis. Stat. ch. 295 (if the county or municipality has not adopted an ordinance, permitting is done through the Wisconsin Department of Natural Resources (WDNR)). The county or municipality may also require a conditional use permit under its zoning ordinance. Local ordinances addressing frac sand mining vary among the most affected counties in the state, but ordinances are becoming more common and more sophisticated as local governments begin to understand the effects of sand mining on their communities. Both the Towns Association and the Counties Association have developed materials to assist local governments with the challenge of sand mining oversight. (Towns Association materials are compiled at http://www.wisctowns.com/education/frac-sand; Counties Association materials are available at http://www.wicounties.org/events/#past-event-materials.) Several counties in Wisconsin have developed sand mining moratoria, in order to put permitting on hold while they study the issue. (See, e.g., Eau Claire County Ordinance Imposing a Moratorium on the Expansion/Creation of New Non-Metallic Mining Operations, available online at http://www.co.eau-claire.wi.us/docs/Moratorium_Ordinance.pdf, last accessed Sept. 3, 2013); Trempeleau County Moratorium Approved August 19, 2013 (Tony Kennedy, Wisconsin County Board Approves Moratorium on Frac Sand Mines, MINNEAPOLIS STAR TRIB., Aug. 19, 2013, retrieved from http://www.startribune.com.)

Regulation of other environmental impacts associated with frac sand mining remains at the state level, through WDNR. For example, most mine sites will require a stormwater runoff permit, which is issued under the Wisconsin Pollutant Discharge Elimination System (WPDES) program. Facilities may also need a wetlands general or individual permit for filling in wetlands under Wis. Stat. § 281.36. Any plant with a dryer will require a minor source air pollution construction and operating permit, and facilities must also file a fugitive dust control plan (see generally, Wis. Stat. ch. 285, Wis. Admin. Code NR 415). Some facilities may also need taking permits for endangered species (Wis. Stat. § 29.604), a permit allowing groundwater withdrawal (Wis. Stat. § 281.34), or navigable waterway permits (Wis. Stat. ch. 30). However, the lack of state regulations specific to frac sand mining has meant that Wisconsin has faced obstacles in measuring or regulating other environmental concerns that are specific to frac sand mining, such as consideration of cumulative impacts of groundwater withdrawals or air emissions of crystalline silica.

Although citizens and environmental groups have raised concerns about the cumulative impacts of the greatly increased level of frac sand mining, and the Wisconsin Department of Natural Resources has recognized that there is a need for considerable increase in staffing resources, the state of Wisconsin has done little to study or address the environmental impacts of the industry. In 2012, WDNR rejected a citizen petition to regulate crystalline silica as a
hazardous air pollutant even though the agency itself stated that the pollutant qualified as such under existing law. (See, Report to the Natural Resources Board: Silica Study, August 2011, available online at http://dnr.wi.gov/files/PDF/pubs/am/AM407.pdf, last accessed Sept. 3, 2013.) WDNR cited concerns about the administrative burden and lack of quality data to change the regulations around silica. (Mark Gunderman, DNR Denies Crystalline Silica Petition from Area Residents. CHIPPEWA HERALD, February 1, 2012, retrieved from http://chippewa.com.) Following the petition denial, WDNR posited that it would need an additional 10.2 full-time staff people to adequately regulate air emissions coming from the sites, but ultimately only got two new positions funded in the most recent biennial budget. (Lee Bergquist, Sand Mines in Wisconsin Unearth Environmental Problems, MILWAUKEE J. SENTINEL, Aug. 4, 2013, retrieved from http://www.jsonline.com.)

In Wisconsin, the industry remains regulated by understaffed state and local agencies administering a patchwork of state and local regulations and permits. The current framework has led to significant rates of noncompliance and violations: WDNR has stated that 80 to 90 percent of sand mines have received notices of noncompliance, and approximately 20 percent of sand mines have received notices of violation for failure to comply with the applicable regulations. (Kate Prengamen, Frac Sand Industry Faces DNR Violations, Warnings, Wisconsin Center for Investigative Journalism, Mar. 3, 2013, retrieved at http://www.wisconsinwatch.org.) The state, its citizens, and the industry could all benefit from a more comprehensive approach. However, although a few proposals for new laws governing sand mining have been proposed in the legislature, they were not comprehensive in nature, and they failed to pass (see, e.g., 2011 S.B. 405 (requiring sand mining to be listed as a conditional use in an area zoned as agricultural, and prohibited use in an area zoned as residential), and 2011 S.B. 406, establishing notice requirements for frac sand mine proposals).

Minnesota’s Regulatory Framework for Frac Sand Mines

Minnesota’s state-level mining regulations entirely lacked requirements for nonmetallic mining reclamation until just this year. At the county or municipal level, conditional use permits were issued where ordinances existed, but some localities were (and remain) completely unprepared for this type of industry moving into the area. However, Minnesota’s comprehensive and cautious approach to sand mining regulation is in stark contrast with Wisconsin’s.

In early 2013, the Minnesota legislature, alarmed by the rapid industry growth seen in Wisconsin and the overall lack of information regarding the impacts of the industry on the environment, human health, and property values, passed broad legislation requiring study of the issue of effective regulation of the impacts of frac sand mining. Specifically, the legislation, H.F. 976, provides the following:

- Requires the Environmental Quality Board to create a model regulatory ordinance for municipalities to adopt (Minn. Stat. § 116C.99(2));
- Requires the EQB to assemble a silica technical assistance team to provide local units of government with technical support when reviewing a frac sand mine application (Minn. Stat. § 116C.99(3));
- Creates a defined process for conducting environmental assessments or environmental impact statements for frac sand mine projects (Minn. Stat. § 116C.991);
- Requires the Department of Natural Resources to begin rulemaking to address reclamation (H.F. 976, sec. 105), setbacks from trout streams (Minn. Stat. § 103G.217), and water appropriations (Minn. Stat. § 116D.04) for frac sand mines;
• Requires the Pollution Control Agency to develop air quality standards for silica (H.F. 976, sec. 105).

With the passage of this landmark legislation, Minnesota recognized the need to understand the impacts of sand mining on the land, water, and public health, in order to adequately regulate the industry, and the Minnesota legislation provides state and local regulators with tools designed to gain this information and use it effectively. Minnesota’s local and state regulators will now be able to deal with concerns about air quality, water quality and quantity, and reclamation. Unlike Wisconsin, Minnesota’s legislature is addressing this issue head-on, filling in gaps in knowledge and proceeding with caution. This science-based approach should give regulators the necessary tools to protect human health and welfare, natural resources, and property values from the potential impacts of frac sand mining.

Conclusion

Frac sand mining can be done responsibly. Indeed, industry leaders are advocating for “good neighbor” standards for frac sand mining operations. (See, e.g., http://www.wisconsinsand.org/) However, with the rapid expansion of the industry and the existing fragmented and resource-limited regulatory framework in both Wisconsin and Minnesota, it is not surprising that many sand mining operations are violating permits or state environmental regulations. (Data regarding violations and noncompliance with permit terms are specific to Wisconsin. Media coverage of permit violations in Minnesota is scarce, presumably because of the relatively small number of frac sand mines currently operating in Minnesota, and the lack of state-level requirements for reclamation permits.) Both Minnesota and Wisconsin will benefit from a better understanding of the environmental impacts of the industry and how to create standards that will protect nearby citizens, natural resources and the mining companies alike. Minnesota, with H.F. 976, has taken a strong initial step to develop that understanding and provide its state and local regulators with the information and tools necessary to that task. And, it’s not too late for Wisconsin to follow suit.

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INTEGRATING STATE MINING REGULATION WITH FEDERAL CLEAN WATER ACT REQUIREMENTS
Carl Anne Renlund

Conflicts between federal and state policy goals have grown to be major issues in the mining sector over the past several years, a phenomenon perhaps best exemplified by high-profile disagreements between the state of Alaska and the United States over how and when to initiate environmental impact studies of the proposed Pebble Mine. In addition to conflicts between federal and state regulators over mining projects, individuals and groups opposed to mining can leverage citizen’s suits and other federal statutory oversight mechanisms to second-guess state permitting and enforcement decisions related to mining. The federal Seventh Circuit Court of Appeals recently addressed this scenario, issuing a decision with significant ramifications for mining companies relying on state regulatory programs in the conduct of their mine operations. See Wis. Res. Prot. Council v. Flambeau Mining Co., 727 F.3d 700 (2013).

Specifically, the court addressed whether the trial court in the Western District of Wisconsin erred in determining that Flambeau Mining Company had violated the Clean Water Act (CWA) by discharging stormwater containing de minimis amounts of copper from its reclaimed mine site without the proper permit. Id. at 705–06. In reversing the trial court, the decision makes clear that Flambeau Mining Company was in compliance with the CWA at all times by relying on a discharge authorization under a Wisconsin law regulating mining. Id. at 711.

Following closure of active mining at the Flambeau Mine site, the Wisconsin Department of Natural Resources (WDNR) elected to regulate Flambeau Mining Company’s stormwater discharges at the site pursuant to its mining permit that had been issued in 1998. Id. at 705. WDNR relied on a specific provision in the Wisconsin Administrative Code allowing it to regulate the site’s stormwater pursuant to the mining permit, rather than pursuant to a separate Wisconsin Pollution Discharge Elimination Permit (WPDES) permit. Id. at 704. It was undisputed that Flambeau Mining Company relied upon and complied with the stormwater discharge conditions of the mining permit since issued by WDNR in 1998. Id. at 705. Despite that, plaintiffs filed a citizen suit alleging that the company’s mining permit was not a WPDES permit issued pursuant to the CWA, and therefore, any stormwater discharges were illegal. See Wis. Res. Prot. Council v. Flambeau Mining Co., 903 F. Supp. 2d 690, 720 (W.D. Wis. 2012).

Though the trial court ultimately concluded that Flambeau Mining’s Company’s environmental efforts at the mine site were “exemplary” and that those efforts deserved “commendation, not penalties,” the trial court held that the mining permit was not a valid WPDES permit, and because the CWA is a strict liability statute, imposed a pro forma penalty of $25 for each of the 11 discharges. Wis. Res. Prot. Council, 727 F.3d at 705–06. The trial court also denied plaintiffs their attorneys’ fees. Id. at 706. Flambeau Mining Company appealed from the decision of liability, and plaintiffs appealed the denial of their attorneys’ fees request.

On appeal, Flambeau Mining Company argued that its mining permit was properly issued by WDNR, the only entity with authority to issue CWA stormwater permits in Wisconsin, that Flambeau Mining Company reasonably relied upon the permit it was issued, that it was in compliance with that permit, and that plaintiffs’ lawsuit was barred by the CWA’s permit shield provisions. Id. at 706. Plaintiffs argued that the Administrative Code relied upon by WDNR to regulate stormwater discharges with the mining permit had not been properly approved by the Environmental Protection Agency, that the mining permit was not a permit issued pursuant to the CWA, and accordingly the permit shield did not apply. Id. at 706.

The Seventh Circuit reversed the trial court decision, determined that Flambeau Mining
Company was entitled to the permit shield defense, and therefore Flambeau had not violated the CWA. Id. at 711. In summary, the Seventh Circuit concluded that Flambeau Mining Company had been told by WDNR that its mining permit constituted a valid WPDES permit, that Flambeau Mining Company had no notice that any provision of the state law upon which WDNR relied to issue the permit was invalid, and that Flambeau Mining Company was at all times in compliance with the mining permit as issued. Id. at 709–11. The Seventh Circuit determined that denying a regulated entity the permit shield under these circumstances would be “inconsistent with the requirements of due process,” id. at 711, and would “vitiating the permit shield” altogether. Id. at 710. The Seventh Circuit emphasized that the permit shield is intended to provide permit holders certainty and finality by ensuring that compliant CWA permit holders will not face enforcement actions. Id. at 706, 710. Here, the enforcement action attempt was made more than a decade after the permit in question was issued. The Seventh Circuit also denied plaintiffs’ cross-appeal relating to attorneys’ fees holding that since the plaintiffs were not prevailing parties, they were not entitled to fees. Id. at 711.

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ACHIEVING SUSTAINABLE MINE OPERATIONS: INTEGRATING SUSTAINABILITY AND RISK MANAGEMENT
Scott Shock and Robert Pojasek

More and more mining companies are recognizing that their long-term success and profitability depend on finding new ways to align their business interests with the interests of the community and society in general, for mutually beneficial outcomes. By doing so, they can protect against reputational risk and preserve their “social license” to operate.

Risks and opportunities are often addressed through environmental management, “sustainability,” and risk management programs. Unfortunately, many companies have kept these programs separate from each other, thereby missing synergies that could be gained by coordinating and aligning them. Systematically coordinating these programs can facilitate moving from a retrospective/reactive approach to a prospective/proactive one, which can result in more sustainable operations over the long term.

This article presents an overview of the various frameworks for sustainability and risk management programs, and presents two case examples to illustrate a strategy for aligning them to take advantage of synergies, minimize risk, and improve overall corporate performance.

First, let’s define some terminology.

What Is Sustainability?

“Sustainability” can have a variety of meanings when viewed from different perspectives. Some people focus on the impacts of company operations on the environment, society, the economy, and future generations. Their perspective focuses almost entirely on negative impacts—the damage that has occurred or may occur. Many people have begun to tune out these negative portrayals. Viewed more constructively and less negatively:
Sustainability is the capability of an organization to transparently manage its operations in ways consistent with responsible environmental stewardship, social well-being, and economic prosperity over the long term while being accountable to its stakeholders. (Robert B. Pojasek, Understanding Sustainability: An Organizational Perspective, DOI: 10.1002/tqem.20330, http://isites.harvard.edu/fs/docs/icb.topic1215317.files/Understanding%20Sustainability%202012%20rev.pdf.)

Using this perspective, we recognize that the organization’s activities, products, and services may have impacts on the environment, society, and the economy that impose operational, regulatory, and reputational risks back to the organization. By managing both negative and positive aspects of risk in these three areas, an organization can be proactive and responsible.

Within existing internal management initiatives, many organizations have core values defining responsibilities of the company and its employees in each of these risk areas. These organizations can reinforce these responsibilities and make them more specific to daily activities, by developing a “code of conduct” that outlines the company’s expectations about the incorporation of those responsibilities into the operation of the organization.

Performance of leadership, strategic planning, employee engagement, engagement with customers and other stakeholders, information and knowledge management, and process management can be scored using a framework (such as the Baldridge performance excellence framework (http://www.nist.gov/baldrige/about/performance_excellence.cfm)). It is possible to create quantitative indicators from this model and use them to improve operational performance over the long term.

This operational definition of sustainability, from the perspective of an organization, enables each business to identify the impacts and corresponding risks associated with its activities, products, and services. It provides a set of established tools that provide resilience to deal with unforeseen risks and to have the capacity to adjust in a way that safeguards the interests of its key stakeholders, reputation, brand, and value-creating activities.

Sustainability is about preparing an organization to deal with those internal and external contexts that might otherwise prevent it from achieving its objectives.

What Is Risk Management?

Risk is uncertainty that exists regarding the ability of the company to meet its stated objectives. Risk management frameworks provide tools to identify and address threats that jeopardize the ability of the company to meet its objectives (figure 1).

International Organization for Standardization (ISO) 31000 is an international guide to best practice in the area of risk management. The process begins by establishing the approach that is appropriate to the company’s circumstances and consistent with the internal and external contexts. The risk assessment process identifies, analyzes, and evaluates the company’s identified risks. Risks that are determined to be “unacceptable” to the company need to be addressed, or “treated.” In some cases, this may involve the sharing of the risk with an insurance company for a fee. The enterprise risk management program monitors and reviews the results. Each step in the process is communicated within a stakeholder engagement process.

Figure 1: Risk management process
Integrating Sustainability and Risk Management Programs

The focus of risk management programs is to take appropriate action to contain “threats” (negative risks) that could result in unfavorable outcomes such as damage to the company’s social license to operate.

In contrast to risk management programs, sustainability programs seek to develop opportunities, or create “positive risk.” Awareness is growing among corporate managers that opportunities identified through sustainability programs can be used as a means of proactively offsetting threats (negative risk) on the company’s “risk map.”

Existing risk management programs can be aligned or integrated with corporate social responsibility and sustainability programs. These existing programs can be enhanced or adapted to meet developing standards of practice, such as:

- The Global Reporting Initiative (GRI) on sustainability reporting (available at www.globalreporting.org)
- Top-down risk management requirements (Sarbanes-Oxley section 404 in the United States and similar requirements for publicly traded companies in other countries)
- Public disclosures of risks required of publicly traded companies (Securities and Exchange Commission (SEC) Form 10-K or 20-F in the United States and similar requirements in other countries)
- Management systems standards such as the International Organization for Standardization (ISO) 14001 Environmental Management System, which are being revised to have connections with the risk management and sustainability programs (available at http://www.iso.org/iso/home/standards.htm)
- The Equator Principles, adherence to which may be required by a government or development bank that is a project funding partner (available at www.equator-principles.com).

The bottom line is that a company can benefit by linking sustainability efforts and risk management efforts with its environment, health, and safety management systems (figure 2).


The following examples highlight various aspects of risk management and sustainability programs, and how these programs can benefit companies that employ them.

Case Example 1: Metals Mine on Tribal Lands

Description: A mining company operating in an area that includes tribal villages and subsistence hunting had to address concerns regarding dust emissions into the surrounding environment. Elevated metals concentrations had been identified in areas surrounding the mine, transport road, and port, raising questions in the community about the potential risks to human health and the environment. These concerns could have led to a shutdown of the main transport road. In response to the findings of
elevated metals, the company implemented a thorough investigation to characterize the nature and extent of the dust deposition, followed by a detailed human health and ecological risk assessment. Based on the findings from that assessment, the company developed a proactive risk management program. Through this program the company identified and implemented risk management actions designed to minimize the potential for future impacts to human health and the environment over the remainder of the mine’s operational life.

**Integrated Sustainability/Risk Management Approach:** To enhance its effectiveness and the sustainability of the operation, the company implemented the risk management program with systematic stakeholder involvement. A variety of efforts were included in the dust-related risk management program, including:

- Identifying stakeholders from different groups, including landowners, managers, and operators, local and regional governments including tribal authorities, state and federal agencies, nongovernmental organizations, and technical experts

- Implementing a strong stakeholder communication and engagement program, including regular community visits to share data and gather community input and ideas on dust management issues

- Defining risk management objectives with the involvement of stakeholder representatives through a workshop process, and through comment on subsequent risk management plan and periodic review. Objectives addressed a variety of topics including minimizing metals dust emissions; remediating or reclaiming selected areas; verifying the continued safety of subsistence foods and water; environmental monitoring with action levels for adaptive management; protection of worker health; and effective communication and stakeholder engagement

- Preparing a comprehensive set of implementation efforts designed to identify and effect the actions needed to achieve the risk management objectives

- Integrating the risk management objectives with the company’s ISO 14001 Environmental Management System database to track task assignments, roles, and responsibilities, and to ensure timely completion of risk management tasks

- Establishing a reporting process for continued engagement with the stakeholders, including local communities

- Conducting periodic review of effectiveness of the efforts, to facilitate continuous improvement on the risk management program, and thereby improve the sustainability of the operation as a whole.

**Benefits:** The company benefited from more proactive management of the dust issues to reduce impacts over the long term, and established an improved trust level with stakeholders, particularly local tribal communities, thereby minimizing the risk of future litigation and achieving a more sustainable operation.

**Case Example 2: Coal Mining Company Seeking to Reduce Costs**

**Description:** Through the use of a benchmarking analysis that compares current practices against industry best practices, a coal mining company with both domestic and international operations evaluates its current risk management practices, and identifies both gaps and opportunities. Using the results of that analysis, it proceeds to address the identified gaps and opportunities, and institutes a regular review process to ensure continuous improvement in performance. It expects to create value by identifying ecological assets to offset liabilities, and by framing existing risk management practices in the context of best practices guidance, to improve communication with outside stakeholders, including
investors, regulators, and communities that it operates in. The company also expects to obtain reduced rates for insurance coverage as a result of this work.

**Integrated Sustainability/Risk Management Approach:** The approach to risk management in this case could involve the following actions:

- Benchmarking existing programs to applicable and appropriate standards, which could include the ICMM sustainability framework, the GRI mining sector reporting guidelines, international management system guidance (ISO standards), the Equator Principles, and/or mining-industry best practices
- Linking sustainability components with the company’s risk management program(s)
- Assessment and management of labor and human rights aspects in projects in developing countries
- Development and implementation of supply-chain programs dealing with environmental, social, and labor rights
- Development, implementation, and/or enhancement of stakeholder participation programs
- Review of environmental and social risks associated with projects
- Establishing or enhancing a continuous improvement process for company sustainability, environmental, social, and health and safety management systems, including plans and procedures, risk mitigation, and training.

Some of the currently available sustainability and risk management tools that could be applied in this case include risk and reliability assessment methodologies, ecosystem services evaluation, and energy/greenhouse gas evaluations, which could include the following components:

- **Risk and Reliability Assessments:** Risk and reliability analyses can range from compliance-focused to total business-based approaches, and should address issues critical to the operation of each facility, such as evaluation of operation risks and opportunities, operational reliability, safety hazards, and product quality. Assessment of these types of business risks has greatly improved through the use of ISO 31000:2009 for Enterprise Risk Management, and the revision of the ISO 14001 Environmental Management Systems standard to include risk management activities.

- **Ecosystem Services Evaluation:** Using a holistic ecosystem services approach, value can be created for a mining project. Ecological assets can be inventoried for use in mitigating or offsetting potential environmental liabilities resulting from both current and future mining activities. For example, wetlands on company-owned or controlled property may be carbon sinks that could offset carbon generated during mining operations.

- **Energy, Greenhouse Gas, and Climate Change Evaluations:** Carbon dioxide can be viewed as a surrogate measure for energy consumption and other emissions. Evaluations can include, for example: (1) energy audits, which seek to identify opportunities for improvement in production efficiency, and to identify cost-saving opportunities in energy efficiency; (2) impact assessments, such as life-cycle assessments, and evaluation of new capital projects that require evaluation of their climate change impacts; (3) mitigation evaluations, involving identification and evaluation of mitigation alternatives that can offset emissions; and (4) vulnerability
assessments that allow the company to identify and address potential climactic impacts to facilities and operations.

**Benefits:** All of the actions and risk management tools described above can help identify opportunities to balance the company’s risk profile, and lower the cost of operational controls and/or insurance costs, thus contributing to the company’s competitive advantage.

**Conclusions**

Some companies have already benefitted from linking environment, health, and safety programs, risk management programs, and sustainability programs, but many others have yet to realize the benefits of doing so. By carefully linking these programs and establishing a high level of collaboration between them, companies can move toward a more proactive management of risks and opportunities, thereby establishing a solid foundation for more sustainable corporate growth.

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Environment, Energy, and Resources Dedication to Diversity and Justice Award
The Environment, Energy, and Resources Dedication to Diversity and Justice Award will recognize people, entities, or organizations that have made significant accomplishments or demonstrated recognized leadership in the areas of environmental justice and/or a commitment to gender, racial, and ethnic diversity in the environment, energy, and natural resources legal area. Accomplishments in promoting access to environment/energy/resources rule of law and to justice can also be recognized via this award.

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This award recognizes individuals and organizations who have distinguished themselves in environmental law and policy, contributing significant leadership in improving the substance, process or understanding of environmental protection and sustainable development.

Environment, Energy, and Resources Government Attorney of the Year Award
The Environment, Energy, and Resources Government Attorney of the Year Award will recognize exceptional achievement by federal, state, tribal, or local government attorneys who have worked or are working in the field of environment, energy, or natural resources law and are esteemed by their peers and viewed as having consistently achieved distinction in an exemplary way. The Award will be for sustained career achievement, not simply individual projects or recent accomplishments. Nominees are likely to be currently serving, or recently retired, career attorneys for federal, state, tribal, or local governmental entities.

Law Student Environment, Energy, and Resources Program of the Year Award
The Law Student Environment, Energy, and Resources Program of the Year Award will be given in recognition of the best student organized educational program or public service project of the year addressing on issues in the field of environmental, energy, or natural resources law. The program or project must have occurred during the 2013 calendar year [consideration may be given to allowing projects that occurred in the 2012-2013 or 2013-2014 academic years]. Nominees are likely to be law student societies, groups, or committees focused on environmental, energy, and natural resources issues.

State or Local Bar Environment, Energy, and Resources Program of the Year Award
The State or Local Bar Environment, Energy, and Resources Program of the Year Award will be given in recognition of the best CLE program or public service project of the year focused on issues in the field of environmental, energy, or natural resources law. The program or project must have occurred during the 2013 calendar year. Nominees are likely to be state or local bar sections or committees focused on environmental, energy, and natural resources issues.

These Awards will be presented at the ABA Annual Meeting in Boston in August 2014.

For further details about these awards, please visit the Section Web site at www.ambar.org/EnvironAwards