



607: Best Practices in Tracking Environmental Law Worldwide

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Jessine A. Monaghan is manager and counsel regulatory programs for GE Advanced Materials in Washington, DC. In that capacity she provides global issues management on a range of issues from chemical regulatory programs to emerging issues of endocrine disruption and security for chemical facilities.

Ms. Monaghan previously worked for Sotheby's, the art and antique auctioneer in London. As director and European compliance officer, she helped Sotheby's develop a compliance program and implement it across its European offices. Prior to Sotheby's, Ms. Monaghan managed environmental, health, and safety issues for GE in Europe. Her role included management of GE's environmental, health, and safety compliance program for 80 manufacturing facilities in Europe, advocacy with the European Union and national governments, and evaluation of the environmental, health, and safety aspects of mergers, acquisitions, and sales of assets. Prior to this position, she practiced law with Hunton & Williams.

Ms. Monaghan received a BA from Wellesley College and is a graduate of the Washington and Lee University School of Law.

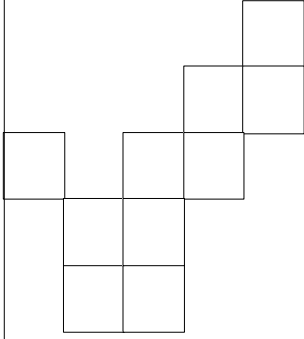
Mary-James Young

Mary-James Young is senior regulatory counsel for Vectren Corporation in Evansville, Indiana. Her responsibilities include providing legal counsel to Vectren's three regulated utilities, particularly in the areas of state and federal regulatory compliance.

Prior to joining Vectren, Ms. Young served as corporate counsel to the Louisville Water Company in Louisville, Kentucky, general counsel to the Jefferson County Judge/Executive in Kentucky, and as an assistant attorney general and special prosecutor for the Kentucky Attorney General.


Ms. Young serves as pro bono counsel to the Mary Byron Foundation, a national foundation focused on domestic violence education and advocacy.

Ms. Young received her BA, summa cum laude, from Spalding College, her JD and MA from the University of Louisville and her LLM, in environmental laws, from George Washington University in Washington, DC.



**BEST PRACTICES IN
TRACKING
ENVIRONMENTAL LAWS
WORLDWIDE**

ACC'S 2004 Annual Meeting
October 26, 2004
Chicago, Illinois



AGENDA

- **The Challenge of tracking EHS laws**
 - Large vs. small Legal Depts.
 - Specialists vs. generalists
- **Separating the wheat from the chaff**
 - Spotting developments → finding the law → analyzing the law → advising clients
- **Best Practices**
 - Domestic
 - International



The Challenge

- Companies doing business in multiple jurisdictions face an ever-changing array of laws.
- EHS encompasses dozens of subjects.
- Small offices are forced to become instant experts.
- Even “specialists” need both source material and some analysis/guidance.



Sorting It All Out

- Step 1 – spot developments by systematically checking sources (newsletters, internet, etc.)
- Step 2 – determine if the development has any potential implications for your business.
- Step 3 – analyze the law. Requires source material in a language you can understand. May require outside assistance in foreign jurisdiction.
- Step 4 – develop advice for your internal customers.
- Step 5 – remain involved in compliance planning, implementation, updates, etc.



Internet Resources – caveats

- Official sites vs. unofficial or commercial ones.
- Check with local colleagues or outside consultants to see if they trust the site.
- Make sure material is current, updated.
- Be careful of relying on “plain meaning” alone in foreign venues. Legal systems, syntax and other factors may make reading the law an unreliable way to determine its meaning.



Domestic Resources

- Premium (i.e. fee-based) services: Lexis/Nexis, WEST, ELR, trade publications, etc.
- “Partnering” – working with experts/consultants, specialized counsel, local counsel, etc. to track laws. Issues include:
 - How to choose the right ones
 - How to keep scope and expense manageable
- Publicly available resources: Government sites, newspapers of “record”, many other internet resources



A. Official U.S. Sites of Value

- USEPA <http://www.epa.gov/>
- Hazmat Transportation
<http://hazmat.dot.gov/>
<http://www.myregs.com/dotrspa>
<http://www.faa.gov/>
- Occupational Safety
<http://www.osha.gov/comp-links.html>
<http://www.dir.ca.gov/DOSH/DOSHreg/SpecialMeetingSec5110.html>



B. Unofficial US Sites

- Environmental Law Net <http://lawvianet.com/>
- Toxic Torts <http://www.toxlaw.com/>
- Occupational
<http://www.occupationalhazards.com/>
- Global Warming
 - <http://www.climatebiz.com/index.cfm>
 - <http://www.pewclimate.org/>
 - <http://www.heatisonline.org/main.cfm>
 - <http://www.safeclimate.net/business/measuring/>



B. Unofficial Sites (cont'd)

- Corporate Social Responsibility (CSR)

- <http://www.ethicalcorp.com/>

- <http://www.sdportal.org/templates/Template8/layout.asp?MenuID=36>

- <http://www.greenbiz.com/index.cfm>

- <http://www.csrwire.com/>



C. European Union

- Europa – EU Gateway

- http://www.europa.eu.int/index_en.htm

- Eur-Lex – Portal to EU law <http://europa.eu.int/eur-lex/en/index.html>

- Environment DG

- http://www.europa.eu.int/comm/dgs/environment/index_en.htm

- Eur-Activ EU News and Policy

- <http://www.euractiv.com/cgi-bin/cgint.exe/2023246-456?11&1011=boutus1>

- WEEE/RoHS (Commercial)

- http://uk.farnell.com/static/rohs/RoHS_Directive_Website.htm

- Chemicals Policy <http://www.chemicalspolicy.org/home.shtml>



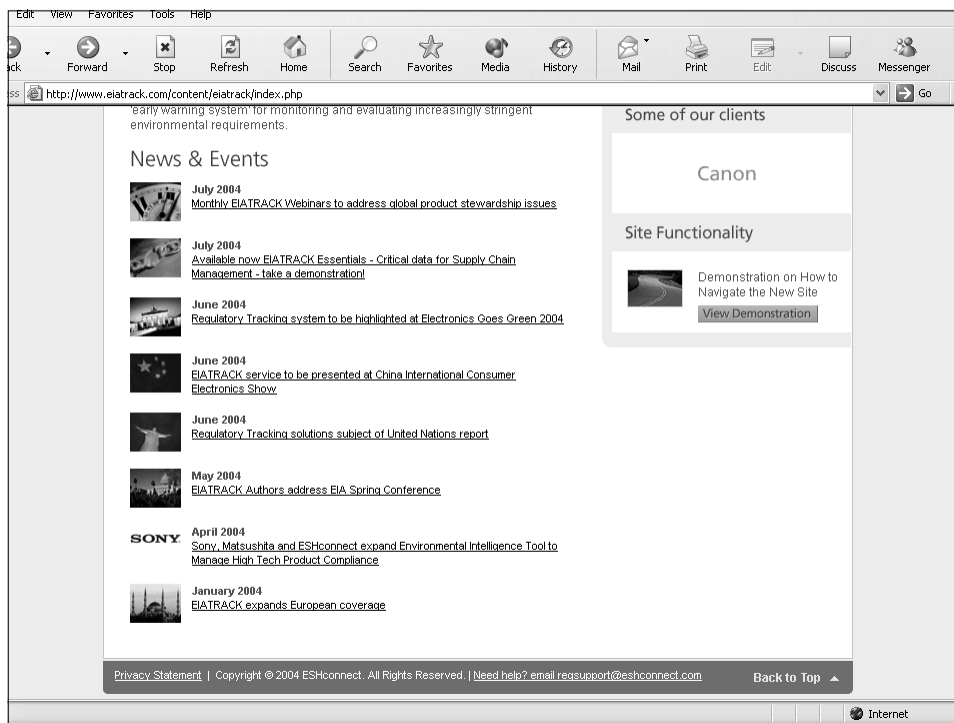
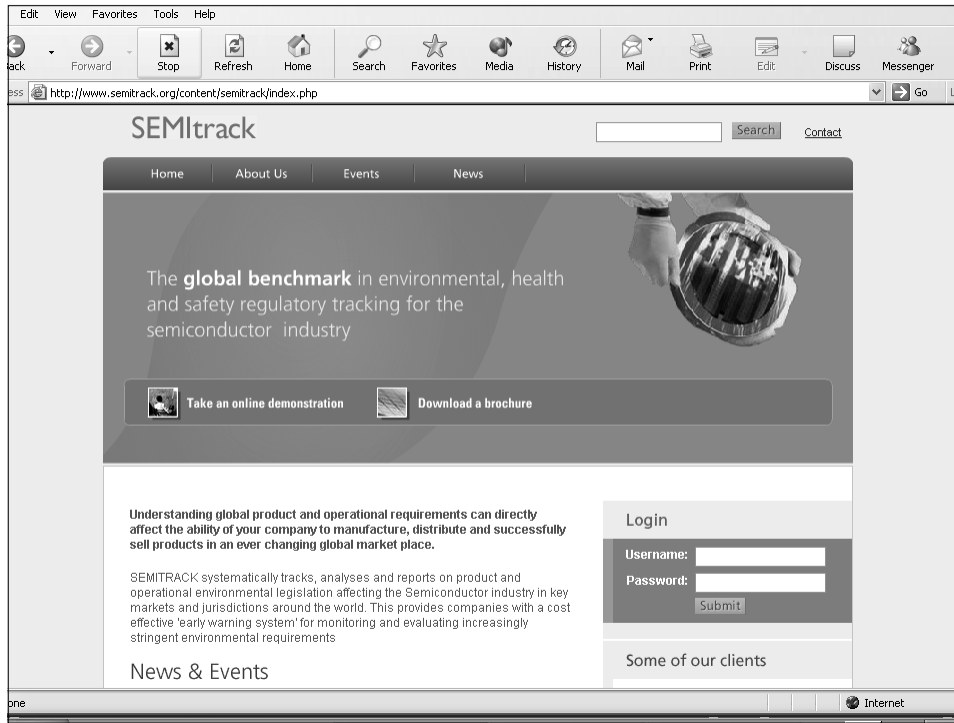
D. Country Pages

- Resource Guide <http://www.asil.org/resource/env1.htm>
- China SEPA <http://www.zhb.gov.cn/english/>
- Israel (law firm primer) <http://www.environment.co.il/>
- Germany Federal
<http://www.bmu.de/en/1024/js/base/?nav=vorwen>
- Japan <http://www.env.go.jp/en/index.html>
- U.K Health & Safety Executive <http://www.hse.gov.uk/>
- Taiwan EPA <http://cemnt.epa.gov.tw/eng/>



Trade Association Resources

- SEMI Semiconductor Equipment
- EIA Electronic Industries Association



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Tracking the law is only part of the solution

- Understand the problem; it may require different approaches
 - Transaction – buying a business or property
 - Compliance
 - Enforcement
 - Export
- Find the law
- Understand the law
- Advise the client
- Work with the client to solve the problem
- Use technology to make what you have learned available to others in your company

Tracking EHS Laws

- Internet helps enormously, but has its limits
 - Often focused on public policy, not the law itself
 - Hard to know whether it is up to date or reliable
 - **But**, can provide you with an English language version of the law or regulation and an initial contact in a ministry
- Some services are good, but rarely provide the answer to critical questions on reporting obligations or dealing with a violation
 - Environmental Data Service (Environment Daily on European developments)
- Local language services may be available on CD Rom or online

Network of practitioners offers the best assurance of being on top of the law and having someone trusted to interpret it

Understanding the law

Understanding the law is a combination of understanding the context, a good local practitioner or consultant to interpret, and your own skill in asking the right questions

- How do you find a good local practitioner?
 - Get recommendations
 - Get them to do a small task and evaluate how well they write in English, do they look at a problem in a holistic way or just answer the question posed
- Consider consultants for more technical issues
 - Consultants often know rules (e.g. clean up standards) better than lawyers, but can focus on lore and not law

Understanding the law

- Understand the background of the legal system
 - The US uses the common law model of the UK, as do Canada, New Zealand, Australia and India
 - Other countries are Napoleonic code based
 - Colonial era laws were sometimes adopted wholesale on independence and interpretations can still come from the original country's laws

Understanding the law

- Understand the political context
 - How government officials will approach enforcement or cleanup?
 - Will they enforce the standards on the books regardless?
 - Is it a negotiated settlement?
 - Do they understand how soil and groundwater work and how they can and can not be remediated?
 - What sort of technical expertise does the government agency have?
 - Will they understand the arguments you are making?
 - Will they jump to a decision based on limited academic research?
 - Will they accept "out of country" research or tests?

Understanding the law

- If you want to engage in advocacy on developing legislation or regulation
 - Ask questions about whether and how advocacy is done
 - It is imperative to have local people who will understand the policy drivers of jobs, party politics, etc.
 - Local people will also be key to making the right contacts
 - Industry associations can be helpful and can keep your company out of the spotlight

Understanding the law

- Ask the right questions – and ask them a few different ways
 - Civil code lawyers can sometimes be very literal in responding to the question you asked; they may not answer the question you should have asked given your problem
 - Get into the details; don't rely on terms that have a legal meaning to you, but perhaps not to locals
 - E.g. "retroactive" cleanup

Put a system in place to share information

- Intranet sites can house
 - Listing of reliable intranet sites, counsel, services
 - Access to online subscription services
 - Opinions on certain topics
 - Updates from your practitioners network
 - Links to individual business or division intranets on EHS
- EHS councils in countries can provide a forum for exchange of information and best practices among company personnel (EHS professionals and lawyers)
- Share best practices at internal meetings or on your intranet

BPs on EHS Compliance Challenges

Challenges

- Flood of new laws & regulations; poorly codified requirements
- Ambiguously drafted requirements; government officials have discretion
- Limited opportunities for notice & comment on proposed rules
- Gradual implementation of requirements
- Multiple agencies regulate EHS; Agency disharmony & overlap
- Lack of technical infrastructure such as proper waste disposal facilities

Response

- Established EHS law tracking system & maintain an internal, searchable database
- Network with drafters to consult on interpretive questions
- Use trade association for comments where possible; dialogue with officials to show benefits of interactive approach
- Encouraging drafters to provide clear & reasonable timelines for compliance
- Promoting interagency dialogue in written comments and by holding an EHS Forum with industry and agencies
- Share BPs with agencies; consider partnering with other MNC to develop

BPs EHS Outreach

- Maintain regular contact with agencies to watch new regulations & enforcement trends
- Continue to comment on proposed legislation where relevant through industry associations
- Participate actively in EHS MNC groups
- Consider using corporate philanthropy to encourage development of EHS expertise and projects
- Increase outreach to key EHS academics
 - *Organize “get-to-know you” events EHS law & management academics*
 - *Develop law school internship program*