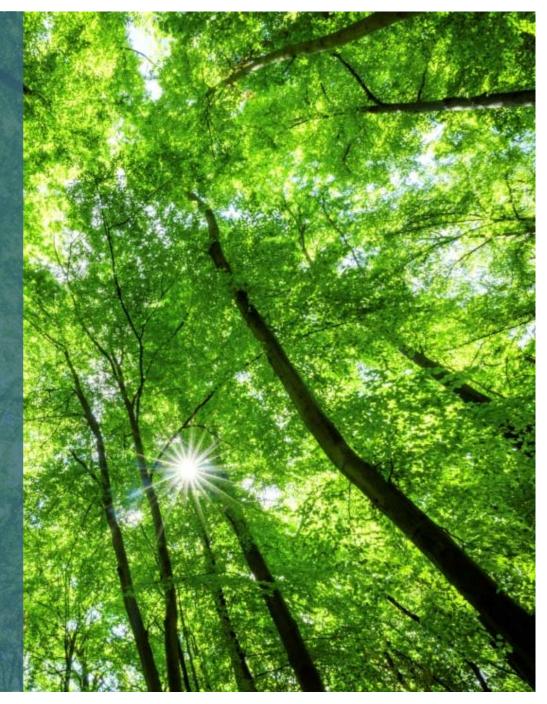


AUGUST 2021

ESG & ETHICS

33RD ANNUAL TEXAS ENVIRONMENTAL SUPERCONFERENCE AUSTIN, TEXAS



AG	EN	DA

Background on ESG
Applicable Ethics Rules and Hypos
In-house Experience with ESG
Avoiding Backlash: Validating ESG Information

Menti Poll - Question 1 Menti.com - Code 8381 5995

MY, OR MY FIRM'S, KNOWLEDGE OF ESG IS (1-5 SCALE):

- 1 non-existent, e.s.what?
- 2 elemental, we can spell ESG
- 3 progressing, ESG or sustainability is in someone's job description, at least part time
- 4 advanced, we have some ESG disclosures and are starting to engage with investors or employees
- 5 expert, we know our ESG policies, programs and practices and make annual disclosures



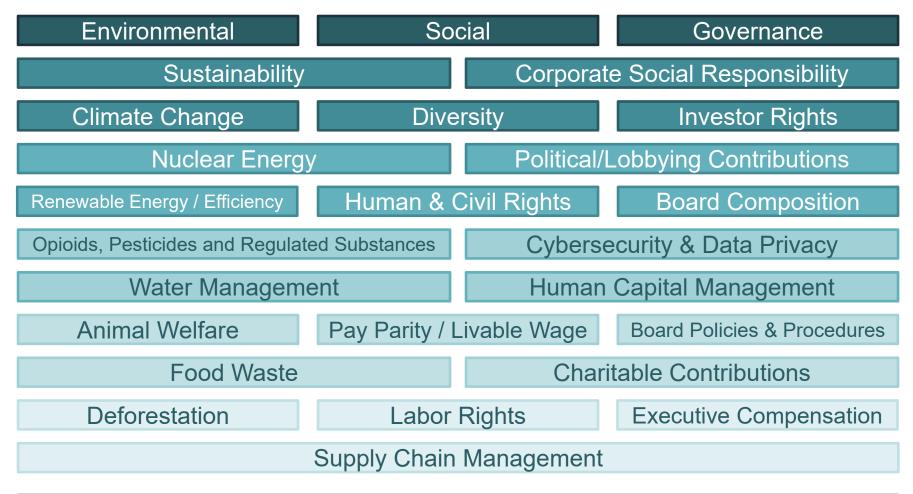
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UNDERSTANDING ESG

- Environmental, social, governance (ESG), is short hand for key corporate risks and opportunities that are of interest to stakeholders, including investors, and capable of significantly influencing a company's perceived or actual value, other than those risks and opportunities relating directly to a company's financial performance.
- Broadly speaking, identifying key ESG risks is similar to general ERM risk identification. A company must:
 - Evaluate its material operational inputs (i.e., labor, natural resources, data, technology, third party products and services); and
 - Evaluate its material operational outputs (i.e., products, services and data).

THE BROAD WORLD OF ESG

What is ESG?





How does "ESG" compare to "sustainability"?

How does "ESG" compare to "corporate social responsibility"?

How does "ESG" compare to integrated reporting?

RAPIDLY EXPANDING EXTERNAL ESG BUSINESSES

Companies Face Competing and Overlapping Regimes for Standards, Reporting and Rankings



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UNDERSTANDING ESG FRAMEWORKS, GUIDELINES AND RATINGS NO BENCHMARKING (EXCEPT FOR ONE STANDARD)

With the exception of CDP, none of the reporting frameworks benchmark or grade companies' disclosures, and the level of disclosure *is at the discretion of the company.*

 <u>CDP (formerly the Carbon Disclosure Project)</u>: CDP solicits primarily climaterelated information from companies annually by sending Climate Change, Water, and Forest Questionnaires. Companies that disclose information to CDP are assigned grades and are regularly benchmarked against peers.



PROFESSIONAL RESPONSIBILITY COMPETENCE AND TRUTHFULNESS ABOUT SERVICES

Hypo 1: A long-standing client asks you (alone) to help prepare its ESG disclosures. Although your practice involves environmental law, you know little to nothing about ESG standards and related disclosures.

Can you say "yes"?

PROFESSIONAL RESPONSIBILITY COMPETENCE AND TRUTHFULNESS ABOUT SERVICES

Model Rule 1.1: Competence (TX Rule 1.01)

 A lawyer shall provide *competent* representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation.

Model Rule 7.1: Communications Concerning a Lawyer's Services (TX Rule 7.01)

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

PROFESSIONAL RESPONSIBILITY CONFIDENTIALITY, TRUTHFULNESS, AND THE SCOPE OF REPRESENTATION

Hypo 2: A VP at company ABC has directed you as in-house/outside counsel to prepare a report in response to investor demands. The VP intends to submit a disclosure that overrepresents the "good" information regarding a topic that is important to a particular standard and/or strategically leaves out information that some investors might consider material.

- Do you report the company to the authorities?
- Do you share this information with shareholders?
- Do you report this information to a board member?

PROFESSIONAL RESPONSIBILITY

CONFIDENTIALITY, TRUTHFULNESS, AND THE SCOPE OF REPRESENTATION

Model Rule 1.6: Confidentiality of Information (TX Rule 1.05)

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent....
- (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
 - (1) to prevent reasonably certain death or substantial bodily harm;
 - (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another....
 - (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

PROFESSIONAL RESPONSIBILITY

CONFIDENTIALITY, TRUTHFULNESS, AND THE SCOPE OF REPRESENTATION

TX Rule 1.05: Confidentiality of Information

- (c) A lawyer may reveal confidential information:
 - (7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client *from committing a criminal or fraudulent act*.
 - (8) To the extent revelation *reasonably* appears *necessary to rectify* the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services had been used.
 - No mention of "substantial harm"

PROFESSIONAL RESPONSIBILITY CONFIDENTIALITY, TRUTHFULNESS, AND THE SCOPE OF REPRESENTATION

Model Rule 4.1: Truthfulness In Statements To Others (TX Rule 4.01)

 "In the course of representing a client a lawyer shall not knowingly: make a false statement of material fact or law to a third person; or fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6."

PROFESSIONAL RESPONSIBILITY

CONFIDENTIALITY, TRUTHFULNESS, AND THE SCOPE OF REPRESENTATION

Model Rule 1.13: Organization as Client (TX Rule 1.12)

- (a) A lawyer employed or retained by an organization *represents the* organization acting through its duly authorized constituents.
- (b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that it is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law...

Hypo 3: The corporate secretary (who is a lawyer) and outside counsel are critical members of company ABC's ESG team. They hold several discussions considering ESG targets and goals that they decide not to implement.

- In litigation (whether ESG related or not) or other proceedings, were those conversations confidential and covered by the Attorney-Client Privilege?
- What if no outside counsel are involved?



Model Rule 1.6: Confidentiality of Information (TX Rule 1.05)

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent....
- (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
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 - (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;



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INTRODUCTION

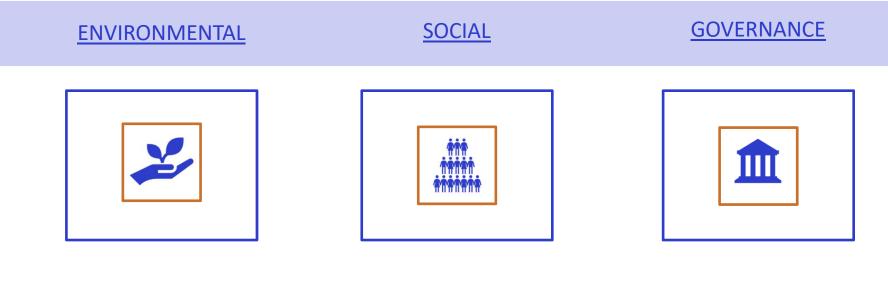
Building on 20 Years of Sustainability Excellence





Responsibly Resilient

OUR SUSTAINABILITY PRIORITIES



Protecting People & the Planet Engaging Our Employees & Building Our Communities Assuring Responsive Management



Responsibly Resilient

MY PERSONAL ESG "ETHICAL" REASON

LAWYERS HAVE A DUTY TO, WITH RESPECT, ENGAGE IN THE PUBLIC SQUARE OF OUR SOCIETY



Model Rule 6.4 – Law Reform Activities Affecting Client Interests

Public Service

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.



PROVIDING ENERGY. IMPROVING LIVES.

33rd Annual Texas Environmental Superconference

MARIA DUNN, ESG & Sustainability

August 6, 2021







CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This document contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, which are intended to be covered by the safe harbors created thereby. Words and phrases such as "is anticipated," "is estimated," "is expected," "is planned," "is scheduled," "is targeted," "believes," "continues," "intends," "will," "would," "objectives," "goals," "projects," "efforts," statements about strategies and statements that include similar expressions are used to identify such forward-looking statements. However, the absence of these words does not mean that a statement is not forward-looking. Forward-looking statements included in this document are based on management's expectations, estimates and projections as of the date they are made. These statements are not guarantees of future performance, and you should not unduly rely on them as they involve certain risks, uncertainties and assumptions that are difficult to predict. Therefore, actual outcomes and results may differ materially from what is expressed or forecast in such forward-looking statements. Factors that could cause actual results or events to differ materially from those described in the forward-looking statements include fluctuations in NGL, crude oil and natural gas prices, and petrochemical and refining margins; unexpected changes in costs for constructing, modifying or operating our facilities; unexpected difficulties in manufacturing, refining or transporting our products; lack of, or disruptions in, adequate and reliable transportation for our NGL, crude oil, natural gas and refined products; potential liability from litigation or for remedial actions, including removal and reclamation obligations under environmental regulations; limited access to capital or significantly higher cost of capital related to illiquidity or uncertainty in the domestic or international financial markets; potential disruption of our operations due to accidents, weather events, including as a result of climate change, terrorism or cyberattacks; general economic and political developments including: armed hostilities; expropriation of assets; changes in governmental policies relating to NGL, crude oil, natural gas or refined petroleum products pricing, regulation or taxation; and other political, economic or diplomatic developments, including those caused by public health issues and outbreaks; the impact of adverse market conditions or other similar risks to those identified herein affecting Phillips 66 Partners, as well as the ability of Phillips 66 Partners to successfully execute its growth plans; and other economic, business, competitive and/or regulatory factors affecting Phillips 66's businesses generally as set forth in our filings with the Securities and Exchange Commission. Phillips 66 is under no obligation (and expressly disclaims any such obligation) to update or alter its forward-looking statements, whether as a result of new information, future events or otherwise





Sustainability Goes Beyond ESG

SUPPORTS LONG-TERM RESILIENCE





Roles lawyers can / should play in ESG Menti Poll – Question 2

a) legal advisors (legal risk, legal compliance, etc)

b) they should lead a company's program

c) a and b (they can do both and still provide independent legal advice)

d) none of above, leave this to Investor Relations and others



Avoiding Backlash: Validating ESG Information

33rd Annual Texas Environmental Superconference Austin, Texas August 7, 2021

LAWRENCE HEIM EDITOR, PRACTICALESG.COM



THE BACKDROP - ESG DATA VALIDATION IS LACKING

- Corporate ESG disclosures are widely read and evaluated
 - Form the basis of evaluations by ratings agencies and investors
- Few companies have internal controls for ESG data, and almost none employ validation similar to financial data
- Increasingly, artificial intelligence employed to read filings and compare the information to other data sources
 - Can find surprises in supplier relationships and geographic linkages, especially in the context of U.S. Sanctioned Entities



THE BACKDROP – ESG DATA VALIDATION IS LACKING

- Existing ESG assurance/audit procedures can vary in scope, depth and coverage
- Concern about ESG fraud and ethics matters is valid
- SEC has signaled that ESG disclosure enforcement is coming soon



NET ZERO COMMITMENTS, CARBON OFFSET USE AND RELIANCE

- Are meaningful direct emission reductions sought/achieved?
- Are any offsets used real?
 - How are they guaranteed?
 - What happens if they fail?
- Where is carbon footprint data coming from?
- Purchasing software systems, supplier surveys
 - How are those validated?



WATER USE DATA

- Are any water meters and/or wells excluded from the usage data?
- Are wastewater discharge volumes compared to incoming water volumes as a check?
- Are water/wastewater meters calibrated regularly?



SUPPLY CHAIN DATA

- Where is that information coming from?
- What controls exist to validate information from or about suppliers?
- Technology solutions
 - Blockchain doesn't capture location or operating contexts
 - Pollution control technology may not scale to operational level (carbon capture)



CERTIFICATIONS, AUDITORS & INDUSTRY PROGRAMS

Additional controls and monitoring are prudent

- Netflix documentary Seaspiracy
- How are third-party auditors qualified and monitored by the company?
 - Myriad studies on efficacy of social audits/auditors
 - Auditor quality (Netflix documentary All the Queen's Horses)



THE BACK PAGE

- Question everything and implement meaningful internal controls for ESG data validation
- Consider engaging Internal Audit staff
- Supplement the team with internal subject matter experts for environmental, human resources, supply chain, safety and other relevant technical topics



THE BACK PAGE

- External consultants/auditors can be used, but screen them for qualifications
- Understand ESG fraud and ethics concerns are real
- Industry programs can be a valuable resource, but consider augmenting those with your own controls and oversight



Menti Poll - Question 3

AN ESG TOPIC I'D LIKE TO LEARN MORE ABOUT IS _____





THANK YOU

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