

# VIRTUAL EHS COMPLIANCE

24 JUNE 2020



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## EHS RISKS REMAIN



- Employees remain exposed to hazards.
  - Indeed, Covid-19 is yet another H&S exposure.
  - Need we amend every last PPE hazard assessment to include Covid-19?
- Environmental emissions continue to flow.
- Governmental EHS compliance and reporting obligations continue to apply.
- Executives and Board Members remain accountable for EHS compliance.
- Activists have time on their hands.

## RISKS OF COMPLACENCY

- Falling into bad practices
- Potential for criminal enforcement
- Must comply, even during bankruptcy



## EHS TOPICS PURSUED VIRTUALLY

- **EHS Compliance Audits:** Comprehensive regulatory compliance audits to evaluate client status with local, national and regional environmental and occupational health and safety laws and regulations.
- **Transactional Due Diligence:** Evaluating the EHS risks associated with business transactions, from straightforward acquisition, divestiture, refinancing and insurance placement to more complex merger, restructuring, buyout, public offering and bankruptcy situations.



# AUDIT AND DUE DILIGENCE: THREE WAYS TO GATHER INFORMATION

- Physical inspection – walking around and looking at conditions.
- Interview – talking with workers, business managers, and EHS professionals.
- Document and records review – looking at the paperwork.



## PHYSICAL INSPECTION

- Still photo uploads.
- Video uploads.
- Cell phones or tablets interactively with Facetime.
- Cell phones or tablets interactively with MS-Dynamics 365 Remote Assist.
- Advanced options.



. . . OK to mix and match!

# PHYSICAL INSPECTION

## Still Photos or Recorded Video Uploads

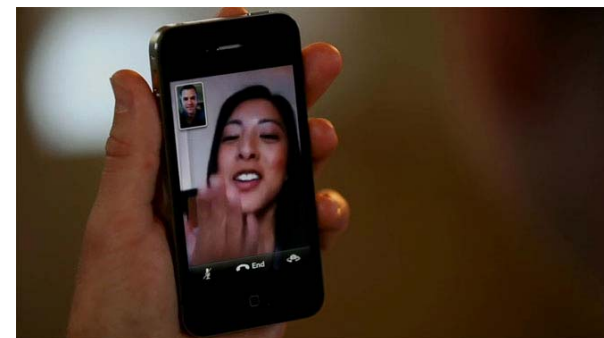
Advantages	Disadvantages
Cheap	Privacy concerns
Easy	Proprietary information concerns
Familiar hardware and software	ITAR concerns
Unaffected by noise	Lack of spontaneity
Not very distracting	Ordinary cameras/smartphones not intrinsically safe



## PHYSICAL INSPECTION

### Cell phones or tablets with Facetime or Other Video Sharing Applications

Advantages	Disadvantages
Allows spontaneity	Privacy concerns
Modest cost	Proprietary information concerns
Modest effort	ITAR concerns
Written and drawn guidance available in noisy areas	Perils of photographer distraction
Only slightly distracting	Ordinary cameras and tablets not intrinsically safe
Familiar hardware	Unfamiliar software





## PHYSICAL INSPECTION

Smart Glasses, e.g., HoloLens Augmented Reality or RealWear HMT-1 headsets that enable virtual collaboration.

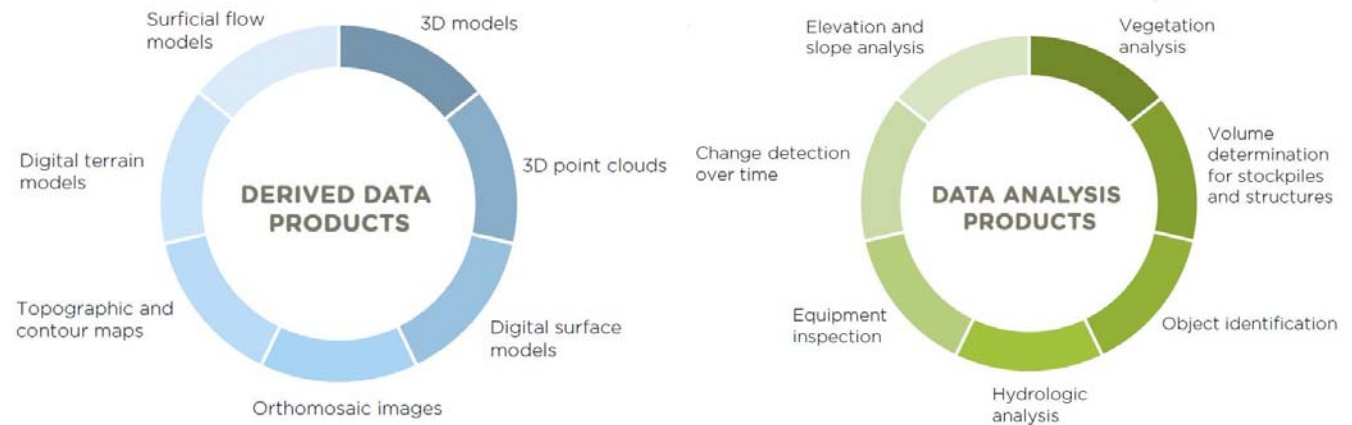
Advantages	Disadvantages
Allows spontaneity	Privacy concerns
Intrinsically safe, used in refineries	Proprietary information concerns
Written and drawn guidance available in noisy areas	ITAR concerns
Heads-up display	Somewhat expensive
Technological sizzle!	Unfamiliar hardware, unfamiliar software
	Distracting for everybody – funny-looking



# OUR SERVICES

Specific to COVID conditions:

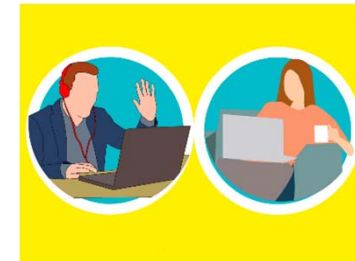
- Live video site tours from drones
- "Digital Twin" high-resolution 3D model
- High-resolution aerial mapping and digital inspections
- [Aerial 360 panorama views of sites](#)



## INTERVIEW

Probably the easiest to replicate remotely

- Phone call – Tried and true
- Video conference – Pretty easy, thanks to Skype and MS-Teams



## DOCUMENT REVIEW

Highly dependent on document storage method.

- EHS Management Information System (EMIS)
  - *Gensuite*
  - *Enablon*
  - *Intelex*
  - *VelocityEHS*
- Electronic files in a central directory – Ask for access
- Electronic files in various places – Compile into shared location
- Paper-based records – Start scanning!



## NEW AUDITING TECHNOLOGIES: LEGAL CONSIDERATIONS

- FAA regulations on drones: 14 CFR Part 107
- Employee privacy concerns
  - Labor contracts
  - Warn employees
- Consider potential for the same tools to be used against you
  - Government agencies and concerned citizens



## KEYS TO VIRTUAL EHS COMPLIANCE



- Document roles, responsibilities, processes, and tasks like never before more than you think necessary. – Schedule, schedule, schedule!
- Mix and match technologies:
  - Even if you use VR goggles, you can still ask for still photos from a smartphone!
  - Even if you use Skype videoconferences, you can still do a quick interview on a phone call!

## GENERAL DISADVANTAGES

- Hosting effort increases. Data gathering, especially in a paper-based environment.
- Physical inspection suffers. The best cameras provide just a fraction of the information gathered in person.
- Interviews suffer. Spontaneous conversations disappear.
- Document review suffers.
- Coaching suffers.
- Involve attorneys early if auditing under attorney-client privilege.



## GENERAL ADVANTAGES



- Continued EHS operations.
- Travel costs are eliminated. No hotels, rental cars, airlines, or travel time.
- Covid-19 transmission concerns are avoided. The audit team's germs and viruses stay safely off site.



# PROTECTIONS FOR SELF-AUDITING AND SELF-DISCLOSURE

- Protection for voluntary efforts to discover and correct
- EPA and some states
- Under utilized



## EPA'S AUDIT POLICY

- 9 eligibility criteria
- Protections
  - Reduction of gravity-based penalty component
  - Protection against criminal enforcement



# KANSAS CIVIL DISCOVERY PRIVILEGE AND PENALTY IMMUNITY

- Environmental Audit Reports
- Burden on party asserting privilege
- 6 months or less
- Protection against testimony
- Penalty immunity
  - Applies to voluntary disclosures
  - Rebuttable presumption of immunity
  - Eligibility

## MISSOURI PROTECTIONS

- No specific law, regulation, or policy in place
- MDNR regulations allow for consideration when calculating penalties
- Correct quickly!

## ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT DOCTRINE

- Legal doctrines that protect against government regulators and civil litigants
- Work product is broader, but qualified
- Often valuable, even if self-discovery/correction protections are in place

# AGENCY COVID-19 FLEXIBILITY POLICIES

- EPA
- MDNR

[regulatory.inquiry@dnr.mo.gov](mailto:regulatory.inquiry@dnr.mo.gov)



## OSHA AND COVID-19

- COVID-19 is recordable, if work-related
- May 19 Memo
- 29 CFR Part 19
- June 18 Guidance on returning to work
- Retaliation
- Pre-existing OSHA regulations



## CLOSING COMMENTS AND QUESTIONS

- Comments?
- Questions?





THANK YOU

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