



Global Compliance and Facility Manager Reliance

By Josh McIlwain, SFP, LEED Green Associate

By now, most Facility Managers are familiar with or preparing for Building Performance Standards, Corporate Sustainability Reporting and Compliance Requirements that are applicable to their organizations. Regardless of whether an organization has internal Sustainability initiatives, the lion's share of the burden in making sure a facility is compliant will land on its FM's shoulders and will remain so regardless of electoral outcomes.

More traditionally desirable outcomes like adding value to an asset, measurable ROI from energy savings or operational efficiencies and improved occupant comfort and safety will need to be balanced against the costs for non-compliance and from the perspective of cost-avoidance. Within corporate governance, accounting and finance are best suited to chart the financial path forward for their facilities. The cost calculations involved are essentially an accounting problem that's specific to each facility, its location, and ownership. The implementation of compliance will fall to FMs to research, get pricing, and project manage the solutions specific to their facility.

Like individuals, no two facilities are the same. They are all unique in their own ways. Custom solutions are needed to maximize returns on energy savings for each investment in new equipment. Compliance requirements are different across various jurisdictions - - so the implementation of solutions will be different as well. Boilerplate solutions and software for data collection will only get a building so far.

Inevitably, new regulations impact corporate profits. This comes at a time when vacancy rates, recapitalization costs and commercial mortgage interest rates have

made some facilities worth less than the costs for upgrades and the value of the building's continued operation.

Part of the challenge in approaching compliance stems from the multiple different applicable regulations that are enforceable, and which sometimes cross overlapping jurisdictions. The implementation of these policies' timelines, deadlines and penalties, their oft-shifting regulatory language and pending litigation status can be both messy and confusing. This is especially true for operations staff with limited existing bandwidth.

The inherent complexity is part of the reason why compliance regulations will outlast election cycles, because either

- The winning candidate for office has limited ability and authority to influence or restrict regulations outside their jurisdiction or scope,
- The regulations are implemented by unelected bureaucracies,
- The regulations can be challenged by unelected special interest groups in front of appointed judges,
- The regulations were voted into effect by the electorate directly via referendum.

The global and interconnected nature of our financial institutions, businesses and governments has led to serious debate and thorny challenges. Global investments in renewable energy are made by financial institutions, and access to the energy is sold to publicly traded companies in need of meeting compliance goals. Such is the case with Google's investment in a Taiwan-based solar asset owned by BlackRock's Climate Infrastructure subsidiary¹.

¹ [Google invests in BlackRock-owned solar company to aid net-zero goals | ESG Dive](#)



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Financial institutions that manage state-backed pension funds are accountable to their constituents, beholden to the laws governing finance, and beholden to fiduciary responsibility. Many of those financial institutions also manage portfolios of Real Estate and are further beholden to shareholders to deliver returns.

Conflicts abound. A lawsuit was brought against Shareholders by Exxon over their proposals to accelerate carbon dioxide emission reductions². Twenty-five State Attorneys General and two energy corporations filed suit against the Department of Labor regarding ESG Investing that will have implications beyond the parties' respective scope³. The U.S. Supreme Court's decision overturning Chevron U. S. A. Inc. v. Natural Resources Defense Council upends the authority of Federal agencies to regulate markets⁴. Special interest groups like the California Restaurant Association prevailed in their fight against mandated electrification versus the City of Berkeley⁵, and there is pending litigation from the several building ownership groups vs. the State of Colorado and City of Denver that, as of this writing, has yet to play itself out at the Federal level⁶.

What does this mean for Global Corporate Leaders? Budgetary and operational decisions must be made during unpredictable times and within volatile regulatory conditions. Where these conditions exist, decisions based on inaction, reaction or overreaction become more likely. Guesswork and Accountability don't mix well, my friends...

There are some commonalities to the different regulations and reporting requirements. One of the main intents is to push organizations towards

decarbonization via reduction of Greenhouse Gas (GHG) Emissions and towards increases in building energy efficiency. Within the continental U.S., the map below from the Institute for Market Transformation⁷ shows where Building Performance Standards have been passed or have been committed to. The European Union has passed and has begun implementing the Corporate Sustainability Reporting Directive, with additional regulations impacting organizations and facilities in

The State of Building Performance Standards (BPS) in the U.S.
Members of the National BPS Coalition as of July 2024



² [Judge rules Exxon can sue activist shareholder over climate proposal \(cnbc.com\)](https://www.cnbc.com)

³ [2023.01.26 1 complaint.pdf \(law360news.com\)](https://www.law360news.com)

⁴ [22-451 Loper Bright Enterprises v. Raimondo \(06/28/2024\) \(supremecourt.gov\)](https://www.supremecourt.gov)

⁵ [21-16278.pdf \(uscourts.gov\)](https://www.uscourts.gov)

⁶ [coloradocourtfilereg282024.pdf \(naiop.org\)](https://www.naiop.org)

⁷ [Map: National BPS Coalition Participating Jurisdictions - IMT](https://www.imt.org)



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Europe. Global markets, and businesses with operations in Europe will need to comply.⁸

Stateside, GHG emissions reporting requirements are likely to be applicable to publicly traded companies via the SEC, even though the current emissions disclosure rule is currently stayed. Organizations doing business in California are subject to GHG emissions disclosures. There are some notable differences between the California regulations and the SEC's, for example: California's regulations include Scope 3 emissions, covers private companies, but does not cover non-US companies, while the SEC's climate disclosure rule is only interested in publicly traded entities.⁹

Globally, as the larger pieces of the puzzle start to fit themselves together, challenges will remain locally. In Colorado, we have overlapping jurisdictions between our various city ordinances and the state. Approximately 1,500 buildings in the City of Denver must comply with the City's Energize Denver Ordinance, yet, because the building in Denver is also located in the State of Colorado, will also need to comply with Colorado's Regulation 28. The mandated targets are similar in scope, but not identical, and their timelines for compliance aren't quite in synch.

Imagine, a facility owned by an entity with operations based in California, listed and publicly traded in the U.S. (SEC), and that has operations in Europe (EU CSRD Compliance). That same organization might have facilities that need to ensure compliance with 3 different sets of regulations. Imagine that same California-based corporation has office locations in Denver, Colorado, and now it may have 5 regulatory bodies to answer to. It is unlikely that an election cycle (or two) will

eliminate the need for compliance from an FM's workload. Global initiatives become local challenges, and vice versa.

Over the past few years, I've delivered several presentations to business and trade associations to help educate and prepare our building and facility owners and managers. Invariably, opposing opinions arise during the Q and A sections following my presentations. In one case, a question from a Contractor explored the impact of government regulation on capitalism and was responded to by an Architect in attendance, who raise his hand, identified as a capitalist, and asked "Why wouldn't we want to eliminate waste from our businesses?"

Compliance with regulations is necessary for the continuity of business operations and to ensure stakeholder protections, but it's also necessary for us to look at the big picture to understand "the why", as well as "the how." This is the type of big-picture thinking that FM's can deploy, from a local level, as they navigate global thinking. We can push past partisan viewpoints to come together and solve the challenges ahead.

What's needed is for civilization to move forward. We need to make decisions with the best information we have, with the right intentions, and accept that the process will be messy. As stewards of our facilities, FM's have an outsized influence in impacting our community, both locally and globally.

As we face the compliance challenges, keeping the "3 Ps of Sustainability" -- People, Planet, Profit -- in an optimal balance will be helpful. We would do well to

⁸ [The European Green Deal - European Commission \(europa.eu\)](https://european-council.europa.eu/media/en/press-operations/infographic-116236.pdf)

⁹ [Decoding California's Climate Action: A Deep Dive into SB 253 & SB 261 | EcoAct \(eco-act.com\)](https://www.eco-act.com/blog/decoding-california-s-climate-action-a-deep-dive-into-sb-253-sb-261)



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remember that reducing consumption and eliminating waste in all its forms is both Sustainable and Profitable. That's something we can all rely on.

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