Greenwashing and Plastics: Getting Ahead of the Upstream Risks

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Consumer packaged goods companies know that sustainability sells. And in their efforts to market their products as sustainable, they've long contended with allegations of greenwashing—the practice of claiming their products are friendlier to the environment than they actually are.

With these companies facing heavier pressure to shrink their plastics footprint, greenwashing scrutiny of their activities is only sharpening. Recent developments—from private lawsuits to government investigations to shareholder proposals—signal that relief is nowhere in sight.

Yet while consumer packaged goods companies have historically borne the brunt of public outcry about plastic waste, they're no longer the only companies grappling with plastics-related greenwashing concerns. Indeed, whether from regulators, investors, or consumers, greenwashing scrutiny increasingly targets the entire plastics value chain.

Fundamentally, plastic is processed oil extracted from the ground. While energy companies have been in the crosshairs for some time over the impact of carbon emissions, it is foreseeable that concerns about plastic waste will eventually work their way back to the source: oil.

The Next Big Target

There is a strong case that integrated energy companies and upstream oil and gas producers—whose polarizing public image makes them easy marks for concerned shareholders, activists, politicians, and the plaintiffs' bar—may become the next target of plastics-related greenwashing allegations.

Crude oil and natural gas provide the raw materials used by vertically integrated oil and gas suppliers and others to manufacture plastics, and 90 percent of plastics produced in the United States are derived from virgin (non-recycled) sources. Plastics already comprise approximately 6 percent of global oil consumption (roughly the same percentage as the global use of aviation fuel), a number that is projected to reach 20 percent by 2050.

Major oil companies have faced plastics-related shareholder proposals. While these proposals do not allege greenwashing, they show that stakeholders care increasingly about plastics-related issues, and are willing to take action against companies about them.

The risks here are as serious as they are diverse. Even when without merit, greenwashing allegations can erode customer trust, dissuade investment, jeopardize partnerships, reduce share prices, disrupt operations, and harm corporate reputations—all while costing extraordinary amounts of time, energy, and money to defend.

To get ahead of those risks, many upstream companies will need to review and refine how they portray their plastics-related goals, risks, and initiatives. This complex work has numerous moving parts, and centers on ensuring that the information they share is clear, correct, and complete.

Vetting the Value Chain

A key challenge will be to collect and verify information from third parties.

With reducing plastic waste becoming a higher priority for stakeholders and regulators alike, integrated energy companies and upstream oil and gas producers will feel a similar urgency to highlight their efforts toward that end, or to project how softening demand for virgin plastics could affect their business.

Complicating matters further, upstream and integrated oil companies often must rely on information from others down the plastics value chain—like processors, converters, retailers, and waste management companies—to support their plastics-related claims.

But in communicating with their stakeholders, upstream companies must make ample time to *substantiate* this information, and build out robust processes for doing so. This is especially critical for evaluating statements predicated on a product's recyclability, as inadequate infrastructure prevents most plastic from being recycled.

Many companies throughout the plastics value chain (including upstream oil and gas companies) are making statements about the percentage of their end-use plastics that are recyclable, even when litigation is starting to surface—targeting mainly consumer goods brands *for now*—alleging that recyclability claims cannot be supported when most plastic never actually gets recycled.

Vetting the value chain is seldom straightforward. And prioritizing speed over substantiation can lead to statements that are incomplete or vague at best—and false or misleading at worst.

Show and Tell

While several oil and gas companies have made plastics-related claims, complex environmental, social, and governance (ESG) politics have left others wondering whether the benefits of doing so outweigh the double-edged risk: taking heat from activists for purportedly overhyping their commitment to sustainability, while inflaming anti-ESG advocates who contend that focusing on sustainability undermines business fundamentals.

This dynamic could lead some upstream companies to consider a form of "greenhushing"—keeping quiet about their plastics-related sustainability endeavors, even when trending favorably, lest they antagonize stakeholders or invite legal challenges.

Greenhushing might seem practical as a stopgap measure, especially for companies still developing their data-reporting and validation capabilities. But this practice may be short-sighted, because it can signal that a company is unprepared to address stakeholder concerns or regulator demands.

For this reason, upstream companies would be wise to communicate beyond their headline claims. This means publishing thorough, specific evidence underpinning those claims, and explaining how their plastics-related initiatives—or efforts to future-proof this revenue stream—will continue to add value to the business.

Upstream companies that show their work, rather than just talk about it, position themselves to elevate their credibility with investors and consumers, and deter greenwashing allegations in the process.

Another Layer of Complexity

The fast-evolving regulatory environment adds more complexity and urgency.

In March, for example, the European Union reached a provisional agreement on a new law to ban some single-use plastics and make all packaging fully recyclable by 2030. And in December, the United Nations plans to adopt a treaty that legally binds countries to ending plastic pollution.

Stateside, four legislatures (California, Colorado, Maine, and Oregon) have recently passed extended producer responsibility laws for packaging, which aim to shift costs for the end-of-life management of packaging from local governments to producers. Nine more states have introduced similar legislation in 2024.

In weakening demand for plastic packaging and making it more expensive to produce, these developments may compel companies to rethink how they manage their plastics-related business lines, and to consider whether they should plan for a future with lower virgin plastic demand.

Meanwhile, the Federal Trade Commission's (FTC) forthcoming update of its Green Guides, which private plaintiffs use to bring greenwashing litigation, is widely expected to set higher standards for claiming that products are recyclable. If the FTC takes that approach, upstream companies will need to conduct a rigorous review of their own recycling-related claims.

Striking a Balance

Light, cheap, and durable, plastics make modern life possible, playing a critical role in technology, medicine, food storage, and more. But plastics' extremely long lifespan—and the microplastics that result as they degrade—are a visceral issue worldwide (much less abstract and hard-to-see than climate change), which has made plastic waste a pressing concern across the world.

In that light, we should expect that the pressure to reduce the world's dependence on plastics will only become more acute—and fall increasingly to the companies that are part of their value chain.

As upstream companies respond to that pressure, they will confront competing challenges: sharing their plastics-related goals and efforts toward those goals, while protecting themselves from greenwashing allegations. Striking a balance between the two requires sound, forward-thinking counsel, and is key to getting ahead of the risks.

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