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Environmental Audit Challenges to Compliance

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ABSTRACT

Environmental Auditing is an inspection as to whether the environmental norms are complied by the industries and other institutions or machinery. It is an essential factor for sustainable development. If environmental norms are complied with then the Environment Health and Safety (EHS) risks are low. For analyzing the compliance, independent and unbiased auditing is necessary. Certain norms have been specified by the International Organization for Standardization in ISO 14000 and 14001 which should be complied with. The major challenge is the lack of compliance with those norms. Further, it has been stated, that third-party auditing can be a tool for bringing reformation in the field of environmental auditing.

Keywords – Auditing, EHS, Compliance, Third-Party Auditing

I. INTRODUCTION & IMPORTANCE

Pollution has now become a very contemporary and inevitable threat to humanity. As a consequence, rapid modern industrial technology, transportation, and comfortable housing pollution might be the biggest threat affecting more or every being on Earth. Unlike other threats like terrorism, recession, and other internal and external security issues, the environmental threat is often overlooked. At present Industries account most for the pollution. Any machinery related to automobiles, household appliances, and masonry leads to a residue that causes environmental degradation due to air or water pollution. Auditing is the term often associated with finances and accounts examination. The audit is defined as conducting an official examination and investigation of accounts.⁴ Environmental auditing is a management tool that assists environmental compliance requirements and further examines the efficiency of environmental management mechanisms for the identification of risks and hazards, degradation of natural resources, and costs involved in conducting it.⁵ Learning from various

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⁴ *Auditing*, BLACK'S LAW DICTIONARY (10th ed. 2014).

⁵ *Unit 1, Introduction to Environmental Auditing and Management*, https://www.soas.ac.uk/cedep-demos/000_P508_EAEMS_K3736-Demo/unit1/page_14.htm.

disasters like the Bhopal Gas tragedy, Chornobyl, and regulatory compliances have led to the development of Environmental Auditing.

An environmental audit is done to properly execute the environmental performance of any industry. It is done to keep a check for optimum utilization of resources and to analyze the mechanism and need for alternative energy. Another aim is to maintain occupational health and safety and to document the status of environmental compliance.⁶

Environmental auditing should be carried out with proper planning, and identification of the type and scope of the audit. The environmental policy of the industry must be analyzed properly. The collection of data should be followed by evaluation and suggested improvements and changes should be implemented. A typical audit process includes Pre-audit, Onsite, Post audit activities.

Environmental auditing helps in overall sustainable development by helping in reducing pollution and waste levels thereby helping in proper environmental compliance. Apart from sustainable development, Environmental Auditing also helps industries to avoid heavy fines by the compliance regulatory authorities for non-compliance with environmental norms. Litigation costs about the environment are also saved due to proper compliance. Overall goodwill and health of the employees of the companies are also maintained if the working environment is pollution-free and safe.

II. ENVIRONMENT AUDIT SCHEME (EAS)

EAS is an important aspect of Environmental Audit. It has three components:

1. State Pollution Control Board
2. Internal Auditor Board
3. External Auditor

1. State Pollution Control Board is required to appoint internal auditors and evaluate the reports and initiate action accordingly.

2. Internal Auditor Board Internal auditors as appointed by the State Board shall have a properly equipped laboratory for analysis of various samples related to pollutions.

3. The external Auditor Team would be selected by the State Board and reports are to be sent back with comments.

⁶ Sangita Ingole, *Environmental Auditing: Its Benefits and Countenance*, INTL. J. OF SCIENCE INNOVATIONS AND DISCOVERIES, 152 (2012).

III. KEY AREAS OF ENVIRONMENTAL AUDITING

There are various fields wherein Environmental Auditing is carried out. Scope of auditing can range from compliance to general requirements and health and safety inspection of the Employee. A few areas of Environmental Auditing are Environment Health Safety, Water Audit, Energy Audit, and Compliance Audit. Environment Health Safety Audit - Workmen are the backbone of any industry. Various hazardous industries cause serious health problems to the workers especially those exposed to the field in any industry. Blue-collar workers are more vulnerable to health and safety issues in any industry. Proper safety mechanisms like fire extinguishers should be installed and safety gear like masks, helmets, and jackets should be made available to the workers in any industry. All the norms about the safety obligations have to be checked and complied with.

Water Audit - It keeps a check on the consumption and recycling of water. Water Audit is a scientific framework that can be an effective tool against drought management and shortage problems. It may prove effective against wastewater disposal and compliances related to the treatment of wastewater before releasing it into an open water resource.

Compliance Audit –

It includes checking on proper compliances to the Environmental norms and procedural requirements.

IV. ENVIRONMENTAL COMPLIANCE AUDIT

Non-Compliance with environmental norms has led to various suits about remedial action, personal injury, and environmental damage which in turn have caused huge losses to the companies. Judiciary opting pro-environment approaches in its various judgment by giving due recognition to 'Polluter Pays' principle and other principles have established that economy cannot be attained at the cost of the environment.

Compliance Audit checks if the plant is complying with the requirements laid by the provisions of law.⁷ (C) Various laws require compliance. European Union has Eco-Management and Audit Regulation (EMA), specifically for Environmental Auditing, however, participation is voluntary. Companies having industrial activities are required to carry out regular audits at the industrial sites.⁸ (CSTI) Asian Environmental Compliance and Enforcement Network (AECEN) was established to ameliorate compliance with Environmental norms in Asia. The

⁷ Environmental Auditing, COUNCIL OF SCIENCE AND TECHNOLOGY INSTITUTES, <https://www.dlswb.rmit.edu.au/conenv/envi1128/Reading-CSTI.pdf>.

⁸ Ibid.

main objective of AECEN was to make and execute better environmental regulations and policies through mutual exchange of ideas and practices. Organization for Economic Co-operation and Development compliance (OECD) assurance program was also formed within the framework of the OECD Global Forum on Sustainable development for ensuring compliance among the OECD countries for increasing environmental benefit and minimizing costs related to regulation.

A specific requirement audit is a subtype of Environmental Compliance Audit that checks compliances to specific regulations, for example, a sustainable forestry audit.⁹ The compliance audit criteria include National legislations, International conventions and treaties, applicable standards, and industry guidelines.¹⁰

V. ENVIRONMENTAL AUDITING METHODOLOGY

Different types of audits may require different methods to carry out. However, some basic steps are common in all auditing processes. There are 4 basic steps of auditing: Pre-audit, On-site audit, and Post-audit followed by Review.¹¹

Pre-audit steps

It includes a plan of the audit and finalizing the specialized team for the audit. The composition of the audit team depends on the availability of the expert members, companies often opt for external members instead of internal members, who have expertise in the field and can give unbiased reports. Background information about the site is gathered which helps to reduce time consumed on-site by the team and accordingly further activities are planned. Information regarding the environmental norms, policy, government standards, risk areas, budget, and objectives of the organization is collected, and accordingly, the team is finalized. Objectives and scope are then identified as to the facilities that are to be examined and the outcome of the audit.¹² Finally, protocols that are to be followed by the auditors during carrying out the audit are made and the facility is informed to make on-site arrangements.¹³

On-site steps

Aims and objective is communicated to the personnel of the site followed by a tour of the site so that the areas that require special attention can be identified.¹⁴ It is essential to form an

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

understanding of the internal mechanism of any facility. Inspection is carried out through established protocols. The team collects information through general observation, questionnaires, and interaction with the staff. Then the extent of responsibilities is looked upon as whether the internal mechanism is competent and reliable enough. The effectiveness of any system is more important than its sophistication.¹⁵ After gathering data by conducting tests, relevant inquiries, and observations, findings are recorded and evaluated by the team and sometimes informal discussion is done for making a formal report.¹⁶ An exit conference is also conducted to identify the miscommunications between the audit team and the site personnel.¹⁷

Post-audit steps

After the on-site work, the report has to be drafted which is then reviewed by the site personnel to check its veracity. The report is then analyzed and an action plan is prepared to address the deficiencies. The industrial unit will then focus on executing the reformations and recommendations. The findings and observations must be substantiated by proper evidence and due regard must be given to the previous audits and the deficiencies that were not taken care of must be checked.¹⁸

Environmental Audit Report is the end yield of Environmental Audit. It contains observations, results, and suggestions. Standard EA Report should contain the background of the audit, specifications of the site followed by aims and criteria of the audit, and evidence used. Problems and findings must be duly addressed along with the status of compliance with environmental norms.¹⁹

VI. AUDITING NORMS: INTERNATIONAL AUDITING STANDARDS

With the advent of environmental awareness in the 1950s, various environmental conferences were held for acknowledging environmental issues. After various environmental disasters like the US oil spill, Bhopal Gas Tragedy, and Chernobyl, environmental activism increased throughout the globe. In 1972, leaders from various countries gathered in Stockholm to understand the environmental concerns which ultimately led to the formation of the UN Environmental Program (UNEP). Since many countries were in the developing stage and the economy was also to be developed, industries were reluctant to adopt changes related to

¹⁵ ILO Content Manager, *Environmental Auditing - Definition and Methodology*, ILO ENCYCLOPEDIA (Mar. 24, 2011, 05:31 PM), <https://www.iloencyclopaedia.org/component/k2/item/748-environmental-auditing-definition-and-methodology>.

¹⁶ Ibid.

¹⁷ Guide on Environmental Audit, INTERNAL AUDIT STANDARDS BOARD (2012) <http://kb.icai.org/pdfs/PDFFile5b28e322df0fd2.63902464.pdf>.

¹⁸ Ibid.

¹⁹ Ibd.

environmental policy. However environmental activism led to the formation of stricter policies related to the environment.

USA announced **US National Environment Policy Act** in 1969, under which Environment Impact Assessments were carried out.²⁰ Gradually, the practice of Environmental Impact assessment became a legal requirement across the world. Various assessments regarding the quality of air, water, health, and safety became prominent. The USA was the first to implement Environmental Auditing for evaluating the performance of chemical and oil industries. In the USA, Environmental Audit was a mechanism to avoid the prosecution by Securities and Exchange Commission (SEC).²¹ In 1979, US Environmental Protection Agency certified third-party auditors for inspection of sites.²² Then many federal agencies incorporated Environmental audits as a tool to carry out compliance operations.

In Canada, auditing was conducted mostly by the in-house team of any industry. It was more of a tool for management than escaping the liabilities. Canadian Institute of Chartered Accountants 1993 released a document for the auditors titled '**Environmental Costs and Liabilities: Accounting and Financial Reporting Issues**'. It contained the mechanisms for putting forth environmental concerns in the financial reports. Later Canadian Standards Association issued guidelines for carrying out environmental auditing in a document titled 'Guidelines for Environmental Auditing: Statement of Principles and General Practices (CSA, 1994).'

United Nations established 'World Commission on Environment and Development (WCED)' considering environmental issues as global issues. The concept of Sustainable Development emerged from this commission. The commission released a report 'Our Common Future' in which it was mentioned that the development should be in a way that would not compromise the needs of future generations. Later on, at UN Conference on Environment and Development (UNCED) held in Rio de Janeiro, the concept of Sustainable Development received global acceptance.

The **European Eco-Management and Audit Scheme (EMAS)** was founded by the European Union in 1993 to improve environmental attainment on a steady basis. Initially, only industries were permitted to join it, gradually it became open to all sectors. Under EMAS, the organization ought to have a policy and that policy must be reviewed on-site along with the aims related to

²⁰ Shuchi Pahuja, *Environmental Audit*, ENCYCLOPEDIA OF CORPORATE SOCIAL RESPONSIBILITY, SPRINGER, (2013), https://link.springer.com/referenceworkentry/10.1007%2F978-3-642-28036-8_692.

²¹ Unit 1, *Introduction to Environmental Auditing and Management*, https://www.soas.ac.uk/cedep-demos/000_P508_EAEMS_K3736-Demo/unit1/page_14.htm.

²² *Ibid.*

the environment specified expressly. Regular audits and statements from the organization are also important along with a continual improvement process.

The **British Standards Institution BS7750** focused on a systematic approach to an Environmental Policy with mechanisms for identification of major issues and inspecting improvement.

The **ISO 14000 Series of Standards** for environmental management system state the procedures and guidelines for Environmental Auditing. International Organization for Standardization ISO is an independent organization formed in 1947 for standardization. ISO 14000 standard series states certain requirements that an organization can impart in their environmental management system for ameliorating environmental performance.²³ ISO mainly emerged from the discussions held at Rio Summit on Environment. According to ISO 14000, an Environmental Management System shall have necessarily a declaration of ISO 14001 along with the obligations (legal and voluntary), policy, management system, and an audit as stated in ISO 14010 for confirming the compliance to ISO 14000. ISO has released various standards for Environmental Auditing. ISO 19011 was introduced in 2002 for providing organizations with updated standards of auditing programs, management systems, and principles.

VII. ENVIRONMENTAL AUDITING IN INDIA

In India, Environmental Auditing emerged as an effect of the Constitutional commitments, LPG, commitments to the sustainable development goals, and other international norms and conventions. Rule 14 of the Environmental Protection Act, 1986 states about Environment Audit to be carried out by certain industries. The report has to be submitted to State Pollution Control Board in a fixed format as stated in Annexure 4, form 5 of the act. The industries that require consent under Air and Water act and those requiring authorizations under Hazardous Waste Rules have to mandatorily submit the Environmental Audit Report. Industries have now started opting for international certifications like ISO 14000 for their subsidiaries around the globe. Since there are now growing concerns regarding environmental pollution and sustainable development, various industries have now started voluntary action toward Environmental Auditing. Below stated is an in-depth analysis of the aspect of Environmental Audit in India.

Due to rapid economic growth, industrial development, migration, and urbanization various environmental issues have originated. It had led to water and air pollution, deforestation, and

²³ ISO, ENVIRONMENTAL MANAGEMENT SYSTEMS — REQUIREMENTS WITH GUIDANCE FOR USE (3rd ed., 2015).

many other environmental threats. There are over 20 Indian cities on the world's most polluted cities list. The air quality data shows that few major cities in India exceed the standards given by World Health Organization and Indian norms as well.²⁴ The particulate matter released by the vehicles is responsible for most of the air quality degradation, other sources include thermal power plants and other industries.²⁵ Rivers and water resources suffer a similar plight. A major waste in rivers originates due to the release of untreated industrial waste and non-industrial domestic waste. These levels of pollution have made the water unfit for consumption and have also affected the aquatic habitat tremendously.

For resolving these issues and bringing the required reforms to the environmental degradation, govt. has taken steps to develop the environmental framework of the country. National Environmental Policy, 2006 was framed to reform the errors of the previous policies. The main objectives of NEP are the conservation of environmental resources along with livelihood security and environmental governance.²⁶ Constitution of India under Art. 48-A states that the state shall take steps to protect the environment and natural resources of the country.²⁷ In addition to Constitution, National Policy on Pollution Abatement (NPPA) is another significant policy that guides the prevention of environmental pollution and acknowledges polluter pays principles. Apart from policies, there exist certain specific legal frameworks for the protection of the environment. To mention a few, the Water (Prevention and Control of Pollution) Act of 1974, Air (Prevention and Control of Pollution) Act of 1981, Environment (Protection) Act of 1986 (EPA), National Environmental Tribunal Act of 1995, National Environmental Appellate Authority Act of 1997. Under the Air act, pollution control boards have the power to designate a particular area as a control area and give authorization for setting up industries at specific places. Similarly, the Water act vests State and Central Pollution Control Board to set effluent standards for different industries. Public Liability Insurance Act, 1991 makes it compulsory for the industry owners with hazardous business to take insurance for the potential threat of accident or any type of hazard.

There are certain key institutions for the implementation of environmental norms. This majorly includes the Ministry of Environment and Forest, Central and State Pollution Control Board, and Courts. Ministry is majorly responsible for all environmental activities like planning and

²⁴ Environmental Compliance and Enforcement in India: Rapid Assessment, OECD, <http://www.oecd.org/environment/outreach/37838061.pdf>.

²⁵ Ibid.

²⁶ National Environment Policy 2006, MINISTRY OF ENVIRONMENT & FORESTS (2006) https://ibkp.dbtindia.gov.in/DBT_Content_Test/CMS/Guidelines/20190411103521431_National%20Environment%20Policy,%202006.pdf.

²⁷ INDIA CONST. art. 48A.

promotion of policies, conducting surveys, conservation of flora and fauna, and animal welfare. Central Pollution Control Board is a national agency having zonal offices across the country. The major aim of the CPCB is to provide govt. with suggestions on the matters about prevention control of air and water pollution, maintaining coordination between State Pollution Control Boards, collection of data on pollution and recommending measures for prevention, and organizing mass awareness programs. State Pollution Control Board comes under the state legislature. The major aims of SPCB include advising state govt. on issues related to the environment, grant authorization, and clearances to industries to operate as per the statutes. Over the last few decades, the judiciary has through judicial activism and public interest litigation filed by citizens played a crucial role in environmental conservation. Citizen complaints to CPCB and SPCB have also played a crucial role in enforcement and compliance with environmental standards.

In India, Supreme Audit Institution is headed by the Comptroller and Auditor General of India. Environmental Audit by SAI is carried out for performance and compliance audits. Over the last 25 years, various Environmental Audits have been carried out by SAI under MSO guidelines.²⁸

In the case *Indian Council for Enviro-legal Action v. Union of India and Ors. (1996)*²⁹, the petitioner brought an action against many chemical industries that were responsible for pollution in Bichhri Village, Udaipur region in Rajasthan. The industries dealt with various hazardous chemicals such as oleum and acids from phosphate compounds. The industries operated without proper environmental clearances and released toxic wastewaters. Orders given by the courts were ignored by the industries. After a report given by National Environmental Engineering Research Institute, Supreme Court gave the final decision. Court also acknowledged the strict liable principle and polluter pays principle. It was repeatedly emphasized by the court the lack of precautionary measures and not having the requisite clearances required. Due to this issue court emphasized the idea of Environmental audits by specialized agencies regularly and certification has to be acknowledged. Supreme Court in recent years has opted for a pro-environment approach over development at the cost of the environment.

VIII. THIRD-PARTY AUDITING AS A MECHANISM FOR REFORMATION

Environmental Auditing in any company can be conducted by the internal auditing team or

²⁸ Environmental Auditing in India, COMPTROLLER AND AUDITOR GENERAL OF INDIA, <http://iced.cag.gov.in/wp-content/uploads/2013/02/Environment-auditing-in-India.pdf>

²⁹ *Indian Council for Enviro-Legal v. Union Of India & Ors (1996) 3 S.C.C. 212.*

govt. appointed team. The credibility of the auditors can be questioned if it is influenced by bias. Despite conducting auditing there is a possibility that the environment, health, and safety of the workers might be compromised. Apart from health and safety, high emissions and release of effluent from industries which lead to high scale environmental pollution are a very catastrophic ancillary product of development. To reduce such threats, it is essential to ensure compliance with environmental norms to the farthest extent achievable. This unbiased, third-party environmental audit can be an essential tool to bring about change in compliance with environmental norms. Gujarat High Court, in the matter SCA 770/1995 gave Environmental Audit Scheme as a verdict which had a third-party, systematic method for proper auditing. However, it also did not work out properly. The study was conducted by researchers from different universities on the status of third-party auditing in Gujarat, India.³⁰ The key findings of the study were that first, the state of affairs was deeply corrupted, second, the auditors if reported truthfully, the falsely reported industries will reduce, and third, after auditing the industrial plants if have treatment plants, it reduced the pollution emission. The main issue that was identified in this study was a conflict of interest or lack of proper incentives and acknowledgments to release an honest report.

IX. CONCLUSION

It is undisputed that for a better Environment, to achieve sustainable development, the environmental norm and standards must be diligently framed and most importantly compliance to those norms must be implemented through proper mechanisms. Environmental Audit is one such mechanism to avoid industrial disasters and consistent gradual environmental pollution. Chernobyl disaster, Bhopal Gas Tragedy, Love Canal Disaster, and many other disasters majorly result from either lack of environmental standards or proper monitoring of those established standards. Proper Environmental Auditing can reduce the hazards of industrial disasters or environmental pollution to a very large extent. The lives of workers and other stakeholders will not be compromised if safety standards are checked and monitored regularly.

³⁰ Esther Duflo, Michael Greenstone, Rohini Pande & Nicholas Ryan, *Truth-Telling by Third-Party Auditors and the Response of Polluting Firms*, 128 THE Q. J. OF ECON., 1499, 1539 (2013).