

Federal Government Initiatives in Environmental Auditing

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(Note: The views expressed in this paper are solely the author's and not those of the U.S. Environmental Protection Agency or any other government entity.)

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During the past decade many companies have developed environmental auditing programs for sound business reasons, particularly as a means of helping manage pollution control affirmatively over time instead of reacting to crises. Environmental auditing programs have been initiated and expanded in the absence of legislative or regulatory requirements to audit. Government agencies, especially at the Federal government level have taken various initiatives to encourage environmental auditing, advance the state of the art of audit practices, apply audit techniques to the governments's own facilities, and to help set the direction for future audit programs and practices.

U.S. EPA's Environmental Auditing Policy

After considerable deliberations and several false starts, the U.S. Environmental Protection Agency publicly addressed environmental auditing issues in a policy statement published in the Federal Register as an interim policy on November 8, 1985 (50 FR 46504) and as a final policy on July 9, 1986 (51 FR 25004). The policy encouraged the use of environmental auditing to help achieve and maintain compliance with environmental laws and regulations as well as to help identify and correct unregulated environmental hazards. The policy statement specifically:

- ° encourages regulated entities to develop, implement and upgrade environmental auditing programs;

- ° discusses when the Agency may request audit reports;
- ° explains how EPA's inspection and enforcement activities may respond to regulated entities' efforts to assure compliance through auditing;
- ° endorses environmental auditing at federal facilities;
- ° encourages state and local environmental auditing initiatives; and
- ° outlines elements of effective audit programs

Two aspects of the EPA policy statement stand out above the others. (1) the issue of potential EPA access to audit reports and (2) EPA's identification of elements of effective audit programs.

Access to Audit Reports

Because EPA believes Agency requests for audit reports could inhibit auditing in the long run, decreasing both the quantity and quality of audits conducted, the policy statement notes that "EPA will not routinely request audit reports." Of course, EPA's authority to request an audit report could be exercised on a case-by-case basis -- where the Agency determines it is needed to accomplish a statutory mission or where the government deems it material to a criminal investigation. Such requests should be limited and made only when the information needed cannot be obtained from the monitoring, reporting or other data otherwise available to the Agency.

This issue of EPA access to audit reports was a motivating factor in the development of the policy statement and the key issue on which

most commenters focused during the public comment period. EPA issued the final policy with only minor changes from the interim version.

Elements of Auditing

Believing that effective environmental audits have certain discernible elements in common with other kinds of audits, EPA identified performance-oriented "Elements of Effective Environmental Auditing Programs" as an appendix to the Agency's audit policy statement. These elements are fairly general, allowing for considerable variability in the way a company might structure an audit program. Response to these elements was quite positive, with concern focused more on whether EPA would develop more restrictive audit elements in the future. In brief the seven elements suggested by EPA are:

1. explicit top management support for environmental auditing and commitment to follow-up on audit findings.
2. an environmental auditing function independent of audited activities.
3. adequate team staffing and auditor training.
4. explicit audit program objectives, scope, resources and frequency.
5. a process which collects, analyzes, interprets and documents information sufficient to achieve audit objectives.
6. a process which includes specific procedures to promptly prepare candid, clear and appropriate written reports on audit findings, corrective actions, and schedules for implementation.

7. a process which includes quality assurance procedures to assure the accuracy and thoroughness of environmental audits.

While identification of these elements does not reflect any great insight or new findings, their publication by EPA does lay out some generally accepted "criteria" against which companies can assess their audit programs, and about which interested parties can react and continue to debate appropriate elements of effective environmental auditing.

Audit Provisions in Consent Decrees

Within the past two years environmental auditing provisions have played a central role in a number of major settlements with several industries. Due to the very wide distribution and publicity given to those settlements, and to the benefits of auditing for both industry and EPA, environmental auditing is now being considered in enforcement negotiations with a number of companies.

The potential for including audit provisions in settlement agreements was acknowledged in EPA's environmental auditing policy statement. The policy noted that audit provisions are most likely to be proposed in settlement negotiations where:

- " ° A pattern of violations can be attributed, at least in part, to the absence or poor functioning of an environmental management system; or
- ° The type or nature of violations indicates a likelihood that similar noncompliance problems may exist or occur elsewhere in the facility or at other facilities operated by the regulated entity."

Among the issues that arise when considering auditing in an enforcement context are:

- What effect should an auditing provision have on the overall terms of a settlement (e.g., penalties)?
- What effect should a party's compliance history have on the overall terms of a settlement, e.g., on Agency access to audit documents, oversight, reporting of violations, Agency role in identifying appropriate corrective action, and whether a third-party (versus internal) auditor is utilized?
- What limitations are appropriate to be placed on Agency inspections of audited facilities while the audit is under way or on the use of audit findings in a subsequent enforcement action?
- When is it appropriate to provide for stipulated penalties to be paid in settlement of violations uncovered by an audit?

These fundamental issues of Agency enforcement policy have yet to be resolved, although various approaches have been taken in different settlement agreements drafted by both regional and headquarters EPA offices.

Environmental Auditing Materials

EPA prepared and widely distributed a number of audit-related materials over the past few years. These materials, available from EPA's Regulatory Reform Staff, PM-223, Washington, D.C. 20460, include:

- "Current Practices in Environmental Auditing," profiling in detail five companies' operating environmental audit systems;

- "Annotated Bibliography on Environmental Auditing", a reference guide to sources of information on audit design, procedures, benefits, legal and other issues.
- "Benefits of Environmental Auditing: Case Examples", identifying specific environmental and other benefits derived from over twenty companies' actual auditing programs.
- "Applicability of Environmental Auditing to Underground Storage Tanks", a review of underground storage tank regulatory initiatives and tank assessment and audit techniques.
- "Issues of Confidentiality and Disclosure in Environmental Auditing", discussing some legal issues and principles of concern to many companies developing or considering audit programs.
- "Duties to Report or Disclose Information on the Environmental Aspects of Business Activities", delineating corporate obligations to record and report information on the environmental and health impacts of their activities and EPA obligations to disclose or protect such information.

In addition to these materials, some audit protocols may be available to the public from one or more of the federal agencies identified below.

Other Federal Agencies

EPA is not the only federal agency involved in environmental auditing-related activities. Many federal agencies have undertaken

initiatives to establish auditing programs to assess environmental compliance and management at their own facilities.

Federal agency self-audit initiatives are a response to many factors, including: encouragement from EPA, increased state and local enforcement actions, third party litigation, specific legislative compliance requirements, and increased awareness of potential organizational and personal liabilities. In addition in May 1986 the U.S. General Accounting Office (GAO) issued a report (Hazardous Waste: Federal Civil Agencies Slow To Comply With Regulatory Requirements) which devotes one of its three major chapters to environmental auditing and concludes "environmental auditing could help identify [waste] handlers and improve compliance."

The Tennessee Valley Authority (TVA), which started auditing in 1980, has the oldest audit program in the federal sector. TVA's program is described in some detail in the Edison Electric Institute's "Environmental Auditing Case Studies" published in 1984 and available from EEI, 1111 Nineteenth ST., NW, Washington, DC 20036.

Other federal agencies establishing audit programs include:

- (1) The Air Force, which has: audited air bases and contractor operated facilities in the United States; expanded some audits to include waste minimization possibilities; and developed detailed audit protocols which may be publicly available.

- (2) The Department of Energy (DOE), which last year established a new Office of Environmental Audit and Compliance under the Assistant Secretary for Environment and began auditing DOE's major facilities.
- (3) The Army Materiel Command (AMC), which has completed consultant-conducted audits of all its facilities and is now initiating in-house audits.
- (4) The National Institute of Health (NIH), which developed detailed audit protocols and conducted an initial audit of its extensive Bethesda, MD facilities.
- (5) The National Aeronautics and Space Administration (NASA), which has funded several consultant audits of some major NASA facilities.
- (6) EPA itself, which is completing internal audits of its own laboratories' compliance with the Resource Conservation and Recovery Act (RCRA) while also initiating third party audits covering all environmental regulations.

Federal Agency Conference

In 1984 EPA sponsored a conference for federal agencies to acquaint them with environmental auditing principles and practices. That conference relied to a large extent on relaying information about private sector audit programs and practices.

EPA is planning a follow-up conference for federal agencies in early 1987. This conference will focus more on agencies' experience

in developing and implementing audit programs and on audit techniques for planning and conducting audits and reporting audit findings.

Conclusion

Various environmental auditing initiatives, especially by EPA, appear to be effectively expanding audit programs and practices. While auditing has demonstrated its usefulness to many private companies, most federal agencies are only beginning to audit. However, their initial audit efforts are very encouraging.

Because environmental auditing systems have been widely adopted on a voluntary basis in the past, and because audit quality depends to a large degree on genuine management commitment to the program and its objectives, EPA is likely to continue to believe that auditing should remain a voluntary activity.