



Environmental Auditing:
Stuck Between a Progressively
Softer Rock and a Hard Place

D. Marsh Prause

Smith Helms Mulliss & Moore, L.L.P.
Greensboro, North Carolina

Synopsis

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§ 6.01. Introduction.

This chapter examines the dilemma confronting corporate officials attempting to decide whether to voluntarily conduct an environmental self-audit and discusses recent developments that help to resolve this dilemma by encouraging environmental auditing through the provision of various types of protection to businesses conducting environmental audits.¹ The remainder of this introduction explains the dilemma and uses two illustrations to demonstrate it. The first section of the chapter following

¹ EPA defines “environmental auditing” as “a systematic, documented, periodic and objective review by regulated entities of facility operations and practices related to meeting environmental requirements.” 51 *Fed. Reg.* 25,004, 25,006 (1986)(EPA’s original Environmental Auditing Policy Statement). *See also* 60 *Fed. Reg.* 66,706, 66,710 (1995)(incorporating this definition into EPA’s new audit policy by reference).

the introduction examines the rationale for encouraging regulated entities to engage in self-examination in general and environmental audits in particular. The following sections consider recent regulatory, legislative, and judicial developments that tend to encourage voluntary environmental auditing by furnishing incentives in the form of a variety of protections for companies conducting voluntary environmental audits.

[1] — The Dilemma.

Corporate officials attempting to decide whether to implement an environmental auditing program of any scope² are “stuck between a rock and a hard place.” The “rock” is the prospect that conducting an audit will result in the generation of information that government agencies or private litigants might obtain and wield against the company in the context of enforcement proceedings or litigation. The “hard place” is the prospect that refraining from an audit will result in the company’s failure to promptly discover and remedy problems today that could be significantly more expensive to remedy in the future. Laws, regulations, and government policy have the potential to impact the resolution of this dilemma. Recent developments have softened the “rock,” encouraging companies to implement audit programs and examine themselves in order to stay clear of the “hard place.”³

[2] — The Rock.

The “rock” is perhaps best illustrated by the what happened to Coors Brewing Company after it voluntarily disclosed to the Colorado Department of Public Health and Environment that a \$1.5 million self-audit of its beer brewing process conducted over 18 months revealed emissions of unexpectedly large quantities of volatile organic compounds.⁴ Before the audit, Coors Brewing and other brewers were unaware of the relatively large quantities of volatile organic compounds generated by

² The considerations discussed throughout this article are applicable to both facility-specific and company-wide environmental self-audits.

³ For a discussion of why this resolution of the dilemma is favorable from a public policy standpoint, *see infra* § 6.02.

⁴ *See* “Companies Say EPA Enforcement Policy Collides With Voluntary Audit Programs,” 25 *Env’t Rep.* (BNA) 416, 417 (June 24, 1994).