

INSIGHTS

Environmental Auditing, With Tim Wilkins

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By: [Daniel J. Pope](#) and [Timothy A. Wilkins](#)

In this episode of the Environmental Law Monitor, [Tim Wilkins](#), co-chair of Bracewell's [Environmental, Social & Governance \(ESG\)](#) practice group, joins host [Daniel Pope](#) to discuss environmental auditing and why companies should be actively conducting environmental audits.

What is an environmental auditing?

When I'm speaking about environmental auditing, I'm thinking of environmental self-audits, a self-examination of your compliance with respect to the laws, regulations, permits, other requirements that are applicable to a given facility. It's more akin to the internal audit function that people do as part of their financials or as part of their SEC reporting. It is a self-check on how you're doing relative to the applicable standards and requirements. When I think of environmental auditing, that's the approach I'm describing.

When did you start thinking about environmental auditing? What put the idea of auditing on your radar?

As a first-year summer associate, after my first year of law school, I clerked in Bracewell's Houston office and went to work for a gentleman by the name of Terrell Hunt, who was the immediate past head of EPA's Office of Enforcement Policy.

One of the things that came up was some stuff that was kind of fresh in the news at that time about EPA and even some of the criminal enforcers going after self-audit information at some of the big companies. I think Budweiser and Coors were examples that had been in the news at the time, where basically those companies had internal audit programs on environmental stuff and the enforcement authorities said, "Yeah, hand those over and use those documents as a road map to enforcement actions."

To me, as a policy junkie, that was a terrible incentive to set up the idea that somebody who was doing internal self-criticism and trying to get better and you turn around and hit him in the mouth with the very good stuff that you want them to be doing to try and get better.

Have you continued to be involved with the development of audit policies? What's your continued involvement on the policy side?

I recently provided input to the state of Louisiana on a statute that they ended up adopting that relates to environmental auditing and audit privilege issues. The biggest sort of policy

development was participating in kind of a working group that EPA set up at the federal level on the idea of new owner audits, the idea of using EPA's audit policy from 2000, the idea that you find, fix and disclose in exchange for penalty leniency, applying that in transactional contexts where a new owner of stock or assets could take advantage of the idea that I'm going to go turn over a bunch of rocks, find the things that are broken, go into the agency and fix them. But I can't live with, for example, a 21-day disclosure or a 60-day corrective action timeline you need when you're digesting a new acquisition. A lot more time than that flexibility in how those audits get evaluated by the agency. I'd done new owner audits under agreement with EPA before. There was like a formal policy around that. And in 2008, EPA adopted the so-called interim approach to applying the environmental audit policy in a transactional context. I was involved in the development of that and have remained involved in that through being one of the real frequent fliers at EPA on the new owner audit program. They take a lot of how they apply that program from new owner audits that I've done with them over time.

For companies that don't really think about environmental auditing as part of a routine business practice, what are the real purposes underlying these?

These days, big companies, companies in heavily regulated industries, are going to have strong compliance programs. They're going to have smart people working in the space that understand the regulations that have SOPs or that have procedures, have lists of applicable requirements that they use to make sure that they're staying in compliance as best as possible.

What environmental audits do is provide a periodic, systematic, candid, thorough check that those systems are still working. I like to say that laws change, people leave, equipment breaks, processes get modified. All of those things can take you from being in compliance to out of compliance in a heartbeat. And if you just keep doing what you're doing, you may miss that, right?

It's important to have fresh eyes, and on a periodic basis, take a look at compliance in company-wide systems, facility by facility and activity by activity. I think it's important to have that sort of level of check. And I think it depends on what is the degree of flux at a facility or in a certain area of law? I think you know how high-risk from a regulatory perspective your activities are. Are there new lenses that you look at stuff through?

Have questions about environmental auditing? Contact [Tim Wilkins](#) or [Daniel Pope](#).

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